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Tuesday
June 25, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

CONTINUED INSIDE

Selected Subjects

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

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

WHO: The Office of the Federal Register.

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

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

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Proclamation 5354 of June 21, 1985

Increase in the Rates of Duty for Certain Pasta Articles From the European Economic Community

By the President of the United States of America

A Proclamation

1. On June 20, 1985, I determined pursuant to section 301(a) of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2411(a)), that the preferential tariffs granted by the European Economic Community (EEC) on imports of lemons and oranges from certain Mediterranean countries deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pts. 5 and 6)), are unreasonable and discriminatory, and constitute a burden or restriction on U.S. commerce. I have further determined, pursuant to section 301(b) of the Act (19 U.S.C. 2411(b)), that the appropriate course of action to respond to such practices is to withdraw concessions with respect to imports from the EEC.

2. Section 301(a) of the Act authorizes the President to take all appropriate and feasible action to obtain the elimination of an act, policy, or practice of a foreign government or instrumentality that 1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement; or 2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce. Section 301(b) of the Act also authorizes the President to suspend, withdraw, or prevent the application of benefits of trade agreement concessions with respect to, and to impose duties or other import restrictions on the products of, such foreign government or instrumentality. Pursuant to section 301(a) of the Act, such actions can be taken on a nondiscriminatory basis or solely against the foreign government or instrumentality involved.

3. I have decided, pursuant to section 301 (a)(2) and (b) of the Act, to increase the U.S. import duties on the pasta articles provided for in items 182.35 and 182.36 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) which are the product of any member country of the EEC.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to sections 301 (a)(2) and (b) and section 604 of the Trade Act of 1974, do proclaim that:

1. Subpart B of part 2 of the Appendix to the TSUS is modified as follows:

(a) The heading is amended by adding after 1962 "or Section 301 of the Trade Act of 1974".

(b) The following new items and superior heading, set forth in columnar form, are inserted in the columns designated "Item", "Articles", and "Rates of Duty 1", respectively, following TSUS item 945.69:

	"Macaroni, noodles, vermicelli, and similar alimentary pastes (provided for in items 182.35 and 182.36, part 15B, schedule 1) if the product of any member country of the EEC:	
945.80	Not containing egg or egg products	40% ad val.
945.82	Containing egg or egg products	25% ad val."

2. If, in the opinion of the United States Trade Representative, a mutually acceptable resolution of this issue has been reached with the EEC, he shall so advise the President, together with a recommendation concerning the modification or termination of this action. A decision by the President to modify or terminate this action shall be published in the **Federal Register**.

3. This proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date which is 15 days after the date on which this proclamation is signed.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of June, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-15380
Filed 6-24-85; 10:49 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 377

[Docket No. 50698-5098]

Exports of Crude Oil to Canada for Consumption or Use Therein

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: On June 14, 1985, President Reagan determined that crude oil exports to Canada are in the national interest and made the necessary findings under the Energy Policy and Conservation Act, the Mineral Lands Leasing Act, and the Outer Continental Shelf Lands Act to permit exports to Canada of crude oil subject to those statutory restrictions (50 FR 25189, June 18, 1985). To implement this determination, Part 377 of the Export Administration Regulations is being revised to permit crude oil exports to Canada for consumption or use therein, provided that it was not transported via the Trans-Alaska Pipeline and was not produced from Naval Petroleum Reserves.

EFFECTIVE DATE: June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Rodney A. Joseph, Acting Manager, Short Supply Program, Room 3876, Office of Industrial Resource Administration, U.S. Department of Commerce, Washington, DC 20230, Telephone: 202/377-3984.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Since this rule pertains to a foreign affairs function of the United States, the proposed rulemaking procedures and the delay in effective date required under the Administrative Procedures Act are inapplicable.

2. This rule contains a collection of information requirement subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The collection of this information has been approved by the Office of Management and Budget (OMB control number 0625-0001).

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because a notice of proposed rulemaking is not required to be published. Accordingly, no initial or final Regulatory Flexibility Analysis has or will be prepared.

4. Since this rule pertains to a foreign affairs function, it is not a rule within the meaning of section 1(a) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 377

Exports.

PART 377—SHORT SUPPLY CONTROLS AND MONITORING

1. The authority citation for Part 377 is revised to read as follows:

Authority: Secs. 203, 206, Pub. L. 95-223, as amended (50 U.S.C. 1702, 1704); E.O. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513, March 29, 1985); Sec. 103, Pub. L. 94-163, as amended, (42 U.S.C. 6212); Sec. 28, Pub. L. 93-153, (30 U.S.C. 185); Sec. 28, Pub. L. 95-372, (43 U.S.C. 1354); E.O. 11912 of April 3, 1976 (41 FR 15825, as amended); and Presidential Findings (50 FR 25189, June 18, 1985)

2. Accordingly, the Export Administration Regulations (15 CFR Part 368-399) are amended by adding § 377.6(d)(1)(viii) as follows:

§ 377.6 Petroleum and petroleum products.

* * * * *

(d) * * *

(1) * * *

(viii) *Exports to Canada for consumption or use therein.* The Group A commodity was not produced from the Naval Petroleum Reserves and was not and will not be transported by pipeline over rights-of-way granted pursuant to Sec. 203 of the Trans-Alaska Pipeline Authorization Act and is being exported to Canada for consumption or use therein.

* * * * *

Issued: June 20, 1985.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85-15284 Filed 6-24-85; 8:45 am]

BILLING CODE 3510-25-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33-6588; IC-14575; File No. S7-1007]

Registration Forms for Insurance Company Separate Accounts That Offer Variable Annuity Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of forms, rule amendments, and publication of guidelines.

SUMMARY: The Commission is adopting: (1) Form N-3, a new registration form for certain separate accounts registered under the Investment Company Act of 1940 as management investment companies, and certain other separate accounts; (2) Form N-4, a registration form for certain separate accounts registered under the Investment Company Act of 1940 as unit investment trusts, and certain other separate accounts; and (3) related rule amendments. The Commission is also publishing staff guidelines for the preparation of Forms N-3 and N-4. The Commission is adopting the foregoing to integrate and codify disclosure requirements for insurance company separate accounts that offer variable annuity contracts and to shorten and simplify the prospectus provided to investors, while making more extensive information available for those who request it. Separate accounts will be permitted to use existing registration forms during a transition period of approximately one year.

DATE: The amended rules will be effective July 25, 1985. The new forms and guidelines will be available for registration of separate accounts and for filing of post-effective amendments by separate accounts July 25, 1985.

FOR FURTHER INFORMATION CONTACT:

Thomas E. Neal, Assistant Chief, (202) 272-2061, Brian M. Kaplowitz, Special Counsel, (202) 272-2061, or Jeffrey S. Puretz, Attorney, (202) 272-3010, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting the following:

(1) Form N-3, a registration form that will replace Form N-1 (17 CFR 239.15, 274.11) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "1933 Act") and the Investment Company Act of 1940 (15 U.S.C. 80a-1, *et seq.*) (the "1940 Act"), for use by separate accounts that offer variable annuity contracts and that are organized as management investment companies under the 1940 Act, and Form S-1 under the 1933 Act for use by certain separate accounts that offer variable annuity contracts but which are not registered investment companies (collectively, "management accounts"). Form N-3 is in three parts: (i) Part A is the prospectus required by section 10(a) of the 1933 Act (15 U.S.C. 77j(a)), (ii) Part B is the "Statement of Additional Information", which contains additional information that must be provided upon request, and (iii) Part C contains other information that is required for the registration statement. The text of Form N-3 is Appendix A to this release.

(2) Form N-4, a registration form that will replace Form S-6 (17 CFR 239.16) under the 1933 Act and Form N-8B-2 (17 CFR 274.12) under the 1940 Act for use by separate accounts that offer variable annuity contracts and are organized as unit investment trusts under the 1940 Act, and Form S-1 under the 1933 Act for use by certain separate accounts that offer variable annuity contracts but which are not registered investment companies (collectively "trust accounts"). Form N-4 has the same three-part format as Form N-3. The text of Form N-4 is Appendix B to this release.

(3) Amendments to the following rules of Regulation C under the 1933 Act: rule 482 (17 CFR 230.482), 486 (17 CFR 230.486), 495 (17 CFR 230.495), 496 (17 CFR 230.496), and 497 (17 CFR 230.497). Rule 486 is amended to reflect the three-part format of Forms N-3 and N-4 and to permit all registrants that use Forms N-3 and N-4 to use the procedures provided in that rule. Rules 482, 495, 496, and 497 are amended to add Forms N-3 and N-4 to the registration forms specified in those rules.

(4) Amendments to the following rules under the 1940 Act: Rule 8b-11 (17 CFR 270.8b-11), 8b-12 (17 CFR 8b-12), and 30d-1 (17 CFR 270.30d-1). Rules 8b-11 and 8b-12 are amended to add Forms N-3 and N-4 to the registration forms specified in those rules, and rule 30d-1 is amended to add an item of Form N-3 to the items specified in that rule.

The Commission is not amending Form N-1A (17 CFR 239.15A, 274.11A), the registration form for open-end investment companies, as it had proposed. Amendment to Form N-1A was proposed in connection with a requirement to disclose yield quotations by money market portfolio companies underlying trust accounts using Form N-4. The proposed yield disclosure for Form N-4 has not been adopted, and this change has obviated the need to amend Form N-1A. Further, the Commission is not rescinding rule 22d-2 under the 1940 Act (17 CFR 270.22d-2), which permits separate accounts offering variable annuity contracts to establish variations in their sales loads and administrative charges. When the Commission adopted rule 22d-1 in February of 1985, it requested comment on whether rule 22d-2 should be rescinded.

The Commission is also publishing staff guidelines for the preparation of Forms N-3 and N-4, which are Appendixes C and D to this release, respectively.

Background and Purpose

On December 23, 1983, the Commission proposed for comment two new forms for registration of insurance company separate accounts that offer variable annuity contracts ("separate accounts").[1] The Commission stated it wished to extend the use of a simplified prospectus, as first developed for mutual funds with the adoption of Form N-1A,[2] to the separate accounts.[3]

The Commission, in the proposing release, expressed the belief that Forms N-3 and N-4 would provide significant benefits for separate account registrants and investors, including integrating the reporting and disclosure requirements under both the 1933 Act and the 1940 Act into one form and codifying disclosure standards that the staff has developed for the separate accounts. By adopting the format of Form N-1A, the forms would also permit shorter and simpler prospectuses.

Commentators generally supported adoption of the proposed forms, although they suggested some changes and clarification. The Commission has made several changes in response to the comments, and the Commission is hereby adopting Forms N-3 and N-4 and certain related rule amendments, as well as publishing staff guidelines to both forms.

Forms N-3 and N-4—An Overview

Both Forms N-3 and N-4 contain three parts. The first part of each is a simplified prospectus that meets the requirements of section 10(a) under the 1933 Act and whose delivery satisfies the prospectus delivery requirements of section 5(b)(2) under the 1933 Act (15 U.S.C. 77e(b)(2)). The prospectus will contain a concise presentation of material information about the separate account and the variable annuity contracts. The second part is the Statement of Additional Information, which will be available to prospective purchasers upon request and without charge. The Statement of Additional Information will contain more detailed discussions of matters required to be in the prospectus, as well as other information that might interest some investors. The third part of each form consists of other information generally required only in the registration statement.[4]

Discussion of Comments

The Commission received seven comment letters on the proposing release.[5] All of the commentators

[1] Investment Company Act Release No. 13689 49 FR 614 (January 5, 1984). After publication of the release, the Commission twice extended the period for public comment in response to requests from an interested party. Investment Company Act Release Nos. 13800 (February 29, 1984) (49 FR 8626 (March 8, 1984)) and 13947 (May 17, 1984) 49 FR 21938 (May 24, 1984).

[2] The Commission adopted Form N-1A for use by open-end investment companies other than separate accounts of insurance companies. Investment Company Act Release No. 13436 (August 12, 1983) [48 FR 37928 (August 22, 1983)].

[3] Separate account is defined in section 2(a)(37) of the 1940 Act (15 U.S.C. 80a-2(a)(37)) to mean:

An account established and maintained by an insurance company . . . under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

[4] For a discussion of how this three-part format is designed to achieve the goal of prospectus simplification, see the adopting release of Form N-1A, *supra* note 2.

[5] Three of the commentators were law firms, two were insurance companies, one was a trade association representing insurance companies, and one was a consultant to insurance companies. Over 250 comments were included in the comment letters

supported the concept of providing a registration form specifically for separate accounts that offer variable annuities. Most stated that they support adoption of the concept of a simplified prospectus, as first developed in Form N-1A, for the separate accounts. The commentators offered a substantial number of specific comments and suggestions on the proposed forms and guidelines. In response to the comments, several changes have been made.

Many of the specific comments received are discussed below. The first section of the following discussion focuses on the major issues raised by the commentators. It is followed by a discussion of comments on specific items of Form N-3 and Form N-4. A final section presents the views of the Division of Investment Management on comments relating to the guidelines to the forms. Readers should see the proposing release for a more complete explanation of the proposed forms.

Financial Information

In its proposing release, the Commission requested comment on presentation of financial information in Forms N-3 and N-4. The Commission proposed that the prospectus for both management and trust accounts contain condensed financial information of the separate account and that the Statement of Additional Information contain other financial information including complete financial statements of the separate account. The Statement of Additional Information would also contain a two-year comparative balance sheet of the insurance company that sponsors the separate account. The remainder of the insurance company's financial statements could be placed in Part C, rather than in Part B, if they were made available to investors upon request and without charge.

Five commentators addressed the proposed presentation of the sponsoring insurance company's financial statements. These commentators approved the principle of placing these financial statements in the Statement of Additional Information and in Part C, rather than in the prospectus. However, one commentator asserted that the insurer's financial statements should not be required at all, arguing that they would diminish the significance of the separate account's financial information. Another commentator asserted that the purpose of the sponsor's financial statements is to show its long-term solvency, and that since the comparative balance sheets are sufficient for this purpose, the remainder of the financial statements, as proposed for Part C, need not be disclosed. The Commission is adopting the requirements on presentation of financial information as proposed. As stated in the proposing release, variable annuity contractowners or annuitants may not have the same interest in the sponsoring insurance company as they have in the separate account; however, they look to the sponsoring insurance company to assure annuity payments, and the insurance company's financial information should be available to them. Placement of the financial statements in the Statement of Additional Information and Part C of the registration forms ensures that they will be available to interested investors, while relieving registrants and insurance companies of a substantial disclosure cost.

One of the commentators objected to the proposal to make the insurance company's financial statements in Part C available to investors upon request, asserting that only information in the Statement of Additional Information should be available. The Commission proposed this information for Part C instead of the Statement of Additional Information to reduce the disclosure burden for insurance companies, and the Commission is retaining the format as proposed.[6] However, like the N-1A, the instructions for Forms N-3 and N-4 prescribe minimal requirements for each part,[7] and registrants are free to include additional information in the prospectus and the Statement of Additional Information, so long as it does not impede understanding of the required information. This principle is stated in the general instructions of each form as adopted. Accordingly, a registrant that does not wish to make any section of Part C available to investors may place the sponsoring insurance company's financial statements in the Statement of Additional Information.

The Commission requested comment on whether stock life insurance companies that prepare financial statements in accordance with generally accepted accounting principles ("GAAP") solely for inclusion in a separate account registration statement should instead be permitted to use financial statements prepared in accordance with applicable statutory accounting requirements.[8] Three commentators favored permitting the use of statutory financial statements, one of which advocated their use for all stock life insurance companies; one commentator favored GAAP for all financial statements. Two of the commentators favoring statutory financial statements said that they present a more conservative view of an insurance company's financial position and are more appropriate than GAAP financial statements to show solvency. In the forms as adopted, the Commission will permit the use of statutory financial statements by life insurance companies that would be required to prepare GAAP financial statements solely for inclusion in a separate account registration statement.[9]

In the proposing release, comment was requested on whether other information on the financial condition of the sponsoring insurance company should be included in the prospectus, such as ratings on the stability of insurance companies assigned by a private rating service. Two commentators opposed inclusion of this information, one asserting that these ratings serve a different function and provide different information than securities ratings. The Commission has determined not to require this other information.

Simplified Prospectus

Several commentators asserted that the proposed forms did not effectively simplify the prospectus in many respects, and offered many specific recommendations that information proposed for the prospectus instead be placed in the Statement of Additional Information. Some of these

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[6] Under current requirements, separate account prospectuses must contain full financial statements of both the separate account and the sponsoring insurance company, and condensed financial information for a management account.

In Forms N-3 and N-4, the only portion of Part C that must be made available to investors upon request is the insurance company's financial statements therein.

[7] *See* adopting release of Form N-1A, note 2, *supra*.

[8] Mutual life insurance companies and their wholly-owned stock insurance company subsidiaries are currently permitted to use financial statements prepared in accordance with statutory accounting requirements. Rule 7-02 of Reg. S-X (17 CFR 210.7-02).

[9] This use of statutory financials is being permitted solely to relieve the disclosure burden upon this group of registrants and their sponsoring insurance companies. The Commission staff has, upon request, permitted certain of the affected insurance companies to use statutory financials. To promote consistency in financial reporting, the Commission does not believe it is appropriate to permit a broader class of insurance companies to use statutory financials. Rule 7-02 permitted mutual life insurance companies to use statutory financials in 1981 because GAAP had not yet been developed for them. Accounting Series Release No. 301, (Release 33-6357) (October 21, 1981) (46 FR 54332 (November 2, 1981)). The Commission noted at that time the broad use of and acceptance of GAAP statements for investor reporting services.

The permitted use of statutory financials will be indicated by instruction to the appropriate item in each form. The Commission is not amending Rule 7-02 of Reg. S-X, *supra*.

recommendations have been adopted. For instance, a requirement to disclose information on computation of annuity payments has been removed from the prospectus and placed in the Statement of Additional Information. However, information on sales loads and insurance company charges against the separate account has been retained in the prospectus. Other specific recommendations are discussed in more detail in the discussion of the forms that follows.

Several commentators stated that the forms should not employ certain technical terms such as "sponsor," "depositor," "transfer agent," and "public offering price," for forms designed exclusively for insurance company products. As adopted, the forms contain more general terms, except that the word "depositor" has been retained in Form N–4 since it is a common term that has been used for many years to describe the creator of a unit investment trust.

The Commission is aware that since adoption of Form N–1A some investors have encountered problems obtaining the Statement of Additional Information. In particular, some investment companies have failed to deliver Statements of Additional Information upon request, and some have made it difficult for investors to request the document by requiring, for example, written requests. The Commission has fostered a movement toward a simplified prospectus for investment companies upon the premise that more detailed information would be available for investors who want it, and the Commission believes it is imperative that investors be able to obtain a Statement of Additional Information without first overcoming significant obstacles. Accordingly, the Commission is retaining, with some modification, undertakings that were proposed for Forms N–3 and N–4. As proposed, one undertaking required that any application to purchase an annuity contract include a space that an investor could check to obtain a copy of the Statement of Additional Information. The undertaking as adopted provides registrants with an option: the inclusion either of the space on the annuity application or a post card or mail in form affixed to or included in the prospectus that an investor may use to send for a Statement of Additional Information. Another undertaking, as proposed, required delivery of the Statement of Additional Information that was requested on a purchase application no later than delivery of the contract purchased. This undertaking has been amended to require delivery of the document (and any financial statements required to be made available) promptly upon written or oral request.

Several commentators objected to the proposed undertakings asserting that they might encourage frivolous requests and that they are unfair since they are not in Form N–1A. The Commission believes that the undertakings are warranted to ensure that separate accounts respond to valid requests for Statements of Additional Information. Furthermore, the Commission will consider adopting these requirements for investment companies using other registration forms, including Form N–1A.

The Commission is adding an item in Forms N–3-and N–4 that will require registrants to provide in the prospectus a table of contents for the Statement of Additional Information. This item will help investors know what information is available in the Statement of Additional Information. It should not encourage frivolous requests for the document, and indeed may discourage them since investors will be able to see plainly the type of additional information available to them and would be less likely to request the document merely to ascertain its contents. The table of contents should be quite short for most registrants so it will not unduly lengthen the prospectus. A requirement has been added that the cover page of both forms indicate where in the prospectus the table of contents of the Statement of Additional Information appears.

Even though the table of contents was not specifically proposed, it was within the scope of the proposing release, which indicated the Commission's intent to provide investors with an opportunity to obtain information in the Statement of Additional Information that may be of interest to them. Separate publication of the table for notice and comment is therefore unnecessary.

Forms N–3 and N–4

The following portion of this release discusses the more significant comments on the individual items and instructions of Forms N–3 and N–4. Since the two forms are similar and reponses to the comments are often the same for both, the forms are generally discussed together. This discussion follows the order of Form N–3, but it relates to both forms unless otherwise indicated by the paragraph headings. Discussion that is unique to Form N–4 follows the joint discussion of both forms. The item numbers in the following portion of this release refer to the forms as adopted; in certain instances, they may differ from the item numbers in the forms as proposed.

General Instructions to Forms N–3 and N–4

1. Use of the Forms. Forms N–3 and N–4

As proposed, Forms N–3 and N–4 would be used for all separate accounts offering variable annuity contracts which are registered under the 1940 Act as management investment companies or unit investment trusts, and for insurance companies offering variable annuity contracts funded by separate accounts that are excepted from the 1940 Act by section 3(c)(11) (15 U.S.C. 80a–3(c)(11)).[10] One commentator, while agreeing that the new forms are more appropriate for the latter group of issuers than the S–1, upon which they must currently register, suggested that rule 486 under the 1933 Act (17 CFR 230.486) should be amended to provide for automatic effectiveness of post-effective amendments of this class of issuers. The Commission has adopted this suggestion, and is adding paragraph (f) to rule 486 to accommodate all issuers that can use Forms N–3 and N–4.[11]

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[10] Section 3(c)(11) provides that the following are excepted from investment company status under the Act:

Any employee's stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954 or which holds only assets of governmental plans . . .; or any collective trust fund maintained by a bank consisting solely of assets of such trusts; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans . . . (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 5 of the Securities Act of 1933 by section 3(a)(2)(C) of such Act, and (C) advances made by an insurance company in connection with the operation of such separate account

[11] Rule 486 provides procedures for the automatic effectiveness of post-effective amendments to registration statements for offerings by registered separate accounts. The separate accounts excepted from the 1940 Act by section 3(c)(11) will not be registered separate accounts, and therefore, in the absence of the amendment adopted herein, would not be permitted to use the procedures in the rule.

Although this amendment to rule 486 was not specifically proposed, the proposing release indicated that rule 486 would be amended to provide its automatic effectiveness procedures for registered separate accounts using Forms N–3 and N–4. The proposing release also indicated that Forms N–3 and N–4 would be available for use by non-registered separate accounts. In addition, the comment, mentioned above, to amend rule 486 to permit its use by non-registered separate accounts indicates that the amendment was within the scope of the proposing release.

A commentator also advocated use of the new forms for separate accounts that offer variable life insurance or insurance products in the nature of annuities (such as funding agreements for discrete projects) that use separate accounts for accumulations or payments. The Commission is not extending use of Forms N-3 or N-4 to other issuers at this time. The forms would be inappropriate for variable life insurance or funding agreements since they were designed specifically for variable annuity contracts.

One commentator suggested that a registrant that no longer offers or solicits the purchase of variable annuity contracts funded through a separate account should be permitted to use an existing registration form, the N-1 for management accounts and the S-6 for trust accounts, for the annual update of its registration statement. Where a registrant is required to maintain a current prospectus for variable annuity contracts that it no longer offers, the Commission has no objection to the continued use of Forms N-1 or S-6 for the registrant's annual update. However, the Commission strongly encourages registrants in this situation to convert to Forms N-3 or N-4, as applicable. The Commission believes that the simplified format is beneficial to existing contractowners as well as prospective investors. Moreover, the savings in printing costs for the shorter prospectus may offset a registrant's cost of conversion.

The commentator further observed that several registrants that have ceased offering any contracts, or have ceased offering some contracts funded by a separate account while continuing others, no longer maintain current prospectuses with respect to the discontinued contracts.[12] The commentator cited no-action letters that permit several trust accounts to refrain from maintaining and delivering a current prospectus, subject to certain conditions. The commentator suggested that the Commission codify those conditions in a rule.[13] The Commission believes that issuers of variable annuity contracts that are periodic payment plans are under a duty to maintain a current prospectus for so long as payments may be accepted from contractowners.[14] The Commission staff will continue to consider this type of request from registrants, but the Commission believes these requests should be evaluated on a case-by-case basis and is not currently considering a rule on this matter.

2. Registration Fees, Forms N-3 and N-4

One commentator inquired whether the transition from the current forms to the N-3 and N-4 would entail the payment of additional registration fees under the 1933 Act or the 1940 Act. An existing registrant that converts from Form N-1 or Forms S-6 and N-8B-2 may do so by means of a post-effective amendment. No fees need be paid for filing a post-effective amendment, unless, of course, the registrant is also increasing the number or amount of securities registered or registering an indefinite number of securities, in which case fees are payable pursuant to rules 24e-2 and 24f-2 under the 1940 Act (17 CFR 270.24e-2 and 270.24f-2).

3. Special Terms, Forms N-3 and N-4

One commentator suggested some minor changes to the definition of the term "variable annuity contract" to distinguish between the accumulation and payout phases of a contract and to accommodate the funding agreements, described above, which are funded by separate accounts and are similar to annuities. The minor changes recommended by the commentator were adopted, but only to clarify the definition of the term.

4. Documents Comprising Registration Statement or Amendment, Forms N-3 and N-4

One commentator noted that some insurance products are funded by more than one registered separate account, but are sold by means of a "combined prospectus," which includes a description of each registrant in a single prospectus. The commentator stated that registrants should be permitted to include the combined prospectus in the registration statement of only one separate account and to incorporate the prospectus by reference in registration statements for the other separate accounts, asserting that this practice would be less burdensome and would be consistent with industry practice. The Commission is not adopting this recommendation because it would be inconsistent with Rule 411 under the 1933 Act (17 CFR 230.411).[15] Any person should be able to retrieve from the Commission's filing system a registration statement that includes a prospectus, and the recommended procedure would defeat this goal. Further, contrary to the commentator's assertion, the recommended procedure is not industry practice for either initial filings or post-effective amendments of registration statements.

5. Preparation of the Registration Statement or Amendment, Forms N-3 and N-4

A statement in this section of the General Instructions said that responses to items that use the terms "list" or "identify" should include only a short explanation or description. In response to a comment, this instruction is being deleted, and the words "list" and "identify" should be given their plain meaning.

One commentator objected to the instruction on preparation of the Statement of Additional Information which said that it and the prospectus are independent documents, asserting that the Statement of Additional Information can never be truly independent. While the reference to an independent document has been deleted, the Statement of Additional Information should be understandable by itself, and the instruction so states.

A new paragraph has been added to the instructions that reduces the number

[12] The requirement to maintain a current prospectus is from section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3)), which requires that a prospectus used more than nine months after the effective date of the registration statement shall not contain information more than 16 months old.

[13] *See, e.g.*, Letter to Educators Life Insurance Company of America Separate Account A, Ref. No. 77-IP-55 (pub. avail. August 1, 1977); Letter to Washington National Insurance Company Variable Funds A & B, Ref. No. 77-IP-55 (pub. avail. May 17, 1978) (discontinued individual contracts, but continued selling group contracts); Letter to Investors Life Insurance Company of North America, INA/Putnam Separate Account, Ref. No. 82-58-IP (pub. avail. October 12, 1982). One of the conditions in the letters was that contractowners receive a current prospectus, periodic reports, and any proxy materials from the underlying portfolio companies in which the trust accounts invested. *See also* Fidelity Fund Accumulation Plan, et. al., Ref. No. 79-199-CC (pub. avail. July 27, 1979) (contractual plans not funded by a separate account).

[14] Section 2(a)(27) of the 1940 Act (15 U.S.C. 80a-2(a)(27)) defines "periodic payment plan certificate" as

(A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments and (B) any security the issuer of which is also issuing securities of the character described in clause (A) and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in clause (A) have upon completing the periodic payments for which such securities provide.

[15] Rule 411 describes circumstances under which information may be incorporated by reference in a prospectus, and it does not extend to permitting incorporation by reference of an entire prospectus. Further, the rule prohibits incorporation by reference where it would render a statement incomplete, unclear, or confusing.

of copies of registration statements and amendments that must be filed with the Commission. Forms N–3 and N–4 will requite seven additional copies of a registration statement instead of the ten additional copies required by rule 402(b) under the 1933 Act (17 CFR 230.402(b)). The forms will require three additional copies (including two marked) of amendments instead of the eight copies required by rule 472(a) under the 1933 Act (17 CFR 230.472(a)).

Information Required in a Prospectus

6. Item 1 of Forms N–3 and N–4—Cover Page

In response to a comment from several commentators, neither form will require that its cover page contain information on the types of qualified plans with which the variable annuity contracts may be used. Instead, the Commission has adopted the suggestion of a commentator and included a request for information on limitations on the types of purchasers to whom the contracts will be offered.

Forms N–3 and N–4 were proposed with the requirement, modeled after Form N–1A, that the cover page of the prospectus contain the date of the prospectus and the date of the Statement of Additional Information. Similarly, the Statement of Additional Information required that the cover page contain its date and the date of its related prospectus. Several commentators asserted that these requirements are burdensome, particularly since the prospectus must be updated every time the Statement of Additional Information is amended. However, in the staff's experience, it is quite rare that a registrant amends the text of its Statement of Additional Information but not its prospectus (for other than the date) in filings other than its annual post-effective amendment. The Commission is retaining the cross-dating requirement upon the belief that the importance to investors of knowing which documents complement each other outweighs any burden to registrants. Further, the cover page will require a statement that the Statement of Additional Information be made available upon written or oral request.

7. Item 2 of Forms N–3 and N–4—Definitions

Proposed Forms N–3 and N–4 required a glossary to define special terms used in the prospectus. In response to several comments, the Commission has modified this requirement to permit, in lieu of the glossary, the use of an index that refers to the pages upon which special terms are defined in text.

8. Item 3 of Forms N–3 and N–4—Synopsis or Highlights

The Commission is retaining the provision in Forms N–3 and N–4 that requests a synopsis that describes certain key features of the offering where the prospectus is longer than 12 pages. Several commentators noted that this threshold was borrowed from Form N–1A, and suggested a higher one since Forms N–3 and N–4 would require disclosure on the insurance aspects of variable annuity contracts, and the prospectus would be longer. However, the reason for a threshold is that over a certain length, readers would be assisted by a summary; the complication of the product does not alter the premise that after 12 pages, readers would be assisted by a synopsis.

Several comments were received about the requirement that any prospectus not containing a synopsis highlight information on the following characteristics: a sales load imposed upon annuitization or redemption, a possible tax penalty on premature withdrawals, or a revocation right such as a "ten-day free look" provision. Commentators questioned the importance and relevance of this disclosure and its consistency with Form N–1A. All of this information relates to withdrawing assets under variable annuity contracts, an event that may trigger serious consequences, including certain costs, for a contractowner. In the context of a variable annuity, the Commission believes this information is sufficiently important to a prospective investor to warrant highlighting.

9. Item 4 of Forms N–3 and N–4—Condensed Financial Information[16]

Item 4 of proposed Forms N–3 and N–4 required condensed financial information for each class of accumulation units of a registrant. Several commentators raised issues concerning the classes for which information must be provided. One commentator noted that many registrants have discontinued offering particular contracts funded by a separate account while continuing others, and questioned whether condensed financial information must be shown for the discontinued contracts. Another commentator noted that a single separate account may fund a wide variety of contracts, each of which has distinct classes of accumulation units. Further, one commentator stated that some separate account registrants use more than one prospectus to offer different contracts.

The Commission has considered these comments and recognizes that the issue is difficult because a wide variety of methods have been used to register variable annuity contracts. However, the starting point for determining appropriate presentation of financial information is the registration statement, and a registrant must disclose condensed financial information for the securities covered by its registration statement. This includes information relating to all contracts offered by means of the prospectus in a registration statement.[17] It also includes information relating to discontinued contracts that are no longer offered for sale by means of the prospectus, but for which the registrant may continue to accept payments.[18] To achieve this disclosure, an instruction has been added to each form to state that condensed financial information must be disclosed (1) for each class of accumulation units derived from contracts offered by means of the registrant's prospectus, and (2) for each class derived from contracts no longer offered for sale but for which the registrant may continue to accept payments. Further, for a registrant that includes more than one prospectus in a registration statement (*e.g.* a different prospectus for each type of contract being offered), the instruction provides that condensed financial information for a class of accumulation units (*e.g.* for each contract) need only be presented in the prospectus by which the class (contract) is offered. It need not be included in every prospectus used by that registrant.[19] To relieve the

[16] A discussion of the aspects of Item 4 that relate only to Form N–3 follows this discussion. *See* paragraph 10, *infra*.

[17] Where a prospectus offers a variety of contracts that are represented by different classes of accumulation units, registrants often must exercise their judgment, subject to the requirements of the forms and appropriate disclosure standards, on how to disclose condensed financial information fully while making it understandable for readers. However, many registrants have been successfully presenting this type of disclosure for years on Form N–1. Adoption of the new forms does not, in itself, introduce this issue (except for trust accounts, for which the condensed financial information requirements are abbreviated).

Two commentators requested guidance on appropriate organization of the table presenting condensed financial information for particular characteristics of certain registrants. These specific types of issues must be addressed on a case-by-case basis and are not appropriate for inclusion in this discussion or in the forms.

[18] Of course, these disclosure requirements do not apply to registrants that need not maintain a current registration or deliver a current prospectus for discontinued contracts in reliance upon no-action letters such as those cited in note 13, *supra*.

[19] Indeed, some registrants that have been selling a contract for years have added a new contract by means of a post-effective amendment.

confusion in this area, the Commission recommends that in the future, registrants use a separate registration under the 1933 Act for distinct contracts, even where they are issued by the same registered separate account.[20]

In proposed Forms N-3 and N-4, the Commission required that the prospectus for a management or a trust account contain a yield quotation for any separate account having a money market component. The Commission noted in its proposing release that under current forms yield quotations for trust accounts are disclosed only by the underlying money market fund and not by the trust account. The proposed requirement was intended to show money market yield for trust accounts net of charges at the trust account level, and to permit investors to compare performance of the money market components of separate accounts, whether organized as trust accounts or management accounts. Several commentators objected to mandatory disclosure of yield quotations. They asserted that these requirements were intended to conform separate account disclosure to that required for mutual funds which, unlike variable annuities, are purchased and sold on the basis of short-term yields. One commentator stated that yield quotations were included in Form N-1A for mutual funds that wanted to advertise on the basis of yield.[21] The Commission has deleted the yield requirement since it is inappropriate to single out return of money market portfolios for disclosure to the exclusion of other types of portfolios.[22] However, the forms will require disclosure of yield for money market accounts or sub-accounts that advertise on the basis of current yield to assure compliance with advertising rules for investment companies.

10. Item 4 of Form N-3—Condensed Financial Information

Proposed Form N-3 required information on the registrant's portfolio turnover rate in its presentation of condensed financial information. The proposed formula for determining the portfolio turnover rate has been amended to require that a registrant include long-term United States government securities as long-term debt securities in the calculation. The instructions to this formula have been modified to clarify the treatment of put or call options for purposes of the rate calculation.[23]

11. Item 5 of Form N-3—General Description of Registrant and Insurance Company, and Item 5 of Form N-4—General Description of Registrant, Depositor, and Portfolio Companies

The required description of the registrant in both Forms N-3 and N-4 has been amended to, among other things, clarify disclosure of the treatment of the income, gains, and losses of the registrant vis-a-vis its sponsoring insurance company and of the description of obligations arising under the variable annuity contracts.

12. Item 6 of Form N-3—Management

As proposed in Form N-3, this item required a description of the responsibilities of a registrant's board of managers under the applicable laws of the sponsor's jurisdiction. In response to a comment that much of a board of managers' responsibilities are derived from the 1940 Act, the item has been simplified to request a description of the board's responsibilities.

13. Item 7 of Form N-3 and Item 6 of Form N-4—Deductions and Expenses

In these items, the Commission required a brief description of all deductions from purchase payments, contractowner accounts, or assets of the registrant. One commentator argued that disclosure of details on how various deductions are computed should go in the Statement of Additional Information. The Commission is not adopting this suggestion. The items call for only a brief description and the Commission believes that disclosure of deductions is appropriate for the prospectus. In particular, disclosure of computation of a sales load, whether a front-end load or deferred load, is material and should go in the prospectus.

A new requirement has been added to this item to describe any variations in the sales load or administration charges established pursuant to an exemptive rule or order under section 22(d) of the 1940 Act.[24] In February of 1985, in connection with the adoption of rule 22d-1 under the 1940 Act,[25] the Commission requested comment on whether rule 22d-2 should be rescinded.[26] Rule 22d-2, first adopted in August of 1975 (and formerly numbered rule 22d-3), permits registered separate accounts issuing variable annuity contracts to establish variations in their sales load, administrative charges, or other deductions from purchase payments, subject to certain conditions. Several commentators asserted that since its adoption rule 22d-2 has worked effectively for separate accounts and the Commission has determined not to rescind the rule.[27] In both Forms N-3 and N-4, the new disclosure requirement seeks disclosure of special purchase plans or methods that reflect variations or elimination of the sales load, administrative charges, or other deductions from purchase payments.

An instruction in the proposed forms stated that any deduction other than sales load used for distribution expenses should be identified. In response to several comments that this instruction is vague, it has been revised to require disclosure in the event that proceeds derived from, among other things, mortality and expense risk charges may be used for distribution.[28]

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[20] The Commission recognizes that the provisions of some variable annuity contracts may vary slightly depending upon how the contracts are used and is not suggesting that every contract variation warrants separate registration under the 1933 Act. For instance, many annuity contracts are designed to finance different types of deferred compensation plans, and they may vary depending on the type of plan and the requirements of the Internal Revenue Code. However, other differences between contracts, such as single premium vs. flexible premium or group vs. individual contracts, are more distinct and may warrant separate registration. Clearly, where different prospectuses are used to sell distinct contracts, the contracts should be registered separately under the 1933 Act.

[21] These advertisements are permitted pursuant to rule 482 under the 1933 Act (17 CFR 230.482). Such advertisements are technically "omitting prospectuses" under section 10(b) of that Act (15 U.S.C. 77j(b)).

[22] The Commission continues to believe that both trust accounts and management accounts should be subject to the same requirements on disclosure of investment return to permit comparison of performance, and proposals toward this end may be forthcoming in the future. As suggested by a commentator, an instruction has been added to indicate that disclosure of the method of calculating yield may be placed in the Statement of Additional Information.

[23] These changes conform with the portfolio turnover rate as recently prescribed in Form N-SAR (17 CFR 274.101), the semi-annual reporting form for registered investment companies, and recently proposed for comment for Forms N-1A and N-2. *See* Investment Company Act Release No. 14299 (January 4, 1985) (50 FR 1442 (January 11, 1985)) (adopting release for Form N-SAR); Investment Company Act Release No. 14080 (August 6, 1984) (49 FR 32370 (August 14, 1984)) (proposing release for Form N-SAR); Investment Company Act Release No. 14300 (January 4, 1985) (50 FR 1542 (January 11, 1985)) (proposing release for amendments of portfolio turnover rate calculation for Forms N-1A and N-2).

[24] Section 22(d) (15 U.S.C. 80a-22(d)) requires that redeemable securities of registered investment companies be sold to the public only at a current public offering price described in the prospectus.

[25] Rule 22d-1 permits registered investment companies that issue redeemable securities to establish scheduled variations in their sales loads.

[26] Investment Company Act Release No. 14390 (February 22, 1985), (50 FR 7909 (February 27, 1985)).

[27] Separate accounts that are registered investment companies may rely upon both rule 22d-1 and 22d-2 for exemptions from section 22(d).

[28] Separate accounts that fund variable annuity contracts generally deduct a fee for incurring the risk that mortality experience and administrative

Continued

This revision is consistent with current staff disclosure standards for mortality and expense risk charges. Further, consistent with Form N-1A, Form N-3 has been revised to require disclosure where any distribution expenses are paid from separate account assets pursuant to a plan under rule 12b-1 under the 1940 Act (17 CFR 270.12b-1).[29]

Proposed Forms N-3 and N-4 required disclosure of sales load as a percentage of the public offering price of variable annuity contracts. Several commentators questioned the application of the term "public offering price" to variable annuity contracts, which are generally periodic payment plans and are frequently sold with a deferred sales load. As suggested by one commentator, the adopted forms request disclosure of sales load as a percentage of a purchase payment or, for a deferred sales load, of an amount withdrawn or surrendered.[30]

Several commentators objected to a requirement in proposed Form N-3 that a registrant provide a statement of expenses consisting, for registrants that have been in existence for over a full year, of the ratio of total expenses as a percentage of average net assets for the past year. The commentators asserted that the same information is required in the condensed financial information table and would be redundant. The Commission proposed to consolidate all expense information in the same item in Farm N-3 so inventors would be able to find all of the expenses associated with a contract in one section of the prospectus, and the Commission in retaining the requirement.[31] Further, the Commission is adding the requirement to Form N-4 so investors in trust accounts will be provided with expense disclosure analogous to that of management accounts.[32]

14. Item 8 of Form N-3 and Item 7 of Form N-4—General Description of Variable Annuity Contracts

Proposed Forms N-3 and N-4 required registrants to identify persons who have rights under the variable annuity contracts and to describe the nature of those rights. Proposed Form N-3 specifically stated that the rights described should include voting rights. One commentator asserted that it is impossible to describe rights deriving from the large number of relationships that can exist between annuitants, contractowners, and beneficiaries under a variable annuity contract. In response to this comment, the item is being amended to require only the description of material rights in both forms, except that Form N-3 will continue to require that all voting rights must be described. Further, an instruction is being added to both forms advising registrants not to describe rights that are described elsewhere in the prospectus. Accordingly, in Form N-4 voting rights need not be described in this item since disclosure of voting rights is solicited in Item 5(e).

15. Item 9 Form N-3 and Item 8 in Form N-4—Annuity Period

These items have been substantially rewritten in response to a substantial amount of comment on the proposed forms. Both proposed forms would have required disclosure of the operation of the registrant during a contract's annuity period and how first and subsequent annuity payments are determined. Commentators stated that the proposed items were overly technical and stressed the mechanics of computation of annuity payments. As revised, the item in both forms is organized to give registrants greater flexibility in describing annuity options. It requests a brief description of material factors that affect benefits under annuity options, of possible annuity commencement dates, frequency of payments, the effect of assumed investment return, and rights to change annuity options.

As suggested by one of the commentators, an item is being added to the Statement of Additional Information, Item 26 in Form N-3 and Item 22 in Form N-4, requiring disclosure of the mechanics of determining the amount of annuity payments in that document.

16. Item 10 of Form N-3 and Item 9 of Form N-4—Death Benefit

The proposed forms contained a requirement to describe briefly the death benefit available under a variable annuity contract. One commentator suggested that this item be incorporated in the Statement of Additional Information in an item describing determination of annuity payments. The commentator also objected to a requirement that the registrant disclose the forms that a death benefit may take,[33] asserting that this disclosure is not required for mutual funds on Form N-1A and that the written contract for a variable annuity will describe the forms of the death benefits. The Commission has retained the death benefit disclosure in the prospectus as proposed since it is a significant feature of many variable annuity contracts and one that many investors might find important. While it is true that the forms of the death benefit will be described in a contract, the prospectus is the document by which securities are offered, and all material aspects of the security must be described in the prospectus.

17. Item 11 of Form N-3 and Item 10 of Form N-4—Purchases and Contract Value

These items have been revised in part. In the proposed forms, the items required disclosure, among other things, of the way in which the public offering price is determined and that it is based on the value of an accumulation unit. The adopted version, as suggested by a commentator, seeks an explanation of how purchase payments are credited to a contract, not of public offering price. It also requires an explanation of how accumulation unit value is determined.

18. Item 12 of Form N-3 and Item 11 of Form N-3—Redemptions

The forms as adopted incorporate one change that was recommended by a

expenses may change over time. If proceeds from this charge go to an insurance company's general account, they may be used, *inter alia*, for distribution expenses of the registrant that are paid from the general account. *See* Investment Company Act Release No. 14190 (October 11, 1984) (49 FR 40879 (October 18, 1984)) (proposing rule 26a-3 under the 1940 Act and describing these risks and charges).

[29] Rule 12b-1 authorizes open-end investment companies to adopt plans pursuant to which fund assets may be used to pay for distribution expenses.

Expense disclosure for Forms N-3 and N-4 may in the future be modified to add a tabular presentation showing the amount of expenses and expenses as a percentage of net assets, among other things. This was recently proposed for Form N-1A. Investment Company Act Release No. 14230 (November 9, 1984) (49 FR 45172 (November 15, 1984)).

[30] Of course, where a deferred sales load is based upon the amount withdrawn or surrendered, the sales load may not exceed 9 percent of the purchase payments made, and this limitation should also be disclosed. *See* rule 6c-8 under the 1940 Act (17 CFR 270.6c-8).

[31] This disclosure is consistent with the recent proposal to amend Form N-1A to consolidate all expense related information and add a tabular presentation setting forth expenses, which would include a caption on expenses as a percentage of net assets. *See* Investment Company Act Release No. 14230 (November 9, 1984) (49 FR 45172 (November 15, 1984)).

[32] The Commission is adopting this expense disclosure requirement for Form N-4 and is also adding to Form N-4 a requirement to disclose whether, and, if so, how, a registrant's organizational expenses will be paid out of its assets. While these requirements on expense disclosure were not specifically proposed for Form N-4, they were specifically proposed for Form N-3 and were within the general scope of the proposal for which public comment was solicited. Further, while the proposing release suggested that disclosure by management and trust accounts need not be entirely identical, it clearly indicated the Commission's intent to adopt forms that would be essentially comparable.

[33] This refers to a beneficiary's options for receiving proceeds, such as a lump sum distribution or, as many registrants offer, the annuity payment options that were available to the annuitant under a contract.

commentator. The proposed items required a description of restrictions on redemption that apply to contracts offered in connection with the Texas Optional Retirement Program. An instruction has been added that the item may be satisfied by describing the restrictions on a supplement attached to prospectuses delivered to participants in the program.

19. Item 13 of Form N-3 and Item 12 of Form N-4—Taxes

The proposed forms required a registrant to describe briefly the tax consequences of investing in the variable annuity contracts being offered. In response to a comment, an instruction has been added to state that a registrant need not include detailed description of applicable law. However, an instruction that called for disclosure of methods by which taxable income may be received under the contract has been retained upon the belief that this information would be important for many investors, and is appropriate for prospectus disclosure. This is particularly true because many purchases of annuity contracts are motivated by tax considerations.

This item has been modified in both forms to require identification, rather than a brief description, of the types of tax-qualified plans for which the contracts will be used.

The proposed forms required disclosure of the impact of taxation on the registrant, and an instruction required a statement that a registrant's operations will not be taxed separately from those of its sponsor. This instruction has been deleted to conform with tax law changes made in the Deficit Reduction Act of 1984.[34] The modified forms do, however, require a brief description of the impact, if any, of taxation upon the determination of account and subaccount values.

One commentator stated that it wished to include information in prospectuses to comply with disclosure requirements imposed by the Internal Revenue Code and ERISA in connection with individual retirement annuities and other products, but that the requirement in the forms to "briefly describe" tax consequences might not accommodate this more detailed disclosure. The commentator requested that the Commission facilitate coordinating these disclosure requirements.

Registrants may include tax and ERISA disclosure if it meets the requirements of the forms. The instructions to Forms N-3 and N-4 state that registrants may include additional information in the prospectus or the Statement of Additional Information so long as it does not obscure or impede understanding of required information. However, the additional disclosure could be quite lengthy. One of the purposes of the N-3 and N-4 is to provide a simplified prospectus that can be readily understood by investors, and the Commission discourages registrants from including detailed information that would lengthen or complicate the prospectus.

Part B—Information Required in a Statement of Additional Information

20. Item 16 in Form N-3 and Item 15 in Form N-4—Cover Page

The Commission is retaining the requirement, as proposed in Forms N-3 and N-4, that the Statement of Additional Information state the date of this related prospectus on its cover page. Several commentators were opposed to this requirement.[35]

21. Item 18 of Form N-3 and Item 17 of Form N-4—General Information

The proposed forms required disclosure of any suspensions by any state of sales of contracts offered by a registrant or its sponsoring insurance company. Two commentators stated that this requirement was too broad in that it included products other than life insurance and annuities and it was not limited in time. The item has been amended to limit disclosure of the insurance company's suspensions to the past five-year period; however, it does include suspensions of any type of insurance contract. Disclosure will also be required of sales of contracts of the registrant that have been suspended at any time at the request of a state.

A requirement to identify the jurisdictions in which the sponsoring insurance company is authorized to do business has been deleted in response to comments that this information is not useful and would require a change each time a new jurisdiction is added. A requirement has been added to identify each level of control where the insurance company is subject to more than one level of control.

22. Item 21 of From N-3—Investment Advisory and Other Services

A new disclosure requirement has been added to this item to require a summary of the significant aspects of any plan under rule 12b-1 of the 1940 Act, under which a registrant could incur expenses for the distribution of its securities.[36] This will conform disclosure for separate accounts that have adopted plans under rule 12b-1 to that of mutual funds on Form N-1A.[37]

23. Item 22 of Form N-3—Brokerage Allocation

A paragraph has been added to this item that seeks disclosure of acquisitions by a management account of securities issued by its regular brokers or dealers.[38] The purpose of this requirement is to permit management accounts to acquire the securities of these issuers under disclosure standards developed by the Commission in connection with adoption of rule 12d3-1 under the 1940 Act (17 CFR 270.12d3-1), which permits investment companies to acquire securities issued by brokers, dealers, and other securities businesses.[39]

24. Item 23 of Form N-3—Purchase and Pricing of Securities Being Offered

Paragraph (a) of this item in proposed Form N-3 required disclosure of the method that will be used to determine the total offering price at which annuity contracts may be offered to the public. Because commentators had questioned the use of the term total offering price,[40]

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[34] The Deficit Reduction Act, Pub. L. 98-369, 98 STAT 494, provided that an insurance company's basis in the assets underlying all variable contracts will be adjusted for appreciation or depreciation, thereby eliminating corporate level capital gains tax for the insurance company attributable to the segregated asset account.

[35] *See* paragraph 6, *supra*, the discussion of the cover page of the prospectus for Forms N-3 and N-4.

[36] See note 29, *supra*.

[37] Other changes have been made to this item to replace the term transfer agent with a more generalized description, and to clarify disclosure of changes in contract with parties that provide management-related services.

[38] A regular broker or dealer is defined in rule 10b-1 under the 1940 Act (17 CFR 270.10b-1), essentially, as one of the ten brokers or dealers that received in the past year, the greatest amount of an investment company's brokerage commissions or portfolio transactions as principal, or that sold the largest amount of the investment company's securities. *See* Investment Company Act Release No. 14193 (October 12, 1984) (49 FR 40569 (October 17, 1984)) (adopting release).

[39] In its adopting release for rule 12d3-1, the Commission stated that it would require this disclosure in Forms N-3 and N-4 upon adoption. Investment Company Act Release No. 14036 (July 13, 1984) (49 FR 29362 (July 20, 1984)). *See also* Investment Company Act Release No. 13725 (January 17, 1984) (49 FR 2912 (January 24, 1984)) (proposing release, in which the Commission requested comment on proposed disclosure requirements for all types of investment companies).

[40] *See* the text of the discussion on the "Simplified Prospectus," *supra*.

the item has been revised to seek a description of the method that will be used to determine the sales load on a contract, particularly any differences in sales load charged to different types of purchasers.

A new paragraph has been added to this item, modeled on Item 19(a) of Form N–1A, requiring a description of the manner in which a registrant's securities are offered to the public, including any special purchase plans and exchange privileges not described in the prospectus.

As proposed and adopted, this item also requires a registrant to describe the valuation method used to value its assets. A proposed instruction to this item stated that a registrant must describe the effect of an exemptive order or rule that permits it to use amortized cost valuation or penny-rounding pricing.[41] One commentator questioned this instruction, asserting that debt securities of less than 60 days maturity may be valued at amortized cost in the absence of an exemption from the Commission.[42] This instruction has been amended to seek disclosure of the effect of any conditions where the amortized cost or penny-rounding methods are used pursuant to an exemption.

25. Item 24 of Form N–3 and Item 20 of Form N–4—Underwriters

This item was proposed only for Form N–3. In proposed Form N–4, disclosure of essentially the same information on underwriters was sought in different items.[43] It has been adopted in both forms as a distinct item, essentially in the fashion proposed in Form N–3.

Several technical changes have been made to this item to clarify the disclosure being sought. In response to a comment, the item will require disclosure of whether the sponsoring insurance company or an affiliate thereof is the registrant's principal underwriter; as proposed, the item related only to the insurance company. In a paragraph soliciting information on unusual payments to unaffiliated underwriters or dealers, changes were made to clarify the use of the term "current offering price" and to delete an instruction addressing payments for legal and auditing services.

26. Item 27 of Form N–3 and Item 23 of Form N–4—Financial Statements

Among the financial statements required for Forms N–3 and N–4, the proposal included a two-year comparative balance sheet of a registrant's sponsoring insurance company. One commentator stated that a one-year balance sheet should be sufficient. Rule 3–01 of Regulation S–X (17 CFR 210.3–01) requires audited balance sheets for the two most recent fiscal years, and the Commission believes it would be inappropriate to lessen this requirement for insurance company sponsors of separate accounts.

As proposed, both forms required the sponsoring insurance company's balance sheets to be placed in the Statement of Additional Information. The instruction in both forms has been clarified to state that any notes accompanying the balance sheets must also be placed in the Statement of Additional Information.

Part C—Other Information

27. Item 28 of Form N–3 and Item 24 of Form N–4—Financial Statements and Exhibits

Several of the commentators discussed the exhibits required by these items. Both proposed forms required an exhibit containing a copy of any contract of reinsurance, and several commentators argued that this requirement was too broad. It has been changed to require only copies of contracts of reinsurance in connection with the annuity contracts offered by the registrant. The requirement that the exhibits contain the form of each variable annuity contract has been retained, even though one commentator argued one specimen contract would be sufficient.

The proposed forms required an opinion of counsel that the securities being registered will be legally issued, fully paid and non-assessable. Several commentators pointed out that the latter two representations have not been required by the staff in registrations for variable annuity contracts,[44] and the item has been modified to require the opinion to state whether the securities will be legally issued and will represent binding obligations of the insurance company sponsoring the separate account.

28. Item 29 of Form N–3—Directors and Officers of the Insurance Company, and Item 25 of Form N–4—Directors and Officers of the Depositor

As proposed in both forms, this item required the name, position with the insurance company, and position with the registrant of each director and officer of the sponsoring insurance company. Several commentators stated that many insurance companies have a large number of officers and directors, many of whom perform duties unrelated to variable annuity contracts. Accordingly, an instruction to the item has been added stating that the required information need only be provided for certain designated executive officers and for officers and directors engaged in activities relating to the registrant or its variable annuity contracts.[45]

In Form N–4, this item has been amended so that no disclosure of the offices held with the registrant need be disclosed since unit investment trusts do not have officers or directors.

29. Item 30 of Form N–3—Persons Controlled by or Under Common Control with the Insurance Company or Registrant, and Item 26 of Form N–4—Persons Controlled by or Under Common Control with the Depositor or Registrant.

As proposed, this item required a list of all persons directly or indirectly controlled by or under common control with the sponsoring insurance company or registrant. Though several commentators stated that this requirement is burdensome because the list may be lengthy, the Commission is retaining it. The item will provide

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[41] Rule 2a–7 under the 1940 Act permits investment companies, subject to enumerated conditions, to value portfolio securities by use of the amortized cost valuation method or to compute current price per share by rounding the net asset value per share to the nearest one cent. *See* Investment Company Act Release No. 13380 (July 11, 1983) (48 FR 32555 (July 18, 1983)) the adopting release of rule 2a–7, for a description of these methods and a description of the rule. Prior to adoption of the rule, many investment companies obtained individual exemptive orders permitting amortized cost valuation or penny rounding.

[42] *See* Investment Company Act Release No. 9786 (May 31, 1977) (42 FR 28999 (June 7, 1977)), in which the Commission stated it will not object if certain investment companies value debt securities with remaining maturities of less than 60 days at amortized cost, if done in good faith and unless particular circumstances dictate otherwise. *But see* Letter to Benchmark Tax-Exempt Fund (pub. avail. July 28, 1983) (asserting, in substance, that an investment company may not rely upon Release 9786 if it relies upon an exemption to use amortized cost or penny rounding).

[43] *See* Items 16(c), 26(c) and 26(e) of proposed Form N–4, *supra* note 1. Consolidating the disclosure in one item for Form N–4 places some information that was proposed for Part C in the Statement of Additional Information. *See also*, Form N–1A (information on underwriters required in the Statement of Additional Information).

[44] This was indicated in Guide 40 of the proposed guidelines for Form N–3 and in Guide 15 of the proposed guidelines for Form N–4. *See* the proposing release, *supra* note 1.

[45] This instruction is modeled after Exchange Act Release No. 8389 (August 29, 1968), which set forth the officers and directors that must be listed by an insurance company to register as a broker-dealer on Form B–D. A similar limitation on the persons for whom information need be given has been incorporated in Item 33, Business and Other Connections of the Investment Adviser, and Item 34, Principal Underwriters, of Form N–3 and in the parallel items of Form N–4.

information on affiliated persons of the registrant that may be important for identification of affiliated transactions regulated under section 17 of the 1940 Act.

30. Item 31 in Form N-3 and Item 27 in Form N-4—Number of Contractowners

Both proposed forms requested information on the number of contractowners of contracts offered by the registrant. Two commentators questioned whether the Commission was seeking the number of participants or of contractowners. The Commission believes the item is clear as proposed and is adopting it to require the number of contractowners.

31. Item 37 of Form N-3 and Item 32 of Form N-4—Undertakings

In proposed Form N-3 and N-4, the Commission required in any initial registration statement an undertaking to file an amendment with certified financial statements showing the initial capital received before accepting subscriptions from over 25 persons if the registrant proposed to raise its initial capital pursuant to section 14(a)(3) of the 1940 Act (15 U.S.C. 80a-14(a)(3)). One commentator asserted that this undertaking should be deleted since an exemption from this section is available to separate accounts in rule 14a-2 under the Act (17 CFR 270.14a-2). In response to this comment, and in light of the fact that separate accounts generally do not offer annuity contracts by first soliciting subscriptions, this undertaking is being deleted from both forms.

Proposed Forms N-3 and N-4 required an undertaking to file a post-effective amendment as frequently as necessary to ensure that the audited financial statements in the registration statement are never more than 16 months old. A commentator said this undertaking should be deleted, asserting that section 10(a) of the 1933 Act requires updating of financials already if an offering is being made, and that compliance would be burdensome and inconsistent with present practice if no offering is being made. The Commission believes that the requirement to maintain a current prospectus applies to the issuer of variable annuity contracts for so long as payments may be accepted under the contracts, and the undertaking has been modified accordingly.[46]

Form N-4

The following discussion is on comments related solely to proposed Form N-4. Comments and modifications applicable to both Forms N-3 and N-4 are discussed in the prior section.

1. General Instructions. Rule as to Use of Form N-4

One commentator suggested that the Commission permit trust accounts and their underlying portfolio companies, which register on Form N-1A, to use a single integrated prospectus that would provide an integrated discussion of the variable contracts offered by the trust account and of all underlying funding alternatives. The Commission does not believe it is appropriate to permit Form N-4 to be integrated with Form N-1A at this time, since it is adopting a new form specifically designed for trust accounts and which provides a simplified prospectus for those accounts. Further, a change in Commission policy on the prospectus delivery requirements for trust accounts may decrease regulatory compliance costs for registrants and their sponsors.[47]

Part A—Information Required in a Prospectus

2. Item 1—Cover Page

Proposed Form N-4 required that the cover page of the registrant's prospectus contain a statement that the prospectus is not valid unless preceded or accompanied by the prospectuses of *all* of the underlying funds in which a purchaser may invest. This statement would have required a trust account to deliver its prospectus plus the prospectuses of all of its underlying portfolio companies upon the sale of a variable annuity contract. The Commission has reconsidered this statement and determined not to require it on a prospectus cover page; accordingly, upon a sale of a variable annuity contract, a trust account will not necessarily be required to deliver the prospectuses of all of its underlying portfolio companies. The Commission believes that the description of underlying portfolio companies that may be included in a trust account prospectus may, if appropriately presented, be treated as an omitting prospectus under section 10(b) of the 1933 Act, thus removing the necessity for delivery of statutory prospectuses for those companies.[48] Of course, delivery of a prospectus of an underlying company in which a contractowner actually invests will be required pursuant to section 5(b)(2) under the 1933 Act (15 U.S.C. 77e(b)(2)).[49]

3. Item 4—Financial Information

As discussed earlier, the requirement for money market sub-accounts to provide a yield quotation has been deleted except where the registrant advertises on the basis of the sub-account's yield. Paragraph (a) of this item will be adopted to require the registrant to show accumulation unit value at the beginning of a reporting period, at the end of the period, and the number of outstanding accumulation units, as proposed with modifications on the classes of accumulation units for which this information must be shown, as discussed in the prior section.[50]

Costs and Benefits

In its proposing release, the Commission stated that Forms N-3 and N-4 are intended to shorten and simplify the prospectus available to investors, and the Commission requested comment and data concerning the cost savings or burdens to insurance companies and separate accounts. Two commentators submitted comments on this matter. Both stated that the proposed forms

[46] The adoption of this requirement is not intended to negate the validity of previously granted no-action positions. *See* discussion at note 13, *supra*.

[47] The change in policy on prospectus delivery requirements follows in paragraph 2, the discussion on the cover page of the prospectus of Form N-4.

[48] If an offer to invest in any or all of the underlying portfolio companies of a trust account is made by means of a prospectus, then, of course, the prospectus must meet the requirements of section 10 of the 1933 Act. *See* sections 5(b)(1) (15 U.S.C. 77e(b)(1)) and 2(10) of the 1933 Act (15 U.S.C. 77(b)(10)). The proposed cover page statement contemplated that a description of a portfolio company in a trust account prospectus would be treated as a prospectus under section 2(10) of the 1933 Act, unless it was preceded or accompanied by a prospectus meeting the requirements of section 10(a) of the 1933 Act (a "statutory prospectus"). *See* section 2(10) of the 1933 Act. The description would therefore (if not preceded or accompanied by a statutory prospectus) violate section 5(b)(1) of the 1933 Act, which requires that any prospectus used to offer a security for which a registration statement has been filed must meet the requirements of section 10 of the 1933 Act. The Commission, however, believes the description may be structured as an omitting prospectus complying with section 10 for purposes of section 5(b)(1). *See* rule 482 under the 1933 Act (17 CFR 230.482) (under which certain advertisements by investment companies are deemed omitting prospectuses). Therefore, the trust account prospectus containing the description may be sent or given to an investor prior to, or at the same time as, a statutory prospectus for the portfolio companies.

[49] This section requires that a statutory prospectus must accompany or precede any security carried by means of interstate commerce for the purpose of sale or for delivery after sale. Further, if a trust account offers exchange privileges permitting a contractowner to change his or her investment from one underlying fund to another, then the statutory prospectus of the fund into which a contractowner switches must be delivered prior to or upon the exchange pursuant to section 5(b)(2) of the 1933 Act (15 U.S.C. 77(e)(b)(2)).

[50] *See* Paragraph 9 of the discussion on Forms N-3 and N-4, on Item 4 of the forms—Condensed Financial Information, *supra*.

would substantially reduce costs, including printing, mailing, and storage costs, and paperwork burdens. This savings will inure to the benefit of approximately 300 separate account registrants.

Transition Period

Forms N-3 and N-4 will eventually supplant Forms N-1, N-8B-2, and S-6 for insurance company separate accounts funding variable annuity contracts. To permit the Commission and the industry to adjust to the new forms in an orderly fashion, the Commission is providing for a transition period of one year during which all registrants may use either the existing forms or the new forms. After the expiration of the one year transition period, separate accounts that fund variable annuity contracts will be permitted to use Forms N-1 and S-6 only if they no longer offer the contracts to new purchasers.[51] However, the Commission encourages registrants to convert to the simplified prospectus format of Forms N-3 and N-4 since, as stated earlier, this format may be beneficial to both registrants and investors. Forms N-1, N-8B-2, and S-6 will continue to be used by separate accounts that offer variable life insurance contracts.

Statutory Authority

The Commission hereby adopts Form N-3 and Form N-4, amendments to rules 482, 486, 495, 496, and 497 under the Securities Act of 1933, and amendments to rules 8b-11, 8b-12, and 30d-1 under the Investment Company Act of 1940 pursuant to the provisions of sections 7, 10, and 19 of the Securities Act of 1933 (15 U.S.C. 77g, 77j, and 77s) and sections 8, 30, and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-8, 80a-29, and 80a-37).

Guidelines for Registration Statements

Consistent with the Commission's practice of publishing the views of the staff to assist issuers, their counsel, accountants, and others to comply with applicable provisions of the federal securities laws, the Commission published for comment proposed guidelines prepared by the Division of Investment Management (the "staff") to assist in the preparation of Forms N-3 and N-4. Of the seven comment letters the Commission received on proposed Forms N-3 and N-4, five also discussed the guidelines. None of the five commentators opposed the guidelines, and all of the comments addressed specific substantive issues.

The staff has considered the comments and has modified some of the guidelines in response to the comments. The Commission has determined to publish the guidelines to Forms N-3 and N-4. They are a compilation of what the staff believes are applicable Commission releases and staff positions and interpretations, and their publication should assist registrants to expedite the registration process. However, publication of the views of the staff does not afford those views any legal status they would not otherwise have. Nor does such publication prevent the staff from applying the positions set forth in the guidelines flexibly in light of particular circumstances, or from changing those positions if appropriate.

Staff Discussion on Comments to Proposed Guidelines to Forms N-3 and N-4

The following is a brief synopsis of the comments on the proposed guidelines for Forms N-3 and N-4, which were published by the Commission. Since the guideline for the two forms are so similar, and the responses to comments often the same, the guidelines for both forms are generally discussed together. The next section follows the order of the guidelines to Forms N-3, but the discussion relates to the guidelines for both forms unless otherwise indicated by the headings in the discussion. It is followed by a discussion of guidelines that apply only to Form N-4. The guideline numbers in the following discussion refer to the guideline as published for proposal; in some instances, as indicated in text, they differ from the guideline numbers as published in final form.

Guidelines for Forms N-3 and N-4

1. Proposed Guide 3 of the Guidelines for Form N-3—Investment Objectives and Policies

Proposed Guide 3 stated that the Statement of Additional Information should include disclosure of a policy that permits a particular practice even though not use within the past year. One commentator said that this information is not significant to a prospective investor and should be deleted. This part of the guide is intended as a corollary to Item 5(d) of Form N-3, which states that a registrant should not include disclosure of this type of policy in the prospectus. The staff is retaining this part of the guide but it has been modified to clarify its meaning.

2. Proposed Guide 4 of the Guidelines for Forms N-3—Types of Securities

Guide 4 states that if a state insurance law limits the type of investment that the separate account may make to a greater extent than the registrant's fundamental investment policies, the legal limitation should be disclosed in the prospectus. One commentator suggested that this guide should be modified to permit disclosure of this information in the Statement of Additional Information. The staff does not agree with this suggestion because, under these circumstances, the state law limitations are the primary restrictions on certain aspects of portfolio management. Consequently, the staff believes the information is material. Accordingly, this guide is being retained as proposed.

A discussion on repurchase agreements issued by brokers, dealers, or banks has been added to this guide. The discussion addresses the requirement that a repurchase agreement be fully collateralized.

3. Proposed Guide 5 of the Guidelines for Form N-3—Portfolio Turnover

As proposed, this guide stated that new separate accounts other than money market separate accounts should estimate the rate of portfolio turnover they would not exceed. One commentator asserted that this is impossible to predict accurately. The staff believes that this rate can be roughly estimated and that it is indicative of a registrant's portfolio management intentions. Moreover, Guide 5 of the Guidelines to Forms N-1A requests the same information. This statement in the guide is being retained as originally published, particularly since the disclosure is suggested only for the Statement of Additional Information.

Proposed Guide 5 also stated that an existing separate account should disclose its rate of portfolio turnover for each of the past two years. One commentator questioned this statement in light of the requirement in Form N-3, Item 4, to set forth the portfolio turnover rate for each year for which financial information is presented. The staff agrees with this comment and has deleted this statement from the guide.

4. Proposed Guide 7 of the Guidelines for Form N-3—The Borrowing of Money

One commentator suggested that the following guides be combined into one guide on senior securities: Guide 7—The Borrowing of Money, Guide 8—Senior

[51] Registrants converting to Form N-3 or Form N-4 from one of the existing forms should not file the post-effective amendment to become automatically effective under rule 486(b) (17 CFR 230.486(b)); rather, registrants should use the procedure in rule 486(a).

Securities, Guide 10—Purchases on Margin, and Guide 13—Making Loans to Other Persons. The staff believes that organizing these issues in separate guides makes them easier and more convenient for registrants to use, and the organization is being retained as proposed.

Proposed Guide 7 stated that if a registrant will borrow more than 5% of net assets, it should concisely discuss the purposes and consequences of such borrowing. One commentator stated it is not clear what consequences should be discussed. Among the consequences that warrant disclosure, the staff believes, is the leveraging factor that results from this type of borrowing, and this has been indicated in a parenthetical added to the guide.

5. Proposed Guide 15 to the Guidelines for Form N-3—Trading to Avoid Long-Term Capital Gains and Losses

This guide has been removed since the Deficit Reduction Act of 1984 has effectively eliminated capital gains tax to the sponsoring insurance company attributable to gains and losses of the separate account.

6. Proposed Guide 20 to the Guidelines for Form N-3—Separate Accounts Investing in Other than High Grade Bonds

This guide, renumbered Guide 19 as published in final form, stated that where a registrant chooses to use certain rating criteria in its prospectus disclosure, the registrant should also disclose the minimal rating that the separate account would find acceptable under the rating criteria. One commentator asked whether the rating services' description of their ratings may be disclosed in the Statement of Additional Information. The staff believes that where a registrant uses certain rating criteria, the description of the criteria should be disclosed, and it may be placed in the Statement of Additional Information.

7. Proposed Guide 21 to the Guidelines for Form N-3—Disclosure of Risk Factors

The staff is amending this guide to indicate more clearly its expectations for appropriate risk disclosure. The staff is concerned that many registrants have not been placing adequate risk disclosure in their prospectuses. Frequently, registrants with sub-accounts offering a variety of securities portfolios merely state that there is no assurance that the investment objectives of each sub-account can be achieved, with no additional risk disclosure. The amended guide states that registrants should address in the prospectus the principal speculative or risk factors arising from the securities being offered, which may, for example, be the result of the registrant's particular investment objective, the type of securities in which it invests, the type or size of companies in which it invests, the investment techniques it employs, or from innovative or unusual methods of operation. This amended guide is intended to help registrants in the preparation of registration statements; it is not intended to limit comments on risk disclosure that the staff may have on any particular registration statement. As published in final form, the guide is numbered Guide 20.

8. Proposed Guide 24 to the Guidelines for Form N-3—Management of the Separate Account

As proposed, this guide stated in part that the prospectus should describe the responsibilities of the board of managers under the laws of the jurisdiction where the sponsoring insurance company was organized. One commentator said this statement was probably "cloned" from the guideline for Form N-1A, and it is inappropriate for the N-3 since a separate account is not a separate legal entity under state law and is not comparable to a mutual fund. The staff wishes to promote disclosure of the responsibilities of the board of managers, whether derived from the 1940 Act, state law, or the fundamental documents of the investment company. The guide, renumbered Guide 23 as published in final form, has been revised simply to request disclosure of the responsibilities of the board of managers.

9. Proposed Guide 25 to the Guidelines for Form N-3—Investment Advisory and Other Services

One commentator objected to the statement in this guide that Item 6 of Form N-3 requires a registrant to state that the adviser is responsible for portfolio management. The commentator pointed out that, in fact, Item 6 requires no such statement and that in some cases, the officers of an investment company actually make investment decisions based on advice furnished by the investment adviser. The staff has amended to the guide to reflect more closely the language of Item 6, which requires a registrant to disclose the services provided by its investment adviser, and, in response to Item 6, suggests that a registrant disclose whether the investment adviser is responsible for portfolio management, and if not, who is. This guide has been published in final form as Guide 24.

10. Proposed Guide 27 of the Guidelines for Form N-3 and Proposed Guide 4 of the Guidelines for Form N-4—Redemption

This proposed guide described the redemption requirements of section 22(e) of the 1940 Act (15 U.S.C. 80(a)-22(e)), which applies to both management and trust accounts since each issues redeemable securities.[52] One commentator stated that the guide is inappropriate since separate accounts are not only registered investment companies but also funding vehicles for insurance contracts. The application of the redemption provisions of the 1940 Act to variable annuities has been considered by the staff and registrants over years of regulation of variable annuities, and the application of section 22(e) to variable annuities is well settled.[53] A description of rules 22e-1 and 27c-1 under the 1940 Act [17 CFR 270.22e-1 and 270.27c-1] has been added to the guide. These rules exempt reqistrants from the 1940 Act's redeemability requirements during a payout period with respect to variable payout options based upon life contingencies.

One statement in this guide provided that registrants must disclose in the prospectus procedures for obtaining payment upon redemption shortly after purchase. A commentator questioned the need for this prospectus disclosure in light of "free look" provisions of variable annuity contracts and the long-term nature of variable annuity contracts. However, the staff believes that redemption procedures may be very important to investors and is retaining this statement in the guide. Similarly, the staff is retaining a statement that registrants should disclose procedures by which an investor can avoid delays in payments such as use of a certified check. As published in final form, this guide is Guide 26 in the Guidelines for Form N-3 and Guide 3 in the Guidelines for Form N-4.

11. Proposed Guide 29 of the Guidelines for Form N-3 and Proposed Guide 5 of the Guidelines for Form N-4—Distribution Expenses

The proposed guideline on distribution expenses addressed special arrangements to sell variable annuity contracts to customers of despository

[52] Section 27(c)(1) requires that periodic payment plan certificates be redeemable securities.

[53] *See in the Matter of The Prudential Insurance Company of America*, 41 S.E.C. 335 (1963), *affirmed sub nom., Prudential Insurance Co. of America v. SEC*, 326 F.2d 383 (3d Cir. 1964), *cert. denied*, 377 U.S. 953 (1964).

institutions that may raise issues under the Glass-Steagall Act. Several commentators questioned the relevance of this guide to insurance company separate accounts. Even though it may now be of limited applicability, the staff has retained this part of the guide because of the rapid state of change in the financial services industry in recent years.

A new section has also been added to this guide. It addresses representations made by separate accounts in connection with applications for exemptive relief from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction of charges for the assumption of mortality and/or expense risks. These representations relate to the possibility of direct or indirect use of account assets to finance distribution expenses. The revised guideline indicates that these representations should go in the Statement of Additional Information. The guide is published in final form as Guide 28 in the Guidelines for Form N-3 and Guide 4 in the Guidelines for Form N-4

12. Proposed Guide 30 of the Guidelines for Form N-3—Tax Consequences

This guideline addressed the offsetting of capital gains of one series against the losses of another series for a series account. Since the Deficit Reduction Act of 1984 eliminated taxation of capital gains and losses for an insurance company attributable to its separate account, this guideline has been removed.

13. Proposed Guide 34 to the Guidelines for Form N-3 and Proposed Guide 9 to the Guidelines for Form N-4—Administrative Charges

Two commentators addressed disclosure recommended by the guide. The proposed guide stated that where a registrant charges an administrative charge as a percentage of assets, it should disclose that contractowners with larger account values may be subsidizing services provided to contractowners with smaller account values. One commentator asserted that larger accounts do not always subsidize smaller ones and that large accounts usually require more servicing than small ones. The staff has revised the guide, as recommended by the commentator, to suggest disclosure that there is no necessary relationship between the administrative charge imposed on a given contract and the amount of expenses that may be attributable to that contract. This guide has been published in final form as Guide 32 in the Guidelines for Form N-3 and Guide 8 in the Guidelines for Form N-4.

14. Proposed Guide 35 to the Guidelines for Form N-3 and Proposed Guide 10 to the Guidelines for Form N-4—Deferred Sales Loads

In discussing the disclosure on deferred sales loads, the staff stated that a sales load not subject to any contingency should be described as a deferred sales load, not a contingent deferred load. In response to a comment questioning the meaning of "contingent," the staff is adding a sentence to indicate that a deferred sales load does not become contingent solely because the sales load is waived in the event of an annuitant's death, or if the registrant provides that a percentage of contract value may be withdrawn without imposition of a sales load. The guide has been renumbered Guide 33 and Guide 9 in the Guidelines for Forms N-3 and N-4, respectively, as published in final form.

15. Proposed Guide 36 of the Guidelines for Form N-3 and Proposed Guide 11 of the Guidelines for Form N-4—Annuity Payments

This guide, renumbered Guides 34 and 10 in the published Guidelines for Forms N-3 and N-4, respectively, has been largely rewritten to reflect the changes in Forms N-3 and N-4 on the disclosure required for annuity payments. The guide outlines the disclosure requirements of the forms and suggests that registrants discuss factors that affect the level of payments in the annuity options available. As recommended by one commentator, it calls for disclosure that is written in a practical, narrative fashion, and it discusses approrpriate disclosure where annuitants are given a choice of assumed investment returns in the annuity options.

The guide also addresses disclosure required for the Statement of Additional Information on the method for determining the amount of annuity payments. The guide retains much of the text from its proposal on appropriate disclosure of initial payments and subsequent payments for variable annuity options.

16. Proposed Guide 37 of the Guidelines for Form N-3 and Proposed Guide 12 of the Guidelines for Form N-4—Assumed Interest Rates

The discussion of assumed interest rates, described in the adopted Forms as assumed investment return, has been included in the guide on annuity payments; therefore, the proposed Guide 37 for the Guidelines for Form N-3 and proposed Guide 12 of the Guidelines for Form N-4 have been deleted.

17. Proposed Guide 39 to the Guidelines for Form N-3 and Proposed Guide 14 to the Guidelines for Form N-4—Automatic Annuity Options

In this guide, the staff affirmed its position that, generally, an automatic purchase of a fixed annuity with amounts that have accumulated on a variable basis is inconsistent with section 27(c)(1) of the 1940 Act. Section 27(c)(1) requires variable annuity contracts to be redeemable securities. One commentator opposed this position asserting that an automatic fixed annuity feature is not a forced redemption and that the staff position doesn't take cognizance of variable annuities as a vehicle for retirement income. The commentator stated that annuity options including a "default provision," are fully disclosed, annuitants are generally given several opportunities to make a choice of payout option, and that the vast majority of participants select a fixed annuity.

The staff continues to believe that a contract with an automatic fixed annuity feature is not a redeemable security and is therefore inconsistent with section 27(c)(1).[54] The staff believes that where an annuitant has indicated that he or she wishes to invest in a separate account offering variable accumulation, the insurance company should not alter the annuitant's intentions in the absence of express authorization. Where variable and fixed payout options are provided, the staff believes that an automatic fixed annuity would constitute a substitution of the judgment of the insurance company for that of the annuitant. Further, the staff believes its position helps ensure that an insurance company will contact an annuitant to determine his or her choice of an annuity option. This guide has been published in final form as Guide 36 in the Guidelines for Form N-3 and Guide 12 in the Guidelines for Form N-4.

18. Proposed Guide 40 in the Guidelines for Form N-3 and Proposed Guide 15 in the Guidelines for Form N-4—Legal Opinions

These proposed guides have been deleted because the undertakings to both Forms N-3 and N-4 have been amended to state more accurately the opinion of counsel required for the registration statement. The guides had

[54] Section 2(a)(32) under the 1940 Act defines a redeemable security as a security under which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets upon presentation of the security to the issuer.

served to explain the proposed undertakings, but the explanation is no longer necessary.

Guidelines for Form N-4

The following discussion relates to a guideline to Form N-4. Guidelines common to Form N-4 and Form N-3 are discussed in the prior section. Proposed Guide 2 to the Guidelines for Form N-4—Cover Page

As proposed, the guide stated that the cover page must contain a statement that the prospectus is not valid unless preceded or accompanied by prospectuses of all the portfolio companies in which a purchaser may invest. The policy on the prospectus delivery requirements for trust accounts has been changed so that only the prospectuses of the underlying portfolio companies in which an investor invests need be delivered.[55] This guide has been deleted.

List of Subjects

Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rules and Forms

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The Commission is amending Chapter II, Title 17 of the Code of Federal Regulations as follows:

1. The authority citation for Regulation C of Part 230 is revised to read in part as follows:

Authority: Sections 230.400 to 230.499 issued under the Securities Act of 1933, as amended, 15 U.S.C. 77a *et seq.* * * *

Note.—In §§ 230.400 to 230.499, the numbers to the right of the decimal point correspond with the respective rule number in Regulation C, under the Securities Act of 1933.

2. By revising the text of paragraph (d) preceding the note of § 230.482 to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(d) In the case of an investment company which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in 13 months or less, any quotation of such company's yield contained in such advertisement shall be: (1) a quotation of current yield based on the method of computation prescribed in Form N-1 (set forth in §§ 239.15 and 274.11 of this chapter), Form N-1A (set forth in §§ 239.15A and 274.11A of this chapter), Form N-3 (set forth in §§ 239.17a and 274.11b of this chapter), or Form N-4 (set forth in §§ 239.17b and 274.11c of this chapter) and identifying the length of and the date of the last day in the base period used in computing that quotation, or (2) a quotation of current yield described in paragraph (d)(1) of this section and a corresponding quotation of effective yield determined in accordance with the instructions as to the calculation of effective yield quotations contained in Forms N-1, N-1A, N-3, or N-4.

* * * * *

3. By revising paragraphs (b)(2) introductory text, (b)(3), and (b)(4), and adding paragraph (f) to § 230.486 to read as follows:

§ 230.486 Effective date of post-effective amendments filed by registered separate accounts of insurance companies.

* * * * *

(b) * * *

(2) Any prospectus or Statement of Additional Information filed as a part of such amendment does not include disclosure relating to any of the following events to the extent that such events have occurred since the effective date of the registrant's registration statement or the effective date of its most recent post effective amendment thereto which included a prospectus or Statement of Additional Information, whichever is later, unless such events are disclosed in a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective:

* * * * *

(3) The registrant represents that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section, has occurred since the latest of three dates: (i) The effective date of the separate account's registration statement; (ii) the effective date of its most recent post effective amendment to its registration statement which included a prospectus; or (iii) the filing date of a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective;

(4) Such amendment recites on the facing sheet thereof that the registrant proposes that the amendment will become effective pursuant to paragraph (b) of this section.

* * * * *

(f) For purposes of this section, a post-effective amendment to a registration statement for an offering of securities by a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(37)), as that term is used in paragraphs (a) and (b) of this section and as such amendments are referred to in paragraphs (c) and (d) of this section, shall include a post-effective amendment to a registration statement for an offering of securities by an insurance company funded through a separate account, as defined in section 2(a)(37) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(37)), where the separate account need not register under the Investment Company Act of 1940 pursuant to section 3(c)(11) thereof (15 U.S.C. 80a-3(c)(11)).

4. By revising paragraphs (a), (c), and (d) of § 230.495 to read as follows:

§ 230.495 Preparation of registration statement.

(a) A registration statement on Form N-1A, Form N-3, or Form N-4 shall consist of the facing sheet of the applicable form; cross-reference sheet; a prospectus containing the information called for by such form; the information; list of exhibits; undertakings and signatures required to be set forth in such form; financial statements and schedules; exhibits; any other information or documents filed as part of the registration statement; and all documents or information incorporated by reference in the foregoing (whether or not required to be filed).

* * * * *

(c) In the case of a registration statement filed on Form N-1A, Form N-3, or Form N-4, Parts A and B shall contain the information called for by each of the items of the applicable Part, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item may be omitted. Copies of Parts A and B may be filed as part of the registration statement in lieu of furnishing the information in item-and-answer form. Wherever such copies are filed in lieu of information in item-and-answer form, the text of the items of the form is to be omitted from the registration statement, as well as from Parts A and B, except to the extent provided in paragraph (d) of this section.

(d) In the case of a registration statement filed on Form N-1A, Form N-3, or Form N-4, where any item of those forms calls for information not required

[55] This is discussed in the Commission release in the section on the cover page of Form N-4.

to be included in Parts A and B, (generally Part C of such form) the text of such items, including the numbers and captions thereof, together with the answers thereto shall be filed with Parts A and B under the cover of the facing sheet of the form as a part of the registration statement. However, the text of such items may be omitted provided the answers are so prepared as to indicate the coverage of the item without the necessity of reference to the text of the item. If any such item is inapplicable, or the answer thereto, is in the negative, a statement to that effect shall be made. Any financial statements not required to be included in Parts A or B shall also be filed as part of the registration proper, unless incorporated by reference pursuant to Rule 411 (§ 230.411 of this chapter).

5. By revising § 230.496 to read as follows:

§ 230.496 Contents of prospectus used after nine months.

In the case of a registration statement filed on Form N-1A, Form N-3, or Form N-4 there may be omitted from any prospectus or Statement of Additional Information used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus or the Statement of Additional Information insofar as later information covering the same subjects, including the latest available certified financial statements, as of a date not more than 16 months prior to the use of the prospectus or the Statement of Additional Information is contained therein.

6. By revising paragraphs (c) and (e) of § 230.497 to read as follows:

§ 230.497 Filing of prospectuses—number of copies.

* * * * *

(c) For investment companies filing on Form N-1A (§ 239.12A and § 274.11A of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), or Form N-4 (§ 239.17b and § 274.11c of this chapter), within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, ten copies of each form of prospectus and Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used.

* * * * *

(e) For investment companies filing on Form N-1A, Form N-3, or Form N-4, after the effective date of a registration statement no prospectus which purports to comply with section 10 of the act or Statement of Additional Information which varies from any form of prospectus or Statement of Additional Information filed pursuant to paragraph (b) of this section shall be used until copies thereof have been filed with, or mailed for filing to, the Commission, together with five copies of a cross reference sheet similar to that previously filed, if changed.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

7. The authority citation for Part 239 is revised to read in part as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a *et seq.* * * *

8. By adding § 239.17a to read as follows:

§ 239.17a Form N-3, registration statement for separate accounts organized as management investment companies.

Form N-3 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable annuity contracts and which register under the Investment Company Act of 1940 as management investment companies, and certain other separate accounts. This form is also to be used for the registration statement of such separate accounts pursuant to Section 8(b) of the Investment Company Act of 1940 (§ 274.11b of this chapter).

9. By adding § 239.17b to read as follows:

§ 239.17b Form N-4, registration statement for separate accounts organized as unit investment trusts.

Form N-4 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable annuity contracts and which register under the Investment Company Act of 1940 as unit investment trusts, and certain other separate accounts. This form is also to be used for the registration statement of such separate accounts pursuant to Section 8(b) of the Investment Company Act of 1940 (§ 274.11c of this chapter).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 270 is revised to read in part as follows:

Authority: The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *et seq.* * * *

11. By revising paragraph (b) of § 270.8b-11 to read as follows:

§ 270.8b-11 Number of copies-signatures-binding.

* * * * *

(b) In the case of a registration statement filed on Form N-1A, Form N-3, or Form N-4, three complete copies of each part of the registration statement (including exhibits and all other papers and documents filed as part of Part C of the registration statement) shall be filed with the Commission.

* * * * *

12. By revising paragraph (b) of § 270.8b-12 to read as follows:

§ 270.8b-12 Requirements as to paper, printing and language.

* * * * *

(b) In the case of a registration statement filed on Form N-1A, Form N-3, or Form N-4, Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8½ by 11 inches in size, insofar as practicable. The prospectus and Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

* * * * *

13. By revising paragraph (a) of § 270.30d-1 to read as follows:

§ 270.30d-1 Reports to stockholders of management companies.

(a) Every registered management company shall transmit to each stockholder of record, at least semi-annually, a report containing the financial statements required to be included in such reports by the company's registration statement form under the 1940 Act (instructions E and F of Item 18 of Form N-1, instructions 5 and 6 of Item 23 of Form N-1A, Item 20 of Form N-2, or Item 27(a) of Form N-3) except that the initial report of a newly registered company shall be made as of a date not later than the close of the fiscal year or half-year occurring on or after the date on which the company's notification of registration under the 1940 Act is filed with the Commission.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

14. The authority citation for Part 274 continues to read in part as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.* * * *

15. By adding § 274.11b to read as follows:

§ 274.11b Form N-3, registration statement of separate accounts organized as management investment companies.

Form N-3 shall be used as the registration statement to be filed pursuant to Section 8(b) of the Investment Company Act of 1940 by separate accounts that offer variable annuity contracts to register as management investment companies. This form shall also be used for registration under the Securities Act of 1933 of the securities of such separate accounts (§ 239.17a of this chapter).

16. By adding § 274.11c to read as follows:

§ 274.11c Form N-4, registration statement of separate accounts organized as unit investment trusts.

Form N-4 shall be used as the registration statement to be filed pursuant to Section 8(b) of the Investment Company Act of 1940 by separate accounts that offer variable annuity contracts to register as unit investment trusts. This form shall also be used for registration under the Securities Act of 1933 of the securities of such separate accounts (§ 239.17b of this chapter).

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission previously certified that Form N-3, Form N-4, and the amendments to rules 482, 486, 495, 496, and 497 under the 1933 Act and 8b-11, 8b-12, and 30d-1 under the 1940 Act, if adopted, will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

June 14, 1985.

Note.—Forms N-3 and N-4 and the guidelines for such forms will not be shown in the Code of Federal Regulations.

Form N-3—Registration Statement Under the Securities Act of 1933 ☐

Pre-Effective Amendment No. ——— ☐

Post-Effective Amendment No. ——— ☐

and/or

Registration Statement Under The Investment Company Act of 1940 ☐

Amendment No. ———

(Check appropriate box or boxes.)

———

(Exact Name of Registrant)

———

(Name of Insurance Company)

———

(Address of Insurance Company's Principal Executive Offices)

(Zip Code) ———

Insurance Company's Telephone Number, including Area Code ———

———

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering ———

It is proposed that this filing will become effective (check appropriate space)

——— immediately upon filing pursuant to paragraph (b) of Rule 486

——— on (date) pursuant to paragraph (b) of Rule 486

——— 60 days after filing pursuant to paragraph (a) of Rule 486

——— on (date) pursuant to paragraph (a) of Rule 486

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

The "Approximate Date of Proposed Public Offering" and the table showing the calculation of the registration fee under the Securities Act of 1933 should be included only where securities are being registered under the Securities Act. Registrants that are registering an indefinite number of securities under the Securities Act pursuant to Investment Company Act Rule 24f-2 (17 CFR 270.24f-2) should include the declaration required by Rule 24f-2(a)(1) on the facing sheet, instead of or in addition to the Securities Act registration fee table.

Contents of Form N-3

General Instructions

A. *Rule as to Use of Form N-3.* Form N-3 shall be used by all separate accounts offering variable annuity contracts which are registered under the Investment Company Act of 1940 ("1940 Act") as management investment companies for: (1) An initial registration statement required by section 8(b) of the 1940 Act (15 U.S.C. 80a-8(b)) and any amendments thereto; (2) a registration statement required under the Securities Act of 1933 ("1933 Act") and any amendments thereto; or (3) any combination of these 1940 Act and 1933 Act filings.

Form N-3 shall also be used to file a registration statement under the 1933 Act, and any amendments thereto, for variable annuity contracts funded by separate accounts which would be required to be registered under the 1940 Act as management investment companies except for the exclusion provided by section 3(c)(11) of the 1940 Act.

B. *Registration Fees.* Section 6(b) of the 1933 Act (15 U.S.C. 77(f)(b)) and Rule 457 (17 CFR 230.457) set forth the fee requirements under the 1933 Act. Rule 8b-6 under the 1940 Act (17 CFR 270.8b-6) sets forth the fee for filing an initial registration statement under that Act. The 1940 Act fee is in addition to the fee required under the 1933 Act. Registrants that are increasing the number or amount of securities registered or registering an indefinite number of their securities are also directed to Rules 24e-2 and 24f-2, respectively, under the 1940 Act (17 CFR 270.24e-2 and 270.24f-2) to compute the filing fee.

C. *Number of Copies.* Filings of registration statements on Form N-3 shall contain the number of copies specified in Securities Act Rule 402 (17 CFR 230.402), except that seven additional copies of the registration statement shall be furnished to the

Commission, instead of the ten additional copies required by Rule 402(b).

Filings of amendments on Form N-3 shall contain the number of copies specified in Securities Act Rule 472 (17 CFR 230.472), except that there shall be filed with the Commission three additional copies of such amendment, two of which shall be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made in the registration statement by the amendment, instead of the eight additional copies with at least five marked as required by Rule 472(a) (17 CFR 230.472(a)).

D. *Special Terms*. The following terms, when used in Form N-3, shall mean:

Registrant. The term "Registrant" means the separate account (as defined in section 2(a)(37) of the 1940 Act (15 U.S.C. 80a-2(a)(37))) which offers the variable annuity contracts.

Insurance Company. The term "insurance company" means the sponsoring insurance company that establishes and maintains the separate account and which owns the assets of the separate account.

Variable Annuity Contract. The term "variable annuity contract" means any accumulation contract or annuity contract, any portion thereof, or any unit of interest or participation therein pursuant to which the value of the contract, either during an accumulation period or after annuitization, or both, varies according to the investment experience of the separate account in which the contract participates. Unless the context otherwise requires, the term refers to the variable annuity contracts being offered pursuant to the Registration Statement prepared on this Form.

Contractowner Account. The term "contractowner account" means any account of any contractowner, participant, annuitant, or beneficiary to which (net) purchase payments under a variable annuity contract are added and from which administrative or transaction charges may be subtracted.

E. *Application of General Rules and Regulations*. If the registration statement is being filed under both the 1933 and 1940 Acts or under only the 1933 Act, the General Rules and Regulations under the 1933 Act, particularly Regulation C (17 CFR 230.400-497), shall apply, and compliance with them will be deemed to the meet the Rules for 1940 Act Registration Statements. However, if the registration statement is being filed only under the 1940 Act, the General Rules and Regulations under that Act, particularly Regulation 8(b) (17 CFR 270.8b-1 to 8b-32), shall apply, exept as noted in General Instruction F below.

F. *Amendments*. Attention is specifically directed to Rule 8b-16 under the 1940 Act (17 CFR 270.8b-16) which requires the annual amendment of Registration Statements filed pursuant to Section 8(b) of the 1940 Act. Where Form N-3 has been used to file a registration statement under both the 1933 and 1940 Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

G. *Incorporation by Reference*. A Registrant may, at its discretion, incorporate all or part of the Statement of Additional Information into the prospectus, without physically delivering the Statement of Additional Information to investors with the prospectus. But the Statement of Additional Information must be available to the investor upon request at no charge and any information or documents incorporated by reference into the Statement of Additional Information must be provided along with the Statement of Additional Information.

Rule 411 under the 1933 Act (17 CFR 230.411), and Rules 0-4, 8b-23, 8b-24, and 8b-32 under the 1940 Act 17 CFR 270.0-4, 270.8b-23, 270.8b-24, and 270.8b-32 contain guidance on incorporating information or documents by reference into a registration statement filed on Form N-3. In general, a Registrant may incorporate by reference, in the answer to any item of Form N-3 not required to be in the prospectus, any information elsewhere in the registration statement or in other statements, applications, or reports filed with the Commission.

The rules on incorporation by reference under both the 1933 Act and the 1940 Act are subject to the limitations of Rule 24 of the Commission's Rules of Practice (17 CFR 201.24). Since Rule 24 may be amended from time to time, Registants are advised to review the Rule before incorporating by reference any document as an exhibit to a registration statement.

Subject to these rules, a Registrant may incorporate by reference into the prospectus or the Statement of Additional Information in response to Items 4(a) or 27 of Form N-3 the information in any report to contractowners meeting the requirements of section 30(d) of the 1940 Act (15 U.S.C. 80a-29(d)) and Rule 30d-1 (17 CFR 270.30d-1), provided:

1. The material incorporated by reference is prepared in accordance with, and covers the periods specified by, this Form;

2. The Registrant states in the prospectus or the Statement of Additional Information, at the place where the information would normally appear, that the information is incorporated by reference from a report to security-holders. The Registrant may also describe, in either the prospectus, the Statement of Additional Information, or Part C of the Registration Statement (in response to Item 28(a)), any parts of the report to securityholders that are not incorporated reference and are not a part of the Registration Statement; and

3. The material incorporated by reference is provided with the prospectus or the Statement of Additional Information to each person to whom the prospectus or the Statement of Additional Information is given, unless the person holds securities of the Registrant and otherwise has received a copy of the material. However, Registrant must state in the prospectus or the Statement of Additional Information that it will furnish, without charge, another copy of such report on request and the name, address, and telephone number of the person to contact.

H. *Document Comprising the Registration Statement or Amendment*. 1. A registration statement or an amendment to it filed under both the 1933 and 1940 Acts, except for an amendment described in paragraph 5 below, shall consist of the facing sheet of the Form, the cross-reference sheet required by Rule 495(a) under the 1933 Act (17 CFR 230.495(a)), Part A, Part B, Part C, required signatures, all other documents filed as a part of the registration statement, and documents or information permitted to be incorporated by reference, whether or not required to be filed.

2. A registration statement or an amendment to it which is filed under only the 1933 Act shall contain all the information and documents specified in paragraph 1 of the this Instruction H, except for an amendment filed only under sections 24(e) or (f) of the 1940 Act (15 U.S.C. 80a-24(e), 80a-24(f)).

3. An amendment to a 1933 Act registration statement filed only to register additional securities under Section 24(e) or 24(f) of the 1940 Act need only consist of the facing sheet of the Form, required signatures, and, if filed pursuant to section 24(e) of the 1940 Act, an opinion of counsel concerning the legality of the securities being registered. Registrants are reminded that an opinion of counsel must accompany a Rule 24f-2 notice filed by Registrants that have registered an indefinite number of their shares.

4. A registration statement or an amendment to it which is filed under only the 1940 Act shall consist of the facing sheet of the Form, a cross-reference sheet, responses to all items of Parts A and B except Items 1, 2, 9, and 10, responses to all items of Part C except Items 28(b) (5), (12), (13), and (14), required signatures, and all other documents filed as part of the registration statement.

5. An amendment permitted by paragraph (d)(2) of Rule 486 under the 1933 Act (17 CFR 230.486), which is filed under paragraph (b) of that Rule to change the disclosure in an amendment filed under paragraph (a), shall consist of the facing sheet of the Form, a cross-reference sheet, responses to any items of Part A, Part B, or Part C that are amended or supplemented by the amendment, required signatures, and all other documents filed as part of the registration statement.

I. *Preparation of the Registration Statement or Amendment*. The instructions for Form N-3 are in three parts. Part A relates to the prospectus required by Section 10(a) of the 1933 Act; Part B relates to the Statement of Additional Information that must be provided upon request to recipients of the prospectus; Part C relates to other information that is required to be in the registration statement.

Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the Registrant in a way that will help investors decide whether to purchase the securities being offered. The prospectus should be clear, concise, and understandable. Avoid the use of technical or legal terms, complex language, or excessive detail.

Responses to the items of Part A should be as simple and direct as possible and include only information needed to understand the fundamental characteristics of the Registrant. Descriptions of practices that are required by law generally should not include detailed discussions of the law itself.

Part B: Statement of Additional Information

The items in Part B call for additional information about Registrants which is not required in the prospectus, but which may be of interest to some investors. In addition, Part B gives Registrants an opportunity to provide information about matters that they believe may interest investors.

Registrants should not repeat in Part B information that is in the prospectus, except where necessary to make Part B understandable.

General Instructions for Parts A and B

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contracts. The information need not be in any particular order, with the following exceptions:

(a) Items 1, 2, 3, and 4 (a) and (b) must be in numerical order in the prospectus and may not be preceded or separated by any other item, except as permitted by the instructions to Item 3.

(b) Item 4, "Condensed Financial Information," should not be preceded by any other chart or table (except for the table of contents required by Rule 481(c) under the 1933 Act [17 CFR 230.481(c)]).

(c) All of the information required by Item 7, "Deductions and Expenses," should be in one place in the prospectus.

2. The prospectus or the Statement of Additional Information may contain more information than called for by this Form, provided that the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of required information. Specifically, Registrants are free to include in the prospectus financial statements required to be in the Statement of Additional Information, and may include in the Statement of Additional Information financial statements that may be placed in Part C.

3. The statutory provisions relating to the dating of the prospectus apply equally to the dating of the Statement of Additional Information for purposes of Rule 423 under the 1933 Act (17 CFR 230.423). Furthermore, the Statement of Additional Information should be made available at the same time that the prospectus becomes available for purposes of Rules 430 and 460 under the 1933 Act (17 CFR 230.430, 230.460).

4. Instructions for charts, graphs, tables, and sales literature:

(a) A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, no chart, graph, or table should precede the condensed financial information specified in Items 4 (a) and (b).

(b) If "sales literature" is included in the prospectus, (1) the literature should not significantly lengthen the prospectus, and it should not obscure essential disclosure and (2) members of the National Association of Securities Dealers, Inc. (NASD) are not relieved of the filing and other requirements of the NASD for investment company sales literature (See Securities Act Release No. 5359, January 26, 1973 (38 FR 7220 (March 19, 1973))).

Part A Information Required In A Prospectus

Item 1. Cover Page

(a) The outside cover page must contain the following information:

(i) The Registrant's name;

(ii) The Insurance Company's name;

(iii) The types of variable annuity contracts offered by the prospectus (e.g., group, individual, single premium immediate, flexible premium deferred);

(iv) Any limitations on the class or classes of purchasers to whom the contract is being offered, in general terms;

(v) Identification of the type of separate account (e.g., money market account, bond account) or a brief statement of the Registrant's investment objectives;

(vi) A statement or statements that (A) the prospectus sets forth information about the registrant that a prospective investor ought to know before investing; (B) the prospectus should be kept for future reference; (C) additional information about the Registrant has been filed with the Commission and is available upon written or oral request and without charge (This statement should explain how to obtain the Statement of Additional Information, whether any of it has been incorporated by reference into the prospectus, and where the table of contents of the Statement of Additional Information appears in the prospectus.);

(vii) The date of the prospectus, and the date of the Statement of Additional Information;

(viii) The statement required by Rule 481(b)(1) under the 1933 Act [17 CFR 230.481(b)(1)]; and

(ix) Such other information as is required by rules of the Commission or of any other governmental authority having jurisdiction over the Registrant for the issuance of its securities.

(b) The cover page may include other information, if it does not, by its nature, quantity, or manner or presentation, impede understanding of the required information.

Item 2. Definitions

Define the special terms used in the prospectus (e.g., accumulation unit, contract owner, participant, sub-account, etc.) in a glossary. In lieu of a glossary, Registrants may use an index of special terms that refers to the page on which each special term is defined.

Instruction: Only special terms used throughout the prospectus must be defined or listed. If a special term, e.g., "net investment factor," is used in only one section of the prospectus, it may be defined there. However, all special terms used in the prospectus must be defined.

Item 3. Synopsis or Highlights

(a) The Registrant should include a synopsis of the information contained in the prospectus when the prospectus is long or complex. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

(b) The synopsis should be a clear and concise description of the key features of the offering and the Registrant, with cross-references to relevant disclosures elsewhere in the prospectus.

(c) If the prospectus does not include a synopsis and the variable annuity contract contains any of the following characteristics, they must be highlighted:

(i) Any portion of the sales load assessed upon redemption or annuitization;

Instruction: If any portion of the sales load is assesed upon redemption or annuitization, the response to this Item need only state the maximum percentage load that may be assessed against any given amount redeemed or annuitized with a cross-reference to a more complete description of the sales load in the prospectus.

(ii) A penalty tax may be assessed pursuant to Section 72(q) of the Internal Revenue Code [26 U.S.C. 72(q)] upon withdrawal of amounts accumulated under any variable annuity contract; or

(iii) The variable annuity contract contains a revocation right (e.g., a "ten-day free look" provision).

Instruction: The highlighted information may not be preceded by the response to any Item except 1 or 2. It may precede Item 2 or be on the cover page. The information does not have to appear under a separate caption.

Item 4. Condensed Financial Information

(a) Furnish the following information for each class of accumulations units of the Registrants, or for such classes of the Registrant and its subsidiaries consolidated as prescribed in Rule 6-03 of Regulation S-X [17 CFR 210.6-03].

PER ACCUMULATION UNIT INCOME AND CAPITAL CHANGES

(for an accumulation unit outstanding throughout the period)

1. Investment income;
2. Expenses;
3. Net investment income;
4. Net realized and unrealized gains (losses) on securities;
5. Net increase (decrease) in accumulation unit value;
6. Accumulation unit value at beginning of period;
7. Accumulation unit value at end of period;
8. Expenses to average net assets;
9. Net investment income to average net assets;
10. Portfolio turnover rate;
11. Number of accumulation units outstanding at end of period.

Instructions: 1. The above information must be provided for each class of accumulation units of the Registrant derived from contracts offered by means of this prospectus and each class derived from contracts no longer offered for sale, but for which Registrant may continue to accept payments. Information need not be provided for any class of accumulation units of the Registrant derived from contracts that are currently offered for sale by means of a different prospectus. Also, information need not be provided for any class of accumulation units that is no longer offered for sale but for which Registrant may continue to accept payments, if the information is provided in a different, but current prospectus of the Registrant.

2. The information shall be presented in comparative columns for each of the last ten

fiscal years of the Registrant (or for the life of the Registrant and its immediate predecessors, if less) but only for periods after the effective date of Registrant's first 1933 Act Registration Statement. In addition, the information shall be presented for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities furnished.

3. Per accumulation unit amounts shall be given at least to the nearest cent. If the computation of the offering price is extended to tenths of a cent or more, then the amounts on the table shall be given in tenths of a cent.

4. Per accumulation unit income and capital changes should only be given for sub-accounts that fund obligations of the Registrant under variable annuity contracts offered by means of this prospectus.

5. If the investment adviser has been changed during the period covered by this Item, the date(s) of such change(s) should be shown in a footnote.

6. The condensed financial information for not less than the latest five fiscal years shall be audited and shall so state. The auditor's statement pertaining to the condensed financial information need not be included in the prospectus.

7. The amount to be shown at caption 3 may be derived from the difference between the per accumulation unit figures obtained by dividing the amount of undistributed net income attributable to an accumulation unit at the beginning and end of the year by the number of accumulation units outstanding on those respective dates. (Other acceptable methods may be used. If another method is used, the method should be explained in a footnote to this table.) The amounts to be shown at captions 1 and 2 are derived by applying to the net investment income on a per accumulation unit basis the ratio of such items, as shown in the financial statements prepared under rule 6-04 of Regulation S-X (17 CFR 210.6-04), to the net income as shown in such statements.

8. "Expenses," as used in caption 2 above, include the expenses described in caption 2 of Rule 6-07 of Regulation S-X. If there were income deductions such as those described in captions 3 and 5 of that Rule, compute the per accumulation unit amounts thereof and state them separately immediately after caption 2 above.

9. The amount to be shown at caption 4, while mathematically determinable by the summation of amounts computed for as many periods during the year as the number of accumulation units increased or decreased is also the balancing figure derived from the other figures in the statement and should be so computed. The amount shown at this caption for an accumulation unit outstanding throughout the year may not accord with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of increases and decreases in the number of accumulation units in relation to fluctuating market values for the portfolio.

10. The "average net assets," as used in captions 8 and 9, shall be computed upon the basis of the value of the net assets determined no less frequently than as of the end of each month.

11. The portfolio turnover rate to be shown at caption 10 shall be calculated as follows:

a. The rate of portfolio turnover shall be calculated by dividing (A) the lesser of purchases or sales of portfolio securities for the particular fiscal year by (B) the monthly average of the value of the portfolio securities owned by the Registrant during the particular fiscal year. Such monthly average shall be calculated by totaling the values of the portfolio securities as of the beginning and end of the first month of the particular fiscal year and as of the end of each of the succeeding eleven months, and dividing the sum by 13.

b. For the purposes of this Item, exclude from both the numerator and the denominator all securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. All long-term securities, including United States Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds of the sale of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

c. If during the fiscal year the Registrant acquired the assets of another separate account in exchange for its own accumulation units, it shall exclude from purchases the value of securities so acquired, and from sales all sales of such securities made following a purchase-of-assets transaction to realign the Registrant's portfolio. In such event, the Registrant shall also make appropriate adjustment in the denominator of the portfolio turnover computation. The Registrant must disclose such exclusions and adjustments in its answer to this Item.

d. Short sales which the Registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from date of acquisition are included in purchases and sales for purposes of this Item. The proceeds from a short sale should be included in the value of the portfolio securities which the Registrant sold during the reporting period and the cost of covering a short sale should be included in the value of the portfolio securities which the Registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities which the Registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities which the Registrant sold during the period.

12. The number of accumulation units outstanding at the end of each period may be shown to the nearest thousand (000 omitted), provided it is indicated that such has been done.

(b) Give the following information as of the end of each of the Registrant's last ten fiscal years for each class of senior securities (including bank loans) of the Registrant. If consolidated statements were prepared as of any of the dates specified, the information shall be furnished on a consolidated basis:

Year	Amount of debt outstanding at end of period	Average amount of debt outstanding during the period	Average number of registrant's units outstanding during the period	Average amount of debt per unit during the period
(1)	(2)	(3)	(4)	(5)

Instructions: 1. Instructions 2, 3, and 6 to Item 4(a) also apply here.

2. The method used to determine the average shown above (e.g., weighted, monthly, daily, etc.) must be described.

3. Column 5 is derived by dividing the amount shown in column 3 by the number shown in column 4.

(c) For each account or sub-account that is held out to be a "money market" account or sub-account or has policies calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, and which advertises on the basis of current yield, furnish: (1) A yield quotation based on the seven days ended on either (A) the date of the most recent financial statements of the Registrant included in the prospectus or (B) the last day of the most recent month for which it is practicable both to make the required calculation and to include the results in the prospectus, computed by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the sub-account at the beginning of the period, dividing the net change in account value by the value of the account at the beginning of the base period to obtain the base period return, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and multiplying the difference by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent; and (2) the length of and the date of the last day in the base period used in computing that quotation.

Instructions: 1. When calculating the yield quotation required in subsection (c) above, determination of net change in account value must reflect all deductions that are charged to all contract-owner accounts in proportion to the length of the base period and the sub-account's average account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of current yield.

3. Realized gains and losses from the sale of securities and unrealized appreciation and depreciation are to be excluded from the calculation of yield.

4. With the presentation of the yield quotation, the Registrant must disclose any material net change that would result from the inclusion of capital changes that are

excluded in the computation pursuant to this Item.

5. The Registrant need not furnish a yield figure for both an accumulation unit of a sub-account for qualified contracts and an accumulation unit for a sub-account for non-qualified contracts funded by the same portfolio, if the two yield figures would not be materially different.

6. The Registrant may furnish separate yield figures for individual and group contracts.

7. In addition to the yield quotation required by this Item, the Registrant may also include a quotation of effective yield, carried to at least the nearest hundredth of one percent, computed by compounding the unannualized base period return by adding 1 to the base period return, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula: Effective yield = $(\text{Base Period Return} + 1)^{365/7} - 1$.

8. When calculating the yield quotation required in subsection (c) above, Registrants that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

9. The Registrant need not include in the prospectus the method of calculating the yield quotation described above. Nevertheless, the Registrant should include the method of calculating this yield figure in the Statement of Additional Information in response to Item 25.

(d) If all the required financial statements of the Registrant and the Insurance Company (see Item 27) are not in the prospectus, state, under a separate caption, where the financial statements may be found. Briefly explain how any financial statements not in the Statement of Additional Information may be obtained.

Item 5. General Description of Registrant and Insurance Company

Concisely discuss the organization and operation or proposed operation of the Registrant. Include the information specified below.

(a) Briefly describe the Insurance Company, including:

(i) Its name, address, and a description of the general nature of its business;

Instruction: The description of the Insurance Company's business should be short and need not list all of the businesses in which the Insurance Company engages or identify the jurisdictions where it does business, if a general description (e.g., "life insurance" or "reinsurance") is provided.

(ii) The date and form of organization of the Insurance Company and the name of the state or other jurisdiction under whose laws it is organized; and

(iii) If the Insurance Company is controlled by another person, the name of that person and the general nature of its business (If the Insurance Company is subject to more than one level of control, simply give the name of the ultimate control person.).

(b) Briefly describe the Registrant, including:

(i) The date and form of organization of the Registrant and the Registrant's classification pursuant to Section 4 of the 1940 Act (15 U.S.C. 80a-4) (i.e., a separate account and an open-end investment company);

(ii) The subclassification of the Registrant pursuant to Section 5(b) of the 1940 Act (15 U.S.C. 80a-5(b));

(iii) A statement indicating

(A) That income, gains, and losses, whether or not realized, from assets allocated to the Registrant are, in accordance with the applicable variable annuity contracts, credited to or charged against the Registrant without regard to other income, gains, or losses of the Insurance Company;

(B) That the assets of the Registrant may not be charged with liabilities arising out of any other business of the Insurance Company, and

(C) Whether the obligations arising under the variable annuity contracts are obligations of the Insurance Company.

(iv) Whether there are sub-accounts of the Registrant (i.e., for qualified and non-qualified contracts or for different portfolios of the Registrant); and

(v) If 10 percent or more of the assets of any sub-account are attributable to one variable annuity contract, the name and address of the contractowner of, and the percentage of assets attributable to, the variable annuity contract.

Instruction: Sub-accounts that fund obligations of the Registrant under contracts that are not offered by means of this prospectus need not be described.

(c) Concisely describe the investment objectives and policies of the Registrant, including:

(i) Whether those objectives may be changed without the approval of a majority of votes;

(ii) How the Registrant proposes to achieve its objectives including:

(A) The types of securities in which Registrant invests or will invest principally and any special investment practices or techniques that will be used and

(B) The identity of any particular industry or group of industries in which the Registrant proposes to concentrate. (Concentration, for purposes of this Item, is deemed to be investment of 25% or more of the value of Registrant's total assets in a particular industry or group of industries. The policy on concentration should not be inconsistent with Registrant's name.);

(iii) Subject to subparagraph (d) of this Item, the identity of other policies of Registrant that may be changed only with the approval of a majority of votes, including those policies which Registrant deems to be fundamental within the meaning of section 8(b) of the 1940 Act; and

(iv) Subject to subparagraph (d) of this Item, the significant investment policies or techniques (such as risk arbitrage, repurchase agreements, forward delivery contracts, investing for control or management) that are not described pursuant to subparagraphs (ii) or (iii) above that Registrant employs or intends to employ in the foreseeable future.

(d) Discussion of types of investments that will not be Registrant's principal portfolio emphasis, and of related policies or practices, should generally receive less emphasis in the prospectus, and under the circumstances set forth below may be omitted or limited to information necessary to identify the type of investment, policy, or practice. Specifically,

(i) Do not disclose a policy which prohibits a particular practice, or one which permits a particular practice but which the Registrant has not used within the past year and does not intend to use in the foreseeable future, and

(ii) If a policy limits a particular practice so that no more than 5% of Registrant's net assets are at risk, or if Registrant has not followed that practice within the last year, and does not intend to follow such practice in the foreseeable future, simply identify the practice.

(e) Discuss briefly the principal risk factors associated with investment in Registrant, including factors peculiar to the types of portfolio securities in which it invests or intends to invest, as well as those factors generally associated with investment in a company with investment policies and objectives similar to Registrant's.

Item 6. Management

Describe concisely how the business of the Registrant is managed, including:

(a) The responsibilities of the board of managers;

(b) For each investment adviser of the Registrant:

(i) Its name and address and a brief description of its experience as an investment adviser, and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business (If the investment adviser is subject to more than one level of control, simply give the name of the ultimate control person.); and

(ii) The services provided by the investment adviser (If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are, subject to the authority of the board of managers, responsible for overall management of Registrant's business affairs, simply state that fact instead of listing all services provided.);

(c) The identity and principal business address of any other person who provides significant administrative or business affairs management services (e.g., an "Administrator," "Sub-Administrator," or "Servicing Agent"), and briefly describe the services provided;

Instruction: Information need not be given about any services described in response to Item 7(a).

(d) If Registrant engages in any of the following practices, a statement to that effect:

(i) Paying brokerage commissions to any broker

(A) Which is an affiliated person of the Registrant or the Insurance Company, or

(B) Which is an affiliated person of such person, or

(C) An affiliated person of which is an affiliated person of the Registrant, the Insurance Company, the Registrant's investment adviser, or its principal underwriter; and

(ii) Allocating brokerage transactions in a manner that takes into account the sale of investment company securities.

Item 7. Deductions and Expenses

(a) Briefly describe all deductions from purchase payments, contractowner accounts, or assets of the Registrant (e.g., investment advisory fees, sales loads, administrative and transaction charges, risk charges, and premium taxes). Specify the amount of any such deduction as a percentage or dollar figure (e.g., 95% of the average daily net assets or $5 per exchange). Except for the deduction for premium taxes, identify the person who receives the amount deducted, briefly describe what is provided in consideration for the deduction, and explain the extent to which the deduction can be modified.

Instructions: 1. Identification of the range of current premium taxes is sufficient.

2. If proceeds from explicit sales loads will not cover the expected costs of distributing the contracts, identify from what source the shortfall, if any, will be paid. If any shortfall is to be made up from assets from the Insurance Company's general account, disclose, if applicable, that any amounts paid by the Insurance Company may consist, among other things, of proceeds derived from mortality and expense risk charges deducted from the account. If Registrant directly or indirectly pays distribution expenses under 1940 Act Rule 12b-1 (17 CFR 270.12b-1), list the principal types of activities for which payments are or will be made, and (i) if the plan has been in effect for a full fiscal year, give the total amount spent in the most recent fiscal year as a percentage of net assets; or (ii) otherwise briefly describe the basis on which payments will be made (e.g., percentage of net assets, etc.).

3. If the Registrant has been in operation for a full fiscal year, provide the compensation paid to the adviser for the most recent fiscal year as a percentage of average net assets. No further information about the amount of the deduction is required in response to this Item if the adviser is paid on the basis of a percentage of net assets and if the Registrant has neither changed investment advisers nor changed the basis on which the adviser is compensated during the most recent fiscal year. If the fee is paid in some manner other than on the basis of average net assets, briefly describe the basis of payment. If the Registrant has not been in operation for a full fiscal year, state generally what the investment adviser's fee will be as a percentage of average net assets, including any breakpoints. It is not necessary to include precise details as to how the fee is computed or paid.

(b) State the sales load as a percentage of each purchase payment, if it is so calculated, and as percentage of the net amount invested for each breakpoint. For contracts with a deferred sales load, state the sales load as a percentage of the amount withdrawn or surrendered. The percentages should be shown in a table.

(c) Unless set forth in response to paragraph (b), list any special purchase plans or methods established pursuant to a rule or an exemptive order that reflect scheduled variations in, or elimination of, the sales load (e.g., group discounts, waiver of sales load upon annuitization or attainment of a certain age, waiver of a deferred sales load for a certain percentage of contract value ("free corridor"), investment of proceeds from another policy, exchange privileges, employee benefit plans, or the terms of a merger, acquisition or exchange offer made pursuant to a plan of reorganization); identify each class of individuals or transactions to which such plans apply; state each different sales charge available as a percentage of the public offering price and as a percentage of the net amount invested; and state from whom additional information may be obtained. Describe any other special purchase plans or methods established pursuant to a rule that reflect other variations in, or elimination of, the sales load or in any administrative charge or other deductions from purchase payments, and generally describe the basis for the variation or elimination in the sales load or other deduction (i.e., the size of the purchaser, a prior or existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services).

(d) State the commissions paid to dealers as a percentage of purchase payments.

(e) Provide a statement as to the Registrant's expenses. (If the Registrant has been in existence for a full year, simply set forth the Registrant's total expenses for the most recent full fiscal year as a percentage of average net assets unless the Registrant expects to incur a material amount of extraordinary expenses in the next year. If the Registrant has not been in operation for a full year, list the types of expenses for which Registrant will be responsible.)

(f) If the investment adviser is compensated for its services to the Registrant by someone other than the Registrant, identify the person who provides the compensation and specify the amount.

(g) If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized, including the amount to be amortized and the period over which the amortization will occur.

Item 8. General Description of Variable Annuity Contracts

(a) Identify the person or persons (e.g., the contractowner, participant, annuitant, or beneficiary) who have material rights, including voting rights, under the variable annuity contracts, and briefly describe the nature of those rights, (1) during the accumulation period, (2) during the annuity period, or (3) after the death of the annuitant or contractowner.

Instruction: The Registrant need not repeat rights that are described elsewhere in the prospectus. When describing voting rights, indicate how the rights will be allocated.

(b) Briefly describe any provisions for and limitations on:

(i) Allocation of purchase payments among sub-accounts of the Registrant;

(ii) Transfer of contract values between sub-accounts of the Registrant; and

(iii) Exchanges of variable annuity contracts, including interests or participations therein.

(c) Briefly describe the changes that can be made in the variable annuity contract or the operations of the Registrant by the Registrant or the Insurance Company, including:

(i) Why a change may be made (e.g., changes in applicable law or interpretations of law);

(ii) Who, if anyone, must approve any change (e.g., the contractowner or the Securities and Exchange Commission); and

(iii) Who, if anyone, must be notified of any change.

Instruction: Describe only those changes that would be material to a purchaser of the variable annuity contracts, such as a reservation of the right to deregister the separate account under the 1940 Act. Do not describe possible non-material changes, such as changing the time of day at which accumulation unit values are determined.

(d) Describe how contractowner inquiries should be made.

Item 9. Annuity Period

Briefly describe the annuity options available. The discussion should include:

(a) Material factors that determine the level of annuity benefits;

(b) The annuity commencement date (give the earliest and latest possible dates);

(c) Frequency and duration of annuity payments, and the effect of these on the level of payment;

(d) The effect of assumed investment return;

(e) Any minimum amount necessary for an annuity option and the consequences of an insufficient amount; and

(f) Rights, if any, to change annuity options or to effect a transfer of investment base after the annuity commencement date.

Instructions: 1. Describe the choices, if any, available to a prospective annuitant, and the effect of not specifying a choice. Where an annuitant is given a choice in assumed investment return, explain the effect of choosing a higher, as opposed to a lower, assumed investment return.

2. Detailed diclosure on the method of calculating annuity payments should be placed in the Statement of Additional Information, Item 26.

Item 10. Death Benefit

Briefly describe any death benefit available under a variable annuity contract during the accumulation and the annuity periods. Include:

(a) When the death benefit is calculated and payable and the effect of choosing a specific method of payment on calculation of that death benefit, and

(b) The forms the benefit may take, including the effect of not choosing a payment option, and the period, if any, during which payments must begin under any annuity option.

Item 11. Purchases and Contract Value

(a) Briefly describe the procedures for purchasing a variable annuity contract. Include a concise explanation of:

(i) The minimum initial and subsequent purchase payments required and any limitations on the amount of purchase payments that will be accepted (if there are separate limits for each sub-account, state these limits.);

(ii) A statement of when initial and subsequent purchase payments are credited;

(iii) The way in which purchase payments are credited, including:

(A) An explanation that purchase payments are credited on the basis of accumulation unit value, (B) how accumulation unit value is determined, and (C) how the number of accumulation units credited to a contract is determined.

(b) Explain that investment performance, expenses, and deduction of certain charges affect accumulation unit value.

(c) Identify the method used to value the Registrant's assets (e.g., market value, good faith determination, amortized cost).

(d) Describe when calculations of accumulation unit value are made and that purchase payments are credited to a contract on the basis of accumulation unit value next determined after receipt of a purchase payment.

(e) Identify each principal underwriter (other than the Insurance Company) of the variable annuity contracts and state its principal business address. If the principal underwriter is affiliated with the Registrant, the Insurance Company, or any affiliated person of the Registrant or the Insurance Company, identify how they are affiliated (e.g., the principal underwriter is controlled by the Insurance Company).

Item 12. Redemptions

(a) Briefly describe how a contractowner or annuitant (if the variable annuity option chosen by the annuitant is not based on a life contingency) can redeem a variable annuity contract, including how the proceeds are calculated and when they are payable. Unless described in response to another item in the prospectus, describe any charges that may be attendant upon redemption.

(b) If the Registrant offers the variable annuity contracts in connection with the Texas Optional Retirement Program, describe the restrictions on redemption that apply.

Instruction: Registrants can satisfy this Item by describing the applicable restrictions on redemption on a supplement attached to prospectuses delivered to participants in the Texas Optional Retirement Program.

(c) If a request for redemption may not be honored for a certain period of time after a contractowner's investment, describe briefly.

(d) Briefly describe any provision for lapse or involuntary redemptions under the contract and the reasons for it, such as size of the account or infrequency of purchase payments.

(e) Briefly describe any revocation rights (e.g., "ten-day free look" provisions).

(f) If Registrant, under normal circumstances, intends to redeem in kind, that fact should be disclosed.

Item 13. Taxes

(a) Briefly describe the tax consequences to investors of an investment in the variable annuity contracts being offered.

Instruction: This disclosure need not include a detailed description of applicable law. The discussion should include the taxation of annuity payments, death proceeds, periodic and non-periodic withdrawals, pledges and assignments of the contract (if permitted), and any other method by which taxable income may be received by the investor under the variable annuity contract, as well as the tax benefits accorded annuities during the accumulation period. If the tax consequences vary depending on the use of the variable annuity contract (e.g., to fund an individual retirement annuity or corporate plan), the variations should be briefly described.

(b) Identify the types of qualified plans for which the variable annuity contracts are intended to be used.

Instructions: 1. Identify the types of persons who may use the plans (e.g., corporations, self-employed individuals) and disclose, if applicable, that the terms of the plan may limit the rights otherwise available under the contracts.

2. Do not describe the Internal Revenue Code requirements for qualification of plans or the non-annuity tax consequences of qualification (e.g., the effect on employer taxation).

(c) Briefly describe the impact, if any, of taxation on the determination of account or sub-account values.

Item 14. Legal Proceedings

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, any subsidiary of the Registrant, or Registrant's investment adviser, principal underwriter, or Insurance Company is a party. Include the name of the court where the case is pending, the date filed, and the principal parties. Include similar information for any proceedings instituted by governmental authorities.

Instruction: Legal proceedings are material only to the extent that they are likely to have a material adverse effect upon: (1) the ability of the investment adviser or principal underwriter to perform its contract with the Registrant or of the Insurance Company to meet its obligations under the variable annuity contracts or (2) the Registrant.

Item 15. Table of Contents of the Statement of Additional Information

List the contents of the Statement of Additional Information.

Part B. Information Required in a Statement of Additional Information

Item 16. Cover Page

(a) The outside cover page must contain the following information:

(i) The Registrant's name;

(ii) The Insurance Company's name;

(iii) A statement or statements (A) that the Statement of Additional Information is not a prospectus; (B) that the Statement of Additional Information should be read with the prospectus; and (C) how a copy of the prospectus may be obtained;

(iv) The date of the Statement of Additional Information; and

(v) The date of the related prospectus and any other identifying information that the Registrant deems appropriate.

(b) The cover page may include other information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding or required information.

Item 17. Table of Contents

List the contents of the Statement of Additional Information and, where useful, provide cross-references to the prospectus.

Item 18. General Information and History

(a) If the Insurance Company's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any state, sales of contracts offered by the Registrant have been suspended at any time, of if sales of contracts offered by the Insurance Company have been suspended during the past five years, briefly describe the reasons for and results of the suspension.

(b) If 10 percent or more of the assets of any sub-account are not attributable to variable annuity contracts or to accumulated deductions or reserves (e.g., initial capital contributed by the Insurance Company), state what percentage those assets are of the total assets of the separate account. If the Insurance Company, or any other person controlling the assets, has any present intention of removing the assets from the sub-account, so state.

(c) If the Insurance Company is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

Item 19. Investment Objectives and Policies

(a) Describe clearly the investment policies of the Registrant. It is not necessary to repeat information contained in the prospectus, but, in augmenting the disclosure about those types of investments, policies, or practices that are briefly discussed or identified in the prospectus, Registrant should refer to the prospectus when necessary to clarify the additional information called for by this Item.

b. Describe any fundamental policy of the Registrant not described in the prospectus with respect to each of the following activities:

(i) The issuance of senior securities;

(ii) Short sales, purchases on margin, and the writing of put and call options;

(iii) The borrowing of money (Describe any fundamental policy which limits Registrant's borrowings of money and state the purpose for which borrowing may be used.);

(iv) The underwriting of securities of other issuers (Include any fundamental policy concerning the acquisition of restricted securities, i.e., securities that must be registered under the 1933 Act before they may be offered or sold to the public.);

(v) The concentration of investments in a particular industry or group of industries;

(vi) The purchase or sale or real estate and real estate mortgage loans;

(vii) Purchase or sale of commodities or commodity contracts including futures contracts;

(viii) The making of loans (For purposes of this Item, the term "loans" does not include the purchase of a portion of an issue of publicly distributed bonds, debentures, or other securities, whether or not the purchase was made upon the original issuance of the securities. However, the term "loan" includes the loaning of cash or portfolio securities to any person.); and

(ix) Any other policy which the Registrant deems fundamental.

Instructions: 1. For purposes of this Item, the term "fundamental policy" is defined as any policy which the Registrant has deemed to be fundamental or which may not be changed without the approval of a majority of the votes available to eligible voters.

2. The Registrant may reserve freedom of action with respect to any of the foregoing activities, but shall express definitely, in terms of a percentage of assets to be devoted to the particular activity, the maximum extent to which the Registrant intends to engage in it. For purposes of (vii) above, see the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(c) Describe fully any significant investment policies of the Registrant not described in the prospectus which are not deemed fundamental and which may be changed without the approval of the majority of votes available to eligible voters (for example, investing for control of management, investing in foreign securities, or arbitrage activities).

Instruction: Registrant should disclose the extent to which it may engage in the above policies and the risks inherent in them.

(d) Explain any significant change in the Registrant's portfolio turnover rates over the last two fiscal years. If the Registrant anticipates a significant change in the portfolio turnover rate from that reported in Item 4(a)(10) for its most recent fiscal year, so state. In the case of a new registration, the Registrant should state its policy with respect to portfolio turnover.

Item 20. Management

(a) Give the following information about each member of the board of managers and officer of the Registrant, and if Registrant has an advisory board, each member of such board. Also state the nature of any family relationship between persons listed.

Name and address	Position(s) held with registrant	Principal occupation(s) during past 5 years
(1)	(2)	(3)

Instructions: 1. The term "officer" means the president, vice-president, secretary, treasurer, controller, and any other officers who perform policy-making functions for the Registrant. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. The principal business of any corporation or other organization listed under column (3) should be stated unless implicit in its name.

3. If the Registrant has an executive or investment advisory committee, identify the members and state the duties and functions of the committee.

4. Identify by asterisk the members of the board of managers who are interested persons as defined in Section 2(a)(19) of the 1940 Act [15 U.S.C. 80a–2(a)(19)] and the rules thereunder.

(b) For each individual listed in column (1) of the table required by paragraph (a) of this Item, describe any positions held with affiliated persons or principal underwriters of the Registrant.

(c) Give the following information about each person specified below who received from the Registrant or its subsidiaries during the Registrant's last fiscal year aggregate remuneration in excess of $60,000 for services in all capacities:

(i) Each member of the board of managers, each of the three highest paid officers, and each advisory board member of the Registrant;

(ii) Each affiliated person of the Registrant not included in subparagraph (i) except investment advisers;

(iii) Each affiliated person of an affiliate or principal underwriter of the Registrant; and

(iv) All members of the board of managers, officer, and members of the advisory board of the Registrant as a group without naming them.

Name of person	Capacities in which remuneration received	Aggregate remuneration	Pension or retirement benefits accrued during registrant's last fiscal year	Estimated annual benefits upon retirement
(1)	(2)	(3)	(4)	(5)

Instructions: 1. This Item applies to any person who was a member of the board of managers, officer, or member of the advisory board of the Registrant at any time during the last fiscal year. Give information on an accrual basis if practicable.

2. If the Registrant has not completed its first full fiscal year since its organization, give information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding.

3. Columns (4) and (5) should be answered only for those persons named in response to paragraph (a) of this Item and should include all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant or any of its subsidiaries to each such person.

4. Column (4) need not be answered with respect to payments computed on an actuarial basis pursuant to any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

5. The information called for by column (5) may be given in a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

6. In the case of any plan (other than those specified in instruction 3) where the amount set aside each year depends upon the amount of earnings of the issuer or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated annual benefits upon retirement, instead of the information called for by column (5), give the total amount set aside or accrued to date, unless it is impracticable to do so, in which case state the method of computing such benefits.

Item 21. Investment Advisory and Other Services

(a) Give the following information about each investment adviser:

(i) The names of all controlling persons of the investment adviser and the basis of such control; and if significant, the business history of any organization that controls the adviser;

(ii) The name of any affiliated person of the Registrant or the Insurance Company who is also an affiliated person of the investment adviser and a list of all capacities in which the person named is affiliated with the Registrant or the Insurance Company and with the investment adviser; and

Instruction: If an affiliated person of the Registrant or the Insurance Company either alone or together with others is a controlling person of the investment adviser, Registrant must disclose such fact but need not supply the specific amount or percentage of the outstanding voting securities of the investment adviser which is owned by the controlling person.

(iii) The method of computing the advisory fee payable by the Registrant including:

(A) The total dollar amounts paid to the adviser by the Registrant or its Insurance Company under the investment advisory contract for the last three fiscal years;

(B) If applicable, any credits which reduced the advisory fee for any of the last three fiscal years; and

(C) Any expense limitation provision.

Instructions: 1. If the advisory fee payable by the Registrant or its Insurance Company varies depending on the Registrant's investment performance in relation to some standard, set forth the standard along with a fee schedule in tabular form. Registrant may include examples showing the fees the adviser would earn at various levels of performance, but such examples must include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State each type of credit or offset separately.

3. Describe only the most restrictive expense limitation provision.

4. If Registrant is organized as a "series" account the response to paragraph (a)(iii) of this Item should describe the methods of allocation and payment of advisory fees for each class or series.

(b) Describe all services performed for or on behalf of the Registrant, which are supplied or paid for wholly or substantially by the investment adviser in connection with the investment advisory contract.

(c) Describe all fees, expenses, and costs of the Registrant that are to be paid by persons other than the investment adviser, the Insurance Company, or the Registrant, and identify such persons.

(d) Give a summary of any contract for the provision of management-related services to the Registrant, which may be of interest to a purchaser of Registrant's securities, unless the contract is described in response to some other item of this form. Show the parties to the contract and the total dollars paid and by whom, for the past three years. If the services under any management-related service contract are paid for by a deduction from contractowner accounts and if the Registrant or Insurance Company has changed the service provider in the past year, state the reasons for the change.

Instructions: 1. A contract for "management-related services" includes any agreement whereby another person agrees to keep, prepare, or file such accounts, books, records, or other documents as the Registrant may be required to keep under federal or state law, or to provide any similar services with respect to the daily operations of the Registrant, but does not include the following: (i) Any contract to provide investment advice to the Registrant; (ii) any agreement to act as custodian or agent to administer purchases and redemptions under the contracts for the Registrant; or (iii) bona fide contracts for outside legal or auditing services, or bona fide contracts for personal employment entered into in the ordinary course of business.

2. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

3. In summarizing a management-related service contract, include the name of the person providing the service; any direct or indirect relationships between such person and the Registrant, its investment adviser, its Insurance Company, or its principal underwriter; the nature of the services provided; and the basis of the compensation paid for the last three fiscal years.

(e) If any person (other than a bona fide member of the board of managers, officer, member of an advisory board, or employee of the Registrant, as such, or a person named as an investment adviser in response to paragraph (a) above), pursuant to any understanding, whether formal or informal, regularly furnishes advice to the Registrant or to the investment adviser of the Registrant about the desirability of the Registrant's investing in, purchasing, or selling securities or other property, or is empowered to determine what securities or other property should be purchased or sold by the Registrant, and receives direct or indirect remuneration, give the following information:

(i) The name of such person;

(ii) A description of the nature of the arrangement, and the advice or information given; and

(iii) Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in Registrant's portfolio securities) paid for such advice or information, and a statement of how and by whom such remuneration was paid for the last three fiscal years.

Instruction: Do not describe any of the following: (i) Persons whose advice was given solely through uniform publications distributed to subscribers; (ii) persons who gave only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities by the Registrant; (iii) a company which is excluded from the definition of "investment adviser" of an investment company by reason of Section 2(a)(20)(iii) of the 1940 Act [15 U.S.C. 80a–2(a)(20)(iii)]; (iv) any person the character and amount of whose compensation for such service must be approved by a court; or (v) such other persons as the Commission has by rule or order determined not to be an "investment adviser" of an investment company.

(f) Furnish a summary of the significant aspects of any plan under which the Registrant incurs expenses related to the distribution of its shares, and of any agreements related to implementation of the plan.

The summary should include, among other information, the following:

(i) The manner in which amounts paid by the Registrant under the plan during the last fiscal year were spent on:

(A) Advertising,

(B) Printing and mailing of prospectuses to other than current shareholders,

(C) Compensation to underwriters,

(D) Compensation to dealers,

(E) Compensation to sales personnel, and

(F) Other (specify);

(ii) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(A) Any interested person of the Registrant; or

(B) Any director of the Registrant who is not an interested person of the Registrant; and

(iii) The benefits, if any, to the Registrant resulting from the plan.

Instruction: In responding to this Item, Registrants should take note of the requirements of Rule 12b–1 under the 1940 Act [17 CFR 270.12b–1].

(g) Give the name and principal business address of the Registrant's custodian and independent public accountant and provide a general description of the services they perform.

(h) If the portfolio securities of the Registrant are held by a person other than the Insurance Company, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of each such person.

(i) If an affiliated person of the Registrant or an affiliated person of such an affiliated person acts as administrative or servicing agent for the Registrant, describe the services performed by such person and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction: Information already provided in response to prior items need not be repeated.

Item 22. Brokerage Allocation

(a) Describe how transactions in portfolio securities are effected including a general statement about brokerage commissions and mark-ups on principal transactions and the aggregate amount of any brokerage commissions paid by the Registrant during the three most recent fiscal years. Explain any material increase in brokerage commissions paid by the Registrant during the most recent fiscal year as compared to the two prior fiscal years.

(b)(i) State the total dollar amount, if any, of brokerage comissions paid by the Registrant during the three most recent fiscal years to any broker which: (A) Is an affiliated person of the Registant; (B) is an affiliated person of an affiliated person of the Registrant; or (C) has an affiliated person that is an affiliated person of the Registrant, its Insurance Company, investment adviser, or principal underwriter, and the identity of each such broker and the relationships that cause the broker to the identified in this Item.

(ii) State for each broker identified in response to paragraph (b)(i) of this Item:

(A) The percentage of Registrant's aggregate brokerage commissions paid to each broker during the most recent fiscal year and

(B) The percentage of Registrant's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

(iii) Where there is a material difference between the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any broker identified in response to paragraph (b)(i) of this Item, state the reasons for such difference.

(c) Describe how brokers will be selected to effect securities transactions for Registrant and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered.

Instructions: 1. If the receipt or products or services other than brokerage or research services is a factor in the selection of brokers, specify such products and services.

2. If the receipt of research services is a factor in selecting brokers, identify the nature of such research services.

3. State whether persons acting on behalf of Registrant are authorized to pay a broker a commission in excess of that which another broker might have charged for the same transaction, because of the value of (a) brokerage or (b) research services provided by the broker.

4. If applicable, explain that research services furnished by brokers through whom Registrant effects securities transactions may be used by Registrant's investment adviser in servicing all of its accounts and that not all such services may be used by the investment

adviser in connection with the Registrant; or, if other policies or practices are applicable to Registrant with respect to the allocation of research services provided by brokers such policies and practices should be explained.

(d) If, during the last fiscal year, Registrant, its Insurance Company, or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed Registrant's brokerage transactions to a broker because of research services provided, state the amount of such transactions and related commissions.

(e) If the Registrant has acquired during its most recent fiscal year of during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b-1 under the 1940 Act (17 CFR 270.10b-1), or their parents, identify those brokers or dealers and state the value of the Registrant's aggregate holdings of the securities of each subject issuer as of the close of the Registrant's most recent fiscal year.

Instruction: The Registrant need only disclose information with respect to an issuer that derived more than 15% of its gross revenue from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year. If the Registrant has issued more than one class or series of stock, the requested information must be disclosed for the class or series that has securities that are being registered.

Item 23. Purchase and Pricing of Securities Being Offered

(a) Describe the manner in which Registrant's securities are offered to the public. Include a description of any special purchase plans and any exchange privileges not described in the prospectus.

Instruction: Address exchange privileges between sub-accounts, between the Registrant and other separate accounts, and between the Registrant and contracts offered through the Insurance Company's general account.

(b) Describe the method that will be used to determine the sales load on the variable annuity contracts offered by the Registrant.

Instruction: Explain fully any difference in the price at which variable annuity contracts are offered to members of the public, as individuals and as groups, and the prices at which the contracts are offered for any class of transactions or to any class of individuals, including officers, directors, members of the board of managers, or employees of the Registrant, the Insurance Company, its adviser, or underwriter.

(c) Describe the method used to value the Registrant's assets if not described in the prospectus.

Instructions: 1. Describe the valuation procedure used to determine accumulation unit value.

2. If Registrant uses either penny-rounding pricing or amortized cost valuation, pursuant to either an order of exemption from the Commission or Rule 2a-7 under the 1940 Act (17 CFR 270.2a-7), describe the nature, extent and effect of any conditions under the exemption.

(d) Describe the way in which purchase payments are credited to the contract to the extent not described in the prospectus.

(e) If the Registrant has received an order of exemption from Section 18(f) of the 1940 Act (15 U.S.C. 80a-18(f)) from the Commission or has filed a notice of election pursuant to Rule 18f-1 under the Act (17 CFR 270.18f-1) which has not been withdrawn, fully describe the nature, extent, and effect of the exemptive relief in the Statement of Additional Information if the information is not in the prospectus.

Item 24. Underwriters

(a) If the Insurance Company or an affiliate of the Insurance Company is the principal underwriter of the variable annuity contracts, so state.

(b) State whether the offering is continuous.

(c) State the aggregate dollar amount of underwriting commissions paid to, and the amount retained by, the principal underwriter for each of the last three fiscal years.

(d) If during the Registrant's last fiscal year any payments were made by the Registrant to an underwriter of or dealer in the variable annuity contracts unaffiliated with the Registrant or Insurance Company other than: (i) Payments made through deduction from the purchase payments at the time of sale of the variable annuity contracts or from contract values upon redemption, (ii) payments representing the purchase price of portfolio securities acquired by the Registrant, (iii) commissions on any purchase or sale of portfolio securities by the Registrant, or (iv) payments for investment advisory services pursuant to an investment advisory contract, give the following information:

(A) The name and address of the underwriter or dealer;

(B) The circumstances surrounding the payments;

(C) The amount paid; and

(D) How the amount of the payment was determined and the consideration received for it.

Instructions: 1. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

3. Information need not be given about payments made under any contract to provide investment advice or to act as custodian or administrative or servicing agent.

4. If the payments were made under an arrangement or policy applicable to dealers generally, simply describe the arrangement or policy.

Item 25. Calculation of Yield Quotations of Money Market Sub-Accounts

Describe the method used to compute each yield quotation provided in the prospectus pursuant to Item 4(c).

Instructions: 1. For purposes of the yield computation, the determination of net change in account value must reflect all deductions that are charged to all contract-owner accounts in proportion to the length of the base period and the sub-account's average account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of current yield.

3. Realized gains and losses from the sale of securities and unrealized appreciation and depreciation are to be excluded from the calculation of yield.

4. When calculating the yield quotation required in Item 4(c), Registrants that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

Item 26. Annuity Payments

Describe the method for determining the amount of annuity payments if not described in the prospectus. In addition, describe how any change in the amount of a payment after the first payment is determined.

Item 27. Financial Statements

(a) Provide financial statements of the Registrant.

Instructions: 1. The financial statements and schedules required by Regulation S-X (17 CFR Part 210) shall be provided in a separate section of this Part B.

2. Notwithstanding Instruction 1 above, the following statements and schedules required by Regulation S-X may be omitted from Part B and instead included in Part C of the Registration Statement:

(i) The statements of any subsidiary which is not a majority-owned subsidiary and

(ii) The following schedules in support of the most recent balance sheet (a) columns C and D of Schedule III (17 CFR 210.12-03); and (b) Schedule VI (17 CFR 210.12-04).

3. In addition to the requirements of Rule 3-18 of Regulation S-X (17 CFR 210.3-18), any separate account registered under the 1940 Act which has not previously had an effective Registration Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the Registration Statement as of a date within 90 days prior to the date of filing.

4. Every annual report to contractowners required by section 30(d) of the 1940 Act and Rule 30d-1 under it (17 CFR 270.30d-1) shall contain the following information:

(i) The audited financial statements required by Regulation S-X, as modified by Instruction 2, for the periods specified by Regulation S-X;

(ii) The condensed financial information required by Item 4(a) of this Form, for the five most recent fiscal years, with at least the most recent year audited; and

(iii) Unless shown elsewhere in the report as part of the financial statements required by: (i) Above, the aggregate remuneration paid by the separate account during the period covered by the report (A) to all members of the board of managers and to all members of any advisory board for regular compensation; (B) to each member of the board of managers and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or member of the board of managers of the separate account is an affiliated person.

5. Every report required by section 30(d) of the 1940 Act and Rule 30d-1 under it (17 CFR 270.30d-1), except the annual report to contractowners, shall contain the following information (which need not be audited):

(i) The financial statements required by Regulation S-X, as modified by Instruction 2 above, for the period commencing either with (A) the beginning of the separate account's fiscal year (or date of organization, if newly organized) or (B) a date not later than the date after the close of period included in the last report conforming with the requirements of Rule 30d-1 and the most recent preceding fiscal year;

(ii) The condensed financial information required by Item 4(a) of this Form, for the period of the report as specified by (i) above, and the most recent preceding fiscal year; and

(iii) Unless shown elsewhere in the report as part of the financial statements required by (i) above, the aggregate remuneration paid by the separate account during the period covered by the report (A) to all members of the board of managers and to all members of any advisory board for regular compensation; (B) to each member of the board of managers and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or member of the board of managers of the separate account is an affiliated person.

6. See General Instruction F regarding incorporation by reference.

(b) Provide financial statements of the Insurance Company.

Instructions: 1. The financial statements and schedules of the Insurance Company required by Regulation S-X shall be provided in a separate section following the response to paragraph (a) of this Item. If the Insurance Company would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Forms N-3 or N-4, its financial statements may be prepared in accordance with statutory requirements.

2. Notwithstanding Instruction 1 above, all statements and schedules required by Regulation S-X, except for the consolidated balance sheets described in Rule 3-01 of Regulation S-X (17 CFR 210.3-01) and any notes thereto, may be omitted from Part B of the Registration Statement and included in Part C of such Registration Statement.

3. Notwithstanding Rule 3-12 of Regulation S-X (17 CFR 210.3-12), the financial statements of the Insurance Company need not be more current than as of the end of the most recent fiscal year of the Insurance Company unless:

(i) The Insurance Company's financial statements have never been included in an effective registration statement under the Securities Act of 1933 of a separate account which offers variable annuity contracts or funds variable life insurance contracts; or

(ii) The balance sheet of the Insurance Company at the end of either of the two most recent fiscal years included in response to this Item shows a combined capital and surplus, if a stock company, of an unassigned surplus, if a mutual company, or less than $1,000,000; or

(iii) The balance sheet of the Insurance Company at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the 1933 Act (or a fiscal quarter within 90 days of filing if the registration statement is filed solely under the 1940 Act) would show a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000. If two fiscal quarters end within the 135 day period, the Insurance Company may choose either for purposes of this test.

Any interim financial statements required by this Item need not be comparative with financial statements for the same interim period of an earlier year.

Part C—Other Information

Item 28. Financial Statements and Exhibits

List all financial statements and exhibits filed as part of the Registration Statement.

(a) Financial statements.

Instruction: Designate those financial statements which are included in Part A and Part B of the Registration Statement.

(b) Exhibits:

(1) Copies of the resolution of the board of directors of the Insurance Company authorizing the establishment of the Registrant;

(2) Copies of the existing bylaws or instruments corresponding thereto;

(3) Copies of all custodian agreements and depository contracts under section 17(f) of the 1940 Act (15 U.S.C. 80a-17(f)) with respect to securities and similar investments of the Registrant, including the schedule of remuneration;

(4) Copies of all investment advisory contracts relating to the management of the assets of the Registrant;

(5) Copies of each underwriting or distribution contract between the Registrant and the principal underwriter or the Insurance Company and the principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;

(6) The form of each variable annuity contract;

(7) The form of application used with any variable annuity contract provided in response to (6) above;

(8) Copies of the certificate of incorporation or other instrument of organization and the by-laws of the Insurance Company;

(9) A copy of any contract of reinsurance in connection with the variable annuity contracts being offered;

(10) Copies of all bonus, profit sharing, pension, or other similar contracts or arrangements wholly or partly for the benefit of members of the board of managers or officers of the Registrant in their capacity as such; any such plan that is not set forth in a formal document, furnish a reasonably detailed description thereof;

(11) Copies of all other material contracts not made in the ordinary course of business which are to be performed in whole or in part at or after the date of filing the Registration Statement;

(12) An opinion of counsel and consent to its use as to the legality of the securities being registered, indicating whether they will be legally issued and will represent binding obligations of the Insurance Company;

(13) Copies of any other opinions, appraisals, or rulings, and consents to their use relied on in preparing this Registration Statement and required by section 7 of the 1933 Act;

(14) All financial statements omitted from Item 27; and

(15) Copies of any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, the Insurance Company, underwriter, adviser, or initial contractowners and written assurances from the Insurance Company or initial contractowners that the purchases were made for investment purposes without any present intention of redeeming.

Instruction: 1. Subject to the Rules on incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as a part of the Registration Statement. Exhibits numbered 5 and 12-14 above need to be filed only as part of a 1933 Act Registration Statement. Exhibits shall be lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

2. A Registrant need not file an exhibit as part of a post-effective amendment if the exhibit has been filed in the Registrant's initial registration statement or in a previous post-effective amendment, unless there has been a change in the exhibit or unless the exhibit is a copy of a consent required by section 7 of the 1933 Act or is a financial statement omitted from Item 27.

Item 29. Directors and Officers of the Insurance Company

Give the following information about each director or officer of the Insurance Company:

Name and principal business address	Positions and offices with insurance company	Positions and offices with registrant
(1)	(2)	(3)

Instruction: Registrants need only provide the above information for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the variable annuity contracts offered by the Registrant, and for executive officers including the Insurance Company's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

Item 30. Persons Controlled by or Under Common Control with the Insurance Company or Registrant

Provide a list or diagram of all persons directly or indirectly contolled by or under common control with the Insurance Company or Registrant and as to each such person indicate: (1) If a company, the state or other sovereign power under whose laws it is organized, (2) the percentage of voting securities owned or other basis of control by the person, if any, immediately controlling it, and (3) its principal business unless such principle business is implicit in its name.

Instructions: 1. The list or diagram shall include the Registrant and the Insurance Company and shall show clearly the relationship between each company named. If the company is controlled by the direct ownership of its securities by two or more persons, so indicate by appropriate cross-reference.

2. Designate (i) subsidiaries for which separate financial statements are filed; (ii) subsidiaries included in the respective consolidated financial statements; (iii) subsidiaries included in the respective group financial statements filed for unconsolidated subsidiaries; and (iv) other subsidiaries, indicating briefly why statements of such subsidiaries are not filed.

Item 31. Number of Contractowners

State as of a specified date within 90 days prior to the date of filing the number of contractowners of qualified and non-qualified contracts offered by Registrant.

Item 32. Indemnification

State the general effect of any contract, arrangements, or statute under which any member of the board of managers, officer, underwriter, or affiliated person of the Registrant is insured or indemnified in any manner against any liability which may be incurred in such capacity, other than insurance provided by any member of the board of managers, officer, underwriter, or affiliated person for their own protection.

Instruction: In responding to this Item, the Registrant should note the requirements of Rules 461 and 484 under the 1933 Act (17 CFR 230.461, 230.484) and Section 17 of the 1940 Act (15 U.S.C. 80a-17).

Item 33. Business and Other Connections of Investment Adviser

Describe any other business, profession, vocation, or employment of a substantial nature in which each investment adviser of the Registrant, and each director, officer, or partner of any such investment adviser, is or has been, at any time during the past two fiscal years, engaged for his or her own account or as director, officer, employee, partner, or trustee.

Instructions: 1. State the name and principal business address of any company of which any person specified above is a director, officer, employee, partner, or trustee, and the nature of such connection.

2. If the investment adviser is the Insurance Company or an affiliate thereof that is also an insurance company, Registrants need only provide the above information for officers or directors who are engaged directly or indirectly in activities relating to the assets of the Registrant, and for executive officers including the Insurance Company's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

3. The names of investment advisory clients need not be given.

Item 34. Principal Underwriters

(a) Given the name of each investment company (other than the Registrant) for which each principal underwriter currently distributing securities of the Registrant also acts as a principal underwriter, depositor, sponsor, or investment adviser.

(b) Give the following information about each director, officer, or partner of each principal underwriter named in the answer to Item 11(e):

Name and principal business address	Positions and offices with underwriter	Positions and offices with registrant
(1)	(2)	(3)

Instruction: If the principal underwriter is the Insurance Company or an affiliate thereof, and is also an insurance company, Registrants need only provide the above information for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the contracts offered by the Registrant, and for executive officers including the Insurance Company's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

(c) Give the following information about all commissions and other compensation received by each principal underwriter, directly or indirectly, from the Registrant during the Registrant's last fiscal year:

Name of principal underwriter	Net underwriting discounts and commissions	Compensation on redemption or annuitization	Brokerage commissions	Other compensation
(1)	(2)	(3)	(4)	(5)

Instructions: 1. Show in a note, or otherwise, the nature of the services provided in return for the compensation show in column (5). Include any compensation received by an underwriter for keeping the Registrant's securities in the hands of the public.

2. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

3. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

4. Information need not be given about payments made under any agreement whereby another person contracts with the Registrant or the Insurance Company to provide investment advice or to act as custodian or administrative or servicing agent.

Item 35. Location of Accounts and Records

Give the name and address of each person who maintains physical possession of each account, book, or other document required to be maintained by Section 31(a) of the 1940 Act (15 U.S.C. 80a-30(a)) and the Rules under it (17 CFR 270.31a-1 to 31a-3).

Item 36. Management Services

Give a summary of any contract not discussed in Part A or Part B of this Form under which management-related services are provided to the Registrant, indicating the parties to the contract, the total dollars paid and by whom, for the last three fiscal years.

Instructions: 1. The instructions to Item 21(d) of this Form shall also apply to this Item.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

Item 37. Undertakings

Give the following undertakings in substantially this form in all initial registration statements filed under the 1933 Act:

(a) An undertaking to file a post-effective amendment, using financial statements of the Registrant which need not be certified, within four to six months from the effective date of the Registrant's 1933 Act registration statement;

Instructions: 1. Such amendment may be filed earlier only if at least one-half the dollar amount of securities registered has been raised from a public offering and has been substantially invested pursuant to Registrant's investment objectives.

2. Such amendment may be filed later only if the financial statements required by the undertaking are also going to be used in the next semi-annual or annual report to security holders required pursuant to section 30(d) of the 1940 Act and Rule 30d-1 thereunder, the amendment is filed no later than 40 days after the end of the six month period specified in the undertaking, and the amendment becomes effective no later than 60 days after the end of that six month period.

3. The financial statements included in such post-effective amendment should be as of and for the time period reasonably close or as soon as practicable to the date of the amendment, but in no event more than 60 days prior to the date of filing.

(b) An undertaking to file a post-effective amendment to this registration statement as frequently as is necessary to ensure that the audited financial statements in the registration statement are never more than 16 months old for so long as payments under the variable annuity contracts may be accepted;

(c) An undertaking to include either (1) as part of any application to purchase a contract offered by the prospectus, a space that an applicant can check to request a Statement of Additional Information, or (2) a post card or similar written communication affixed to or included in the prospectus that the applicant can remove to send for a Statement of Additional Information;

(d) An undertaking to deliver any Statement of Additional Information and any financial statements required to be made available under this Form promptly upon written or oral request.

SIGNATURES

As required by (the Securities Act of 1933 and) the Investment Company Act of 1940 the Registrant (certifies that it meets the requirements of Securities Act Rule 486(b) for effectiveness of this Registration Statement and) has caused this Registration Statement to be signed on its behalf, in the City of ———, and State of on the —— day of ———, 19——.

(Registrant)

By ———

(Signature and Title)

(Insurance Company)

By ———

(Name of officer of Insurance Company)

(Title)

Instruction: If the registration statement is being filed only under the Securities Act or under both the Securities Act and the Investment Company Act, it should be signed by both the Registrant and the Insurance Company. If the registration statement is being filed only under the Investment Company Act, it should be signed only by the Registrant.

As required by the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Title)

(Date)

Form N-4—Registration Statement Under the Securities Act of 1933 ☐

Pre-Effective Amendment No. ——— ☐

Post-Effective Amendment No. ——— ☐

and/or

Registration Statement Under the Investment Company Act of 1940 ☐

Amendment No. ———

(Check appropriate box or boxes.)

(Exact Name of Registrant)

(Name of Depositor)

(Address of Depositor's Principal Executive Offices)

(Zip Code) ———

Depositor's Telephone Number, including Area Code ———

(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering ———

It is proposed that this filing will become effective (check appropriate space)

——— immediately upon filing pursuant to paragraph (b) of Rule 486

——— on (date) pursuant to paragraph (b) of Rule 486

——— 60 days after filing pursuant to paragraph (a) of Rule 486

——— on (date) pursuant to paragraph (a) of Rule 486

CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

The "Approximate Date of Proposed Public Offering" and the table showing the calculation of the registration fee under the Securities Act of 1933 should be included only where securities are being registered under the Securities Act. Registrants that are registering an indefinite number of securities under the Securities Act pursuant to Investment Company Act Rule 24f-2 (17 CFR 270.24f-2) should include the declaration required by Rule 24f-2(a)(1) on the facing sheet, instead of or in addition to the Securities Act registration fee table.

Contents of Form N-4

General Instructions

A. *Rule as to Use of Form N-4.* Form N-4 shall be used by all separate accounts offering variable annuity contracts which are registered under the Investment Company Act of 1940 ("1940 Act") as unit investment trusts for: (1) An initial registration statement required by section 8(b) of the 1940 Act (15 U.S.C. 80a-8(b)) and any amendments thereto; (2) a registration statement required under the Securities Act of 1933 ("1933 Act") and any amendments thereto; or (3) any combination of these 1940 Act and 1933 Act filings.

Form N-4 shall also be used to file a registration statement under the 1933 Act and any amendments thereto for variable annuity contracts funded by separate accounts which would be required to be registered under the 1940 Act as unit investment trusts except for the exclusion provided by section 3(c)(11) of the 1940 Act (15 U.S.C. 80a-3(c)(11)).

B. *Registration Fees.* Section 6(b) of the 1933 Act (15 U.S.C. 77(f)(b)) and Rule 457 (17 CFR 230.457) set forth the fee requirements under the 1933 Act. Rule 8b-6 under the 1940 Act (17 CFR 270.8b-6) sets forth the fee for filing an initial registration statement under that Act. The 1940 Act fee is an addition to the fee required under the 1933 Act. Registrants that are increasing the number or amount of securities registered or registering an indefinite number of their securities are also directed to Rules 24e-2 and 24f-2, respectively, under the 1940 Act (17 CFR 270.24e-2 and 270.24f-2) to compute the filing fee.

C. *Number of Copies.* Filings of registration statements on Form N-4 shall contain the number of copies specified in Securities Act Rule 402 (17 CFR 230.402), except that seven additional copies of the registration statement shall be furnished to the Commission, instead of the ten additional copies required by Rule 402(b).

Filings of amendments on Form N-4 shall contain the number of copies specified in Securities Act Rule 472 (17 CFR 230.472), except that there shall be filed with the Commission three additional copies of such amendment, two of which shall be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made in the registration statement by the amendment, instead of the eight additional copies with at least five marked as required by Rule 472(a) (17 CFR 230.472(a)).

D. *Special Terms.* The following terms, when used in Form N-4, shall mean:

Registrant. The term "Registrant" means the separate account (as defined in section 2(a)(37) of the 1940 Act (15 U.S.C. 80a-2(a)(37))) which offers the variable annuity contracts.

Depositor. The term "depositor" means the person primarily responsible for the organization of the Registrant and the person who has continuing functions or responsibilities with respect to the administration of the affairs of the Registrant other than the trustee or custodian. The term includes the sponsoring insurance company that establishes and maintains the separate account. If there is more than one such person the information called for in this Form about the depositor shall be provided for each such person.

Variable Annuity Contract. The term "variable annuity contract" means any accumulation contract or annuity contract, any portion thereof, or any unit of interest or participation therein pursuant to which the value of the contract, either during an accumulation period or after annuitization, or both, varies according to the investment experience of the separate account in which the contract participates. Unless the context otherwise requires, the term refers to the variable annuity contracts being offered pursuant to the Registration Statement prepared on this Form.

Contractowner Account. The term "contractowner account" means any account of a contractowner, participant, annuitant, or beneficiary to which (net) purchase payments under a variable annuity contract are added and from which administrative or transaction charges may be subtracted.

Portfolio Company. The term "portfolio company" means any company in which the Registrant invests.

E. *Application of General Rules and Regulations.* If the registration statement is being filed under both the 1933 and 1940 Acts or under only the 1933 Act, the General Rules and Regulations under the 1933 Act, particularly Regulation C (17 CFR 230.400-497), shall apply, and compliance with them will be deemed to meet the rules for 1940 Act Registration Statements. However, if the registration statement is being filed only under the 1940 Act, the General Rules and Regulations under that Act, particularly Regulation 8(b) (17 CFR 270.8b-1 to 8b-32), shall apply, except as noted in General Instruction F below.

F. *Amendments.* Where Form N-4 has been used to file a registration statement under both the 1933 and 1940 Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

G. *Incorporation by Reference.* A Registrant may, at its discretion, incorporate all or part of the Statement of Additional Information into the prospectus, without physically delivering the Statement of Additional Information to investors with the prospectus. But the Statement of Additional Information must be available to the investor upon request at no charge and any information or documents incorporated by reference into the Statement of Additional Information must be provided along with the Statement of Additional Information.

Rule 411 under the 1933 Act (17 CFR 230.411), and rules 0-4, 8b-23, 8b-24, and 8b-32 under the 1940 Act (17 CFR 270.0-4, 270.8b-23, 270.8b-24, and 270.8b-32) contain guidance on incorporating information or documents by reference into a registration statement filed on Form N-4. In general, a Registrant may incorporate by reference, in the answer to any item of Form N-4 not required to be in the prospectus, any information elsewhere in the registration statement or in other statements, applications, or reports filed with the Commission.

The rules on incorporation by reference under both the 1933 Act and the 1940 Act are subject to the limitations of Rule 24 of the Commission's Rules of Practice (17 CFR 201.24). Since Rule 25 may be amended from time to time, Registrants are advised to review the rule prior to incorporating by reference any document as an exhibit to a registration statement.

H. *Documents Comprising the Registration Statement or Amendment.* 1. A registration statement or an amendment to it filed under both the 1933 and 1940 Acts, except for an amendment described in paragraph 5 below, shall consist of the facing sheet of the Form, the cross-reference sheet required by Rule 495(a) under the 1933 Act (17 230.495(a)), Part A, Part B, Part C, required signatures, all other documents filed as a part of the registration statement, and documents or information permitted to be incorporated by reference, whether or not required to be filed.

2. A registration statement or an amendment to it which is filed under only the 1933 Act shall contain all the information and documents specified in paragraph 1 of this Instruction H, except for an amendment to a 1933 Act registration statement filed only under sections 24 (e) or (f) of the 1940 Act (15 U.S.C. 80a-24(e), 80a-24(f)).

3. An amendment of a 1933 Act registration statement filed only to register additional securities under section 24(e) or 24(f) of the 1940 Act need only consist of the facing sheet of the Form, required signatures, and, if filed pursuant to section 24(e) of the 1940 Act, an opinion of counsel concerning the legality of the securities being registered. Registrants are reminded that an opinion of counsel must accompany a Rule 24f-2 notice filed by Registrants that have registered an indefinite number of their shares.

4. A registration statement or an amendment to it which is filed under only the 1940 Act shall consist of the facing sheet of the Form, a cross-reference sheet, responses to all items of Part A and B except Items 1, 2, 8, and 9, responses to all items of Part C except Items 24(b) (3), (9), (10), and (11), required signatures, and all other documents filed as part of the registration statement.

5. An amendment permitted by paragraph (d)(2) of Rule 486 under the 1933 Act (17 CFR 230.486), which is filed under paragraph (b) of that rule to change the disclosure in an amendment filed under paragraph (a), shall consist of the facing sheet of the Form, a cross-reference sheet, responses to any items of Part A, Part B, or Part C that are amended or supplemented by the amendment, required signatures, and all other documents filed as part of the registration statement.

I. *Preparation of the Registration Statement or Amendment.* The instructions for Form N-4 are in three parts. Part A relates to the prospectus required by section 10(a) of the 1933 Act; Part B relates to the Statement of Additional Information that must be provided upon request to recipients of the prospectus; Part C relates to other information that is required to be in the registration statement.

Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the Registrant in a way that will help investors decide whether to purchase the securities being offered. The prospectus should be clear, concise, and understandable. Avoid the use of technical or legal terms, complex language, or excessive detail.

Responses to the items of Part A should be as simple and direct as possible and include only information needed to understand the fundamental characteristics of the Registrant. Decriptions of practices that are required by law generally should not include detailed discussions of the law itself.

Part B: Statement of Additional Information

The items in Part B call for additional information about Registrant which is not required in the prospectus, but which may be of interest to some investors. In addition, Part B gives Registrants an opportunity to provide information about matters that they believe may interest investors.

Registrants should not repeat in Part B information that is in the prospectus, except where necessary to make Part B understandable.

General Instructions for Parts A and B

1. The information in the prospectus and Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contacts. The information need not be in any particular order, with the following exceptions:

(a) Items 1, 2, 3, and 4(a) must be in numerical order in the prospectus and may not be preceded or separated by any other item, except as permitted by the instructions to Item 3.

(b) Item 4, "Condensed Financial Information," should not be preceded by any other chart or table (except for the table of contents required by Rule 481(c) under the 1933 Act (17 CFR 230.481(c)).

(c) All of the information required by Item 6, "Deductions and Expenses," should be in one place in the prospectus.

2. The prospectus or the Statement of Additional Information may contain more information than called for by this Form, provided that the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of required information. Specifically, Registrants are free to include in the prospectus financial statements required to be in the Statement of Additional Information, and may include in the Statement of Additional Information financial statements that may be placed in Part C.

3. The statutory provisions relating to the dating of the prospectus apply equally to the dating of the Statement of Additional Information for purposes of Rule 423 under the 1933 Act (17 CFR 230.423). Furthermore, the Statement of Additional Information should be made available at the same time that the prospectus becomes available for purposes of Rules 430 and 460 under the 1933 Act (17 CFR 230.430, 230.460).

4. Instructions for charts, graphs, tables, and sales literature:

(a) A Registration Statement on this Form may include any chart, graph, or table that is not misleading.

(b) If "sales literature" is included in the prospectus, (1) the literature should not significantly lengthen the prospectus, and it should not obscure essential disclosure and (2) members of the National Association of Securities Dealers, Inc. (NASD) are not relieved of the filing and other requirements of the NASD for investment company sales literature (See Securities Act Release No. 5359, January 26, 1973 (38 FR 7220 (March 19, 1973)).

Part A Information Required in A Prospectus

Item 1. Cover Page

(a) The outside cover page must contain the following information:

(i) The Registrant's name;

(ii) The depositor's name;

(iii) The types of variable annuity contracts offered by the prospectus (e.g., group, individual, single premium immediate, flexible premium deferred);

(iv) Any limitations on the class or classes of purchasers to whom the contract is being offered, in general terms;

(v) A statement or statements that (A) the prospectus sets forth the information about the Registrant that a prospective investor ought to know before investing; (B) the prospectus should be kept for future reference; (C) additional information about the Registrant has been filed with the Commission and is available upon written or oral request and without charge (This statement should explain how to obtain the Statement of Additional Information, whether any of it has been incorporated by reference into the prospectus, and where the table of contents of the Statement of Additional Information appears in the prospectus.);

(vi) The date of the prospectus, and the date of the Statement of Additional Information;

(vii) The statement requried by Rule 481(b)(1) under the 1933 Act (17 CFR 230.481(b)(1));

(viii) The names of the portfolio companies;

(ix) Such other information as is required by rules of the Commission or of any other governmental authority having jurisdiction over the Registrant for the issuance of its securities.

(b) The cover page may include other information, if it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 2. Definitions

Define the special terms used in the prospectus (e.g., accumulation unit, contractowner, participant, sub-account, etc.) in a glossary. In lieu of a glossary, Registrants may use an index of special terms that refers to the page on which each special term is defined.

Instruction: Only special terms used throughout the prospectus must be defined or listed. If a special term, e.g., "net investment factor," is used in only one section of the prospectus, it may be defined there. However, all special terms used in the prospectus must be defined.

Item 3. Synopsis or Highlights

(a) The Registrant should include a synopsis of the information in the prospectus when the prospectus is long or complex. Normally, a synopsos should not be provided where the prospectus is twelve printed pages or less.

(b) The synopsis should be a clear and concise description of the key features of the offering and the Registrant, with cross-references to relevant disclosures elsewhere in the prospectus.

(c) If the prospectus does not include a synopsis and the variable annuity contract contains any of the following characteristics, they must be highlighted:

(i) Any portion of the sales load assessed upon redemption or annuitization;

Instruction: If any portion of the sales load is assessed upon redemption or annuitization, the response to this Item need only state the maximum percentage load that may be assessed against any given amount redeemed or annuitized with a cross-reference to a more complete description of the sales load in the prospectus.

(ii) A penalty tax may be assessed pursuant to section 72(q) of the Internal Revenue Code (26 U.S.C. 72(q)) upon withdrawal of amounts accumulated under any variable annuity contract; or

(iii) The variable annuity contract contains a revocation right (e.g., a "ten-day free look" provision).

Instruction: The highlighted information may not be preceded by the response to any Item except 1 or 2. It may precede Item 2 or be on the cover page. The information does not have to appear under a separate caption.

Item 4. Condensed Financial Information

(a) Furnish the following information for each class of accumulation units of the Registrant.

Accumulation Unit Values. For an accumulation unit outstanding throughout the period.

1. Accumulation unit value at beginning of period;

2. Accumulation unit value at end of period;

3. Number of accumulation units outstanding at the end of period.

Instructions: 1. The above information must be provided for each class of accumulation units of the Registrant derived from contracts offered by means of this prospectus and each class derived from contracts no longer offered for sale, but for which Registrant may continue to accept payments. Information need not be provided for any class of accumulation units of the Registrant derived from contracts that are currently offered for sale by means of a different prospectus. Also, information need not be provided for any class of accumulation units that is no longer offered for sale but for which Registrant may continue to accept payments, if the information is provided in a different, but current prospectus of the Registrant.

2. The information shall be presented in comparative columns for each of the last ten fiscal years of the Registrant (or for life of the Registrant and its immediate predecessors, if less) but only from the later of the effective date of Registrant's or the relevant portfolio company's first 1933 Act Registration Statement. In addition, the information shall be presented for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities furnished.

3. Accumulation unit amounts shall be given at least to the nearest cent. If the computation of the offering price is extended to tenths of a cent or more, then the amounts on the table should be given in tenths of a cent.

4. Accumulation unit values should only be given for sub-accounts that fund obligations of the Registrant under variable annuity contracts offered by means of this prospectus.

(b) For each account or sub-account that is funded by a "money market" fund or portfolio company with policies calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, and which advertises on the basis of current yield, furnish: (1) A yield quotation based on the seven days ended on either (A) the date of the most recent financial statements of the Registrant included in the prospectus or (B) the last day of the most recent month for which it is practicable both to make the required calculation and to include the results in the prospectus, computed by determining the net change, exclusive of capital changes, in the value of a hypothetical preexisting account having a balance of one accumulation unit of the sub-account at the beginning of the period, dividing the net change in account value by the value of the account at the beginning of the base period to obtain the base period return, and multiplying the difference by (365/7) with the resulting figure carried to at least the nearest hundredth of one percent and (2) the length of and the date of the last day in the base period used in computing the quotation.

Instructions: 1. When calculating the yield quotation required in subsection (b) above, the determination of net change in account value must reflect all deductions that are charged to all contractowner accounts in proportion to the length of the base period and the sub-account's average account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of current yield.

3. Realized gains and losses from the sale of securities and unrealized appreciation and depreciation of the sub-account and the portfolio company are to be excluded from the calculation of yield.

4. With the presentation of the yield quotation, Registrant must disclose any material net change that would result from

the inclusion of capital changes that are excluded in the computation pursuant to this Item.

5. The Registrant need not furnish a yield figure for both an accumulation unit of a sub-account for qualified contracts and an accumulation unit for a sub-account for non-qualified contracts funded by the same portfolio company, if the two yield figures would not be materially different.

6. The Registrant may furnish separate yield figures for individual and group contracts.

7. In addition to the yield quotation required by this Item, the Registrant may also include a quotation of effective yield, carried to at least the nearest hundredth of one percent, computed by compounding the unannualized base period return by adding 1 to the base period return, raising the sum to a power equal to 365 divided by 7, and subtracting one from the result according to the following formula: Effective yield = (Base Period Return + 1) $^{365/7}$ − 1.

8. When calculating the yield quotation required in subsection (b) above, registrants that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

9. The Registrant need not include in the prospectus the methods of calculating the yield quotation described above, nevertheless, the Registrant should include the method of calculating this yield figure in the Statement of Additional Information in response to Item 21.

(c) If all the required financial statements of the Registrant and the depositor (see Item 23) are not in the prospectus, state, under a separate caption, where the financial statements may be found. Briefly explain how any financial statement not in the Statement of Additional Information may be obtained.

Item 5. General Description of Registrant, Depositor, and Portfolio Companies

Concisely discuss the organization and operation or proposed operation of the Registrant. Include the information specified below. (a) Briefly describe each depositor, including:

(i) Its name, address, and description of the general nature of its business;

Instruction: The description of the depositor's business should be short and need not list all of the businesses in which the depositor engages or identify the jurisdictions where it does business, if a general description (e.g., "life insurance" or "reinsurance") is provided.

(ii) The date and form of organization of the depositor and the name of the state or other jurisdiction under whose laws it is organized; and

(iii) If the depositor is controlled by another person, the name of that person and the general nature of its business (If the depositor is subject to more than one level of control, simply give the name of the ultimate control person.).

(b) Briefly describe the Registrant, including:

(i) The date and form of organization of the Registrant and the Registrant's classification pursuant to section 4 of the 1940 Act (15 U.S.C. 80a-4) (i.e., a separate account and a unit investment trust);

(ii) A statement indicating

(A) That income, gains, and losses, whether or not realized from assets allocated to the Registrant are, in accordance with the applicable annuity contracts, credited to or charged against the Registrant without regard to other income, gains, or losses of the depositor,

(B) That the assets of the Registrant may not be charged with liabilities arising out of any other business of the depositor, and

(C) Whether the obligations under the variable annuity contracts are obligations of the depositor.

(iii) Whether there are sub-accounts of the Registrant (i.e., for qualified and non-qualified contracts or for different portfolio companies).

Instruction: Sub-accounts that fund obligations of the Registrant under contracts that are not offered by means of this prospectus need not be described.

(c) Briefly describe each portfolio company, including:

(i) Its name;

(ii) Its type (e.g., money market fund, bond fund, balanced fund, etc.) or a brief statement concerning its investment objectives; and

(iii) Its investment adviser.

(d) State conspicuously from whom a prospectus containing more complete information on each portfolio company may be obtained, and that an investor should read that prospectus carefully before investing.

(e) Concisely discuss the rights of contractowners, annuitants, participants, or beneficiaries to instruct the Registrant on the voting of portfolio company securities underlying their interest in the Registrant, including the manner in which votes will be allocated.

(f) Identify and state the principal business address of any person who provides significant administrative or business affairs management services (e.g., an "Administrator," "Sub-Administrator," "Servicing Agent"), and briefly describe the services provided.

Instruction: Information need not be given in response to this Item about any services described in response to Item 6(a).

Item 6. Deductions and Expenses

(a) Briefly describe all deductions from purchase payments, contractowner accounts, or assets of the Registrant (e.g., sales loads, administrative and transaction charges, risk charges, and premium taxes). Specify the amount of any such deduction as a percentage or dollar figure (e.g., .95% of the average daily net assets or $5 per exchange).

Except for the deduction for premium taxes, identify the person who receives the amount deducted, briefly describe what is provided in consideration for the deduction, and explain the extent to which the deduction can be modified.

Instruction: 1. Identification of the range of current premium taxes is sufficient.

2. If proceeds from explicit sales loads will not cover the expected costs of distributing the contracts, identify from what source the shortfall, if any will be paid. If any shortfall is to be made up from assets from the depositor's general account, disclose, if applicable, that any amounts paid by the depositor may consist, among other things, of proceeds derived from mortality and expense risk charges deducted from the account.

(b) State the sales load as a percentage of each purchase payment, if it is so calculated, and as a percentage of the net amount invested for each breakpoint. For contracts with a deferred sales load; state the sales load as a percentage of the amount withdrawn or surrendered. The percentages should be shown in a table.

(c) Unless set forth in response to paragraph (b), list any special purchase plans or methods established pursuant to a rule or an exemptive order that reflect scheduled variation in, or elimination of, the sales load (*e.g.*, group discounts, waiver of sales load upon annuitization or attainment of a certain age, waiver of deferred sales load for a certain percentage of contract value ("free corridor"), investment of proceeds from another policy, exchange privileges, employee benefit plans, or the terms of a merger, acquisition or exchange offer made pursuant to a plan of reorganization); identify each class of individuals or transactions to which such plans apply; state each different sales charge available as a percentage of the public offering price and as a percentage of the net amount invested; and state from whom additional information may be obtained. Described any other special purchase plans or methods established pursuant to a rule that reflect other variations in, or elimination of, the sales load or in any administrative charge or other deductions from purchase payments, and generally describe the basis for the variation or elimination in the sales load or other deduction (i.e., the size of the purchaser, a prior or existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services).

(d) State the commissions paid to dealers as a percentage of purchase payments.

(e) Provide a statement as to the Registrant's expenses. (If the Registrant has been in existence for a full year, simply set forth the Registrant's total expenses for the most recent full fiscal year as a percentage of average net assets, unless the Registrant expects to incur a material amount of extraordinary expenses in the next year. If the Registrant has been been in operation for a full year, list the types of expenses for which Registrant will be responsible.)

(f) State that there are deductions from and expenses paid out of the assets of the portfolio companies that are described in the prospectuses for those companies.

(g) If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized, including the amount to be amortized and the period over which the amortization will occur.

Item 7. General Description of Variable Annuity Contracts

(a) Identify the person or persons (e.g., the contractowner, participant, annuitant, or beneficiary) who have material rights under the variable annuity contracts, and the nature of those rights, (1) during the accumulation period, (2) during the annuity period, or (3) after the death of the annuitant or contractowner.

Instruction: The Registrant need not repeat rights that are described elsewhere in the prospectus.

(b) Briefly describe any provisions for and limitations on:

(i) Allocation of purchase payments among sub-accounts of the Registrant;

(ii) Transfer of contract values between sub-accounts of the Registrant; and

(iii) Exchanges of variable annuity contracts, including interests or participations therein.

(c) Briefly describe the changes that can be made in the variable annuity contracts or the operations of the Registrant by the Registrant or the depositor, including:

(i) Why a change may be made (e.g., changes in applicable law or interpretations of law);

(ii) Who, if anyone, must approve any change (e.g., the contractowner or the Securities and Exchange Commission); and

(iii) Who, if anyone, must be notified of any change.

Instruction: Describe only those changes that would be material to a purchaser of the variable annuity contracts, such as a reservation of the right to deregister the separate account under the 1940 Act. Do not describe possible non-material changes, such as changing the time of day at which accumulation unit values are determined.

(d) Describe how contractowner inquiries should be made.

Item 8 Annuity Period

Briefly describe the annuity options available. The discussion should include:

(a) Material factors that determine the level of annuity benefits;

(b) The annuity commencement date (give the earliest and latest possible dates);

(c) Frequency and duration of annuity payments, and the effect of these on the level of payment;

(d) The effect of assumed investment return;

(e) Any minimum amount necessary for an annuity option and the consequences of an insufficient amount; and

(f) Rights, if any, to change annuity options or to effect a transfer of investment base after the annuity commencement date.

Instructions: 1. Describe the choices, if any, available to a prospective annuitant, and the effect of not specifying a choice. Where an annuitant is given a choice in assumed investment return, explain the effect of choosing a higher, as opposed to a lower, assumed investment return.

2. Detailed disclosure on the method of calculating annuity payments should be placed in the Statement of Additional Information, Item 22.

Item 9. Death Benefit

Briefly describe any death benefit available under a variable annuity contract during the accumulation and the annuity periods. Include:

(a) When the death benefit is calculated and payable and the effect of choosing a specific method of payment on calculation of that death benefit, and

(b) The forms the benefit may take, including the effect of not choosing a payment option and the period, if any, during which payments must begin under any annuity option.

Item 10. Purchases and Contract Value

(a) Briefly describe the procedures for purchasing a variable annuity contract. Include a concise explanation of:

(i) The minimum initial and subsequent purchase payments required and any limitations on the amount of purchase payments that will be accepted (If there are separate limits for each sub-account, state these limits.);

(ii) A statement of when initial and subsequent purchase payments are credited; and

(iii) The way in which purchase payments are credited, including: (A) An explanation that purchase payments are credited on the basis of accumulation unit value, (B) how accumulation unit value is determined, and (C) how the number of accumulation units credited to a contract is determined.

(b) Explain that investment performance of the portfolio company, exprenses, and deduction of certain charges affect accumulation unit value.

(c) Describe when calculations of accumulation unit value are made and that purchase payments are credited to a contract on the basis of accumulation unit value next determined after receipt of a purchase payment.

(d) Identify each principal underwriter (other than the depositor) of the variable annuity contracts and state its principal business address. If the principal underwriter is affiliated with the Registrant, the depositor, or any affiliated person of the Registrant or the depositor, identify how they are affiliated (e.g., the principal underwriter is controlled by the depositor).

Item 11. Redemptions

(a) Briefly describe how a contractowner or annuitant (if the variable annuity option chosen by the annuitant is not based on a life contingency) can redeem a variable annuity contract, including how the proceeds are calculated and when they are payable.

(b) If the Registrant offers the variable annuity contracts in connection with the Texas Optional Retirement Program, describe the restrictions on redemption that apply.

Instruction: Registrants can satisfy this Item by describing the applicable restrictions on redemption on a supplement attached to prospectuses delivered to participants in the Texas Optional Retirement Program.

(c) If a request for redemption may not be honored for a period of time after a contractowner's investment, describe briefly.

(d) Briefly describe any provision for lapse or involuntary redemptions under the contract and the reasons for it, such as the size of the account or infrequency of purchase payments.

(e) Briefly describe any revocation rights (e.g., "ten-day free look" provisions).

Item 12. Taxes

(a) Briefly describe the tax consequences to investors of an investment in the variable annuity contracts being offered.

Instruction: This disclosure need not include detailed description of applicable law. The discussion should include the taxation of annuity payments, death proceeds, periodic and non-periodic withdrawals, pledges and assignments of the contract (if permitted), and any other method by which taxable income may be received by the investor under the variable annuity contract, as well as the tax benefits accorded annuities during the accumulation period. If the tax consequences vary depending on the use of the variable annuity contract (i.e., to fund an individual retirement annuity or corporate plan), the variations should be briefly described.

(b) Identify the types of qualified plans for which the variable annuity contracts are intended to be used.

Instructions: 1. Identify the types of persons who may use the plans (e.g., corporations, self-employed individuals) and disclose, if applicable, that the terms of the plan may limit the right otherwise available under the contracts.

2. Do not describe the Internal Revenue Code requirements for qualifications of plans or the non-annuity tax consequences of qualification (e.g., the effect on employer taxation).

(c) Briefly describe the impact, if any, of taxation on the determination of account or sub-account values.

Item 13. Legal Proceedings

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, any subsidiary of the Registrant, or the Registrant's principal underwriter or depositor is a party. Include the name of the court where the case is pending, the date filed, and the principal parties. Include similar information for any proceedings instituted by governmental authorities.

Instruction: Legal proceedings are material only to the extent that they are likely to have a material adverse effect upon: (1) The ability of the principal underwriter to perform its contract with the Registrant or of the depositor to meet its obligations under the variable annuity contracts; or (2) the Registrant.

Item 14. Table of Contents of the Statement of Additional Information

List the contents of the Statement of Additional Information.

Part B—Information Required in a Statement of Additional Information

Item 15. Cover Page

(a) The outside cover page must contain the following information:

(i) The Registrant's name;

(ii) The depositor's name;

(iii) A statement or statements (A) that the Statement of Additional Information is not a prospectus; (B) that the Statement of Additional Information should be read with the prospectus; and (C) how a copy of the prospectus may be obtained;

(iv) The date of the Statement of Additional Information; and

(v) The date of the related prospectus and any other identifying information that the Registrant deems appropriate.

(b) The cover page may include other information, provided that it does not by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 16. Table of Contents

List the contents of the Statement of Additional Information and, where useful, provide cross-references to the prospectus.

Item 17. General Information and History

(a) If the depositor's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any state, sales of contracts offered by the Registrant have been suspended at any time, or if sales of contracts offered by the depositor have been suspended during the past five years, briefly describe the reasons for and results of the suspension.

(b) If 10 percent or more of the assets of any sub-account are not attributable to variable annuity contracts or to accumulated deductions or reserves (e.g., initial capital contributed by the depositor), state what percentage those assets are of the total assets of the separate account. If the depositor, or any other person controlling the assets, has any present intention of removing the assets from the sub-account, so state.

(c) If the depositor is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

Item 18. Services

(a) Describes all fees, expenses, and costs of the Registrant which are to be paid by persons other than the depositor or the Registrant, and identify such persons.

(b) Give a summary of any contract for the provision of management-related services to the Registrant that may be of interest to a purchaser of Registrant's securities, unless the contract is described in response to some other item of this form. Identify the parties to the contract, and show, for the past three years, the total dollars paid and by whom.

Instruction: 1. A contract for "management-related services" includes any agreement whereby another person agrees to keep, prepare, or file such accounts, books, records, or other documents as the Registrant may be required to keep under federal or state law, or to provide any similar services with respect to the daily operations of the Registrant, but does not include the following: (i) Any agreement to act as custodian or agent to administer purchases and redemptions under the contracts, or (ii) bona fide contracts for outside legal or auditing services, or bona fide contracts for personal employment entered into in the ordinary course of business.

2. In summarizing a management-related service contract, include: the name of the person providing the service; any direct or indirect relationships between such person and the Registrant, its depositor, or its principal underwriter; the nature of the services provided; and the basis of the compensation paid for the last three fiscal years.

(c) Give the name and principal business address of the Registrant's custodian and independent public accountant and provide a general description of the services they perform.

(d) If the assets of the Registrant are held by a person other than the depositor, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of each such person.

(e) If an affiliated person of the Registrant or the depositor, or an affiliated person of such an affiliated person, acts as administrative or servicing agent for the Registrant, furnish a description of the services performed by that person and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction: No disclosure need be given in response to paragraph (e) of the Item for an administrative or servicing agent who is also the depositor.

(f) If the depositor is the principal underwriter of the variable annuity contracts, so state.

Item 19. Purchase of Securities Being Offered

(a) Describe the manner in which Registrant's securities are offered to the public. Include a description of any special purchase plans and any exchange privileges not described in the prospectus.

Instruction: Address exchange privileges between sub-accounts, between the Registrant and other separate accounts, and between the Registrant and contracts offered through the depositor's general account.

(b) Describe the method that will be used to determine the sales load on the variable annuity contracts offered by the Registrant.

Instruction: Explain fully any difference in the price at which variable annuity contracts are offered to members of the public, as individuals and as groups, and the prices at which the contracts are offered for any class of transactions or to any class of individuals, including officers, directors, members of the board of managers, or employees of the Registrant's depositor, underwriter, portfolio company, or investment adviser to the portfolio company.

Item 20. Underwriters

(a) If the depositor or an affiliate of the depositor is the principal underwriter of the variable annuity contracts, so state.

(b) State whether the offering is continuous.

(c) State the aggregate dollar amount of underwriting commissions paid to, and the amount retained by, the principal underwriter for each of the last three fiscal years.

(d) If during the Registrant's last fiscal year any payments were made by the Registrant to an underwriter of or dealer in the variable annuity contracts that is unaffiliated with the Registrant or the depositor, other than payments made through deduction from the purchase payments at the time of sale of the variable annuity contracts or from contract values upon redemption, give the following information:

(i) The name and address of the underwriter or dealer;

(ii) The circumstances surrounding the payments;

(iii) The amount paid; and

(iv) How the amount of the payment was determined and the consideration received for it.

Instructions: 1. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

3. Information need not be given about payments made under any contract to act as administrative or servicing agent.

4. If the payments were made under an arrangement or policy applicable to dealers generally, simply describe the arrangement or policy.

Item 21. Calculation of Yield Quotations of Money Market Sub-Accounts

Describe the method used to compute each yield quotation provided in the prospectus pursuant to Item 4(b).

Instructions: 1. For purposes of the yield computation, the determination of net change in account value must reflect all deductions that are charged to all contract-owner accounts in proportion to the length of the base period and the sub-account's average account size.

2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of current yield.

3. Realized gains and losses from the sale of securities and unrealized appreciation and depreciation of the sub-account and the portfolio company are to be excluded from the calculation of yield.

4. When calculating the yield quotation required in Item 4(b), Registrants that choose to make such an election on an annual basis may use a median account size in place of an average account size in determining the base period return.

Item 22. Annuity Payments

Describe the method for determining the amount of annuity payments if not described in the prospectus. In addition, describe how any change in the amount of a payment after the first payment is determined.

Item 23. Financial Statements

(a) Provide financial statements of the Registrant.

Instruction: The financial statements and schedules required by Regulation S-X (17 CFR Part 210) shall be provided in a separate section. Financial statements of the Registrant may be limited to:

(i) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;

(ii) An audited statement of operations for the most recent fiscal year conforming to the requirements of Rule 6-07 of Regulation S-X (17 CFR 210.6-07); and

(iii) Audited statements of changes in net assets conforming to the requirements of Rule 6-08 of Regulation S-X (17 CFR 210.6-08) for the two most recent fiscal years.

(b) Provide financial statements of the depositor.

Instructions: 1. The financial statements and schedules of the depositor required by Regulation S–X shall be provided in a separate section following the response to paragraph (a) of this Item. If the Insurance Company would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Form N-3 or N-4, its financial statements may be prepared in accordance with statutory requirements.

2. Notwithstanding Instruction 1 above, all statements and schedules required by Regulation S–X, except for the consolidated balance sheets described in Rule 3–01 of Regulation S–X (17 CFR 210.3–01) and any notes thereto, may be omitted from Part B and instead included in Part C of the Registration Statement.

3. Notwithstanding Rule 3–12 of Regulation S-X (17 CFR 210.3–12), the financial statements of the depositor need not be more current than as of the end of the most recent fiscal year of the depositor unless:

(i) The depositor's financial statements have never been included in an effective registration statement under the Securities Act of 1933 of a separate account which offers variable annuity contracts or funds variable life insurance contracts; or

(ii) The balance sheet of the depositor at the end of either of the two most recent fiscal years included in response to this Item shows a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000; or

(iii) The balance sheet of the depositor at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the 1933 Act (or a fiscal quarter within 90 days of filing if the registration statement is filed solely under the 1940 Act) would show a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000. If two fiscal quarters end within the 135 day period, the depositor may choose either for purposes of this test.

Any interim financial statements required by this Item need not be comparative with financial statements for the same interim period of an earlier year.

Part C. Other Information

Item 24. Financial Statements and Exhibits

List all financial statements and exhibits filed as part of the Registration Statement.

(a) Financial statements.

Instruction: Designate those financial statements which are included in Part A and Part B of the Registration Statement.

(b) Exhibits:

(1) Copies of the resolution of the board of directors of the depositor authorizing the establishment of the Registrant;

(2) Copies of all agreements for custody of securities and similar investments of the Registrant, including the schedule of remuneration;

(3) Copies of each underwriting or distribution contract between the Registrant and the principal underwriter or the depositor and the principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;

(4) The form of each variable annuity contract;

(5) The form of application used with any variable annuity contract provided in response to (4) above;

(6) Copies of the certificate of incorporation or other instrument of organization and the by-laws of the depositor;

(7) A copy of any contract of reinsurance in connection with the variable annuity contracts being offered;

(8) Copies of all other material contracts not made in the ordinary course of business which are to be performed in whole or in part on or after the date of filing the Registration Statement;

(9) An opinion of counsel and consent to its use as to the legality of the securities being registered, indicating whether they will be legally issued and will represent binding obligations of the depositor;

(10) Copies of any other opinions, appraisals, or rulings, and consents to their use relied on in preparing this Registration Statement and required by Section 7 of the 1933 Act;

(11) All financial statements omitted from Item 23; and

(12) Copies of any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, the depositor, underwriter, or initial contractowners and written assurances from the depositor or initial contractowners that the purchases were made for investment purposes without any present intention of redeeming.

Instruction: 1. Subject to the rules on incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as a part of the Registration Statement. Exhibits numbered 3 and 9–11 above need be filed only as part of a 1933 Act Registration Statement. Exhibits shall be lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

2. A Registrant need not file an exhibit as part of a post-effective amendment if the exhibit has been filed in the Registrant's initial registration statement or in a previous post-effective amendment, unless there has been a change in the exhibit or unless the exhibit is a copy of a consent required by Section 7 of the 1933 Act or is a financial statement omitted from Item 23.

Item 25. Directors and Officers of the Depositor

Give the following information about each director or officer of the depositor:

Name and principal business address	Positions and offices with depositor

Instruction: Registrants need only provide the above information for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the variable annuity contracts offered by the Registrant, and for executive officers including the depositor's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

Item 26. Persons Controlled by or Under Common Control with the Depositor or Registrant

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the depositor or Registrant and for each such person indicate (1) if a company, the state or other sovereign power under whose laws it is organized, (2) the percentage of voting securities owned or other basis of control by the person, if any, immediately controlling it, and (3) its principal business unless such principal business is implicit in its name.

Instructions: 1. This list or diagram shall include the Registrant and the depositor and shall show clearly the relationships between each company named. If a company is controlled by direct ownership of its securities by two or more persons, so indicate by appropriate cross-reference.

2. Designate (i) subsidiaries for which separate financial statements are filed; (ii) subsidiaries included in the respective consolidated financial statements; (iii) subsidaries included in the respective group financial statements filed for unconsolidated subsidiaries; and (iv) other subsidiaries, indicating briefly why statements of such subsidiaries are not filed.

Item 27. Number of Contractowners

State as of a specified date within 90 days prior to the date of filing the number of contractowners of qualified and non-qualified contracts offered by Registrant.

Item 28. Indemnification

State the general effect of any contract, arrangements, or statute under which any underwriter or affiliated person of the Registrant is insured or indemnified in any manner against any liability which may be incurred in such capacity, other than insurance provided by any underwriter or affiliated person for his own protection.

Instruction: In responding to this Item the Registrant should note the requirements of Rules 461 and 484 under the 1933 Act (17 CFR 230.461, 230.484) and section 17 of the 1940 Act (15 U.S.C. 80a–17).

Item 29. Principal Underwriters

(a) Give the name of each investment company (other than the Registrant) for which each principal underwriter currently distributing securities of the Registrant also acts as a principal underwriter, depositor, sponsor, or investment adviser.

(b) Give the information required by the following table with respect to each director, officer, or partner of each principal underwriter named in the answer to Item 10(d):

Name and principal business address	Positions and offices with underwriter
(1)	(2)

Instruction: If a principal underwriter is the depositor or an affiliate thereof, and is also an insurance company, the above information for officers or directors need only be provided for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the variable annuity contracts offered by the Registrant, and for executive officers including the depositor's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

(c) Give the following information about all commissions and other compensation received by each principal underwriter, directly or indirectly, from the Registrant during the Registrant's last fiscal year:

Name of principal underwriter	Net underwriting discounts and commissions	Compensation on redemption or annuitization	Brokerage commission	Compensation
(1)	(2)	(3)	(4)	(5)

Instructions: 1. Show in a note, or otherwise, the nature of the services provided in return for the compensation shown in column (5).

2. Information need not be given about bona fide contracts with the Registrant or its depositor for outside legal or auditing services, or bona fide contracts for personal employment entered into with the Registrant or its depositor in the ordinary course of business.

3. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

4. Information need not be given about payments made under any agreement whereby another person contracts with the Registrant or its depositor to perform as custodian or administrative or servicing agent.

Item 30. Location of Accounts and Records

Give the name and address of each person who maintains physical possession of each account, book, or other document, required to be maintained by section 31(a) of the 1940 Act (15 U.S.C. 80a-30(a)) and the rules under it (17 CFR 270.31a-1 to 31a-3).

Item 31. Management Services

Give a summary of any contract not discussed in Part A or Part B of this Form under which management-related services are provided to the Registrant, showing the parties to the contract and the total dollars paid and by whom, for the last three fiscal years.

Instructions: 1. The instructions to Item 18(b) of this Form shall also apply to this Item.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

Item 32. Undertakings

Give the following undertakings in substantially this form in all initial registration statements filed under the 1933 Act:

(a) An undertaking to file a post-effective amendment to this registration statement as frequently as is necessary to ensure that the audited financial statements in the registration statement are never more than 16 months old for so long as payments under the variable annuity contracts may be accepted;

(b) An undertaking to include either (1) as part of any application to purchase a contract offered by the prospectus, a space that an applicant can check to request a Statement of Additional Information, or (2) a post card or similar written communication affixed to or included in the prospectus that the applicant can remove to send for a Statement of Additional Information;

(c) An undertaking to deliver any Statement of Additional Information and any financial statements required to be made available under this Form promptly upon written or oral request.

Signatures

As required by (the Securities Act of 1933 and) the Investment Company Act of 1940, the Registrant (certifies that it meets the requirements of Securities Act Rule 486(b) for effectiveness of this Registration Statement and) has caused this Registration Statement to be signed on its behalf, in the City of ———, and State of ——— on this ——— day of ———, 19——.

(Registrant)

By

(Signature and Title)

(Depositor)

By

(Name of officer of depositor)

(Title)

Instruction: If the registration statement is being filed only under the Securities Act or under both the Securities and the Investment Company Act, it should be signed by both the Registrant and its depositor. If the registration statement is being filed only under the Investment Company Act, it should be signed only the Registrant.

As required by the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Title)

(Date)

Guidelines for Form N-3

This release contains Guidelines prepared by the Division of Investment Management for registration statements on Form N-3 for management separate accounts. The Guidelines are based on Commission releases and staff interpretations. Adherence to these Guidelines should speed the examination by the Division's staff of registration statements on Form N-3.

The Guidelines are not rules of the Commission and, except as noted, represent only the views of the staff of the Division, not the Commission. The Guidelines should be read with the Investment Company Act Releases cited in them. The policies stated in the Guidelines may be changed if necessary.

Table of Contents

Guide 1. Name of Registrant

The registrant's name must be consistent with section 35 of the Investment Company Act of 1940 ("1940 Act"), which prohibits, among other things, use of a name or title that is deceptive or misleading. If the name suggests a certain type of investment policy, it should be consistent with registrant's investment policies. If the name indicates that registrant is a money market separate account, registrant should have a policy requiring investment of at least 80% of its assets in debt securities maturing in thirteen months or less.

If the name implies that registrant will invest primarily in a particular type of security, other than money market instruments, or in a certain industry or industries, the registrant should have an investment policy requiring that, under normal circumstances, at least 65 percent of the value of its total assets will be invested in the indicated type of security or industry.[1] Further, the registrant's name may not be so similar to the name of an existing investment company as to cause confusion in identifying the separate account.

In the Division's view, the discussion in Investment Company Act Release No. 5510 (October 8, 1968) about the proprietary rights of an investment company and its adviser in the company's name is not applicable to separate accounts.

Guide 2. Series Accounts

If the separate account operates as a series account, *i.e.*, it has more than one portfolio, then the registrant should provide disclosure in the prospectus and Statement of Additional Information about each portfolio offered. the registrant should indicate when the discussion is addressing the separate account, *e.g.*, the election of members of the board of managers (*see* rule 18f-2 under the 1940 Act (17 CFR 270.18f-2)), and when it is addressing the portfolio, *e.g.*, in identifying investment risks. Specifically, the registrant should identify in response to Item 1(a)(v) the type of each portfolio or briefly state its investment objectives. Similarly, the sub-classification of each portfolio should be identified in response to Item 5(b)(ii) and the investment objectives, policies, practices, and risks of each portfolio should be described in response to Item 5 or Item 19, as appropriate. Expense allocation practices should be described in response to Item 7. Also, if fees, transfer rights, or minimum initial or subsequent purchase payment requirements differ between portfolios, the responses to Items 7, 8, 11, and 23 should reflect the differences. Any other characteristics of the registrant which vary among portfolios, *e.g.*, valuation procedures, shold be described in the prospectus or Statement of Additional Information, as appropriate.

Guide 3. Investment Objectives and Policies

The prospectus should clearly and concisely state the registrant's investment objectives and policies (including the types of securities in which it will invest). Although it is not possible to define precisely what level of investment makes a particular type of investment one in which the registrant invests "principally," as that term is used in Item 5(c)(ii)(A), generally, the amount of disclosure about a particular type of investment should be consistent with its prominence in the registrant's portfolio, with emphasis on the main types of investments the registrant proposes to make and the basic risks of those investments. Discussions of types of investments that will not be emphasized in the registrant's portfolio should be brief and, in many cases, may be limited to identifying the particular type of investments. (As discussed below, the instructions describe certain circumstances in which disclosure may be so limited.) Similar treatment should be given to other practices, such as borrowing money. Registrants should avoid extensive legal and technical detail and need not discuss every possible contingency, such as remote risks.[2]

Registrant should not describe negative investment policies in the prospectus, *i.e.*, policies that prohibit a particular type of investment or practice. Section 8(b) of the 1940 Act may, however, require information about such policies in the registration statement. Registrant should provide very limited disclosure about policies that will permit it to invest on more than 5 percent of its assets in certain types of securities. For example, if a registrant plans to invest no more than 5 percent of its net assets in speculative growth stocks, it is sufficient to state that policy in the prospectus without elaboration.

The Statement of Additional Information should include a more complete discussion of registrant's investment policies that were described briefly, or not at all, in the prospectus. More complete descriptions of the registrant's principal types of investments may also be appropriate, depending on the circumstances. A policy that permits a particular practice, but which has not been used within the past year, as well as whether the registrant intends to use the practice in the coming year, should also be disclosed in the Statement of Additional Information.

Guide 4. Types of Securities

The registrant should discuss in the prospectus the types of securities in which it will invest to reach its investment objective. If the name of the registrant implies investment in a particular type of security (*e.g.*, Common Stock Separate Account), its policy should be consistent with its name (*see* Guide 1). The proportions of the registrant's assets to be invested in debt or equity securities need not be stated in terms of a percentage of total assets.

If the registrant intends to invest in foreign securities or real estate or make loans, see Guides 20, 12, or 13, respectively.

If state insurance law limits the types of investments the separate account may make to a greater extent than the registrant's fundamental investment policies, the legal limitation should be disclosed in the prospectus.

Any repurchase agreement entered into with a broker, a dealer, or a bank must be fully collateralized. A repurchase agreement is fully collateralized only if the market value of the securities held as collateral plus any accrued interest on those securities is equal to or greater than the amount at which the broker, dealer, or bank will repurchase the securities or repay the principal amount borrowed plus interest accrued on the principal amount. Further, the market value of the securities held as collateral must be marked to the market daily during the entire term of the agreement and the repurchase agreement should provide that additional collateral will be required from the broker, dealer, or bank if the market value of the securities falls below the repurchase price. In addition, a registrant must acquire actual or constructive possession of the collateral.[3]

Guide 5. Portfolio Turnover

The registrant should briefly discuss in the prospectus the probable effect of investment techniques on the registrant's rate of total portfolio turnover, if these effects will be significant and if portfolio turnover will have brokerage, tax, or other significant consequences. If the registrant has had or anticipates having a portfolio turnover rate of approximately 100 percent or more, the discussion should (1) include any tax and brokerage consequences which will result from the higher portfolio turnover rate, and (2) cross-reference the discussions of income taxes and brokerage practices included in the prospectus. The Statement of Additional Information should discuss portfolio turnover if the prospectus does not or it may supplement the prospectus disclosure. New separate accounts, other than money market separate accounts, should estimate what rate of portfolio turnover will, generally, not be exceeded (*e.g.*, 50 percent, 100 percent, 150 percent etc.).

A separate account that invests substantial portions of its assets in both common stock and debt securities or preferred stock, should separately describe its portfolio turnover policy for the common stock and debt portions of its portfolio.[4]

Guide 6. Business History

The registrant should list in the Statement of Additional Information all prior names of its sponsoring insurance company during the past five years. For a newly organized insurance company, the registrant should state that the company has no prior operating history.

Guide 7. The Borrowing of Money

The registrant should state in the prospectus any intention to borrow from a bank or otherwise to leverage its assets. If registrant will not borrow more than 5 percent of net assets, it may simply state its intention. If registrant will engage in a higher level of borrowing, it should concisely discuss the purposes and consequences of such borrowing (such as increased leverage).[5] The Statement of Additional

[1] *See* Guide 18, *Concentration of Investments in Particular Industries.*

[2] *See* individual subject headings of these Guidelines concerning disclosure for specific investment techniques or policies.

[3] Investment Company Act Release No. 10666 (April 18, 1979) (44 FR 25128 (April 27, 1979)); Investment Company Act Release No. 13005 (February 2, 1983); Letter from Gerald Osheroff, Associate Director of the Division of Investment Management, to Matthew Fink, General Counsel of the Investment Company Institute (pub. avail. May 7, 1985).

[4] *See* Guide 4, *Types of Securities.*

[5] *See* Investment Company Act Release No. 7220 (June 9, 1972) (37 FR 12790 (June 24, 1972)).

Information may contain any additional disclosure.

Separate accounts organized as open-end management investment companies ("management accounts") are permitted to borrow from banks under 18(f) of the 1940 Act. Under section 18(g) of that Act, certain borrowings for temporary purposes are also permitted. A registrant may not borrow in excess of 5 percent of the value of its total assets for any reason without first obtaining the approval of its eligible voters unless the registrant has so provided in its prospectus.[6] Generally, the prospectus need not restate provisions of law limiting borrowing by the registrant.

Because borrowings involve the creation of a senior security, see Guide 8.

Guide 8. Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements, and Standby Commitment Agreements

Section 18(f) of the 1940 Act prohibits the issuance of senior securities by management accounts except borrowings from banks up to the specified asset coverage. Policies on borrowings should be set forth in the prospectus or in the Statement of Additional Information, depending upon the significance of the policies (*see* Guide 7).

The registration statement should concisely disclose the nature and consequences of the separate account's participation in securities trading practices such as reverse repurchase agreements, firm commitment agreements, and standby commitment agreements.[7] The extent to which such disclosure should be included in the prospectus will depend on how often and to what degree the registrant engages in those kinds of trading practices (*see* Guide 3). The registration statement should (1) describe the potential risk of loss to a separate account and its investors from those transactions, (2) identify the securities trading practices as distinct from the underlying securities, (3) explain the difference in investment goals of participating in the securities trading practices and investing in the underlying securities (*i.e.*, securities used as collateral for the trading practices), and (4) provide any other material information about the practices and the separate account's participation in them. Additionally, the registrant's name should not be misleading in light of its securities trading practices.

Guide 9. Short Sales

In the Division's view, a short sale involves the creation of a senior security and is, therefore, subject to the limitations of section 18 of the 1940 Act. The staff has taken the position that in order to comply with section 18 of the 1940 Act, the selling registrant must put in a segregated account (not with the broker) cash or United States government securities equal in value to the difference between (a) the market value of the securities sold short when they were sold short and (b) any cash or United States government securities required to be deposited as collateral with the broker in connection with the short sale (not including the proceeds from the short sale). In addition, until registrant replaces the borrowed security, it must daily maintain the segregated account at such a level that (1) the amount deposited in it plus the amount deposited with the broker as collateral will equal the current market value of the securities sold short, and (2) the amount deposited in it plus the amount deposited with the broker as collateral will not be less than the market value of the securities at the time were sold short.[8]

Selling short is not the same as selling short "against the box." While a short sale is made by selling a security the separate account does not own, a short sale is "against the box" to the extent that the separate account contemporaneously owns or has the right to obtain at no added cost securities identical to those sold short. The procedures described above for short sales subject to section 18 of the 1949 Act are not applicable to short sales "against the box."

If the registrant expects to sell short, or to sell short "against the box," its policy and the effect of such policy should be described in the registration statement. Whether the description should be included in the prospectus will depend upon how often and in what amount the registrant will sell short (*see* Guide 3). The registration statement should include

1. An explanation of the requirement of collateral and a segregated account and

2. The maximum percentage of the value of the registrant's net assets that will be, when added together: (a) Deposited as collateral for the obligation to replace securities borrowed to effect short sales and (b) allocated to segregated accounts in connection with short sales.[9]

Guide 10. Purchases on Margin

Because of the prohibition in section 18 of the 1940 Act against the issuance of senior securities by management accounts, except in connection with borrowings from banks, the Division's position is that management accounts may not establish or use a margin account with a broker to effect securities transactions on margin.[10]

Guide 11. Restricted Securities

Although the acquisition of restricted securities (securities that must be registered under the Securities Act of 1933 before they may be offered or sold to the public) might not be deemed to be an underwriting commitment under section 12(c) of the 1940 Act, a registrant should describe in the prospectus any policy permitting the purchase of restricted securities if such securities constitute five percent or more of the registrant's portfolio securities. Otherwise, registrant's policy concerning restricted securities should be described in the Statement of Additional Information.

Note.—If a management account holds a material percentage of its assets in restricted securities, such holdings may raise questions about valuation and the separate account's ability to make payment within seven days of the date it receives a request for the withdrawal of contract values. *See also* Guides 13 and 26.

Guide 12. Purchase and Sale of Real Estate

Registrant should indicate the type of real estate investments which it proposes to make, if any, in response to Item 5 and Item 19, as appropriate in light of the level of any such investments (*see* Guide 3). A management account should not acquire illiquid assets, including real estate without an established market, in excess of 10 percent of the registrant's net assets.[11]

For purposes of these disclosure requirements, the Division views an interest in real estate as including securities (other than marketable securities) of companies whose assets consist substantially of real property and interests in real property, including mortgages and other liens, but does not include securities of companies whose investments in real estate are incidental to its primary business, *e.g.*, banks.[12]

Guide 13. The Making of Loans to Other Persons

In response to Item 19, and, if appropriate, in Item 5, the registrant should state its policy on the purchase of non-publicly offered debt securities (including convertible securities).[13] The purchase of a portion of an issue of publicly-distributed bonds, debentures, or other securities, whether or not the purchase is made upon the original issuance of the securities, is not a loan. The registrant should state whether it will make loans which are short term (nine months or less), long term, or both. If a management account holds a material percentage of its assets in debt securities having no established market, there may be a question about the ability of the separate account to make payment within seven days of the date it receives a request for the withdrawal of contract values. A management account should not acquire illiquid assets, including debt securities for which there is no established market, in excess of 10 percent of the registrant's net assets.[14]

[6] *See* sections 13(a), 18(f)(1), and 18(g) of the 1940 Act. *See also* Investment Company Act Release No. 7221 (June 9, 1972) (37 FR 12790 (June 24, 1972)).

[7] For a more complete dicussion of reverse repurchase agreements, firm commitment agreements, and standby commitment agreements, *see* Investment Company Act Release No. 10666 (April 18, 1979) (44 FR 25128 (April 27, 1979)).

[8] Investment Company Act Release No. 7221 (June 9, 1972) (37 FR 12790 (June 24, 1972)).

[9] Investment Company Act Release No. 7220, *supra* note 5.

[10] Investment Company Act Release No. 7221, *supra* note 6.

[11] *See, e.g.*, Investment Company Act Release No. 5847 (October 21, 1969) (35 FR 19989 (December 31, 1970)).

[12] However, interests in companies that invest in real estate are not interests in real estate for purposes of section 3(c)(5)(C) of the Act. *See* Investment Company Release No. 3140 (November 18, 1960) (25 FR 12177 (November 29, 1960)).

[13] *See* Investment Company Act Release No. 7220, *supra* note 5.

[14] Investment Company Act Release No. 5847, *supra* note 11.

Guide 14. Other Policies Which are Changeable Only if Authorized by a Majority of Votes or Which the Registrant Deems a Matter of Fundamental Policy

Item 5 discusses the amount of prospectus disclosure about investment policies which are changeable only if approved by a majority of votes and any other policy (whether or not an *investment* policy) which the registrant treats as "fundamental." Generally, the prospectus need not describe policies that prohibit certain practices or practices that the registrant does not intend to follow. Information concerning negative investment policies or practices is, however, required to be included in the Statement of Additional Information.

When the vote required by the registrant's by-laws is stricter than that required by the 1940 Act to change a policy (*see* section 2(a)(42) and section 13), the Statement of Additional Information should so state.

By-laws or other basic organizational documents submitted as exhibits to the registration statement should be reviewed to make certain a particular policy stated in response to Item 5 is not contrary to the registrant's organizational documents. For example, if the resolution of the board of directors of the sponsoring insurance company authorizing the establishment of the registrant prohibits the registrant from borrowing, the registrant should not state a policy of issuing senior securities. The registrant's organizational documents should not contain any provision which precludes compliance with the 1940 Act or the rules under it. The organizational documents also should provide the registrant's board of managers with authority to take whatever action may be necessary to comply with any applicable federal statute or rule.

Guide 15. Investment in Companies for the Purpose of Exercising Control or Management

If one of the registrant's significant investment policies is to invest in companies for the purpose of exercising control, as defined in section 2(a)(9) of the 1940 Act, the registrant should explain in the prospectus the extent to which, and when, such investments will be made. A statement that the registrant is diversified or that it has a policy of not acquiring more than 10 percent of the outstanding voting securities of any one issuer is not enough, since even such registrants could invest for the purpose of exercising control or management.[15]

Guide 16. Investment in Securities of Other Investment Companies

Section 12(d)(1) of the 1940 Act limits the percentage of voting securities of any other investment company which the registrant may acquire. That section also limits, with some exceptions, the percentage of the value of the registrant's assets that may be invested in securities of other investment companies.

If the registrant intends to invest significantly in the securities of other investment companies, the registrant should state in the prospectus the percentage of its assets which may be so invested. Otherwise, the registrant should show in the Statement of Additional Information the percentage of its assets which may be invested in securities of other investment companies.

Guide 17. Tax-free Bonds—Issuer Diversification

The identification of the issuer of a tax-exempt security for purposes of section 5(b)(1) of the 1940 Act depends on the terms and conditions of the security. When the assets and revenues of an agency, authority, instrumentality, or other political subdivision are separate from those of the government creating the subdivision and the security is backed only by the assets and revenues of the subdivision, the subdivision would be the sole issuer for purposes of section 5(b)(1).[16] Similarly, if an industrial development bond is backed only by the assets and revenues of the non-governmental user, then the non-governmental user would be the sole issuer for purposes of section 5(b)(1). A guarantee by the creating government or some other entity would be considered a separate security which must be valued and included in the 5 percent limit of section 5(b)(1) except as permitted under rule 5b-2 of the Act.[17]

Guide 18. Concentration of Investments in Particular Industries

Section 8(b)(1) of the 1940 Act requires every registered investment company to include in its registration statement a recital of its policies with respect to concentration. Investment (including holdings of debt securities) of more than 25 percent of the value of the registrant's assets in any one industry represents concentration. If the registrant intends to concentrate in a particular industry or group of industries, it should specify in the prospectus the industry or group of industries.

If the registrant does not intend to concentrate, no further investment may be made in any given industry if, upon making the proposed investment, 25 percent or more of the value of the registrant's assets would be invested in such industry. However, when securities of a given industry constitute more than 25 percent of the value of the registrant's assets as a result of changes in value of either concentrated securities or other securities, the excess need not be sold.

The approval of a majority of votes is generally necessary to change to a concentration policy or a policy of not concentrating (*See* section 13(a)(3) of the 1940 Act). If the registrant has employed a policy of concentration in the past but does not intend to follow that policy in the future, its intention and its estimate of the time required to implement a policy of not concentrating should be specifically disclosed in the Statement of Additional Information.

Investment discretion on the part of management to concentrate, without the approval of eligible voters, has been considered by the Division to be prohibited by sections 8(b)(1) and 13(a)(3) of the 1940 Act, unless the statement of investment policy clearly indicates when and under what specific conditions any changes between concentration and non-concentration would be made. Registrants may not reserve the right to concentrate in particular industries "without limitation if deemed advisable and in the best interests of the contract owners".[18]

Money market separate accounts may declare an investment policy on industry concentration reserving freedom of action to concentrate their investments in government securities, as defined in the 1940 Act, and certain bank instruments issued by domestic banks[19] if the Statement of Additional Information discloses the type and nature of the various bank instruments in which the registrant intends to invest and the criteria for evaluating and selecting such investments. Money market separate accounts may not reserve freeedom of action to concentrate investments in the commercial paper of issuers in any one industry.[20]

Further, the statement of concentration policy required by section 8(b)(1) does not apply to investments in tax-exempt securities issued by governments or political subdivisions of governments since such issuers are not members of any industry.

Note.—In determining industry classifications, the staff will ordinarily use the current *Directory of Companies Filing Annual Reports with the Securities and Exchange Commission*, (the "Directory") published by the Commission. A registrant may refer to the *Directory*, or may select its own industry classifications, but such classifications must be reasonable and should not be so broad that the primary economic characteristics of the companies in a single class are materially different. Registrants selecting their own industry classifications should disclose them (a) in the prospectus in the case of a policy to concentrate, or (b) in the Statement of Additional Information in the case of a policy not to concentrate.

Guide 19. Separate Accounts Investing In Other Than High-Grade Bonds

If the registrant seeks high income by investing in other than high-grade bonds,[21] it

[15] Investment Company Act Release No. 7221, *supra* note 6.

[16] Investment Company Act Release No. 9785 (May 31, 1977) 42 FR 29130 (June 7, 1977)).

[17] *Id.*

[18] Investment Company Act Release No. 9011 (October 30, 1975) (40 FR 54241 (November 21, 1975)).

[19] United States branches of foreign banks may be considered domestic banks if it can be demonstrated that they are subject to the same regulation as United States banks. Foreign branches of domestic banks, however, are not registered in the United States and are not considered "domestic banks." Nevertheless, if a registrant can show that the investment risk associated with investing in instruments issued by the foreign branch of a domestic bank is the same as that of investing in instruments issued by the domestic parent, in that the domestic parent would be unconditionally liable in the event that the foreign branch failed to pay on its instruments for any reason, then the staff believes that the registrant may treat that foreign branch as a domestic bank for purposes of concentration. Otherwise, the staff is of the opinion that the registrant may not reserve freedom of action to concentrate its investments in instruments issued by foreign branches of domestic banks.

[20] Investment Company Act Release No. 9011, *supra* note 18.

[21] These would include, for example, bonds receiving a Standard & Poor's rating of BBB or lower or a Moody's rating of Baa or lower.

should concisely but clearly disclose in the prospectus the risks involved in such investments either in response to Item 5 or Item 1 (on the cover page). Where the registrant chooses to use certain rating criteria in its prospectus disclosure, the registrant should also disclose the minimal rating that the separate account would find acceptable under the rating criteria it has chosen. The registrant may place rating services' descriptions of their rating criteria in the Statement of Additional Information.

Guide 20. Disclosure of Risk Factors

A registrant should address in the prospectus the principal speculative or risk factors arising from the securities being offered. These risks may, for example, be the result of the registrant's particular investment objective, the type of securities in which it invests, the type or size of companies in which it invests, the investment techniques it employs, or an innovative or unusual method of operation. Other risk factors may be due to the absence of an operating history, minimal capitalization, or the nature of a registrant's business.

A registrant that intends to invest as much as 10 percent of its assets in foreign securities which are not publicly traded in the United States must disclose this in the prospectus. For many foreign securities, however, there are dollar-denominated American Depository Receipts ("ADRs"), which are traded in the United States on exchanges or over-the-counter, are issued by domestic banks, and do not involve the same currency risk as a foreign security. ADRs need not be treated as foreign securities for purposes of the risk disclosure suggested by this guide.

Guide 21. Government Securities

If the registrant is investing in United States Government securities, the prospectus should explain when and to what extent the registrant intends to do so. If the registrant is significantly investing in United States Government securities on a routine basis, the prospectus should include the following information: (1) The types of Government securities in which the separate account will invest; (2) examples of Government agencies and instrumentalities in whose securities the separate account will invest; and (3) whether the securities of such agency or instrumentality are (a) supported by the full faith and credit of the United States, (b) supported by the ability to borrow from the Treasury, (c) supported only by the credit of the agency or instrumentality, or (d) supported by the United States in some other way.

Guide 22. Foreign Currency Transactions

If the registrant proposes to invest in securities denominated in foreign currencies or to engage in currency conversion transactions, these policies should be disclosed in the prospectus and, if appropriate, in the Statement of Additional Information (*see* Guide 3). If the registrant plans to use foreign currency forward contracts to cover activities which are essentially speculative, such forward contracts will be considered "senior securities" as defined in section 18 of the 1940 Act and will be subject to the limitations discussed in Investment Company Act Release No. 10666 (April 18, 1979) (45 FR 25128 (April 27, 1979)).

Guide 23. Management of the Separate Account

The prospectus must describe how the registrant's business is managed, but disclosure about the role of the board of managers may be limited to a general statement of the responsibilities of the board of managers.

The registrant must disclose in the Statement of Additional Information the name and address, position with registrant, and principal occupation during the past five years of each member of the board of managers and officer of the registrant performing a "policy-making function" for the registrant. Any position held with affiliated persons or principal underwriters of the registrant by each of these individuals must be described. The family relationships among these individuals must also be disclosed. Executive and investment advisory committee members must be identified and their functions briefly discussed. In addition, the registrant must indicate which membess of its board of managers are "interested persons" as that term is defined by section 2(a)(19) of the 1940 Act and the rules thereunder.

The composition of the registrant's board of managers must satisfy section 10 of the 1940 Act. The Federal Reserve Board takes the position that, under section 32 of the Banking Act of 1933, an officer or director of a bank which is a member of the federal reserve system may not serve as an officer, director, or employee of an open-end investment company, including a management account, that is currently offering its shares.[22]

An "advisory board," as that term is defined in section 2(a)(1) of the 1940 Act is a body composed of persons who serve the registrant in only that capacity. Therefore, officers, members of the board of managers, the investment adviser for, and counsel to the registrant may not serve on any such board.[23] The composition of an advisory board, if a management account chooses to have one, is also subject to the requirements of section 10 of the 1940 Act.

The term, "family relationship," as applied to registrant's officers and members of the board of managers in Item 20, is broader than the definition of a "member of the immediate family" contained in section 2(a)(19) of the 1940 Act.[24]

Item 20 requires the registrant to disclose in the Statement of Additional Information the aggregate remuneration received by certain officers, members of the board of managers, members of the advisory board, and certain categories of such persons from the registrant and its subsidiaries, during the registrant's last fiscal year, and all retirement and pension benefits to be received by those individuals from the registrant pursuant to an existing plan. This requirement applies to any individual who was a member of the board of managers, officer, or member of the advisory board of registrant during the last fiscal year and received aggregate remuneration in excess of $60,000.

It is the Commission's view that the registrant must disclose all forms of remuneration received by specified officers and members of the board of managers.[25] "Remuneration" is intended to include cash and non-cash items, *i.e.*, not only all salaries, fees, and bonuses but also personal benefits, commonly known as "perquisites."[26] It is the Commission's view that management is in the best position to determine whether or not a benefit should be considered remuneration, in light of the facts and circumstances of each situation.

Guide 24. Investment Advisory and Other Services

Item 6 requires the registrant to identify in the prospectus its investment adviser and the services provided by its investment adviser. Registrants should address whether the investment adviser is responsible for portfolio management, and if not, who is. If the registrant's adviser has no previous experience in advising a mutual fund or management account, this fact should be disclosed as a risk factor in the prospectus.

Item 21 calls for additional information in the Statement of Additional Information about the background and function of each person providing the registrant with advisory services, especially the identities of all controlling persons of each investment adviser and the basis for their control. The registrant must identify any affiliations between such persons and the registrant. If any affiliated person of the registrant is also an affiliated person of an adviser, the identity of that person and all bases of affiliation must be disclosed. Item 21 calls for a detailed discussion in the Statement of Additional Information concerning the method used to compute the advisory fee paid by the registrant or its sponsoring insurance company. In addition, the registrant must describe in Part B all services performed for it, or on its behalf, pursuant to any investment advisory or management-related service contract,[27] and in each case must identify the persons paying for such services. The registrant must also summarize the substantive portions of any management-related service contract, which may be of interest to a purchaser of the registrant's securities. Any person providing investment advice on a more informal basis must also be identified, and the nature of the arrangement

[22] Investment Company Act Release No. 7221, *supra* note 6.

[23] *Id.*

[24] *See also* Investment Company Act Release No. 7220, *supra* note 5.

[25] As stated in Investment Company Act Release No. 9900 (August 18, 1977) (42 FR 43058 (August 26, 1977)).

[26] For a detailed discussion of those personal benefits which the staff has interpreted to be remuneration requiring disclosure, *see* Investment Company Act Release Nos. 9900, *supra*; 10112 (February 6, 1978) (43 FR 6060 (February 13, 1978)); 12070 (December 3, 1981) (46 FR 60421 (December 10, 1981)).

[27] *See* instructions for Item 21(d) of Form N-3 for the definition of the term "management-related service contract."

and remuneration should be discussed. All investment advisory services must be provided pursuant to a written contract which complies with the provisions of section 15 of the 1940 Act.[28]

Item 6 requires the registrant to provide in the prospectus the name and address of any administrative or servicing agent for the separate account. Item 21 calls for identifying information concerning the custodian and independent public accountant. All custodial arrangements are subject to section 17(f) of the 1940 Act and the rules under it. If the registrant's portfolio securities are held by any person other than the sponsoring insurance company, a commercial bank, trust company, or registered depository, the registrant must state in the Statement of Additional Information the nature of the business of each such person. Item 21 also requires the disclosure of any services performed by, and the basis of remuneration received by, any affiliated person of registrant or of any affiliate of such affiliate, other than the sponsoring insurance company, which acts as administrative or servicing agent for registrant. If a custodian is affiliated with the management account, the management account is considered a self-custodian for purposes of section 17(f) of the 1940 Act and is subject to regulatory requirements different from those applicable to other custodians.

Guide 25. Brokerage Allocation

If the registrant uses affiliated brokers or takes the sale of its contracts into account when allocating brokerage,[29] a statement to that effect must be included in the prospectus in response to Item 6. In addition, a management account must receive exemptive relief from section 27(c)(2) of the 1940 Act before it may pay commissions to affiliated brokers.

Responses to Item 6 should be concise and should not include lengthy descriptions of technical or legal requirements or practices that are standard in the investment company industry. Registrants must provide in the Statement of Additional Information a more complete explanation of the brokerage allocation practices in which they engage. In addition, Item 22 requires the registrant to describe how transactions in portfolio securities are effected, including a statement about mark-ups on principal transactions and brokerage commissions paid during the most recent fiscal year. Further, a registrant must describe in the Statement of Additional Information how it selects brokers and evaluates the commissions to be paid, including the factors considered, such as research services provided by that broker. If research services furnished by brokers used by the registrant to effect its transactions may be used by the registrant's investment adviser to service all its managed accounts, not just for the benefit of the registrant, such practices must be described and explained. No disclosure suggested by this guide about brokerage allocation practices need be given if registrant is not required to respond to Item 22 of the Form.

Guide 26. Redemption

Section 22(e) of the 1940 Act prohibits suspension of the right of redemption or postponement of payment upon redemption of a redeemable security of a management account, for more than seven days after the proper tender of the security for redemption, with certain limited exceptions. Redemption payments may be withheld for more than seven days, if necessary, to prevent the loss or dilution of net asset value that can occur when purchase checks are dishonored.[30] The procedures for obtaining payment upon redemption shortly after purchase must be disclosed in the prospectus, as should any procedures an investor can follow to avoid delays in redemption payments, such as use of a certified check to purchase the variable annuity contracts.

To accommodate contracts that provide for variable annuity options based on life contingencies, rules 22e-1 and 27c-1 under the 1940 Act (17 CFR 270.22e-1 and 270.27c-1) grant exemptions from the redemption requirements of sections 22(e) and 27(c)(1). Rule 27c-1 exempts registered separate accounts, their depositors and underwriters from the requirement in section 27(c)(1) of the 1940 Act that a periodic payment plan certificate be a redeemable security (and from the surrender provisions of section 27(d) of the 1940 Act) with respect to the annuity payment period of variable annuity contracts under which payments are based on life contingencies.

If there is a synopsis in the prospectus, it should show where in the prospectus investors can find a description of redemption procedures.[31]

Redemption procedures are frequently confusing to investors. Therefore, special care should be given to explaining when signature guarantees are necessary, and who can make such guarantees.[32]

Guide 27. Valuation of Securities Being Offered

Registrant must identify in the prospectus the valuation method used. Sometimes, value can be determined fairly in more than one way. For any asset traded on a national exchange, valuation normally should be based on market value when readily available.[33] If a security was traded on the valuation date, the last quoted sale price generally is used. For securities listed on more than one national securities exchange, the last quoted sale, up to the time of valuation, on the exchange on which the security is principally traded should be used or, if there were no sales on that exchange on the valuation date, the last quoted sale, up to the time of valuation, on the other exchanges should be used.

If there was no sale on the valuation date but published closing bid and asked prices are available, the valuation should be within the range of the quoted prices. Some companies as a matter of policy use the bid price, others use the mean of the bid and asked prices, and still others use a valuation within the range of bid and asked prices considered to best represent value in that circumstance; each of these policies is acceptable if consistently applied. Normally, the use of the asked price alone is not appropriate. Where, on the valuation date, only a bid price or an asked price is quoted or the spread between bid and asked prices is substantial, quotations for several days should be reviewed. If sales have been infrequent or there is a thin market in the security, or the size of the reported trades is not representative of the fund's holding (as in the case of certain debt securities), further consideration should be given as to whether "market quotations are readily available." If they are not readily available, the alternative method of valuation prescribed by section 2(a)(41)—"fair value as determined in good faith by the board of directors"—should be used.

For debt or equity securities traded over-the-counter where closing prices are not readily available, quotations should be obtained from more than one broker-dealer, particularly if quotations are available only from broker-dealers not known to be established market-makers for that security. A company may adopt a policy of using a mean of the bid prices, or of the bid and asked prices, or of the prices of a representative selection of broker-dealers quoted on a particular security; or it may use a valuation within the range of bid and asked prices considered best to represent value in that circumstance. Any of these policies are appropriate if consistently applied.

If the validity of the quotations appears to be questionable, or if the number of quotations indicates that there is a thin market in the security, further consideration should be given to whether "market quotations are readily available." If it is decided that they are not readily available, the security should be valued at "fair value as determined in good faith" by the board of managers.

[28] Registrants should note that the disclosure requirements of both Part A and Part B apply to sub-advisers as well, *see* Investment Company Act Release 7220, *supra* note 5.

[29] On March 4, 1981, the Commission approved an NASD proposal to amend portions of Article III, section 26 of the NASD Rules of Fair Practice and related interpretations of the "Anti-Reciprocal Rule," Investment Company Act Release No. 11662 (March 4, 1981) (46 FR 16012 (March 10, 1981)). The rule as amended no longer prohibits NASD members from seeking or granting brokerage commissions in connection with the sale of investment company shares, and permits NASD members to sell shares of investment companies that follow a disclosed policy of considering sales of their shares as a factor in the selection of broker-dealers to execute portfolio transactions, subject to specified conditions.

[30] For a discussion of the conditions under which an investment company can delay redemption for more than seven days pending clearance of purchase checks, *see* Investment Company Institute (Pub. avail. May 3, 1975).

[31] *See* Guide 31: *The Synopsis.*

[32] *See* Investment Company Act Release No. 7220, *supra* note 5.

[33] Investment Company Act Release No. 7221, *supra* note 6. Registrants often value their debt securities by reference to other securities which are considered comparable in rating, interest rate, due date, etc. (often called "matrix pricing") or rely on pricing services which use matrix pricing for valuation of these instruments. Responsibility for making sure that a pricing method is proper rests with the registrant.

To comply with section 2(a)(41) of the Act and rule 2a-4 under the Act, the members of the board of managers must be satisfied that all appropriate factors relevant to the value of securities for which market quotations are not readily available have been considered and determine the method of arriving at the fair value of each such security. No single standard for determining "fair value in good faith" can be established, since fair value depends upon individual circumstances. Generally, the current "fair value" of an issue of securities being valued by the board of managers would be the amount which the owner might reasonably expect to receive for them upon their current sale.[34]

Securities held by the registrant that may not be sold to the public without an effective registration statement under the Securities Act are considered securities for which market quotations are not readily available. They must, therefore, be valued in good faith by the board of managers.[35] It would be improper for the board of managers to value these securities at the market quotation for unrestricted securities of the same class without considering other relevant factors, although the quotation may be considered in making the final valuation.[36] The existence of a shelf registration for the restricted securities also may be considered as a factor in determining the value of the securities, but there may not be an automatic valuation at market price based on this factor alone.[37]

The valuation of short sales of securities, which are not traded on a national exchange, can be at the asked price, that being the most conservative value, or the mean average of bid and asked prices. The use of bid price alone to value short positions is not appropriate.

Certain securities trading practices such as reverse repurchase agreements, firm commitment agreements, and standby commitment agreements require the consideration of special factors in connection with valuation. For example, changes in the value of a firm commitment agreement will affect the price at which shares of a management account may be sold or redeemed. Accordingly, members of the board of managers in determining fair value, must take care that no inaccuracies exist with regard to the valuation of such trading practices.[38] In valuing standby commitments (puts), registrants using the amortized cost method of valuation should indicate that the acquisition of a standby commitment will not affect the valuation of the underlying security. The actual standby commitment will be valued at zero in determining net asset value. In such event, where the separate account pays directly or indirectly for a standby commitment, its cost will be reflected as an unrealized depreciation for the period during which the commitment is held by the separate account and will be reflected in realized gain or loss when the commitment is exercised or expires.[39]

The maturity of a municipal obligation purchased by the separate account will not be considered shortened by any standby commitment to which such obligation is subject. Therefore, standby commitments will not affect the dollar weighted average maturity of the separate account's portfolio. However, where a money market separate account acquires a variable rate or floating rate municipal obligation having a demand feature which allows the separate account unconditionally to obtain the amount due from the issuer upon notice of seven days or less, the maturity of the instrument will normally be the longer of the notice period for the commitment or the time remaining to the next rate adjustment.

Money market separate accounts with portfolio securities that mature in one year or less may use the amortized cost method to value their securities pursuant to the conditions of rule 2a-7.[40] If the portfolio of a money market separate account is to be valued at amortized cost, there must be disclosure in the Statement of Additional Information concerning the effect of this method of valuation on the separate account's accumulation unit value and yield as interest rates change, and on the corresponding dilution of interests in the separate account.

The prospectus must disclose when calculations of accumulation unit value are generally made. The current accumulation unit value of redeemable securities should be computed in accordance with rule 22c-1 under the 1940 Act (17 CFR 270.22c-1), i.e., at least once daily on each weekday (except for customary national and local business holidays listed in the prospectus) in which there is sufficient trading in the separate account's portfolio securities so that the current accumulation unit value might be materially affected by changes in the value of these portfolio securities and on which an order for purchase or redemption of its securities is received. These calculations of accumulation unit value should be made at such specific time or times during the day as determined no less frequently than annually by a majority of the board of managers of the separate account. A separate account need not compute accumulation unit value on a day when no security was tendered for redemption and no order to purchase such security was received or was on hand, having been received since the last previous computation of accumulation unit value.[41]

Guide 28. Distribution Expenses

Item 7 requires that separate accounts that bear distribution expenses in accordance with rule 12b-1 disclose this fact to shareholders in the prospectus.[42]

Many registrants are exempted from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit them to deduct a charge for the assumption of mortality and/or expense risks from the separate account. In furtherance of requests for this exemptive relief, where proceeds from explicit sales loads will not be sufficient to cover expected distribution costs, many registrants represent, among other things, that there is a reasonable likelihood that the separate account's distribution financing arrangement will benefit the separate account and contractowners.[43] These representations should be disclosed in the Statement of Additional Information.

When special arrangements will be made to sell variable annuity contracts to customers of depository institutions, possible applicability of the Glass-Steagall Act should be discussed in the prospectus. The legal issues raised by payments to depository institutions for their services in this connection should be identified, and the consequences for the separate account, if these issues are resolved adversely, should also be discussed.

Guide 29. Financial Statements

The form, content, and presentation of financial statements are prescribed by Regulation S-X (17 CFR Part 210). If the financial statements of the registrant are not provided because the registrant does not have any assets, a statement to that effect should be placed before the financial statements of the sponsoring insurance company in the Statement of Additional Information.

Guide 30. Yield Quotations of Money Market Separate Accounts

For guidance in responding to Item 4(c) and Item 25, the registrant should refer to Investment Company Act Release No. 13049 (February 28, 1983) (48 FR 10297 (March 11, 1983)); Investment Company Act Release No. 11028 (January 28, 1980) (45 FR 7578 (February 4, 1980)); and Investment Company Act Release No. 11379 (September 30, 1980) (45 FR 67079 (October 9, 1980)).

Deductions should be pro rated among the sub-accounts of the separate account. If the deduction is a flat fee charged to all contractowner accounts (*e.g.*, $25.00 per contractowner account per year), the deduction should be prorated by multiplying the flat fee by a fraction the numerator of

[34] For a general discussion of the factors to be considered in this determination, *see* Investment Company Act Release No. 6295 (December 23, 1970) (35 FR 19986 (December 31, 1970)).

[35] Investment Company Act Release No. 7221, *supra* note 6.

[36] Investment Company Act Release No. 5847, *supra* note 11.

[37] Investment Company Act Release No. 6121 (July 20, 1970).

[38] Investment Company Act Release No. 10666, *supra* note 7.

[39] There may be alternative methods of valuing of standby commitments, but in any event the value of the standby commitment together with the underlying security should not exceed the amount received by the separate account upon disposal of the underlying security. At the time these guidelines were published, the staff was considering recommending a rule or interpretive release to the Commission on valuation of standby commitments and securities subject to standby commitments. Registrants should check rule 2a-7 for any amendments on this matter.

[40] Investment Company Act Release No. 13380 (July 11, 1983) (48 FR 32555 (July 18, 1983)).

[41] Investment Company Act Release No. 10827 (August 13, 1979) (44 FR 48659 (August 20, 1979)).

[42] For a more detailed discussion of the contents of the rule, *see* Investment Company Act Release No. 11414 (October 28, 1980) (45 FR 73898 (November 7, 1980)).

[43] For a discussion of representations by applicants seeking this exemptive relief, *see* Investment Company Act Release No. 14190 (October 11, 1984) (49 FR 40879, October 18, 1984)).

which is the average number of contractowner accounts that have money allocated to the sub-account and the denominator of which is the sum of the average number of contractowner accounts for all of the sub-accounts for that kind of contract (*i.e.*, all of the "qualified" sub-accounts or all of the "non-qualified" sub-accounts).

Guide 31. The Synopsis

A synopsis provided pursuant to Item 3 of Form N-3 should clearly and concisely describe the key features of the offering and the registrant. The information in the synopsis need not be in the order or the manner described in this Guide, and it may be presented in a question-and-answer format.

The synopsis should include (1) a brief description of how the registrant proposes to achieve its investment objectives, including the types of securities in which the registrant proposes to invest primarily and whether the registrant proposes to separate as a diversified or nondiversified investment company and (2) a summary of the principal speculative or risk factors associated with investment in the registrant, including factors peculiar to the registrant as well as those generally associated with investment in an investment company with objectives and policies similar to registrant's.

The synopsis should also (1) provide the name of the investment adviser, and, if any other person provides services of the type customarily provided by an investment adviser, the identity of such person and the services provided; (2) provide a cross-reference to the description in the prospectus of how to purchase the variable annuity contracts; (3) provide cross-references to the descriptions in the prospectus of how a contractowner (or annuitant) may redeem and any penalty taxes that may be assessed upon redemption; (4) state the maximum percentage load that may be assessed against any given amount redeemed or annuitized and provide a cross-reference to the description in the prospectus of the deductions and expenses; and (5) provide either a full description of or a cross-reference to the description in the prospectus of any "ten-day free look" or similar provisions.

The synopsis may include additional information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

Guide 32. Administrative Charges

The discussion of any administrative charge deducted from the value of the contractowner's account should (1) concisely describe how the charge is deducted in both the accumulation and annuity periods, (2) explain whether the charge is deducted at the beginning of the contract year for the coming year or deducted at the end of the contract year for the prior year, (3) describe whether the charge is prorated for any period (*e.g.*, between the contract anniversary date and the date of redemption or the date of annuitization), and (4) if the administrative charge is a percentage of assets, disclose that there is no necessary relationship between the amount of the administrative charge imposed on a given contract and the amount of expenses that may be attributable to that contract.

Any administrative charge that is deducted from contractowner accounts and is not a charge or expense of the registrant should not be accounted for as an expense or otherwise included in the determination of net investment income of the registrant. Rather, the amount of the administrative charges should be accounted for, and presented in financial statements of the registrant, as a reduction of ownership units. Whether the amount of such administrative charges is separated in the registrant's financial statement from other withdrawal or redemption amounts that result in a reduction of ownership units depends upon individual facts.

Guide 33. Deferred Sales Loads

Item 7 of Form N-3 requires the registrant to describe any sales loads. A sales load not subject to any contingency should be described as a deferred sales load, *not a* "contingent" deferred sales load. A deferred sales load does not become contingent solely because the sales load is waived in the event of an annuitant's death or if the registrant provides that a given percentage of contract value may be withdrawn without imposition of a sales load (a "free corridor").

The description of any deferred sales load (contingent or not) should include (1) how the deduction will be allocated among subaccounts of the registrant; (2) when, if ever, the sales load will be waived (for example, as part of the death benefit or upon redemptions by contractowners who are also employees of the registrant); and (3) the maximum amount of the sales load as a percentage of purchase payments received. See rule 6c-8 under the 1940 Act (17 CFF 270.6c-8) which limits the amount of a deferred sales load to no more than nine percent of the purchase payments received. If the deferred sales load varies according to the length of time a particular purchase payment has been invested, the description should indicate whether withdrawals will be attributed to purchase payments in the order in which they were invested in the separate account (FIFO) or in the reverse order of investment (LIFO).

The description of a deferred sales load should also explain whether, in the case of a partial redemption, the amount deducted will be a percentage of the amount requested by the contractowner or the total amount withdrawn, and whether the sales load will be deducted from the amount requested or the amount remaining after the contractowner has received the amount requested. For example, if the sales load is 7% and the contractowner has requested $100, the description should make plain whether:

(a) The contractowner receives $93 and the sales load is $7 for a total withdrawal of $100 (*i.e.*, the sales load is 7% of the both the amount requested and the total withdrawal and is deducted from the amount requested);

(b) The contractowner receives $100 and the sales load is $7 for a total withdrawal of $107 (*i.e.*, the sales load is 7% of the amount requested and is deducted from the contract value remaining after the contractowner is paid the amount requested); or

(c) The contractowner receives $100 and the sales load is $7.53 for a total withdrawal of $107.53 (*i.e.*, the sales load is 7% of the total withdrawal and is deducted from the contract value remaining after the contractowner is paid the amount requested).

Additionally, if the registrant allows withdrawal or a given percentage of contract value without imposing a deferred sales load (*e.g.*, a 10% free withdrawal each year), the description of this privilege should indicate when the contract value will be computed to determine the amount of the permitted free withdrawal (e.g., at the beginning of the contract year or the date of the withdrawal request).

Guide 34. Annuity Payments

Item 9 of Form N-3 requires registrants to describe in the prospectus the annuity options available under a contract and the material factors that determine the level of annuity benefits. Registrants should discuss variables that impact the level of payments such as the age at which payments begin, the form of annuity, the frequency of payments, annuity purchase rates, and assumed investment return. The discussion should include any options on the form of annuity such as life annuities, term certain annuities, joint and survivor life annuities, and any other variations. In general, responses to this item should include practical narrative disclosure. Mathematical illustrations and the mechanics of determining annuity payments may be placed in the Statement of Additional Information, Item 26.

Item 9 also calls for disclosure of the effect of assumed investment return. Registrants should explain that annuity payments will vary to reflect the investment experience of the separate account and that the assumed investment return is a fulcrum rate around which variable annuity payments will fluctuate to reflect whether investment experience of the separate account is better or worse than the assumed investment return. Where annuitants are given a choice in assumed investment returns, registrants should explain that a higher assumed investment return will result in a higher initial payment, a more slowly rising series of subsequent payments when actual investment performance (minus any deductions and expenses) exceeds the assumed investment return, and a more rapid drop in subsequent payments when actual investment performance (minus any deductions and expenses) is less than the assumed investment return.

Item 26 requires registrants to disclose in the Statement of Additional Information the method for determining the amount of annuity payments. Registrants should disclose how the initial annuity payment is determined, and if subsequent payments differ from the first, an explanation of how the subsequent payments are determined. Generally, registrants should explain that the amount of the initial payment is determined by applying the value of the annuitant's contract as of the date of annuitization (adjusted for any deductions) to the annuity purchase rate for the annuitant's annuity option, sex, and adjusted age. The specific time when the calculation will be made and the particular deductions that will be made at that time also should be disclosed.

Registrants should disclose that the amount of subsequent annuity payments is determined by multiplying the number of annuity units credited to an annuitant's account by the value of an annuity unit at the time of each payment where (1) the number of annuity units credited to an annuitant's account is determined by dividing the amount of the first annuity payment by the value of an annuity unit at the time of that payment, and (2) the value of an annuity unit changes to reflect investment performance of the separate account adjusted by a factor to neutralize the assumed investment return. Registrants should also disclose any deductions affecting the amount of annuity payments and where relevant, that changes in the value of an annuity unit reflect deductions of mortality and risk expense charges.

Guide 35. Crediting of Contract Values

Item 11(a)(ii) of Form N-3 requires disclosure about when initial and subsequent purchase payments are credited. Section 22(c) of the 1940 Act (15 U.S.C. 80a-22(c)) and rule 22c-1 (17 CFR 270.22c-1) establish standards for crediting purchase payments for securities of registered investment companies. However, the staff has not objected to disclosure that an *initial* purchase payment under a variable annuity contract would be credited within two business days of receipt if the contract application and other necessary information were complete as received by the office issuing the contract, and within five business days of receipt if the application and other information were incomplete when received. Registrants following this practice must disclose it and also disclose that, if the initial purchase payment is not credited within five business days, the purchase payment will be immediately returned unless the prospective purchaser has been informed of the delay and *specifically* requests that the purchase payment not be returned.[44]

Additionally, registrants should disclose any special procedures for crediting initial purchase payments in the case of incomplete applications (*e.g.*, allocation of an initial purchase payment to the money market sub-account if no sub-account has been specified).

Guide 36. Automatic Annuity Options

Item 9 of Form N-3 calls for disclosure about choices available to a prospective annuitant and the effect of not specifying a choice. Registrants should disclose any automatic purchase of a fixed annuity (*i.e.*, the annuity selection that will be made by the company if the prospective annuitant has not chosen an option). The staff has taken the position that an automatic annuity involving a fixed pay out of amounts that have accumulated on a variable basis is not consistent with section 27(c)(1) of the 1940 Act (15 U.S.C. 80a-27(c)(1)). However, the staff does not object to an automatic fixed annuity purchase if the only options available under the variable annuity contract are fixed annuities.

[44] The Commission proposed codifying these standards in an amendment to rule 22c-1 under the Act. *See* Investment Company Act Release No. 13913 (May 1, 1984) (49 FR 19320 (May 7, 1984)).

Guidelines for Form N-4

This release contains Guidelines prepared by the Division of Investment Management for registration statements on Form N-4 for separate accounts organized as unit investment trusts. The Guidelines are based on Commission releases and staff intepretations. Adherence to these Guidelines should speed the examination by the Division's staff of registration statements on Form N-4.

The Guidelines are not rules of the Commission and, except as noted, represent only the views of the staff of the Division, not the Commission. The Guidelines should be read with the Investment Company Act Releases cited in them. The policies stated in the Guidelines may be changed if necessary.

Table of Contents

Guide 1. Name of Registrant

The registrant's name must be consistent with section 35 of the Investment Company Act of 1940 ("1940 Act"), which prohibits, among other things, use of a name or title that may be deceptive or misleading.

In the Division's view, the discussion in Investment Company Act Release No. 5510 (October 8, 1968) about the proprietary rights of an investment company in its name is not applicable to separate accounts.

Guide 2. Business History

The registrant should list in the Statement of Additional Information all prior names of its depositor during the past five years. For a newly organized insurance company, registrant should state that the company has no prior operating history.

Guide 3. Redemption

Section 22(e) of the 1940 Act prohibits suspension of the right of redemption or the postponement of payment upon redemption of a redeemable security of a separate account organized as a unit investment trust, for more than seven days after the proper tender of the security for redemption, with certain limited exceptions. The staff has taken the position, however, that redemption payments can be withheld for more than seven days if necessary to prevent the loss or dilution of net asset value that can occur when purchase checks are dishonored.[1] The procedures for obtaining payment upon redemption shortly after purchase must be disclosed in the prospectus, as should any procedures an investor can follow to avoid delays in redemption payments, such as use of a certified check to purchase the variable annuity contract.

To accommodate contracts that provide for variable annuity options based on life contingencies, rules 22e-1 and 27c-1 under the 1940 Act (17 CFR 270.22e-1 and 27c-1) grant exemptions from the redemption requirements of sections 22(e) and 27(c)(1). Rule 27c-1 exempts registered separate accounts, their depositors and underwriters from the requirement in section 27(c)(1) of the 1940 Act that periodic payment plan certificate be a redeemable security (and from the surrender provisions of section 27(d) of the 1940 Act) with respect to the annuity payment period of variable annuity contracts under which payments are based on life contingencies.

If there is a synopsis in the prospectus, it should show where in the prospectus investors can find a description of redemption procedures.[2]

Redemption procedures are frequently confusing to investors. Therefore, special care should be given to explaining when signature guarantees are necessary, and who can make such guarantees.[3]

Guide 4. Distribution Expenses

Many registrants are exempted from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit them to deduct a charge for the assumption of mortality and/or expense risks from the separate account. In furtherance of requests for this exemptive relief, where proceeds from explicit sales loads will not be sufficient to cover expected distribution costs, many registrants represent that there is a reasonable likelihood that the separate account's distribution financing arrangement will benefit the separate account and contractowners, among other requirements.[4] These representations should be disclosed in the Statement of Additional Information.

When special arrangements will be made to sell variable annuity contracts to customers of depository institutions, possible applicability of the Glass-Steagall Act should be discussed in the prospectus. The legal issues raised by payments to depository institutions for their services in this connection should be identified, and the consequences for the separate account, if these issues are resolved adversely, should also be discussed.

Guide 5. Financial Statements

The form, content, and presentation of financial statements are prescribed by Regulation S-X (17 CFR 210). If financial

[1] For a discussion of the conditions under which an investment company can delay redemption for more than seven days pending clearance of purchase checks, *see* Investment Company Institute (Pub. avail. May 3, 1975).

[2] *See* Guide 7: *The Synopsis*.

[3] Investment Company Act Release No. 7220 (June 9, 1972) (37 FR 12790 (June 24, 1972)).

[4] For a discussion of representations by applicants seeking this exemptive relief, *see* Investment Company Act Release No. 14190 (October 11, 1984) (49 FR 40879, October 18, 1984).

statements of the registrant are not provided because the registrant does not have any assets, a statement to that effect should be placed before the financial statements of the depositor in the Statement of Additional Information.

Guide 6. Yield Quotations of Money Market Sub-Accounts

For guidance in responding to Item 4(b) and Item 21, the registrant should refer to Investment Company Act Release No. 13049 (February 28, 1983) (48 FR 10297 (March 11, 1983)); Investment Company Act Release No. 11028 (January 28, 1980) (45 FR 7578 (February 4, 1980)); and Investment Company Act Release No. 11379 (September 30, 1980) (45 FR 67079 (October 9, 1980)).

Deductions should be pro rated among the sub-accounts of the separate account. If the deduction is a flat fee charged to all contractowners accounts (*e.g.*, $25.00 per contractowner account per year), the deduction should be pro rated by multiplying the flat fee by a fraction the numerator of which is the average number of contractowner accounts that have money allocated to the sub-account and the denominator of which is the sum of the average number of contractowner accounts that have money allocated to each of the sub-accounts for the same kind of contract (*i.e.*, all of the "qualified" sub-accounts or all of the "non-qualified" sub-accounts).

Guide 7. The Synopsis

A synopsis provided pursuant to Item 3 of Form N-4 should clearly and concisely describe the key features of the offering and the registrant. The information in the synopsis need not be in the order or the manner described in this guide, and it may be presented in a question-and-answer format.

The synopsis should include: (1) A cross-reference to the description in the prospectus of how to purchase the variable annuity contracts being offered; (ii) cross-references to the descriptions in the prospectus of how a contractowner (or annuitant) may effect a redemption and any penalty taxes that may be assessed upon redemption; (iii) the maximum percentage load that may be assessed against any given amount redeemed or annuitized and a cross-reference to the description in the prospectus of the deductions and expenses; and (iv) either a full description of or a cross-reference to the description in the prospectus of any "ten-day free look" or similar provisions.

The synopsis may include additional information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

Guide 8. Administrative Charges

The discussion of any administrative charge deducted from the value of the contractowner's account should (1) concisely describe how the charge is deducted in both the accumulation and annuity periods, (2) explain whether the change is deducted at the beginning of the contract year for the coming year or deducted at the end of the contract year for the prior year, (3) describe whether the charge is prorated for any period (*e.g.*, between the contract anniversary date and the date of redemption or the date of annuitization), and (4) if the administrative charge is a precentage of assets, disclose that there is no necessary relationship between the amount of administrative charge imposed on a given contract and the amount of expenses that may be attributable to that contract.

Any administrative charge that is deducted from contractowner accounts and is not a charge or expense of the registrant should not be accounted for as an expense or otherwise included in the determination of net investment income of the registrant. Rather, the amount of the administrative charges should be accounted for, and presented in financial statements of the registrant, as a reduction of ownership units. Whether the amount of such administrative charges is separated in the registrant's financial statements from other withdrawal or redemption amounts that result in a reduction of ownership units depends upon individual facts.

Guide 9. Deferred Sales Loads

Item 6 of Form N-4 requires the registrant to describe any sales loads. A sales load not subject to any contingency should be described as a deferred sales load, *not* a "contingent" deferred sales load. A deferred sales load does not become contingent solely because the sales load is waived in the event of an annuitant's death or if the registrant provides that a given percentage of contract value may be withdrawn without imposition of a sales load (a "free corridor").

The description of any deferred sales load (contingent or not) should include how the deduction will be allocated among sub-accounts of the Registrant; when, if ever, the sales load will be waived (for example, as part of the death benefit or upon redemptions by contractowners who are also employees of the depositor); and the maximum amount of the sales load as a percentage of purchase payments received. See rule 6c-8 under the 1940 Act (17 CFR 270.6c-8) which limits the amount of a deferred sales load to no more than nine percent of the purchase payments received. If the deferred sales load varies according to the length of time a particular purchase payment has been invested, the description should indicate whether withdrawals will be attributed to purchase payments in the order in which they were invested in the separate account (FIFO) or in the reverse order of investment (LIFO).

The description of a deferred sales load should also explain whether, in the case of a partial redemption, the amount deducted will be a percentage of the amount requested by the contractowner or the total amount withdrawn, and whether the sales load will be deducted from the amount requested or the amount remaining after the contractowner has received the amount requested. For example, if the sales load is 7% and the contractowner has requested $100, the description should make plain whether:

(a) The contractowner receives $93 and the sales load is $7 for a total withdrawal of $100 (*i.e.*, the sales load is 7% of both the amount requested and the total withdrawal and is deducted from the amount requested);

(b) The contractowner receives $100 and the sales load is $7 for a total withdrawal of $107 (*i.e.*, the sales load is 7% of the amount requested and is deducted from the contract value remaining after the contractowner is paid the amount requested); or

(c) The contractowner receives $100 and the sales load is $7.53 for a total withdrawal of $107.53 (*i.e.*, the sales load is 7% of the total withdrawal and is deducted from the contract value remaining after the contractowner is paid the amount requested.

Additionally, if the registrant allows withdrawal of a given percentage of contract value without imposing a deferred sales load (*e.g.*, a 10% free withdrawal each year), the description of this privilege should indicate when the contract value will be computed to determine the amount of the permitted free withdrawal (*e.g.*, at the beginning of the contract year or the date of the withdrawal request).

Guide 10. Annuity Payments

Item 8 of Form N-4 requires registrants to describe in the prospectus the annuity options available under a contract and the material factors that determine the level of annuity benefits. Registrants should discuss variables that impact the level of payments such as the age at which payments begin, the form of annuity, the frequency of payments, annuity purchase rates, and assumed investment return. The discussion should include any options on the form of annuity such as life annuities, term certain annuities, joint and survivor life annuities, and any other variations. In general, responses to this item should include practical narrative disclosure. Mathematical illustrations and the mechanics of determining annuity payments should be placed in the Statement of Additional Information, Item 22.

Item 8 also calls for disclosure of the effect of assumed investment return. Registrants should explain that annuity payments will vary to reflect the investment experience of the portfolio company and that the assumed investment return is a fulcrum rate around which variable annuity payments will fluctuate to reflect whether investment experience of the portfolio company is better or worse than the assumed investment return. Where annuitants are given a choice in assumed investment return, registrants should explain that a higher assumed investment return will result in a higher initial payment, a more slowly rising series of subsequent payments when actual investment performance (minus any deductions and expenses) exceeds the assumed investment return, and a more rapid drop in subsequent payments when actual investment performance (minus any deductions and expenses) is less than the assumed investment return.

Item 22 requires registrants to disclose in the Statement of Additional Information the method for determining the amount of annuity payments. Registrants should disclose how the initial annuity payment is determined, and if subsequent payments differ from the first, an explanation of how the subsequent payments are determined. Generally, registrants should explain that the amount of the initial payment is determined by applying the value of the annuitant's contract as of the date of annuitization (adjusted for any deductions) to the annuity purchase rate for the annuitant's annuity option, sex, and adjusted age. The specific time when the calculation will be made and the particular deductions that will be made at that time also should be disclosed. Registrants should disclose that the amount of subsequent annuity payments is determined by multiplying the number of annuity units credited to an annuitant's account by the value of an annuity unit at the time of each payment where (1) the number of annuity units credited to an annuitant's account is determined by dividing the amount of the first annuity payment by the value of an annuity unit at the time of that payment, and (2) the value of an annuity unit changes to reflect investment performance of the underlying portfolio company, adjusted by a factor to neutralize the assumed investment return. Registrants should disclose any deductions affecting the amount of annuity payments, and, where applicable, that changes in the value of an annuity unit reflect deductions of mortality and expense risk charges.

Guide 11. Crediting of Contract Values

Item 10 of Form N-4 requires disclosure about when initial and subsequent purchase payments are credited. Section 22(c) of the 1940 Act (15 U.S.C. 80a-22(c)) and rule 22c-1 (17 CFR 270.22c-1) establish standards for crediting purchase payments for securities of registered investment companies. However, the staff has not objected to disclosure that an *initial* purchase payment under a variable annuity contract would be credited within two business days of receipt if the contract application and other necessary information were complete as received by the office issuing the contract, and within five business days of receipt if the application and other information were incomplete when received. Registrants following this practice must disclose it and also disclose that, if the initial purchase payment is not credited within five business days, the purchase payment will be immediately returned unless the prospective purchaser has been informed of the delay and *specifically* requests that the purchase payment not be returned.[5]

Additionally, registrants should disclose any special procedures for crediting initial purchase payments in the case of incomplete applications (*e.g.*, allocation of an initial purchase payment to the sub-account which invests in the money market fund if no sub-account has been specified).

Guide 12. Automatic Annuity Options

Item 8 of Form N-4 calls for disclosure about annuity option choices available to a prospective annuitant and the effect of not specifying a choice. Registrants should disclose any automatic purchase of a fixed annuity (*i.e.*, the annuity selection that will be made by the company if the prospective annuitant has not chosen an option). The staff has taken the position that an automatic annuity involving a fixed pay out of amounts that have accummulated on a variable basis is not consistent with section 27(c)(1) of the 1940 Act (15 U.S.C. 80a-27(c)(1)). However, the staff does not object to an automatic fixed annuity purchase if the only options available under the variable annuity contract are fixed annuities.

[5] The Commission proposed codifying these standards in an amendment to rule 22c-1 under the Act. *See* Investment Company Act Release No. 13913 (May 1, 1984) [49 FR 19320 (May 7, 1984)].

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17 CFR PART 288

[Release Nos. 33-6589- 34-22158; 39-996; AFDB-1]

Primary Offerings by the African Development Bank

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today is adopting a new regulation specifying the periodic and other reports to be filed with it by the African Development Bank. The regulation is virtually identical to the regulations previously adopted by the Commission in connection with primary distributions of securities issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank and the Asian Development Bank.

EFFECTIVE DATE: June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus, (202) 272-3246, or Martin L. Meyrowitz, (202) 272-3250, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today adopted rules and regulations specifying the periodic and other reports to be filed with it in connection with the primary distribution of securities issued by the African Development Bank ("AFDB" or "the Bank"). The regulation, which would be designated Regulation AFDB,[1] is virtually identical to Regulations BW,[2] IA,[3] and AD,[4] which prescribe the reports to be filed with the Commission by the International Bank for Reconstruction and Development ("IBRD"), the Inter-American Development Bank ("IAD"), and the Asian Development Bank ("AD"), respectively. (These three, along with the African Development Bank, may sometimes be collectively referred to herein as the "Banks".)[5]

[1] 17 CFR Part 288.

[2] 17 CFR Part 285.

[3] 17 CFR Part 286

[4] 17 CFR Part 287

I. Background

United States membership in the IBRD, IAD, AD and AFDB was authorized by the Bretton-Woods Agreements Act, the Inter-American Development Bank Act, the Asian Development Bank Act, and the African Development Bank Act (the "Act"), respectively.[6] Section 9(a) of the Act[7] and each of the aforementioned Acts provides, in relevant part, that certain securities issued or guaranteed by each of the Banks are "exempted securities" within the meaning of section 3(a)(2) of the Securities Act of 1933[8] and section 3(a)(12) of the Securities Exchange Act of 1934.[9] An exemption is also available under the Trust Indenture Act of 1939.[10] Despite the exemptions, each of the Acts requires the Banks to file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be necessary in the public interest or for the protection of investors.[11]

The organization and financing of the AFDB closely follows the pattern of the other international development banks which preceded it. These development banks differ somewhat from traditional banks. They are non-profit financial institutions which do not accept deposits or make short-term loans. Their shareholders are governments. They are organized to make loans fostering

[5] Regulation BW was adopted in Securities Act Release No. 3384 (January 9, 1950). Regulation IA was adopted in Securities Act Release No. 4290 (October 25, 1960). Regulation AD was adopted in Securities Act Release No. 4889 (December 18, 1967).

[6] 22 U.S.C. 286 et seq., Pub. L. No. 79-171, approved July 31, 1945; 22 U.S.C. 283 et seq., Pub. L. No. 86-147, approved August 7, 1959; 22 U.S.C. 285 et seq., Pub. L. No. 89-369, approved March 16, 1966; 22 U.S.C. 290i, Pub. L. No. 97-35, approved August 13, 1981, respectively.

[7] 22 U.S.C. 290i-9(a).

[8] 15 U.S.C. 77a-77aa (1976 and Supp. V 1981), *as amended by* the Business Regulatory Reform Act of 1982, Pub. L. No. 97-261, § 19(d), 96 Stat. 1121 (1982); specifically 15 U.S.C. 77c(a)(2).

[9] 15 U.S.C. 78a-78kk (1976 and Supp. V 1981), *as amended by* theAct of June 6, 1983, Pub. L. No. 98-38; specifically 15 U.S.C. 78c(a)(12).

[10] 15 U.S.C. 77aaa-77bbbb, *as amended*; specifically 15 U.S.C. 77ddd(4).

[11] *See* note 7, *supra*.

economic and social development within certain limitations embodied in their charters. These activities are financed primarily through paid-in capital by members and through borrowing in international capital markets.

As is the case with the other development banks, public offerings in the United States of securities issued or guaranteed by the AFDB would be subject to a number of safeguards both in the Bank's charter and provided for in the Act. First, the capital structure of the Bank is such that its obligations, in effect, rest ultimately on the credit of its member countries, one of which is the United States. Member countries subscribe to capital shares, a percentage of which are paid-in and a percentage of which are subject to call if necessary to meet the Bank's obligations. In the event of default, the Bank would issue a call, on a pro rata basis, to member countries for the amount necessary to meet the obligations. A second call could issue to make up any deficiencies caused by member countries' failure to meet the initial pro rata share.

The Act also provides certain safeguards, modeled on the provisions governing the other development banks in which the United States participates. First, before the AFDB issues any securities in the United States, approval would be required of the National Advisory Council on International Monetary and Financial Problems (the "NAC") under the general direction of the President.[12] Secondly, although the Bank's securities are exempt, the Act, as previously indicated, also provides that the Bank will file with the Commission such annual and other reports as the Commission considers appropriate. Finally, the Act authorizes the Commission, after consulting with such agency or officer as the President designates, to suspend the exemption in whole or in part at any time.[13]

II. Synopsis of Regulation AFDB

Regulation AFDB, and the rules thereunder, require the Bank to file with the Commission quarterly financial reports and copies of the annual report to its governing board.

The quarterly financial reports will be required to be filed with the Commission within 60 days after the end of each fiscal quarter. This time period is consistent with Regulation AD, but longer than that provided in Regulations IBRD and IAD, which allow only 45 days. The reason for giving the AFDB and the AD additional time is that the main offices of the AFDB and the AD are in Africa and the Philippines, respectively, while the main offices of the IBRD and the IAD are located in the United States.

The Bank will also be required to file a report with the Commission on or prior to the date on which any of its primary obligations are sold to the public in the United States. Schedule A under Regulation AFDB sets forth the information and documents to be furnished in a report filed with respect to a distribution of primary obligations of the Bank.

The Commission has been informed by the Bank that no public offering of securities guaranteed by the Bank is presently contemplated in the United States. Accordingly, the new rules, insofar as they require the reporting of the proposed public sale of securities, are limited to the sale of primary obligations of the Bank. Rules with respect to reporting the sale of securities guaranteed by the Bank will be proposed by the Commission when and if the need therefor arises. Regulations BW, IA, and AD likewise are limited to primary obligations only.

List of Subjects in 17 CFR Part 288

Reporting and recordkeeping requirements, Securities.

IV. Text of Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

1. By adding new PART 288 to read as follows:

PART 288—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 9(a) OF THE AFRICAN DEVELOPMENT BANK ACT

Authority: Sec. 9(a), 95 Stat. 743, 22 U.S.C. 290i–9a; sec. 19(a), 48 Stat. 85, 15 U.S.C. 77s(a).

§ 288.1 Applicability of this Part.

This Part (Regulation AFDB) prescribes the reports to be filed with the Securities and Exchange Commission by the African Development Bank pursuant to section 9(a) of the African Development Bank Act.

§288.2 Periodic reports.

(a) Within 60 days after the end of each of its fiscal quarters, the Bank shall file with the Commission the following information:

(1) Information as to any purchases or sales by the Bank of its primary obligations during such quarter;

(2) Two copies of the Bank's regular quarterly financial statement; and

(3) Two copies of any material modifications or amendments during such quarter of any exhibits (other than (i) constituent documents defining the rights of holders of securities of other issuers guaranteed by the Bank, and (ii) loans and guaranty agreements to which the Bank is a party) previously filed with the Commission under any statute.

(b) Two copies of each annual report of the Bank to its Board of Governors shall be filed with the Commission within 10 days after the submission of such report to the Board of Governors.

§ 288.3 Reports with respect to proposed distribution of primary obligations.

The Bank shall file with the Commission, on or prior to the date on which it sells any of its primary obligations in connection with a distribution of such obligations in the United States, a report containing the information and documents specified in Schedule A (17 CFR 288.101). The term "sell' as used in this section and in Schedule A means the making of a completed sale or a firm commitment to sell.

§ 288.4 Preparation and filing of reports.

(a) Every report required by this regulation shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the Bank by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a

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[12] 22 U.S.C. 290i–3. The NAC was created to coordinate the policies and operations of representatives of the United States on the development banks or on agencies otherwise engaged in foreign financial transactions. It is composed of the Secretary of the Treasury (Chairman), the Secretaries of State and Commerce, the Chairman of the Federal Reserve Board and the President of the Export-Import Bank of Washington. 22 U.S.C. 2866. *See* Executive Order No. 11269 of February 14, 1966 (as amended by Ex. Or. No. 11334, March 2, 1967) (providing that the Chairman may consult with interested but unrepresented agencies and may invite them to designate representatives to participate in NAC deliberations).

[13] 22 U.S.C. 290i–9(b).

foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to Rule 3 (17 CFR 288.3) may be filed in the form of prospectus to the extent that such prospectus contains the information specified in Schedule A (17 CFR 288.101).

§ 288.101 Schedule A. Information required in reports pursuant to § 288.3.

This schedule specifies the information and documents to be furnished in a report pursuant to Rule 3 (17 CFR 288.3) with respect to a proposed distribution of primary obligations of the Bank. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

Item 1: Description of obligations.

As to each issue of primary obligations of the Bank which is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payment dates.

(c) The maturity date or, if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of (i) any redemption provisions and (ii) any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the Bank will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the Bank will, as to the payment of interest or principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holders thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the Bank with respect thereto.

(i) The name and address of the fiscal or paying agent of the Bank, if any.

Item 2. Distribution of obligations.

(a) Outline briefly the plan of distribution of the obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the Bank or to any principal underwriter named above designed to stabilize the market for the obligations for the acount of the Bank or the principal underwriters as a group and indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

Item 3. Distribution spread.

The following information shall be given, in substantially the tabular form indicated, as to all obligations which are to be offered for cash (estimate, if necessary):

	Price to the public	Selling discounts and commissions	Proceeds to the bank
Per Unit			
Total			

Item 4. Discounts and commissions to sub-underwriters and dealers.

State briefly the discounts and commissions to be allowed or paid to dealers. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice, without giving the additional amounts to be so paid.

Item 5. Other expenses of the distribution.

Furnish a reasonably itemized statement of all expenses of the Bank in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions.

Instruction. Insofar as practicable, the itemization shall include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

Item 6. Application of proceeds.

Make a reasonable itemized statement of the purposes, so far as determinable, for which the net proceeds to the Bank from the obligations are to be used, and state the approximate amount to be used for each such purpose.

Item 7. Exhibits to be furnished.

The following documents shall be attached to or otherwise furnished as a part of the report:

(a) Copies of the constituent instruments defining the rights evidenced by the obligations.

(b) Copies of an opinion of counsel, in the English language, as to the legality of the obligations.

(c) Copies of all material contracts pertaining to the issuance or distributions of the obligations, to which the Bank or any principal underwriter of the obligations is or is to be a party, except selling group agreements.

(d) Copies of any prospectus or other sales literature to be provided by the Bank or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

V. Statutory Authority

The Commission finds that the notice and public procedure pursuant to the Administrative Procedure Act are unnecessary for the following reasons: (1) The African Development Bank is virtually identical in purpose and structure to the other international development banks; (2) the regulations adopted herein are virtually identical to those for the other international development banks, each of which was adopted without prior exposure to public comments; (3) the special character of the AFDB and its operations; (4) the Commission has never received a letter of complaint regarding any of the international development banks, their rules or disclosure requirements; and (5) the views of the AFDB have been received and considered.

In addition, the effective guarantee of the Bank's obligations by member nations, including the United States; the required prior approval of the United States Government for any offerings in the United States; and the Commission's authority to suspend the exemptions at any time constitutes substantial investor protection.

The Commission further finds, for the reasons set forth above, that there is good cause to make the rules adopted herein effective upon publication in the **Federal Register**. The Bank will be in a position to proceed immediately with public offerings of its securities in the United States if it so decides.

The Commission is adopting Regulation AFDB pursuant to section 9(a) of the African Development Bank Act and section 19(a) of the Securities Act of 1933.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

June 18, 1985.

Securities and Exchange Commission Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the rules relating to the exemptive regulation for the securities of the African Development Bank (the "Bank") contained in Securities Act Release No. 33-6589 will not, if promulgated, have a significant economic impact upon a substantial number of small entities. The reason for this certification is that the rules apply only to the Bank which is not a small entity as defined in 17 CFR 240.0–10.

John S.R. Shad,
Chairman.

Dated: June 18, 1985.

[FR Doc. 85-15200 Filed 6-24-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 178

[T.D. 85-107]

Interim Customs Regulations Amendments Concerning Convention on Cultural Property Implementation Act

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations, solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations in response to the Convention on Cultural Property Implementation Act. The Convention addressed the problem of illicit importing and exporting of items of cultural property, that is, items of importance for archaeology, prehistory, history, literature, art, or science. These interim regulations are intended to prohibit illicit traffic in cultural property while allowing the exchange of national treasures for legitimate scientific, educational, and cultural purposes. These interim regulations are effective for all importations of cultural property, or archaeological or ethnological material, subject to the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 96 Stat. 2329).

DATES: Effective July 25, 1985. Written comments received on or before August 26, 1985, will be considered in determining whether any changes to the interim regulations are required before a final rule is published.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Customs Service Headquarters, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Tom Lindmeier, Entry, Procedures and Penalties Division (202–566–5765);

Operational Aspects: Harrison Feese, Duty Assessment Division (202–566–8652); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Beginning in the late 1960's, the U.S. began participating in negotiations, sponsored by the United Nations, Educational, Scientific and Cultural Organization (UNESCO), addressing the problem of illicit international trade in cultural property. Cultural property was defined as property which, on religious or secular grounds, is specifically designated by a country as being important in the archaeology, prehistory, history, literature, art, or science of that country.

Cultural property, whether archaeological or ethnological in nature, is subject to a unique international trade problem. As demand for cultural property has increased, the supply cannot keep pace in the usual manner of a commodity, that is, increased production. The property is by its very nature of extreme rarity. This situation has resulted in theft of existing artifacts, clandestine excavation of archaeological sites and accompanying illegal importing and exporting.

The value of cultural property is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The educational value of an artifact is forever lost when it is removed from its natural resting place by one motivated by greed rather than scientific curiosity. Similarly, when irreplaceable relics are stolen from museums or other such institutions by one hoping to profit from the black market for such goods, one hoping to profit from the lessons of history is denied his or her chance.

There has been growing concern in the U.S. regarding the need for protecting endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been recent pillaging has, on occasion, strained our foreign and cultural relations with various nations. This situation, combined with the concerns of the museum, archaeological, and scholarly communities, was recognized by the President and Congress. Codes of ethics and professional standards were formally developed by these communities. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in negotiations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97–446, 96 Stat. 2329 at 2350). The spirit of the Convention was enacted into law to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. In 1983 the U.S. became the first major art-importing country to implement the 1970 Convention.

It is with these goals in mind that Customs now invites public comment on the following interim amendments to the Customs Regulations designed to carry out the policies of the Convention on Cultural Property Implementation Act. Customs is aware that these regulations will be supplementing existing laws such as the National Stolen Properties Act, 18 U.S.C. 2314, and other bilateral agreements and treaties.

By T.D. 85–53, published in the **Federal Register** on March 26, 1985 (50 FR 11849), the Customs Regulations were amended by setting forth a list of information collections contained in the regulations and displaying the control number assigned by the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). The list was set forth in a new Part 178 (19 CFR Part 178). The interim regulations in this document are subject to the Paperwork Reduction Act and have been approved by OMB. It is therefore necessary to amend Part 178 by adding OMB Control No. 1515–0147 to the list.

Comments

Before adopting the interim regulations as a final rule, Customs will give consideration to any written comments (preferably in triplicate) timely submitted to the Commissioner. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Inapplicability of Notice and Delayed Effective Date Provisions

The Convention on Cultural Property Implementation Act, Pub. L. 97–446, became effective on April 12, 1983, and the provisions relating to the importation of stolen property became effective on that date. The provisions of the Act relating to the importation of listed archeological and ethnological property are fairly detailed and the interim regulations issued pursuant to them create no new legal rights nor affect those provided for in the existing statutory provisions.

The U.S. Information Agency has been approached by several foreign signatories to the Treaty concerning requests for import restrictions on designated archaeological and ethnological items. USIA has a strong indication that one or more of these countries is presently preparing to apply formally for U.S. import restrictions. In light of the interest expressed by these foreign governments and the need for the U.S. Government to respond to such requests immediately, interim regulations are necessary to facilitate U.S. response to such requests as required by law pursuant to statutory deadlines.

Therefore, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), it has been determined that good cause exists for dispensing with a delayed effective date.

Executive Order 12291

Inasmuch as Customs believes the interim amendment does not meet the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for these regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612) are inapplicable. However any comments submitted with regard to the economic impact of these regulations will be considered before a final rule is issued.

Paperwork Reduction Act

The interim regulations are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Accordingly, applicable sections of the interim regulations have been cleared by the Office of Management and Budget and assigned control number 1515–0147.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Imports, Exports.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collection of information.

Amendments To the Regulations

Parts 12 and 178 Customs Regulations (19 CFR Parts 12, 178), are amended in the following manner:

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

§ 178.2 [Amended]

2. Section 178.2 is amended by inserting, in proper numerical order, the following entry:

19 CFR Section	Description	OMB Control No.
§§ 12.104c, 12.104e.	Certificates and other documentation relating to the importation of items of cultural property	1515-0147

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624. §§ 12.105–12.109 also issued under 19 U.S.C. 2094. §§ 12.110–12.117 also issued under 7 U.S.C. 136 *et seq.* §§ 12.118–12.127 also issued under 15 U.S.C. 2601 *et seq.*;

§ 12.1 also issued under 21 U.S.C. 371(b);

§ 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381(b);

§ 12.4 also issued under 21 U.S.C. 381(b);

§ 12.6 also issued under 7 U.S.C. 1854, 19 U.S.C. 1303;

§ 12.10 also issued under 7 U.S.C. 151–162;

§ 12.15 also issued under 19 U.S.C. 1558;

§ 12.16 also issued under 7 U.S.C. 1592(b);

§§ 12.21–12.23 also issued under 42 U.S.C. 262;

§ 12.26 also issued under 18 U.S.C. 42;

§ 12.28 also issued under 18 U.S.C. 42, 19 U.S.C. 1527;

§ 12.34 also issued under 19 U.S.C. 1202 (Sch. 7, 9A, hdnote 1);

§ 12.37 also issued under 27 U.S.C. 203;

§§ 12.39 also issued under 19 U.S.C. 1337, 1623;

§ 12.40–12.41 also issued under 19 U.S.C. 1305;

§§ 12.42–12.44 also issued under 19 U.S.C. 1307;

§ 12.73 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

§ 12.85 also issued under 19 U.S.C. 1623, 46 U.S.C. 4302, 4306, 4310;

§§ 12.95–12.103 also issued under 18 U.S.C. 54;

§ 12.104 *et seq.*, also issued under 19 U.S.C. 2612.

2. All other statutory authority cited at the end of various sections in Part 12 is removed.

3. Part 12 is further amended by adding a new unit titled, "Cultural Property", designated §§ 12.104–12.104i to read as follows:

Cultural Property

Sec.
12.104 Definitions.
12.104a Importations prohibited.
12.104b State Parties to the Convention.
12.104c Importations permitted.
12.104d Detention of articles, time in which to reply.
12.104e Seizure and forfeiture.
12.104f Temporary disposition of materials and articles.
12.104g Specific items designated by agreements or emergency actions.
12.104h Exempt materials and articles.
12.104i Enforcement.

§ 12.104 Definitions.

For purposes of §§ 12.104 through 12.104i:

(a) The term, "archaeological or ethnological material of the State Part to the 1970 UNESCO Convention" means—

(1) Any object of archaeological interest. No object may be considered to be an object of archaeological interest unless such object—

(i) Is of cultural significance;

(ii) Is at least 250 years old;

(iii) Was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water;

(iv) Meets such standards as are generally acceptable as archaeological such as, but not limited to, artifacts, buildings, parts of buildings, or decorative elements, without regard to whether the particular objects are discovered by exploration or excavation; or

(2) Any object of ethnological interest. No object may be considered to be an

object of ethnological interest unless such object—

(i) Is the product of a tribal or nonindustrial society, and

(ii) Is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people;

(3) Any fragment or part of any object referred to in paragraph (a) (1) or (2) of this section which was first discovered within, and is subject to export control by the State Party.

(b) The term "Convention" means the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization at its sixteenth session (823 U.N.T.S. 231 (1972)).

(c) The term "cultural property" includes articles described in Article 1 (a) through (k) of the Convention, whether or not any such Article is specifically designated by any State Party for the purposes of Article 1. Article 1 lists the following categories:

(1) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(2) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;

(3) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(4) Elements of artistic or historical monuments or archaeological sites which have been dismembered;

(5) Antiquities more than 100 years old, such as inscriptions, coins and engraved seals;

(6) Objects of ethnological interest;

(7) Property of artistic interest, such as:

(i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) Original works of statuary art and sculpture in any material;

(iii) Original engravings, prints and lithographs;

(iv) Original artistic assemblages and montages in any material;

(8) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(9) Postage, revenue and similar stamps, singly or in collections;

(10) Archives, including sound, photographic and cinematographic archives;

(11) Articles of furniture more than 100 years old and old musical instruments.

(d) The term "designated archaeological or ethnological material" means any archaeological or ethnological material of the State Party which—

(1) Is—

(i) Covered by an agreement under 19 U.S.C. 2602 that enters into force with respect to the United States, or

(ii) Subject to emergency action under 19 U.S.C. 2603 and

(2) Is listed by regulation under 19 U.S.C. 2604.

(e) The term "museum" means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public or a regular basis.

(f) The term "Secretary" means the Secretary of the Treasury or his delegate, the Commissioner of Customs.

(g) The term "State Party" means any nation which has ratified, accepted, or acceded to the 1970 UNESCO Convention.

(h) The term "United States" includes the customs territory of the United States, the U.S. Virgin Islands and any territory or area the foreign relations for which the U.S. is responsible.

§ 12.104a Importations prohibited.

(a) No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which was stolen from such institution after April 12, 1983, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.

(b) No archaeological or ethnological material designated pursuant to 19 U.S.C. 2604 and listed in § 12.104g, that is exported (whether or not such exportation is to the United States from the State Party), may be imported into the United States unless the State Party issues a certification or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

§ 12.104b State Parties to the Convention.

(a) The following is a list of States that are a State Party, that is, States that have deposited an instrument of ratification, acceptance or accession to the Convention.

State Party	Date of entry into force
Algeria	Sept. 24, 1974.
Argentina	Apr. 11, 1973.
Bolivia	Jan. 4, 1977.
Brazil	May 16, 1973.
Bulgaria	Apr. 24, 1972.
Cameroon	Aug. 24, 1972.
Canada	June 28, 1978.
Central African Republic	May 1, 1972.
Cuba	Apr. 30, 1980.
Cyprus	Jan. 19, 1980.
Czechoslovakia	May 14, 1977.
Democratic Kampuchea	Dec. 26, 1972.
Democratic People's Republic of Korea.	Aug. 13, 1983.
Dominican Republic	June 7, 1973.
Ecuador	Apr. 24, 1972.
Egypt	July 5, 1973.
El Salvador	May 20, 1978.
German Democratic Republic	Apr. 16, 1974.
Greece	Sept. 5, 1981.
Guatemala	Apr. 14, 1985.
Guinea	June 18, 1979.
Honduras	June 19, 1979.
Hungary	Jan. 22, 1979.
India	Apr. 24, 1977.
Iran	Apr. 27, 1975.
Iraq	May 12, 1973.
Italy	Jan. 2, 1979.
Jordan	June 15, 1974.
Kuwait	Sept. 22, 1972.
Mauritania	July 27, 1977.
Mauritius	May 27, 1978.
Mexico	Jan. 4, 1973.
Nepal	Sept. 23, 1976.
Nicaragua	July 19, 1977.
Niger	Jan. 16, 1973.
Nigeria	Apr. 24, 1972.
Oman	Sept. 2, 1978.
Pakistan	July 30, 1981.
Panama	Nov. 13, 1973.
Peru	Jan. 24, 1980.
Poland	Apr. 30, 1974.
Qatar	July 20, 1977.
Republic of Korea	May 14, 1983.
Saudi Arabia	Dec. 8, 1976.
Senegal	Mar. 9, 1985.
Socialist people's Libyan Arab Jamahiriya.	Apr. 9, 1973.
Sri Lanka	July 7, 1981.
Syrian Arab Republic	May 21, 1975.
Tunisia	June 10, 1975.
Turkey	July 21, 1981.
United Republic of Tanzania	Nov. 2, 1977.
United States of America	Dec. 2, 1983.
Uruguay	Nov. 9, 1977.
Yugoslavia	Jan. 3, 1973.
Zaire	Dec. 23, 1974.

(b) Additions to and deletions from the list of State Parties will be accomplished by **Federal Register** notice, from time to time, as the necessity arises.

§ 12.104c Importations permitted.

Designated archaeological or ethnological material for which entry is sought into the United States, will be permitted entry if at the time of making entry:

(a) A certificate, or other documentation, issued by the Government of the country of origin of such material in a form acceptable to the Secretary, such form being, but not limited to, an affidavit, license, or permit from an appropriate, authorized State Party official under seal, certifying that such exportation was not in violation of the laws of that country, is filed with the district director; or

(b) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party not less than 10 years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before that date of entry, or

(c) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party on or before the date on which such material was designated under 19 U.S.C. 2604.

(d) The term "satisfactory evidence" means—

(1) For purposes of paragraph (b) of this section—

(i) One or more declarations under oath by the importer, or the person for whose account the material is imported, stating that, to the best of his knowledge—

(A) The material was exported from the State Party not less than 10 years before the date of entry into the United States, and

(B) Neither such importer or person (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before the date of entry of the material; and

(ii) A statement provided by the consignor, or person who sold the material to the importer, which states the date, or, if not known, his belief, that the material was exported from the State Party not less than 10 years before the date of entry into the United States and the reasons on which the statement is based; and

(2) For purposes of paragraph (c) of this section—

(i) One or more declarations under oath by the importer or the person for whose account the material is to be imported, stating that, to the best of his knowledge, the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and

(ii) A statement by the cosignor or person who sold the material to the importer which states the date, or if not known, his belief, that the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and the reasons on which the statement is based.

(e) *Related persons.* For purposes of paragraphs (b) and (d) of this section, a person shall be treated as a related person to an importer, or to a person for whose account material is imported, if such person—

(1) Is a member of the same family as the importer or person of account, including, but not limited to, membership as a brother or sister (whether by whole or half blood), spouse, ancestor, or lineal descendant;

(2) Is a partner or associate with the importer or person of account in any partnership, association, or other venture; or

(3) Is a corporation or other legal entity in which the importer or person of account directly or indirectly owns, controls, or holds power to vote 20 percent or more of the outstanding voting stock or shares in the entity.

§ 12.104d Detention of articles; time in which to comply.

In the event an importer cannot produce the certificate or evidence required in § 12.104c at the time of making entry, the district director shall take the designated archaeological or ethnological material into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate or evidence is presented to such officer. The certificate or evidence must be presented within 90 days after the date on which the material is taken into Customs custody, or such longer period as may be allowed by the district director for good cause shown.

§ 12.104e Seizure and forfeiture.

(a) Whenever any designated archaeological or ethnological material is imported into the United States in violation of 19 U.S.C. 2606, and the importer states in writing that he will not attempt to secure the certificate or evidence required by § 12.104c, or such certificate or evidence is not presented to the district director before the expiration of the time provided in § 12.104d, the material shall be seized and summarily forfeited to the United States in accordance with Part 162 of this chapter.

(1) Any designated archaeological or ethnological material which is forfeited to the United States shall, in accordance with the provisions of Title III of Pub. L. 97–446, 19 U.S.C. 2609(b):

(i) First be offered for return to the State Party;

(ii) if not returned to the State Party, be returned to a claimant with respect to whom the designated material was forfeited if that claimant establishes—

(A) valid title to the material;

(B) that the claimant is a bona fide purchaser for value of the material; or

(iii) if not returned to the State Party under paragraph (a)(1)(i) of this section or to a claimant under paragraph (a)(1)(ii) of this section, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws. No return of material may be made under paragraph (a)(1) (i) or (ii) of this section unless the State Party or claimant, as the case may be, bears the expenses incurred incident to the return and delivery, and complies with such other requirements relating to the return as the Secretary shall prescribe.

(b) Whenever any stolen article of cultural property is imported into the United States in violation of 19 U.S.C. 2607, such cultural property shall be seized and forefeited to the United States in accordance with Part 162 of this chapter.

(1) Any stolen article of cultural property which is forefeited to the United States shall, in accordance with the provisions of Title III of Pub. L. 97-446, 19 U.S.C. 2609(c):

(i) First be offered for return to the State Party in whose territory is situated the institution referred to in 19 U.S.C. 2607 and shall be returned if that State Party bears the expenses incident to such return and delivery and complies with such other requirements relating to the return as the Secretary prescribes; or

(ii) if not returned to such State Party, be disposed of in the manner prescribed by law for articles forefeited for violation of the customs laws.

§ 12.104f Temporary disposition of materials and articles.

Pending a final determination as to whether any archaeological or ethnological material, or any article of cultural property, has been imported into the United States in violation of 19 U.S.C. 2606 or 19 U.S.C. 2607, the Secretary may permit such material or article to be retained at a museum or other cultural or scientific institution in the United States if he finds that: sufficient safeguards will be taken by the museum or institution for the protection of such material or article; and sufficient bond is posted by the museum or institution to ensure its return to the Secretary.

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) [Reserved]

(b) A list of specific items or categories designated by agreements or emergency actions as coming under the protection of the Convention will from time to time, as the necessity arises, be published in the Federal Register by means of a general notice.

§ 12.104h Exempt material and articles.

The provisions of this section shall not apply to—

(a) Any archaeological or ethnological material or any article of cultural property which is imported into the United States for temporary exhibition or display if such material or article is rendered immune from seizure under judicial process initiated by the U.S. Information Agency, Office of the General Counsel and Congressional Liaison, pursuant to the Act entitled "An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and for other purposes", approved October 19, 1965 (22 U.S.C. 2459); or

(b) Any designated archaeological or ethnological material or any article of cultural property imported into the United States if such material or article—

(1) Has been held in the United States for a period of not less than 3 consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of this title, but only if—

(i) the acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least 50,000, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from this title,

(ii) such material or article has been exhibited to the public for a period or periods aggregating at least 1 year during such 3-year period, or

(iii) such article or material has been cataloged and the catalog material made available upon request to the public for at least 2 years during such 3-year period;

(2) If paragraph (b)(1) of this section does not apply, has been within the United States for a period of not less than 10 consecutive years and has been exhibited for not less than 5 years during such period in a recognized museum or religious or secular monument or similar institution in the United States open to the public;

(3) If paragraphs (b) (1) and (2) of this section do not apply, has been within the United States for a period of not less than 10 consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary or his designee shall prescribe) of its location within the United States; and

(4) If none of the preceding subparagraphs apply, has been within the United States for a period of not less than 20 consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

§ 12.104i Enforcement.

In the customs territory of the United States, and in the U.S. Virgin Islands, the provisions of these regulations shall be enforced by appropriate customs officers. In any other territory or area within the United States, but not within such customs territory or the U.S. Virgin Islands, such provisions shall be enforced by such persons as may be designated by the President.

William von Raab,
Commissioner of Customs.

Approved April 2, 1985.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 85-15142 Filed 6-24-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 540 and 544

[Docket No. 83N-0378]

Antibiotic Drugs; Deletion of Safety Test; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that amended the antibiotic drug regulations by deleting the original safety test requirement for antibiotic drugs for both human and veterinary use. This document makes editorial corrections.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-11467 beginning on page 19917 in the issue for Monday, May 13, 1985, the following corrections are made on page 19922:

1. In the first column in amendment 72, "§ 540.874d(a)(1)" is inserted between "§ 540.829(a)(3)(i)(*a*)" and "540.874e(a)(1)".

2. In the third column in amendment 89 for § 544.373b(a)(1) by adding the following at the end of the amendment: "and by revising the sixth sentence to read 'the polymyxin B used conforms to the requirements prescribed for polymyxin B by § 448.30 of this chapter.' "

Dated: June 18, 1985.

Mervin H. Shumate,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15212 Filed 6-24-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1099-85]

Providing for the Receipt of Copies of Citizen Enforcement Complaints

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order delegates to the Assistant Attorney General, Land and Natural Resources Division, the function of receiving copies of complaints from citizens who initiate suits under subsection 7002(a)(1)(B) of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Anne H. Shields, Acting Chief, Policy, Legislation and Special Litigation Section, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. (202/633-2586).

SUPPLEMENTARY INFORMATION: Section 401 of the Hazardous and Solid Waste Amendments of 1984 amended section 7002 of the Resource Conservation and Recovery Act (RCRA) to require, upon filing of a citizen enforcement action to address conditions which "may present an imminent and substantial endangerment to health or the environment" that the plaintiff "serve a copy of the complaint on the Attorney General." The purpose of the provision is to notify the Department of Justice of the existence of the citizen suit, and of the allegations made and relief sought. Such information may assist the United

States in evaluating whether it should monitor the progress of the suit, seek leave to participate as *amicus curiae* where deemed appropriate, or seek leave to intervene, which it may do as a matter of right in such actions 49 U.S.C. 6972(d).

The provision is not intended to authorize citizen plantiffs to make the United States a party to their suit, does not affect sovereign immunity, and does not require the Attorney General to respond to or take any action regarding the complaints received.

This order delegates to the Assistant Attorney General, Land and Natural Resources Division, the exclusive authority to receive, on behalf of the Attorney General, copies of complaints served pursuant to subsection 7002(b)(2)(F) of RCRA.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Organization and functions (Government agencies), Administrative practice and procedure.

PART 0—[AMENDED]

By virtue of the authority vested in me by 5 U.S.C. 301 and 28 U.S.C. 509, 510, Subpart M of Part 0 of Chapter 1 of Title 28, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, unless otherwise noted.

2. Subpart M is amended by adding a new § 0.69c as follows:

§ 0.69c Litigation involving the Resource Conservation and Recovery Act.

(a) The authority to receive complaints served upon the Attorney General pursuant to section 401 of the Hazardous Waste Amendments of 1984 (Pub. L. 616, 98th Cong.; 42 U.S.C. 6972(b)(2)(F)) is hereby delegated to the Assistant Attorney General, Land and Natural Resources Division. Every plantiff required to serve upon the Attorney General a copy of their complaint, should do so by sending a copy of the complaint, together with all attachments thereto required by the Federal Rules of Civil Procedure and the Local Rules for the Federal District Court in which the complaint if filed, via first class mail, to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, N.W., Washington, D.C. 20530.

(b) Service pursuant to section 401 shall be deemed effective upon the date the complaint is received by the Assistant Attorney General.

Dated: June 10, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85-14921 Filed 6-24-85; 8:45 am]

BILLING CODE 4410-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-2854-2]

Approval and Promulgation of State Implementation Plans: States of Missouri and Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of State implementation plan inadequacy and call for revisions.

SUMMARY: In this document, EPA gives notice that it has notified the Governors of the States of Missouri and Kansas that their State Implementation Plans are inadequate to attain the National Ambient Air Quality Standards for Ozone in the Kansas City Interstate Air Quality Control Region and called upon the States to submit plan revisions adequate to attain the standards. The purpose of this document is to advise the public of EPA's action.

DATE: Final plan revisions are required to be submitted to EPA by February 20, 1986.

ADDRESS: The information on which this decision was based is available from the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler, 816-374-3791, (FTS) 785-3791.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act Amendments of 1977 require all areas of the country to be designated as attaining or not attaining the National Ambient Air Quality Standards (NAAQS). They further require that each state where there is a nonattainment area revise its State Implementation Plan (SIP) to provide for attainment in that nonattainment area by December 31, 1982, or in some cases by December 31, 1987.

The Kansas City Metropolitan Area was subsequently designated nonattainment for the ozone NAAQS. In response, the States of Kansas and Missouri submitted plan revisions designed to reduce ambient ozone levels to below the standards by December 31, 1982. These revisions were reviewed and approved by EPA as parts of the Missouri and Kansas SIPs.

Findings

The 1983 air quality data reports of the Missouri Department of Natural Resources (MDNR) and the Kansas Department of Health and Environment (KDHE) indicated that the ozone standard was exceeded three times at one site and once at another site in 1983. Because of a possibility of 1983 being an unsual year meteorologically and because the ozone standard, as defined at 40 CFR Part 51 Appendix H, would allow up to three exceedances at one site in a three year period, it was decided that EPA would wait for an additional year of monitoring before deciding whether the standard had been attained.

The monitoring report for 1984 indicated three more exceedances at the site with the highest readings, making six in two years. The standard was also exceeded six times at three other sites.

It was then determined that the Missouri and Kansas SIPs are inadequate to attain the ozone standard in the Kansas City Metropolitan Area. The basis for this finding of inadequacy is that, despite fully implemented SIPs which projected attainment in 1982, this area is still experiencing violation of the ozone standard.

Call For SIP Revisions

On February 20, 1985, EPA notified Governor John Carlin of Kansas and Governor John Ashcroft of Missouri of the above finding and called upon the states to cure the inadequacies in the State Implementation Plans by revising them. The call for revisions applies to the Missouri counties of Clay, Jackson and Platte, and to the Kansas counties of Johnson and Wyandotte. The call was issued pursuant to the authority of Section 110(a)(2)(H) of the Clean Air Act (42 U.S.C. 7410(a)(2)(H)).

The letters to the governors required the submission of the plan revision within one year. The letters also required a schedule for the development of the necessary plan revisions within 60 days. Both states have submitted schedules showing the logical and necessary progression of events leading to the submission of plan revisions by February 20, 1986.

This call for revisions was issued in accordance with the EPA policy entitled "Compliance with the Statutory Provisions of Part D of the Clean Air Act," published November 2, 1983 (48 FR 50686). This policy describes the actions which must be taken when an area is found to have failed to attain the standards. The "Guidance Document for the Correction of Part D SIPs for Nonattainment Areas" (January 1984) contains more information on the content of the required plan revisions.

(Sec. 110 and sec. 301 of the Clean Air Act (42 U.S.C. 7410 and 7601))

Dated: June 6, 1985.

Morris Kay,

Regional Administrator.

[FR Doc. 85-15232 Filed 6-24-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[EPA Docket Number AM055MD A-3-FRL-2854-5]

Approval and Promulgation of Implementation Plans Approval of a Revision to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Maryland Air Management Administration (MAMA) has submitted amendments to its air quality control regulations and has requested that they be reviewed and processed by EPA as a revision to the Maryland State Implementation Plan (SIP). This revision, submitted on March 14, 1984, amends existing Fuel Burning Equipment and Stationary Internal Combustion Engine regulations. The main purpose of these amendments is to provide an exception procedure for persons wishing to construct and operate small solid fuel burning equipment. Other amendments involve rearranging existing language and correcting an error in the codification of the regulations. This notice summarizes the amendments which EPA is approving today as the revision meets all of the requirements of section 110(a)(2) of the Clean Air Act and the Code of Federal Regulations (40 CFR Part 51).

EFFECTIVE DATE: July 25, 1985.

ADDRESSES: Copies of the revision and the accompanying support documents are available during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Programs Branch (3AM10), 841 Chestnut Building, Philadelphia, PA 19107, Attn: Patricia S. Gaughan

Maryland Air Management Administration, Maryland Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201, Attn: George Ferreri, Director

Public Information Reference Unit, U.S. Environmental Protection Agency, EPA Library, Room 2922, 401 M Street SW., Washington, D.C. 20460

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20480.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Pine at the address for EPA Region III, or telephone (215) 597-4554.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1984, the MAMA submitted to EPA Region III amendments to its Cod Of Maryland Regulations (COMAR) for the Control of Fuel Burning Equipment and Stationary Internal Combustion Engines (COMAR 10.18.09). EPA proposed approval of these amendments to the Maryland SIP is the **Federal Register** on January 7, 1985, (50 FR 862). No comments were received regarding the proposed amendments during the 30-day comment period. The MAMA provided proof that, after adequate public notice, public hearings were held on December 15 and December 16, 1983 in Cumberland and Baltimore, Maryland regarding these amendments.

EPA Evaluation

The major purpose of these amendments is to provide an exception procedure for persons wishing to construction and operate small solid fuel burning equipment. In the Metropolitan Baltimore and National Capitol regions (Areas III and IV respectively), the exception procedure will be applicable to solid fuel burning equipment that has a rated heat input of less than 35 million BTU (37 gigajoules) per hour. In the rest of the State, the exception procedure will be applicable to solid fuel burning equipment that has a rated heat input of less than 13 million BTU (13.7 gigajoules) per hour. Construction and operation of these small boilers are prohibited under the existing regulations.

The amendments also establish particulate matter emission standards for these small boilers. Other amendments are not substantive, and simply correct a codification error and rearrange existing language. The amendments and EPA's evaluation are as follows:

A. COMAR 10.18.09.04 Prohibition of Certain New Fuel Burning Equipment

Regulation .04 is amended to allow an opportunity for a source to request an exception to the prohibition of small solid fuel burning equipment. The prohibited sizes are less than 35 million BTU per hour for Areas III and IV, and less than 13 million BTU per hour for Areas I, II, V, and VI (the remainder of the State). The exception procedure involves submitting an application to the Maryland Air Management Administration (MAMA) to assess the potential impact of the new or modified solid fuel burning equipment. The application shall include a description of the proposed construction or modification, including the type and manufacturer of the fuel burning equipment, fuel specifications, expected annual fuel consumption, type and manufacturer of any control equipment, stack height, and a contour map of the area noting property lines and a description of the surrounding terrain.

The MAMA shall make a preliminary determination to proceed with the processing of an application, and notify the applicant of this decision within 10 days. The applicant shall then notify the public of their request for an exception, and allow for a 30-day comment period. The MAMA will review each application on a case-by-case basis. The review procedures must determine that there will be no violation of ambient air quality standards or Prevention of Significant Deterioration (PSD) requirements. In addition, there must be no violation of applicable emission standards, a minimum potential for the creation of a nuisance, and reasonable assurance of fuel quality control. The review procedures also provide for an air quality impact evaluation of each exception, including impacts on PSD and nonattainment areas. By letter of November 29, 1984, the MAMA clarified that exempted sources would still be subject to new source review permitting requirements to the extent applicable.

Within 60 days after the public comment period, the MAMA will issue its final determination in the form of an order. If an application is approved, the order will specify any reasonable control measures to be taken by the source to minimize emissions. The opportunity to request an exception will be made available to new sources and existing sources that have been constructed since 1972. Existing sources constructed prior to 1972 were not subject to the prohibited size regulation and may continue with solid fuel burning, provided that emission standards are met. Replacement or reconversion of these existing units, however, constitutes a new source construction and the prohibition regulation would apply. The MAMA has estimated that approximately six small solid fuel burning units will be constructed or converted from some other fuel each year for the next three years. By reviewing each application on a case-by-case basis, and by assuring that any exempted source meets the newly expanded emission standards for particulate matter, the MAMA has determined that there will be no significant increase in emissions as a result of approval of this amendment. Because the exception procedure will not result in any adverse impacts on the attainment or maintenance of air quality, EPA is approving this amendment.

B. COMAR 10.18.09.05 Visible Emissions (VE)

Regulation .05 is revised to insure that any type of fuel burning equipment is covered by the VE regulation. Because this action will not adversely impact the attainment or maintenance of air quality, EPA is approving this amendment.

C. COMAR 10.18.09.06 Control of Particulate Matter

Regulation .06 expands the emission standard for particulate matter to set forth requirements for fuel burning equipment that has been granted an exception to the prohibited size regulation. This standard is established at .03 grains per dry standard cubic foot (gr/scfd). This standard is consistent with the present standards that have been set for solid fuel burning equipment of any size range. This amendment also changes the term "installation" to "equipment." Since these actions do not adversely impact the attainment or maintenance of air quality, EPA is approving this amendment.

D. COMAR 10.18.09.07 Control of Sulfur Oxides From Fuel Burning Equipment

This amendment to regulation .07 corrects an error in the codification of the regulation and does not alter its original purpose. Since this action does not adversely impact the attainment and maintenance of air quality, EPA is approving this amendment.

E. COMAR 10.18.09.08 Nitrogen Oxides From Fuel Burning Equipment

Regulation .08 is amended to change the term "installation" to "equipment." Since this action does not adversely impact the attainment and maintenance of air quality, EPA is approving this amendment.

F. COMAR 10.18.09.06 Table I and Figure 2, Control of Particulate Matter

Table I and Figure 2 are amended to include the revised particulate matter standards for any exceptions to the prohibited size regulation. These revised standards are discussed in Section C of this Notice. EPA is approving these amendments.

Conclusion

The Administrator's decision to approve this SIP revision is based on a determination that the amendments meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

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

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from today. Under Section 307(b)(2), the requirements which are the subject of today's Notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air Pollution Control, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

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

Dated: June 19, 1985

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

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

Subpart V—Maryland

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

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

2. Section 52.1070 is revised by adding paragraph (C) (83) as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(83) Revisions to the Code of Maryland Regulations (COMAR) were submitted by the Director of the Maryland Air Management Administration on March 14, 1984.

(i) Incorporation by reference.

(A) Amendments to COMAR 10.18.09 (Control of Fuel Burning Equipment and Stationary Internal Combustion Engines), as published in the Maryland Register on March 2, 1984.

(ii) Additional Information.

(A) Letter from MAMA dated November 29, 1984 clarifying that a permit cannot be issued for the sources unless they undergo new source review as under COMAR 10.18.02 (Permits, Approvals and Registration).

[FR Doc. 85-15237 Filed 6-24-85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-10-FRL-2854-6]

Approval and Promulgation of Implementation Plans; Removal of Federal Assistance Limitations; State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On June 11, 1985, the Governor of Oregon signed into law legislation that allows for the implementation of a mandatory vehicle inspection and maintenance (I/M) program in Jackson County. Accordingly with this notice, EPA is announcing removal of the limitations on federal funding assistance in Jackson County. These funding restrictions applied to highway, air and sewage construction grants pursuant to section 176(a) and 316(b) of the Clean Air Act. EPA is taking this action because, by adopting the legal authority to implement an I/M program, the State of Oregon is making reasonable efforts to submit a legally enforceable State Implementation Plan revision for Jackson County that would provide for attainment of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide prior to December 31, 1987.

EFFECTIVE DATE: June 19, 1985.

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips Air Programs Branch, M/S 532 Environmental Protection Agency 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442-4233, (FTS) 399-4233.

SUPPLEMENTARY INFORMATION:

I. Backgound

On June 24, 1980 (45 FR 42278), EPA approved the first phase of the Medford Carbon Monoxide (CO) Attainment Plan. At that time EPA also approved an extension of the attainment date for the CO standard to a date beyond

December 31, 1982, but before December 31, 1987.

The second phase of the Medford CO Attainment Plan was submitted to EPA on October 20, 1982. That plan indicated that, in order to attain the CO standard by December 31, 1987, it would be necessary to implement an automobible inspection and maintenance (I/M) program expeditiously. On February 3, 1983 (48 FR 5131), EPA proposed to approve this second phase with the understanding that EPA would not finally approve the SIP until after I/M was officially adopted and resource commitments were obtained. The 1983 State of Oregon Legislature authorized the implementation of a local I/M program in Jackson County. However, the original schedules and commitments for implementation of an I/M program in Medford were abandoned.

On March 14, 1984 (49 FR 9582), EPA reversed its original proposal and proposed to disapprove the plan and initiate a construction moratorium on major stationary sources of CO because the plan did not contain an enforceable commitment to I/M. In a referendum on March 27, 1984, the residents in Jackson County, Oregon, voted against the establishment of an I/M program. Since the requirements of section 172(b)(10) of the Act were not fulfilled, EPA then finalized the disapproval of the plan (49 FR 35662) and authorized the construction moratorium on September 11, 1984. In a separate notice on the same day, EPA also initiated the section 176(a) and 316(b) sanction process (49 FR 35631). On March 4, 1985, EPA finalized the section 176(a) and 316(b) sanction process in the **Federal Register** (50 FR 8614). The sanctions became effective on May 3, 1985.

Oregon's I/M Legislation

During Oregon's 1985 legislative session, House Bill 2845 was introduced in the House Committee on Environment and Energy. On March 22, 1985, the Bill passed out of committee and received strong support in the House where it passed by a 36–23 margin. On May 21, 1985 the Bill passed in the Senate by a 16–13 margin. The Governor signed the Bill into law on June 11, 1985.

The Bill requires the implementation of a mandatory biennial motor vehicle I/M program, as necessary, in CO and ozone nonattainment areas within the State of Oregon. Accordingly, the State of Oregon will be initiating a program in Jackson County on January 1, 1986, fulfilling the requirements of the Clean Air Act.

The program design will be based upon the Portland program and will be discussed in detail in another Notice. Essentially, all vehicles 20 years old or newer will be required to be inspected every other year in order to have their vehicle registration renewed. A tampering check will also be conducted along with the emission test.

EPA Findings

Based upon the State of Oregon's adoption of legal authority to implement an I/M program as necessary in nonattainment areas, and the Department of Environmental Quality's effort to initiate a program in Jackson County, EPA has determined that Oregon is now making reasonable efforts to submit a CO attainment plan for Jackson County that considers each of the elements in section 172 of the Act. EPA, by this notice, announces removal of the Jackson County federal funding assistance limitations imposed pursuant to sections 176(a) and 316(b) of the Act. Specifically, this action removes the funding constraints affecting highway, air, and sewer construction funding for Jackson County that EPA imposed on March 4, 1985 (50 FR 8614). The construction moratorium under section 110(a)(2)(I) will remain in effect until a SIP revision for the Medford CO problem is approved.

Regulatory Process

Although the March 4, 1985 **Federal Register** notice (50 FR 8614) indicated that EPA would propose removal of the funding limitations and provide an opportunity for public comment prior to final removal, the Agency finds good cause for the reasons stated below to dispense with notice and opportunity for comment prior to removal of the funding limitations.

EPA concludes that prior notice and comment is unnecessary because the Oregon Legislature has now adopted the legal authority to implement an I/M program. The previous lack of such authority was EPA's basis for imposing the funding limitations. The enacted legislation (and its effect on the funding limitations) was subject to considerable public debate and scrutiny, including a telephone conference call between numerous Jackson County citizens, key House and Senate representatives, and other interested parties. The enactment itself is a clear matter of public record. Therefore, the purposes of the proposed rulemaking notice and opportunity for public comment originally contemplated by EPA have been achieved.

Moreover, since the Oregon Legislature has enacted the necessary legal authority to implement an I/M program, EPA believes that continuation of the funding limitations for the additional time necessary to conduct notice and comment rulemaking would be contrary to the public interest. Continuation of the funding sanctions would penalize the citizens of Jackson County and thus harm the public interest by restricting federal highway, air and sewage construction grants in Jackson County. Since Oregon is now making reasonable progress toward implementing an I/M program, the funding sanctions are no longer necessary. Most important, continuation of the sanctions for even a short time would delay the implementation of I/M in Jackson County by restricting federal air grants which Oregon intends to use to start up its I/M program. A likely result of this delay is attainment of the CO NAAQS later than the December 31, 1987 deadline specified in section 172(a) of the Act, resulting in public exposure to high CO levels for a longer time than necessary. Consequently, EPA is proceeding, pursuant to 5 U.S.C. 553(b)(3)(B), for good cause found and stated to remove the funding limitations without prior notice and opportunity for public comment.

EPA also concludes that the reasons stated above constitute good cause to make this action effective less than thirty days before its publication in the **Federal Register**. EPA notes as further support for immediate effectiveness of this action the fact that removal of the limitation relieves a restriction. Accordingly, pursuant to 5 U.S.C. 553(d) (1) and (3), EPA is making this action effective on the date of signature.

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

Under 5 U.S.C. 605(b), I certify that this Notice will 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 Notice from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: June 19, 1985.

A. James Barnes,

Acting Administrator.

[FR Doc. 85-15238 Filed 6-24-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Docket No. AM053VA; A-3-FRL-2854-3]

Approval and Promulgation of Implementation Plans; Approval of Revisions to the Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of an alternative compliance schedule with a final compliance date extension, for the control of volatile organic compounds (VOC) in the prime coating operation at the Ford Motor Company Light-Duty Truck Assembly Plant in Norfolk, Virginia. The approval of this compliance schedule is based on the commitment by Ford Motor Company to replace their current spray prime coating operation with an electrophoretic dip prime coating operation, and on the October 20, 1981 policy statement (46 FR 51386), "Approval of Revisions to the Compliance Schedules for Control of Volatile Organic Compounds from Automobile Assembly Plant Paint Shop Operations." The Administrator approves this SIP revision request as it meets the necessary requirements of the Clean Air Act and 40 CFR Part 51.

EFFECTIVE DATE: This rulemaking will be effective on August 26, 1985 unless notice is received within 30 days that adverse or critical comments will be submitted. Copies of the alternative compliance schedule request and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attention: Ms. Patricia Gaughan (3AM11)

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW. (Waterside Mall), Washington, DC 20460

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219, Attention: William R. Meyer

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mr. Harold A. Frankford, (215) 597-1325, or Ms. Cynthia H. Stahl, (215) 597-9337 at the Region III address above.

SUPPLEMENTARY INFORMATION: On December 17, 1984, the Commonwealth of Virginia submitted a State Implementation Plan (SIP) revision request to provide Ford Motor Company an alternative compliance schedule for the prime coating operation at their Light-Duty Truck Assembly Plant in Norfolk, Virginia, under section 4.02(f) of the Regulations for the Control and Abatement of Air Pollution. This request revises a previous alternative compliance schedule approved by EPA as a SIP revision on January 30, 1984, 49 FR 34647. Ford's initial plan was to continue its spray prime coating operation and to add electrophoretic deposition as a means of meeting the VOC emission limits by December 31, 1984. However, development of a high film build electrophoretic deposition (EDP) technology will now allow the Company to eliminate the spray prime process in favor of the new EDP, while further reducing VOC emissions. The extensive modifications required to utilize EDP will make the new source performance standard (NSPS) regulations applicable. Ford has agreed to meet a final prime coating standard of 1.2 lbs. VOC/gallon of coating less water, as applied. EPA will determine, in a separate action, whether or not this value is equivalent to NSPS. The proposed final compliance date is January 31, 1986. The alternative compliance schedule which also extends the final compliance date, for prime coating operations is shown below.

Contracts set for new equipment—January 15, 1985
Commence installation for new equipment—July 1, 1985
Completion of Construction—December 31, 1985
Final Compliance—January 31, 1986

This revision to the Virginia SIP was adopted by the State Air Pollution Control Board on November 26, 1984 in accordance with the requirements of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. As required by 40 CFR 51.4, the Commonwealth has certified that, after adequate public notice, a public hearing with respect to the Ford Motor Company SIP revision was held on October 22, 1984 in Virginia Beach. The Ford Motor Company is located in the Hampton Roads Intrastate Air Quality Control Region (AQCR), which is an attainment area for ozone.

Conclusion

EPA is approving the alternate compliance schedule submitted by Virginia that is the subject of this SIP revision. This approval is based on a determination that it meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This approval is further based on Ford's commitment to follow the compliance schedule in order to replace the Company's current spray prime coating operation with the EDP operation, as it is consistent with EPA's October 20, 1981 policy statement, 46 FR 51386, regarding compliance schedules for controlling VOC emissions from automobile assembly plant paint shop operations. EPA has determined that the Company's installation and use of EDP technology must meet the applicable New Source Performance Standards (NSPS) for automobile and light-duty truck surface coating operations. However, EPA has also determined that the Company's use of EDP technology would not require the issuance of a Prevention of Significant Deterioration (PSD) permit.

EPA is publishing this action without prior proposal because the Ageny views this as a noncontroversial revision and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 26, 1985.

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

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations.

Date: June 19, 1985.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

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

Subpart VV–Virginia

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2420 is revised by adding paragraph (c) (87) as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(87) A revision to the Virginia State Implementation Plan was submitted on December 17, 1984 by the Virginia State Air Pollution Control Board.

(i) Incorporation by reference

(A) A letter dated November 29, 1984 from the Virginia State Air Pollution Control Board to the Ford Motor Company containing a compliance schedule for installing the electrophoretic deposition process (EDP) for prime coating operations at the Norfolk assembly plant, adopted on November 26, 1984

(ii) Additional Material

(A) Technical Support Document dated November 26, 1985, prepared by the Virginia State Air Pollution Control Board.

[FR Doc. 85–15235 Filed 6–24–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 62

[A-4-FRL-2854-4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Mississippi; Negative Declaration for Primary Aluminum Plants Tennessee; Negative Declaration for Phosphate Fertilizer Plants Florida; Negative Declaration for Primary Aluminum Plants

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 6, 1985, the State of Mississippi certified that there were no primary aluminum reduction plants in the State subject to the requirements of section 111(d) of the Clean Air Act. EPA is today approving this negative declaration.

On April 4, 1985, the State of Tennessee certified that there were no phosphate fertilizer plants in the State subject to the requirements of section 111(d) of the Clean Air Act. EPA is today approving this negative declaration.

On April 22, 1985, the State of Florida certified that there were no primary aluminum reduction plants in the State subject to the requirements of section 111(d) of the Clean Air Act. EPA is today approving this negative declaration.

EFFECTIVE DATE: This action will be effective on August 26, 1985, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State submittals are available for review during normal business hours at the following locations:

Air Quality Control, Bureau of Pollution Control, Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 Ninth Avenue North, Nashville, Tennessee 37203

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Kelly McCarty, EPA Region IV, Air Management Branch, at the above listed address, and phone 404/881–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION: Under section 111(b) of the Clean Air Act, the Administrator is required to publish a list of categories of stationary sources which cause, or contribute significantly to, "air pollution which may reasonably be anticipated to endanger public health or welfare." For each category the Administrator must publish regulations which establish Federal standards of performance for new stationary sources (NSPS) within that category.

Section 111(d) provides for regulation of existing sources which are in a category for which an NSPS has been promulgated for new sources. EPA publishes guideline documents for control of these existing sources which give suggested emission limitations and control techniques. These are usually less stringent than the NSPS and factors such as: Cost of control equipment, economic health of the source, age of the source, etc., may be taken into consideration. Each state must then either submit a plan for control of these sources, or a negative declaration stating that there are no sources located in the State subject to that regulation.

Pursuant to these requirements, the State of Tennessee, on April 4, 1985, certified that there were no phosphate fertilizer plants in the State subject to the requirements of section 111(d) of the Clean Air Act. EPA concurs with the State's negative declaration.

The State of Mississippi submitted information on March 6, 1985, certifying that there were no primary aluminum reduction plants in the State subject to the requirements of section 111(d) of the Clean Air Act. EPA concurs with the State's negative declaration.

The State of Florida submitted information on April 22, 1985, certifying that there were no primary aluminum reduction plants in the State subject to the requirements of section 111(d) of the Clean Air Act. EPA concurs with the State's negative declaration.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice, unless, within 30 days, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effected on August 26, 1985.

Action

Based on the foregoing, EPA hereby approves the negative declarations made by Tennessee, Mississippi, and Florida.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 26, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. § 605(b), the Administrator has certified that approvals of 111(d) plans do not have a significant economic impact of a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur.

Dated: June 18, 1985.

Lee M. Thomas,

Administrator.

PART 62—[AMENDED]

Part 62 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 62 continues to read as follows:

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

2. Section 62.2352 is added as follows:

Subpart K—Florida

Fluoride Emissions From Primary Aluminum Reduction Plants

§ 62.2352 Identification of source—Negative declaration.

The Florida Department of Environmental Regulation submitted on April 22, 1985, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

3. Section 62.6121 is added as follows:

Subpart Z—Mississippi

Fluoride Emissions From Primary Aluminum Reduction Plants

§ 62.6121 Identification of sources—Negative declaration.

The Mississippi Bureau of Pollution Control submitted on March 6, 1985, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

4. Subpart RR is added as follows:

Subpart RR—Tennessee

§§ 62.10600-10601 [Reserved]

Fluoride Emissions From Phosphate Fertilizer Plants

§ 62.10602 Identification of sources—Negative declaration.

The Tennessee Department of Health and Environment on April 4, 1985, submitted a letter certifying that there are no existing phosphate fertilizer plants in the State subject to Part 60, Subpart B of this chapter.

[FR Doc. 85-15236 Filed 6-24-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket Nos. 78-72 and 80-286; FCC 85-283]

MTS and WATS Market Structure and Amendment of the Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Interim Order.

SUMMARY: This Interim Order adopts the Federal-State Joint Board recommendations concerning interim measures for the allocation of the costs in Account 645, Local Commercial Operations, set out in its *Recommended Interim Order and Request for Comments* in this proceeding. The Interim Order also requires adjustments in the affected Bell Operating Companies (BOCs') access charge tariffs in order to ensure proper recovery of the interstate allocation of Account 645 costs and the costs whose allocation is affected by the treatment of Account 645. This action is taken to prevent a sudden and substantial shift in costs to the intrastate jurisdiction while the Joint Board is developing recommendations concerning permanent provisions for the allocation of Account 645. This action is necessary because it will promote administrative efficiency until permanent measures are adopted.

EFFECTIVE DATE: June 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Margot Bester or Claudia Pabo at (202) 632-6363.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 67

Uniform system of accounts.

Interim Order

In the matter of MTS and WATS Market structure amendment of part 67 of the Commission's rules and establishment of a joint board (CC Docket Nos. 78-72 and No. 80-286).

Adopted: May 28, 1985.

Released: June 7, 1985.

By the Commission: Commissioner Rivera not participating.

I. Introduction

A. Summary

1. The Commission hereby adopts the Federal-State Joint Board's recommendations concerning interim measures for the allocation of the costs in Account 645, Local Commercial Operations, set out in its *Recommended Interim Order and Request for Comments (Recommended Interim Order)* in this proceeding.[1] We also adopt as our own the Joint Board's reasoning in support of its recommendations.[2] In addition, we are requiring certain adjustments in the affected Bell Operating Companies' (BOCs') access charge tariffs in order to ensure proper recovery of the interstate allocation of Account 645 costs and other costs whose allocation is affected by the treatment of Account 645.

B. Background

2. The Joint Board's recommendations were prepared in response to a Petition for Rulemaking filed on November 15, 1984 by the New York State Department of Public Service (New York State). The Commission issued a Public Notice requesting comments on the New York State Petition on November 30, 1984. Comments were filed on December 10, 1984 and reply comments were filed on December 14, 1984. In its Petition, New York State pointed out that the American Telephone and Telegraph Co. planned to discontinue its subscription to the billing inquiry service offered by New York Telephone Company (New York Telephone) effective January 1, 1985. It stated that, absent a change in the existing separations procedures, this would result in a sudden and major shift of costs to the intrastate jurisdiction. As a result, New York State requested an interim freeze of the customer contact factor[3] used in Part 67 of the Commission's rules to allocate Account 645, Local Commercial Operations.[4]

[1] *MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, Mimeo No. CC 3400, released March 25, 1985.

[2] In its *Recommended Interim Order*, the Joint Board also requested comments and data regarding permanent procedures for the allocation and recovery of Account 645 costs, changes in the provisions for the allocation and recovery of Account 662, Accounting Department costs, as well as the definition and allocation of equal access and network reconfiguration costs.

[3] Pursuant to § 67.365()a)(1)(i) of the Commission's rules, the portion of Account 645 expense categorized as message toll is apportioned between the state and interstate jurisdictions on the basis of "the relative number of business office contacts relating to state toll and interstate toll messages." 47 CFR 67.365(a)(1)(i) (1984). This is referred to herein as the customer contact factor.

[4] Account 645 reflects the costs involved in maintaining the local commercial operations of the telephone company other than promotional or directory services. This includes service order processing for local customers and interexchange carriers, billing inquiry, collection of coins from pay telephones as well as certain billing and collection functions.

between the state and interstate jurisdictions.

3. The implementation of AT&T's billing inquiry service in the area served by New York Telephone is part of an overall plan on the part of AT&T to terminate its subscription to the billing inquiry services offered by the BOCs. In the future, AT&T will respond to inquiries concerning the charges for its interexchange telephone services through billing inquiry centers operated by its own employees. AT&T began operation of its first billing inquiry center during the first quarter of 1984 in Providence, Rhode Island. It plans to complete the transition to use of its own billing inquiry centers for the areas served by the BOCs by August 1985.[5]

4. Under the existing Part 67 rules for the allocation of Account 645, AT&T's decision to discontinue the use of billing inquiry service provided by the BOCs would result in a substantial increase in the intrastate allocation of Account 645 costs. With the exception of the expenses in the TWX and private line categories,[6] the assignment of Account 645 costs to the interstate jurisdiction is largely attributable to the customer contact factor. However, since the billing inquiry function appears to represent a small portion of the work performed in the local telephone company business office, the BOCs may not be able to reduce their costs substantially when AT&T begins to perform this service for itself. The allocation of Account 645 also affects the allocation of a number of other accounts, thereby magnifying the effect of a shift in Account 645 costs to the intrastate jurisdiction.[7] A number of commenting parties estimated that AT&T's decision to discontinue billing inquiry service could increase the annual intrastate revenue requirement by approximately $1 billion on a nationwide basis. AT&T did not endorse this estimate of the revenue effect under the present rules, but agreed that the shift in costs would be "substantial."

II. Discussion

A. Allocation of Account 645 Costs

5. The Joint Board recommended that the Commission freeze the customer contact factor applicable to study areas for which AT&T has begun or will begin to handle its own billing inquiries at the average level for the twelve months preceding that date. It recommended application of this factor from the date on which AT&T began use of its own billing inquiry facilities through May 31, 1985. Beginning June 1, 1985, the Joint Board recommended that the frozen customer contact factor for these study areas be reduced by 1/24th each month for the following twelve months or until adoption of permanent measures for the allocation of Account 645, whichever occurs first. In the case of study areas for which AT&T begins to handle its own billing inquiries after June 1 1985, the customer contact factor would be frozen at the average level for the twelve months preceding that date, with the factor reduced by 1/24th for each of the following twelve months pending adoption of permanent allocation measures.[8]

6. For the reasons set out by the Joint Board in its *Recommended Interim Order*, we conclude that the recommended interim separations procedures should be adopted to prevent a sudden and substantial shift in costs to the intrastate jurisdiction while the Joint Board is developing recommendations concerning permanent provisions for the allocation of Account 645. Accordingly, we hereby adopt the interim revisions to Part 67 of the Commission's rules recommended by the Joint Board as set out in Attachment A.

B. Recovery of the Interstate Cost Allocation

7. The local exchange carriers will have to adjust their access charge tariffs in order to properly reflect the reduced interstate allocation of Account 645 costs that begins on June 1, 1985. A number of the parties that commented on the New York State Petition addressed the issue of recovery of the modified interstate revenue requirement. AT&T stated that billing inquiry costs should not be recovered through increases in other billing and collection rate elements. Ameritech noted that interim revisions in the interstate charges for recovery of Account 645 costs might be necessary, but did not recommend a particular recovery mechanism. Bell Atlantic argued that the Commission should take steps to allow the exchange carriers to recover the revenues lost due to AT&T's discontinuation of billing inquiry service through other interstate rates. NYNEX argued that the local exchange companies should be allowed to make interim charges in their interstate access charges to recover the costs previously recouped through the charges for billing inquiry service. NYNEX also stated that the recovery of these costs during the transition period should not be structured so as to increase the charges for the other billing and collection rate elements. Pacific urged a freeze on the Part 69 assignment of Account 645 costs to the various access charge elements pending adoption of permanent revisions. GTE recommended that Account 645 costs be treated as overhead, and recovered through the carrier common line charge or spread over all of the access charge rate elements. During the period of the freeze, Rochester Telephone urged recovery of Account 645 costs through other billing and collection rate elements.

8. MCI filed reply comments stating that it did not oppose interim separations procedures for the allocation of Account 645 as long as the Account 645 costs are recovered through the interstate billing and collection rate elements. MCI strongly opposed any approach that would recover Account 645 costs from the Other Common Carriers (OCCs) during this transition period. In its reply, NYNEX emphasized the need for waivers of Part 69 of the Commission's rules to allow recovery of the interstate allocation of Account 645 costs during the transition period. It opposed recovery of these costs through the remaining billing and collection rate elements. Pacific again stated that the Commission should freeze the assignment of Account 645 costs to the different access charge elements pursuant to Part 69 of the Commission's rules. Southwestern Bell supported recovery of the Account 645 costs through a surcharge on all access charge

[5] AT&T stated that it has no current plans to terminate its use of billing inquiry service offered by the independent telephone companies.

[6] Pursuant to § 67.365 of the Commission's rules, the costs in Account 645, Local Commercial Operations, are assigned to the following categories: (1) Message toll and telegram; (2) exchange, including semi-public; (3) directory advertising; and (4) TWX and private line services. This assignment is based on the relative number of users of these services. Each subscriber is counted once for each service which he or she uses. The message toll and telegram expense category is segregated between message toll and telegram on the basis of billed messages. Message toll expense is allocated between the jurisdictions on the basis of the relative number of business office contacts concerning state and interstate toll service. As stated *supra* note 3, this is referred to herein as the customer contact factor. Both the expense associated with telegram service and the costs in the exchange and directory advertising categories are assigned to the local exchange operation. The costs in the TWX category are apportioned based on billed TWX connections. Private line expenses are allocated based on the relative number of private line service accounts.

[7] The accounts affected include among others, Account 640, General Commercial Expenses, Account 261, Furniture and Office Equipment, Account 672, Relief and Pensions, Account 307, Social Security Taxes, and the wage portion of Accounts 661 through 667, General Expenses.

[8] Independent telephone companies would not be affected by the freeze or phase-down measures unless AT&T begins to provide its own billing inquiry services in their study areas. *See supra* note 5.

rate elements except billing and collection during any interim period. United supported recovery of the interim interstate allocation of Account 645 costs through charges for billing and collection services. Rochester Telephone opposed increasing the carrier common line charge to offset the loss of interstate billing inquiry revenues. The National Telephone Cooperative Association (NTCA) and the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) requested institution of rulemaking proceedings to revise the relevant provisions of the access charge rules. The International Communications Association (ICA) took the position that any shift in costs to the intrastate jurisdiction should be accompanied by a requirement that AT&T flow through its savings in the form of reductions in its interstate rates.

9. At present, most of the BOCs' access charge tariffs are designed to recover a large portion of the interstate allocation of Account 645 costs through charges for billing and collection services. Many of the BOCs have a separate billing inquiry rate element in their tariffs designed to recover Account 645 costs, although other BOCs do not have a separate charge for billing inquiry service. The remainder of the interstate Account 645 costs are recovered through a number of different access charge rate elements.[9] As previously stated, the interstate allocation of Account 645 also affects the allocation of a number of other accounts. Many of these accounts involve overhead expenses, with the resulting interstate cost allocation reflected in the charges for all of the access charge rate elements. Thus, the interstate allocation of Account 645 affects the costs underlying the rates for all of the access charge rate elements. Application of the present Part 69 rules would require adjustments in all of these rate elements to reflect the interim phase-down in the interstate allocation of Account 645 costs. We conclude that the administrative burdens involved in such an approach far outweigh any benefits, particularly since these are only interim measures to be used pending adoption of permanent changes in the allocation and cost recovery procedures for Account 645.

10. In order to eliminate the need for a complete refiling of the access charge tariffs to reflect the effect of the interim separations procedures adopted herein, we are directing the BOCs to file interim tariff revisions designed to reflect the full effect of the interim separations changes through changes in the rates for billing and collection services and establishment of a new traffic sensitive rate element.[10] The revenue recovery measures that we are adopting involve: (1) New billing and collection rates that no longer reflect Account 645 costs associated with message toll inquiry; and (2) a new traffic sensitive rate element that recovers the revenue requirements removed from the billing and collection rate elements net of the total change in the interstate revenue requirement due to these interim separations procedures.

11. Accordingly, we are directing the affected BOCs to file new billing and collection charges which reflect the removal of Account 645 costs associated with message toll inquiry from the pre-existing revenue requirement[11] for the billing and collection rate elements. A new interim traffic sensitive rate element is also to be filed to recover: (1) The pre-existing interstate revenue requirement for Account 645 costs associated with message toll inquiry[12] previously assigned to billing and collection services;[13] minus (2) the total reduction in the interstate revenue requirement due to the interim separations changes adopted herein. The total reduction in the interstate revenue requirement referred to above is to include the reduced interstate allocation of Account 645 costs as well as the effect of the change in the allocation of Account 645 on all other affected accounts.[14] This interim rate element is to apply only to AT&T traffic. Part 69 of the Commission's rules is hereby waived to the extent necessary to allow these tariff filings.

12. The BOCs for whom the phase-down begins on June 1, 1985, are to file revised access charge tariff provisions consistent with this *Order* not later than 15 days after its release, to be effective on 15 days' public notice. In cases where AT&T will begin to provide its own billing inquiry service after June 1, 1985, the affected BOC is to file access charge tariff revisions consistent with this *Order* on no less than 45 days' public notice, to be effective on the date when AT&T begins providing its own billing inquiry service for the study area involved.[15] The tariff provisions dealing with the new interim rate element are to contain a different rate for each month to reflect the monthly reduction in the interstate cost allocation.[16] As previously mentioned, this interim rate element is to remain in effect until the Commission adopts new provisions for the allocation and recovery of costs in Account 645 and other affected accounts. Since this interim rate element reflects the full reduction in the interstate allocation of Account 645, as well as other affected accounts, the

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[9] The rate elements involved include common line, line termination, local switching, intercept, information, local transport, and special access, among others.

[10] When AT&T discontinued billing inquiry service, it was able to terminate payment of the separate billing inquiry rate element contained in many of the BOC access charge tariffs absent continuing contractual obligations. Several of the BOCs have experienced revenue shortfalls as a result of this. The revised access charge provisions provided for in this *Order* are not designed to recover these forgone revenues. Absent unusual circumstances, rates for future periods can not be designed to recover revenue shortfalls from prior periods. *See Nader v. FCC*, 520 F.2d 182 (D.C. Cir. 1975). We conclude that the present circumstances do not justify a departure from this basic principle. AT&T's decision to implement its own billing inquiry service and Joint Board consideration of interim separations changes created uncertainty concerning the allocation of Account 645 costs. However, the BOCs were in no way precluded from seeking interstate rate adjustments during this period to recover the revenues that would have been generated by the billing inquiry rate element. Even if the Commission did not make the freeze in the interstate allocation of Account 645 costs applicable when AT&T instituted its own billing inquiry service, and instead allowed a temporary transfer of Account 645 costs to the intrastate jurisdiction, it is unlikely that the BOCs would have been able to recover these costs through intrastate rates.

[11] This refers to the revenue requirement underlying the currently effective access charge tariffs.

[12] The existing separations procedures divide the costs in Account 645 into the following categories: (1) Message toll and telegram; (2) exchange including semi-public; (3) directory advertising; and (4) TWX and private line services. *See supra* note 6. Here, we are concerned only with the interstate portion of Account 645 associated with message toll.

[13] The interstate allocation of Account 645 is recovered through a number of access charge rate elements. Only the billing and collection rate elements are affected by the interim tariff revisions that we are adopting.

[14] We anticipate that the relevant Account 645 costs will exceed the reductions in the interstate cost allocation described above throughout the limited period that this interim rate element is to be in effect. If this ceases to be the case, appropriate adjustments will be required in other access charge rate elements.

[15] A shorter period of public notice will have to be allowed if AT&T initiates its own billing inquiry service for a particular study area in June or July. In this event, there would not be adequate time for the BOC to prepare a tariff filing with 45 days' public notice and still have the filing become effective when AT&T begins providing its own billing inquiry service.

[16] The alternative to this approach involves a single charge applicable during the interim period, designed to reflect the average level of the interstate assignment over that period. We do not believe that this approach is desirable since it is not possible to predict exactly how long these interim measures will remain in effect.

BOCs are not to reflect the reduced interstate cost allocation in their charges for other access charge rate elements until we adopt permanent provisions for the allocation and recovery of these costs.[17]

13. These interim measures for the recovery of Account 645 costs will be effective until permanent provisions for the recovery of these costs become effective. The Joint Board's *Recommended Interim Order* requested comments concerning permanent measures for the allocation and recovery of Account 645 costs, and we expect that these filings will provide us with a sound record on which to base permanent revenue recovery procedures. Pending adoption of permanent measures, these interim procedures will allow a phase-down in the interstate access charge revenue requirement with a minimum of administrative burdens. A separate interim traffic sensitive rate element is preferable to requiring similar adjustments in the rates for billing and collection services because it will not create artificial incentives for AT&T to discontinue use of the billing and collection services offered by the BOCs. In addition, use of an interim traffic sensitive rate element will eliminate the possible need for further tariff revisions in the event AT&T discontinues some or all billing and collection services.[18] During this interim period, the Account 645 costs previously recovered through the charges for billing and collection services, reduced as described above, will be recovered from AT&T. Limiting the application of this new charge to AT&T during this interim period is appropriate since AT&T is the only interexchange carrier that has regularly used BOC billing and collection services including billing inquiry service. The question of permanent measures for the recovery of interstate Account 645 costs, including the issue of which interexchange carriers should pay these costs, will be considered in conjunction with permanent measures for the allocation of Account 645.

14. Reflecting the total reduction in the interstate revenue requirement due to the phase-down in the interstate allocation for Account 645 in this new rate element to be paid by AT&T means that other interexchange carriers that pay other access charge rate elements affected by this change in separations will not benefit from the phase-down during this interim period. This approach is appropriate on an interim basis in light of the fact that we are requiring AT&T to bear most of the burden of maintaining the higher interstate allocation of Account 645, even when AT&T, like the other interexchange carriers, performs its own billing inquiry service.

15. The measures for the recovery of Account 645 costs provided for in this *Order* certainly represent a "rough justice" solution. However, we believe that they are justified for a limited interim period, pending adoption of permanent rule changes, by the reduced administrative burdens involved, and come within our authority to provide for interim procedures which may not reflect the degree of precision which would be desirable in permanent measures. *See Mobil Alaska Pipeline Company v. United States*, 436 U.S. 631 (1978). If further comments or data filed in this proceeding lead us to conclude that these interim measures for the recovery of Account 645 costs are inappropriate, we will provide for any necessary adjustments when we adopt permanent revenue recovery measures. *See Bell Telephone Company of Pennsylvania v. FCC*, Case No. 84-1259 (D.C., Cir. May 14, 1985).

III. Ordering Clauses

16. Accordingly, it is ordered, that the revisions to Part 67 of the Commission's rules set out in Attachment A, are adopted.

17. It is further ordered, that Part 69 of the Commission's rules is waived to the extent necessary to allow recovery of the interstate allocation of the Account 645 costs as set out above.

18. It is further ordered, that the Bell Operating Companies for which the phase-down begins on June 1, 1985 are to file tariff revisions consistent with this *Order* 15 days after its release to be effective on 15 days' public notice. For this purpose, §§ 61.58 and 61.59 of the Commission's rules, 47 CFR §§ 61.58 and 61.59, are waived.

19. It is further ordered, that the remaining affected Bell Operating Companies are to file tariff revisions consistent with this *Order* on not less than 45 days' public notice.

20. It is further ordered, that the Secretary is to publish this *Interim Order* in the **Federal Register**.[19]

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 67—[AMENDED]

Appendix

Part 67 of Title 47, Chapter 1, of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 67 continues to read as follows:

Authority: Secs. 1, 4(i) and (j), 201–205, 221, 403, and 410 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), and (j), 201–205, 221, 403, and 410.

2. In § 67.365, paragraph (a)(1)(i) is revised to read as follows:

§ 67.365 Local commercial operations-account 645.

(a) * * *

(1) * * *

(i) In the case of study areas for which the American Telephone and Telegraph Co. (AT&T) subscribes to the billing inquiry service offered by the local exchange company, message toll expense is apportioned between state toll and interstate toll operations on the basis of the relative number of business office contacts relating to state toll and interstate toll messages. In the case of study areas for which AT&T begins to handle its own billing inquiries, the relative number of business office contacts relating to state toll and interstate toll messages is to be frozen at the average level for the twelve months preceding the date on which AT&T began to perform its own billing inquiry service. In the case of study areas for which AT&T begins to handle its own billing inquiries before May 31, 1985, the frozen factor described above will remain in effect through this date. For these study areas, beginning June 1, 1985, the frozen factor is to be reduced by 1/24th each month for twelve consecutive months or until adoption of permanent allocation procedures for Account 645, whichever comes first. In the case of study areas for which AT&T begins to handle its own billing inquiries

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[17] We do not expect that the Commission will adopt permanent provisions prior to the access charge tariff filings scheduled for July 2, 1985. Accordingly, the revised charges for the other access charge rate elements contained in those filings are not to reflect the reduced interstate cost allocation resulting from the interim separations procedures adopted herein.

[18] While we believe that use of this interim traffic sensitive rate element is desirable, we will consider requests for waiver to allow recovery of the reduced interstate cost allocation through other rate elements. In this regard, we note that NYNEX has filed tariff revisions designed to recover revenue previously recoverd through the charges for billing and collection service through another billing and collection rate element. New York Telephone Company Transmittal No. 684, filed April 10, 1985, effective May 25, 1985.

[19] These actions are taken pursuant to sections 1, 4(i) and (j), 201 through 205, 221, 403, and 410 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), and (j), 201 through 205, 221, 403 and 410. This *Interim Order* is to be effective upon release of the full text by the Commission. We find that there is good cause to make the *Order* effective at that time to allow the BOCs to go forward with the necessary tariff filings expeditiously.

after May 31, 1985, the relative number of business office contacts relating to state toll and interstate toll messages is to be frozen at the level described above. Beginning on the date on which AT&T begins to perform its own billing inquiry service for that study area, the frozen factor will be reduced by 1/24th each month for twelve consecutive months or until adoption of permanent allocation procedures for Account 645, whichever comes first.

* * * * *

[FR Doc. 85-15231 Filed 6-24-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-295; RM-4597]

FM Broadcast Stations in Salamanca, NY, and Bradford, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Exchange of unoccupied FM channels between Salamanca, New York, and Bradford, Pennsylvania, in response to a petition filed by Altair Communications, Inc. Action taken herein assigns Channel 252A to Salamanca, New York, and Channel 261A to Bradford, Pennsylvania.

EFFECTIVE DATE: July 26, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Report and Order (Proceeding Terminated)

Amendment of § 73.202(b), table of allotments FM broadcast stations. (Salamanca, New York, and Bradford, Pennsylvania) (MM Docket No. 84-295, RM-4597).

Adopted: June 7, 1985.

Released: June 19, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 14543, published April 12, 1984, proposing an exchange of channels between Salamanca, New York (Channel 261A), and Bradford, Pennsylvania (Channel 252A). The *Notice* was adopted in response to a petition filed by Altair Communications, Inc. ("petitioner") seeking to alleviate transmitter siting problems on Channel 261A at Salamanca, New York. Petitioner has filed comments reaffirming its intention to apply for Channel 252A, if assigned to Salamanca, New York.

2. Both channel substitutions can be made in compliance with the minimum distance separation requirements with a site restriction at Salamanca, New York, 4.9 miles southeast of that community. Canadian concurrence for the channel substitutions has been received.

3. Although Channel 252A at Bradford, Pennsylvania is currently unoccupied, there are three applicants for its use.[1] The applicants for the Bradford channel have filed no objections to the proposed substitution. Since the channel substitutions do not constitute major amendments the applicant's "cut-off" status will be protected and they will be permitted to amend their applications to specify operation on Channel 261A instead of Channel 252A without the opportunity for others to apply. See *Bountiful, Utah*, et al., 48 R.R. 2d 1322 (1982); and *Miami, Florida*, 45 FR 2811, published January 15, 1980.

4. In view of the foregoing and the fact that the channel substitutions would provide Salamanca with an increased opportunity for a FM service, we believe the public interest would be served by the assignment of Channel 252A to Salamanca, New York and the assignment of Channel 261A to Bradford, Pennsylvania.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204 and 0.283 of the Commission's Rules, it is ordered, That effective July 26, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended for the following communities:

City	Channel No.
Salamanca, New York	252A
Bradford, Pennsylvania	261A

6. It is further ordered, that the Secretary shall send a copy of this *Report and Order* to each of the applicants listed below:

Mountain Media, Inc., c/o Lauren A. Colby, Esq., 532 Pearl Street, Frederick, Maryland 21701

Bradcom, Inc., c/o Frederick A. Polner, Esq., Rothman, Gorden, Foreman & Groudine, 300 Grant Building, Pittsburgh, Pennsylvania 15219

Donald J. Fredeen, c/o James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, 2033 M Street, NW., Suite 203, Washington, D.C. 20036.

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-15227 Filed 6-24-85; 8:45 am]

BILLING CODE 6712-01-M

[1] The applicants are: Mountain Media, Inc. (BPH-830222AC); Donald J. Fredeen (BPH-830707AE) and Bradcom, Inc. (BPH-830714BB). In an Initial Decision Donald J. Fredeen's application was granted. Exceptions to the Initial Decision are now pending.

47 CFR Part 74

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action deletes § 74.731(j) of the Commission's Rules, which contains language identical to a rule eliminated previously which allowed the tendering of television translator applications that propose 1000 watt UHF operation on a channel for which a full service television station is authorized but not operating.

This action eliminates an inconsistency and corrects an obvious inadvertence in the Commission's Rules.

EFFECTIVE DATE: June 25, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Terry L. Haines, Mass Media Bureau, (202) 632-3894.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Television broadcasting.

Order

In the matter of oversight of the Radio and TV Broadcast rules.

Adopted: June 17, 1985.

Released: June 20, 1985.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on its oversight of its TV broadcast rules. A modification is

made herein to correct a minor inconsistency in the regulations governing the low power television and television translator service, as described below.

2. Prior to the establishment of the low power television service, the television translator rules limited UHF television translator stations to a maximum operating power of 100 watts. The only exception to this rule was set forth in § 74.703(a) of the Commission's Rules, which provided that applications for 1000 watt television translator stations would be permitted and given priority if they proposed to operate on a channel and community listed in § 73.606 of the Rules, the Television Table of Assignments. This exception was intended to encourage the use of unused or "idle UHF" channels in the Table, because objectionable interference to full service television stations would be unlikely to occur on an already assigned channel. *Television Translator Stations on Channels 14 Through 69*, 23 RR 2d 1504, 1507 (1971).

3. In the *Low Power Television Report and Order*, 51 RR 2d 476 (1982), the rules were amended to permit low power television and television translator applicants to specify a maximum operating power of 1000 watts UHF whether or not the applicant intended to operate on an assigned channel. The Commission determined that by permitting 1000 watt operation on any UHF channel and thus ensuring maximum flexibility in channel selection for all applicants, the most efficient use of the entire UHF band could be made. 51 RR 2d at 490–91. As a result, the provision of § 74.703(a) of the Rules allowing 1,000 watt operation only on an assigned channel was eliminated as meaningless.

4. In the 1984 low power television rulemaking, language in § 73.3516(c) of the Rules which allowed the tendering of televison translator applications that proposed 1000 watt UHF operation on an assigned channel for which a full service television station was authorized but not operating was deleted. *Low Power Television Service (Filing Windows)*, 57 RR 2d 234, 243 (1984). The Commission stated that this rule section was inadvertently not amended in the 1982 rulemaking to remove this language. Deletion of the language referring to the preference cured an inconsistency in the Rules since the preference for 1000 watt television translators on assigned channels had been eliminated previously.

5. Language virtually identical to that eliminated from § 73.3516(c) relating to the tendering of 1000 watt UHF television translator applications also appears in § 74.731(j) of the Rules and was, through obvious inadvertence, not deleted in the 1984 rulemaking. Because the Commission has decided that elimination of this exception is in the public interest, deletion of this inconsistent rule subsection is necessary as well.

6. This amendment is implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as this amendment imposes no additional burdens on licensees, applicants or the public and raises no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

7. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

8. Therefore, it is ordered, that pursuant to sections 4(i), 5(c)(1) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.83 of the Commission's Rules, Part 74 of the FCC Rules and Regulations is amended as set forth in the attached appendix, effective upon publication in the **Federal Register**.

9. For further information on this *Order*, contact Terry L. Haines, Mass Media Bureau, on (202) 632–3894.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix

PART 74—[AMENDED]

Part 74 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 74 continues to read:

Authority: Sec. 4(i), 5(c)(1) and 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154, 303.

§ 74.731 [Amended]

2. CFR 74.731, "Purpose and Permissible Service", is amended by removing paragraph (j) in its entirety.

[FR Doc. 85–15228 Filed 6–24–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 85–23, FCC 85–314]

Amendment of the Rules To Implement the Final Acts of the World Administrative Radio Conference, Geneva, 1979.

AGENCY: Federal Communications Commission.

ACTION: Order granting interim operating authority.

SUMMARY: This document grants a Motion for Interim Operating Authority filed by the American Radio Relay League, Inc., to permit operation in the band 1269.05–1269.85 MHz in the Amateur Satellite Service pending final action in this proceeding. This action is taken to allow FCC-licensed amateurs to use Mode "L" when contacting the Oscar 10 amateur satellite.

DATE: This interim operating authority is currently in effect and extends until final action is taken in this proceeding on the proposed allocation of the 1260–1270 MHz frequency band to the Amateur Radio Service.

ADDRESS: Federal Communications Commission Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of part 97 of the Commission's rules to implement the final acts of the World Administrative Radio Conference, Geneva, 1979.

Adopted: June 12, 1985.
Released: June 18, 1985.
By the Commission:

1. In the *Notice of Proposed Rule Making* in this proceeding, 50 FR 5797, February 12, 1985, we proposed to amend the rules in the Amateur Radio Service (47 CFR Part 97) to implement many of the decisions we made in the *Second Report and Order* in General Docket No. 80–739, 49 FR 2357, January 19, 1984, pursuant to the Final Acts of the 1979 World Administrative Radio Conference. The actions we proposed to take included addition of the 1260–1270 MHz frequency band to the Amateur Satellite Service pursuant to footnote 664 to the Table of Allocations in 47 CFR 2.106.

2. The American Radio Relay League, Inc., (ARRL) has filed a Motion for Interim Operating Authority to permit amateur satellite operation on the 1269.05–1269.85 MHz band segment on a non-interference basis during the pendency of this proceeding. The ARRL stated that FCC-licensed amateurs are currently at a disadvantage internationally because without access to this spectrum they cannot use Mode "L" operation (a 1269.05–1269.85 MHz uplink and a 436.95–436.15 MHz downlink passband) on the Oscar 10 amateur satellite. Mode L is activated on certain days of the week by the AMSAT–DL operator in the Federal Republic of Germany. At those times, FCC-licensed amateur operators are currently denied the use of Oscar 10. See Comments of the ARRL at 7.

3. For the reasons stated above we conclude that it is in the public interest to permit interim use of Mode "L" operation by FCC-licensed amateur operators. We have coordinated this matter with the Interdepartmental Radio Advisory Committee (IRAC). We have been informed that members of IRAC have no objection to such interim operation.

4. Accordingly, it is ordered, pursuant to sections 4(i) and 303(r) of the Communications Act, as amended (47 U.S.C. 154(i) and 303(r)) that during the pendency of this proceeding amateur operators may use the frequency band 1269.05–1269.85 MHz in the Amateur Satellite Service on a secondary non-interference basis. This interim authority shall remain in effect until final action is taken in this proceeding on the proposal to implement allocation of the 1260–1270 MHz frequency band to the Amateur Satellite Service.

5. It is further ordered, that the Motion for Interim Operating Authority filed by the American Radio Relay League, Incorporated, in this proceeding on February 6, 1985, is granted.

6. It is further ordered, that this interim operating authority is effective on the date of release of this *Order.*

7. For further information about this proceeding contact John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–15230 Filed 6–24–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

[Docket No. 40673–4073]

Fraser River Sockeye and Pink Salmon Regulations

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

ACTION: Final rule.

SUMMARY: NOAA issues this notice of final rule to reprint in the **Federal Register** the International Pacific Salmon Fisheries Commission's 1985 regulations, which implement the Convention for Protection, Preservation, and Extension of the Sockeye Salmon and Pink Salmon Fisheries of the Fraser River System between the United States and Canada (Convention) and are in accord with the Pacific Salmon Treaty of 1985 (the Treaty) between the United States and Canada, which, at the termination of the Convention on December 31, 1985, will provide management authority for these fisheries. This notice and reprinting discharges a foreign affairs obligation of the United States. These regulations are necessary to achieve the objectives of the Convention and the Treaty in 1985. The intended effect of the regulations is to ensure adequate escapement of each spawning unit and catches by the United States of sockeye and pink salmon in numbers stipulated in the Treaty. These rules do not apply to United States Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places, when they are fishing in accord with regulations promulgated by the Department of the Interior.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, Regional Director, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115, telephone: 206–526–6150.

SUPPLEMENTARY INFORMATION: On May 10, 1985, the International Pacific Salmon Fisheries Commission (the Commission) forwarded proposed regulations for the 1985 commercial fishing season for sockeye and pink salmon in Convention Waters to the Government of the United States for approval, as required by Article VI of the Convention between the United States and Canada. The United States has provisionally approved those regulations, except as they apply to United States Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places, including a limited Indian Fishery on the early Stuart run. Regulations for treaty Indian fishing are published by the Department of the Interior at 25 CFR Part 249.

Regulations for 1985 are similar to regulations adopted by the Commission in 1984 to implement the Convention (49 FR 25877, June 25, 1984). The 1985 regulations adopt the 1984 schedules of fishing by gill nets, purse seines, and reef nets to 1985 calendar dates.

The 1985 regulations for sockeye salmon fishing provide for a 7-week season with one day of fishing per week for the non-Indian fishery during the time sockeye salmon are the major target species in Convention Waters and two days per week during the time pink salmon are the target species. This pre-season schedule may be adjusted during the season by the Commission to meet the following paramount objectives of the Convention and the Treaty with Canada: (1) Conservation, i.e., properly-timed escapement through the U.S. fisheries of adequate numbers of the various races of salmon for scheduled fisheries in Canada and for spawning purposes, and (2) attainment of the total U.S. catch of 1.73 million sockeye salmon and 3.6 million pink salmon, as provided for in the Treaty. Such changes in the fishing schedule often occur as the season progresses because pre-season estimates of run size, catches, racial compositions of the salmon runs, migration routes (sockeye salmon may reach the mouth of the Fraser River by passing through the Straits of Juan de Fuca or through Johnstone Straits at the north end of Vancouver Island), and timing of the runs may vary substantially from actual events during the season.

These regulations for United States non-treaty Indian fisheries for sockeye and pink salmon will be effective in High Seas Convention Waters as well as in Convention Waters east of the Bonilla Point-Tatoosh Island line. These regulations are necessary to achieve the objectives of the Convention and the Treaty, and provide for a rational fishery by U.S. fishermen.

50 CFR Part 371 gives notice of the content of regulations adopted by an international commission that are in force for the United States and its citizens under the agreements in the Convention and the Treaty. Reprinting the Commission's regulations in the **Federal Register** helps fulfill the United States' Convention and Treaty obligations to make the Commission's regulations effective and, as such, involves a foreign affairs function not subject to the requirements of the

Administrative Procedure Act (5 U.S.C. 553), E.O. 12291, or the Regulatory Flexibility Act.

List of Subjects in 50 CFR Part 371

Fish, Fishing, Fisheries, International organizations, Reporting and recordkeeping requirements.

Dated: June 19, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 371—FRASER RIVER SOCKEYE AND PINK SALMON REGULATIONS

50 CFR Part 371 is amended as follows:

1. The authority citation for Part 371 is revised to read as follows:

Authority: 16 U.S.C. 776–776f and 16 U.S.C. 3631–3644.

2. Section 371.9 and Appendix A are revised to read as follows:

§ 371.9 Commission regulations.

Appendix A sets forth regulations of the Commission for the 1985 fishing season. These regulations, as may be modified from time to time by emergency orders of the Commission and disseminated under § 371.6 of this part, are the "Regulations of the Commission", violation of which is unlawful under the Act.

Appendix A—International Pacific Salmon Fisheries Commission Regulations

1. (1) No person shall retain pink salmon taken by commercial trolling gear in those waters westerly of a straight line drawn from Tatoosh Island Lighthouse in the State of Washington to Bonilla Point in the Province of British Columbia from the 15th day of June, 1985, to the 14th day of July, 1985, both dates inclusive.

(2) Regulatory control of the waters described in subsection (1) of this section shall be relinquished effective 12:01 a.m. September 15, 1985.

2. (1) No person shall fish for sockeye or pink salmon with nets in Puget Sound Salmon Management and Catch Reporting Areas 4B, 5, 6 and 6C from the 23rd day of June, 1985, to the 20th day of July, 1985; from the 11th day of August, 1985, to the 17th day of August, 1985; and from the 25th day of August, 1985, to the 14th day of September, 1985; all dates inclusive.

(2) No person shall fish for sockeye or pink salmon with purse seines in the waters described in subsection (1) of this section:

(a) From the 21st day of July, 1985, to the 10th day of August, 1985, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Tuesday of each week; and

(b) From the 18th day of August, 1985, to the 24th day of August, 1985, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Tuesday and Wednedsay.

(3) No person shall fish for sockeye or pink salmon with gill nets in the waters described in subsection (1) of this section.

(a) From the 21st day of July, 1985, to the 27th day of July, 1985, and from the 4th day of August, 1985, to the 10th day of August, 1985, all dates inclusive, except from seven o'clock in the afternoon of Tuesday to half past nine o'clock in the forenoon of Wednesday of each week; and

(b) From the 28th day of July, 1985, to the 3rd day of August, 1985, both dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday; and

(c) From the 18th day of August, 1985, to the 24th day of August, 1985, both dates inclusive, except from six o'clock in the afternoon of Tuesday to nine o'clock in the forenoon of Wednesday and from six o'clock in the afternoon of Wednesday to nine o'clock in the forenoon of Thursday.

3. No person shall fish for sockeye or pink salmon with nets in Puget Sound Salmon Management and Catch Reporting Area 6A from the 23rd day of June, 1985, to the 14th day of September, 1985, both dates inclusive.

4. (1) No person shall fish commercially for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A from the 23rd day of June, 1985, to the 20th day of July, 1985; from the 11th day of August, 1985, to the 17th day of August, 1985; and from the 15th day of September, 1985, to the 21st day of September, 1985; all dates inclusive.

(2) No person shall fish for sockeye or pink salmon with purse seines in the waters described in subsection (1) of this section:

(a) From the 21st day of July, 1985, to the 10th day of August, 1985, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Tuesday of each week; and

(b) From the 18th day of August, 1985, to the 14th day of September, 1985, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Tuesday and Wednesday of each week.

(3) No person shall fish for sockeye or pink salmon with gill nets in the waters described in subsection (1) of this section:

(a) From the 21st day of July, 1985, to the 27th day of July, 1985, and from the 4th day of August, 1985, to the 10th day of August, 1985, all dates inclusive, except from seven o'clock in the afternoon of Tuesday to half past nine o'clock in the forenoon of Wednesday of each week; and

(b) From the 28th day of July, 1985, to the 3rd day of August, 1985, both dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday; and

(c) From the 18th day of August, 1985, to the 24th day of August, 1985, and from the 1st day of September, 1985, to the 7th day of September, 1985, all dates inclusive, except from six o'clock in the afternoon of Tuesday to nine o'clock in the forenoon of Wednesday and from six o'clock in the afternoon of Wednesday to nine o'clock in the forenoon of Thursday of each week; and

(d) From the 25th day of August, 1985, to the 31st day of August, 1985, and from the 8th day of September, 1985, to the 14th day of September, 1985, all dates inclusive, except from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday and from six o'clock in the afternoon of Tuesday to nine o'clock in the forenoon of Wednesday of each week.

(4) No person shall fish for sockeye or pink salmon with reef nets in the waters described in subsection (1) in this section:

(a) From the 21st day of July, 1985, to the 27th day of July, 1985, and from the 4th day of August, 1985, to the 10th day of August, 1985, all dates inclusive, except from half past seven o'clock in the forenoon to half past nine o'clock in the afternoon of Monday of each week; and

(b) From the 28th day of July, 1985, to the 3rd day of August, 1985, both dates inclusive, except from half past six o'clock in the forenoon to eight o'clock in the afternoon of Monday; and

(c) From the 18th day of August, 1985, to the 24th day of August, 1985, and from the 1st day of September, 1985, to the 7th day of September, 1985, all dates inclusive, except from six o'clock in the forenoon to nine o'clock in the afternoon of Monday and from five o'clock in the forenoon to nine o'clock in the afternoon of Tuesday of each week; and

(d) From the 25th day of August, 1985, to the 31st day of August, 1985, and from the 8th day of September, 1985, to the 14th day of September, 1985, all dates inclusive, except from half past five o'clock in the forenoon to six o'clock in the afternoon of Monday and from five o'clock in the forenoon to nine o'clock in the afternoon of Tuesday of each week.

5. No person shall fish for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Area 7B, except for those sockeye and pink salmon taken in nets having mesh not less than 7 inches as authorized for the taking of chinook salmon by the Director of Fisheries of the State of Washington, from the 23rd day of June, 1985, to the 20th day of July, 1985, both dates inclusive.

6. No person shall fish commercially for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Area 7D from the 23rd day of June, 1985, to the 20th day of July, 1985, both dates inclusive.

7. (1) No person shall fish commercially for sockeye or pink salmon in that portion of the waters described in subsection (1) of section 4 lying northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia from the 25th day of August, 1985, to the 31st day of August, 1985, both dates inclusive.

(2) No person shal fish commercially for sockeye or pink salmon in that portion of the waters described in subsection (1) of section 4 lying westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia from the 1st day of September, 1985, to the 28th day of September, 1985, both dates inclusive.

8. The following Convention Waters are excluded:

(1) Puget Sound Salmon Management and Catch Reporting Areas 6B, 6D, 7C.

(2) Preserves previously established by the Director of Fisheries of the State of Washington for the protection of other species of food fish.

All times hereinbefore mentioned shall be Pacific Daylight Saving Time.

[FR Doc. 85-15171 Filed 6-20-85; 11:28 am]

BILLING CODE 3510-22-M

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50 CFR Parts 611 and 663

[Docket No. 40446-4072]

Pacific Coast Groundfish Fishery

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

ACTION: Final rule; technical amendment and correction.

SUMMARY: In this document NOAA amends the regulations implementing the Pacific Coast Groundfish Fishery Management Plan which governs groundfish caught in the fishery conservation zone (3-200 nautical miles offshore) off Washington, Oregon, and California. This amendment confirms the intent of the plan to prohibit fishing for flatfish with trawl mesh smaller than 4.5 inches. This document also corrects an editing error in the foreign fishing regulations.

DATES: This action will be effective on July 25, 1985. Comments will be accepted until July 15, 1985.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg. 1, Seattle, WA 98115; or E. C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150; or E. C. Fullerton, 213-548-2575.

SUPPLEMENTARY INFORMATION: Regulations implementing the Pacific Coast Groundfish Management Plan (FMP), as amended, 50 CFR Parts 611 and 663, were published on October 5, 1982 (47 FR 43964), March 27, 1984 (49 FR 11640), and July 5, 1984 (49 FR 27518). The FMP manages the harvest of flatfish with gear restrictions, stating that the mesh size must be 4.5 inches or larger in the directed trawl fishery for flatfish. Flatfish stay close to the sea floor and generally are harvested with bottom trawls, trawls which drag the footrope of the net along the sea floor. Because of their efficiency, bottom trawls must have mesh size of at least 4.5 inches to avoid excessive harvest of juvenile flatfish. To date, gear management has been effective and the overharvest of juvenile flatfish has not occurred.

At its April 1984 meeting, the Pacific Fishery Management Council (Council) heard testimony that some fishermen were circumventing this mesh-size provision by attaching tickler chains to roller trawls. Roller trawls, usually used to harvest rockfish, have large rollers or bobbins attached to the footrope so that it is raised above the sea floor and is less likely to snag on the uneven bottom where rockfish are found. The minimum mesh size for roller gear in the Vancouver, Columbia, and Eureka statistical areas (in the fishery conservation zone north of 40°30′ N. latitude) is 3 inches. By dragging a tickler chain along the sea floor in front of the footrope, roller gear with 3-inch mesh effectively harvests juvenile flatfish.

This activity, contrary to the intent of the FMP, is not clearly prohibited in the implementing regulations at 50 CFR Part 663. In order to make the regulations and fishing practices consistent with the intent of the FMP, the regulations are revised to prohibit use of tickler chains on roller trawls with mesh smaller than 4.5 inches. Accordingly, the regulation at § 663.26(b)(7) is divided into two subparagraphs (A) and (B), but only (B) contains new information.

In the foreign fishing regulations at § 611.70, paragraph (j)(8)(iii) which deals with both foreign and joint venture reporting requirements, was mistakenly placed in subparagraph (8) dealing only with joint ventures. Accordingly, paragraph (j)(8)(iii) is relocated at (j)(9)(iii) with no change in the text.

If written comments are received during the comment period, the Director, Northwest Region, NMFS, will reconsider this action. A subsequent notice will be published in the **Federal Register** if it is necessary to modify, supersede, or rescind this action.

Classification

The Director, Northwest Region, NMFS, has determined that this rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the FMP, the Magnuson Fishery Conservation and Management Act, and other applicable law.

The Council prepared an environmental impact statement (EIS) for the FMP; a notice of availability was published. There will be no change in environmental impact from that determined in the EIS as a result of this rule.

The Council also prepared a regulatory impact review and regulatory flexibility analysis as a part of the FMP which described the estimated ranges of impacts from implementation of the FMP and its regulations and the effects on small businesses. There will be no change in impacts from those previously determined as a result of this rule.

This is a technical amendment to a final rule and as such not a rulemaking requiring review under Executive Order 12291.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

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

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Administrative practice and procedures, Fish, Fisheries, Fishing.

Dated: June 19, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Parts 661 and 663 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

§ 611.70 [Amended]

2. In § 611.70, paragraph (j)(8)(iii) is redesignated as (j)(9)(iii).

PART 663—[AMENDED]

3. The authority citation for Part 663 continues to read as follows:

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

4. In § 663.26, paragraph (b)(7) is revised to read as follows:

§ 663.26 Gear restrictions.

* * * * *

(b) * * *

(7) *Roller trawl or bobbin trawl.* In the Eureka, Columbia, and Vancouver subareas, if trawl mesh size less than 4.5 inches is used—

(A) Rollers or bobbins must be at least 14 inches in diameter and free to rotate, with at least two rollers or bobbins equally spaced on each side of the footrope within 10 feet of the center of the footrope of the net; and

(B) Continuous chain, rope, or cable (commonly known as a "tickler chain") which contacts the sea floor ahead of the rollers may not be used with a roller or bobbin trawl.

* * * * *

[FR Doc. 85-15170 Filed 6-24-85; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Parts 611, 672 and 675

[Docket No. 41046-4171]

Foreign Fishing, Groundfish of the Gulf of Alaska, and Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) under provisions of the fishery management plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Groundfish are apportioned according to the regulations implementing the FMP. No action is being taken at this time for Groundfish of the Gulf of Alaska. The purpose of this action is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, Alaska Region, NMFS) 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

The total allowable catches (TACs) for various groundfish species are established under the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; optimum yields (OYs) are established by the FMP for Groundfish of the Gulf of Alaska. These FMPs were developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act and are implemented by rules appearing at 50 CFR 611.92 and 611.93 and Parts 672 and 675. The TACs and OYs are apportioned initially among DAH, reserves, and TALFF. Each reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b). In addition, surplus amounts of both components of DAH [DAP (domestic processed fish) and JVP (joint venture processed fish)] may be apportioned to TALFF during the fishing year under those same regulations.

The initial DAPs and JVPs for 1985 were based in part on the projected needs of the U.S. industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director) to fishermen and processors in September 1984. The Regional Director initiated another survey in March 1985, for which the results are now complete.

Survey results indicate that more than half of the U.S. fisheries (except the Gulf of Alaska JVP fisheries) will occur during the second half of the year; therefore it is impossible to determine at this time what amounts of DAH, if any, will prove excess to the needs of U.S. fishermen and the reapportionment of any DAH to TALFF would be inappropriate. Reapportionment of DAH and any reserves not released by this action will be considered at a later date.

1. Bering Sea and Aleutian Islands Area (BSA).

As soon as practicable after April 1, June 1, and August 1, or on other dates as are determined appropriate, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, and apportions to TALFF the remaining portion of the reserve. When the initial DAH and TALFF for 1985 were established (50 FR 11369, March 21, 1985), DAH and TALFF were supplemented with 31,890 metric tons (mt) from the initial 300,000-mt reserve, thereby reducing the reserve to 268,110 mt. The April inseason adjustment (50 FR 19946, May 13, 1985) supplemented DAH and TALFF by an additional 134,055 mt from the reserve, reducing it to 134,055 mt. This action supplements DAH and TALFF by an additional 11,035 mt from the reserve, reducing it to 23,020 mt. The changes are summarized in Table 1.

Apportionments to DAH

To provide for bycatch in domestic flatfish fisheries, 50 mt of the non-specific reserve is transferred to the turbot DAP. To provide for proposed increases in joint venture fisheries, 17,018 mt of the non-specific reserve is transferred to the yellowfin sole JVP, and 825 mt of the non-specific reserve is transferred to the Aleutian Islands Area rockfish JVP. To provide for increased bycatches in the joint venture fisheries, 2,000 mt of the non-specific reserve is transferred to the "other species" JVP.

Apportionments to TALFF

Amounts from the reserve are transferred to TALFF as follows: Bering Sea pollock, 75,562 mt; Aleutian Islands Area pollock, 7,500 mt; and Pacific cod, 8,080 mt. Based on the industry surveys discussed above and reports of catch to date, it is found that these fish will not be taken by U.S. fishermen during 1985.

2. Gulf of Alaska.

Apportionments to DAH and TALFF will be considered at a later date.

Comments and Responses

In accordance with 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. One comment was received.

Comment: In the Bering Sea/Aleutians, the DAP and JVP for Pacific cod are sufficient; therefore, reserves should be allocated to the Pacific cod TALFF.

Response: The recommendation of the North Pacific Fishery Management Council, based on industry agreements, was to allow a 35,000-mt directed foreign longline fishery for Pacific cod in the BSA. This action increases the Pacific cod TALFF to 47,680 mt, which allows for that 35,000 mt plus 12,680 mt in bycatch for the foreign trawl fisheries (an adequate amount for the 1,056,707 mt of target trawl species in TALFF).

Classification

This action is taken under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), and complies with Executive Order 12291.

In view of the prior notice provided in the authorizing regulation regarding the dates after which apportionment of reserves and reassessment of DAH are to occur, together with the need to avoid disruption of U.S. and foreign fisheries and to afford a reasonable opportunity to achieve OY, the Agency has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries.

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

Dated: June 19, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

	Current	This action	Revised
Pollock (Bering Sea area only TAC=1,200,000; EY=1,100,000):			
DAP	17,680		17,680
JVP	393,584		393,584
TALFF	713,174	+75,562	788,736
Pollock (Aleutians area only TAC=100,000; EY=100,000):			
DAP	10,540		10,540
JVP	13,966		13,966
TALFF	67,994	+7,500	75,494
Pacific cod (TAC=200,000; EY=347,400):			
DAP	100,000		100,000
JVP	63,190		63,190
TALFF	39,600	+8,080	47,680
Yellowfin sole (TAC=226,900; EY=310,000):			
DAP	1,700		1,770
JVP	82,200	+17,018	99,218
TALFF	125,912		125,912
Turbots (TAC=42,000; EY=57,500):			
DAP	0	+50	50
JVP	5,000		5,000
TALFF	30,700		30,700
Rockfish (Aleutians area only TAC=5,500; EY=7,830):			
DAP	30		30
JVP	960	+825	1,785
TALFF	3,685		3,685
Other species (TAC=37,580; EY=51,200):			
DAP	2,500		2,500
JVP	3,000	+2,000	5,000
TALFF	28,943		28,943
Total (TAC=2,000,900) (includes other species not affected by this action):			
DAP	141,960	+50	141,910
JVP	663,072	+19,843	682,915
RES	134,055	−111,035	23,020
TALFF	1,061,013	+91,142	1,152,155

[FR Doc. 85-15169 Filed 6-20-85; 11:29 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 122
Tuesday, June 25, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 713

[Amdt. 4]

Feed Grain, Rice, Cotton, and Wheat Programs for 1984 and Subsequent Crop Years; Wheat Acreage Allotments and Marketing Quotas for 1986 Crop

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations at 7 CFR Part 713 which set forth the provisions of the feed grain, rice, cotton, and wheat programs for 1984 and subsequent crop years. The proposed rule sets forth the terms and conditions for administering the provisions of the Agricultural Adjustment Act of 1938, as amended, (the "1938 Act") with respect to wheat acreage allotments and marketing quotas for the 1986 crop.

DATE: Comments must be received on or before July 15, 1985 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Cotton, Grain, and Rice Price Support Division, ASCS, Room 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: William Harshaw, ASCS (202) 381-9878. A Preliminary Regulatory Act Analysis and an Initial Regulatory Flexibility Analysis for this action are available upon request from Bruce R. Weber, Agricultural Marketing Specialists, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447-4146.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this final rule applies are: Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Rice Production Stabilization, 10.065; and Wheat Production Stabilization, 10.058; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is applicable to the provisions of this proposed rule and an Initial Regulatory Flexibility Analysis has been completed and is available upon request.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560-0092, 0560-0650, 0560-0091, 0560-0030, and 0560-0071 have been assigned.

Legislative Background

Sections 332, 333, 334, and 336 of the 1938 Act provide for the establishment of acreage allotments and marketing quotas for wheat.

Acreage allotments were last in effect for the 1977 crop of wheat. Section 332 of the 1938 Act provides that the Secretary shall proclaim a national marketing quota for wheat if the Secretary determines that the supply of wheat, in the absence of such a program, would likely be excessive. A formula for computing the national marketing quota for wheat is set forth in Section 332. Section 333 of the 1938 Act provides that the Secretary shall proclaim a national acreage allotment for wheat which shall be the number of acres the Secretary determines would produce a quantity of wheat equal to the national marketing quota. Section 334 of the 1938 Act provides for apportioning the national acreage allotment among States, for apportioning the State allotment among counties, and for apportioning the county allotment among farms.

Pub. L. 74, 77th Cong., as amended (7 U.S.C. 1330, 1340), sets forth provisions for determining farm marketing quotas and assessing marketing quota penalties whenever marketing quotas are in effect for a crop of wheat. Under those provisions the farm marketing quota for any crop of wheat is planted to the crop of wheat on the farm less the farm marketing excess. In general, the farm marketing excess is an amount equal to the actual production of the number of acres of wheat on the farm in excess of the farm acreage allotment for such crop. If producers in a referendum approve marketing quotas, regulations will be issued with respect to the computation of the farm marketing quota and the assessment of marketing penalties.

Section 336 of the 1938 Act provides that, if a national marketing quota for wheat for one, two, or three marketing years is proclaimed, the Secretary is required to conduct a referendum, by secret ballot, of producers to determine whether they favor or oppose marketing quotas for a marketing year for which a national marketing quota is proclaimed. If more than one-third of the producers voting oppose marketing quotas, the Secretary is required to proclaim that marketing quotas will not be in effect for the year.

Proposed Rule

Since acreage allotments and marketing quotas may be in effect for the 1986 crop of wheat, this proposed rule would amend 7 CFR Part 713 to set forth provisions which would be applicable should acreage allotments and marketing quotas become effective for the 1986 crop of wheat.

Section 334 of the 1938 Act provides for a reserve of not to exceed 1 percent of the national acreage allotment for wheat to be used to adjust county allotments because of reclamation and other new areas coming into production of wheat or because a county had a low ratio of wheat acreage allotment to cropland on old wheat farms. Section 334 also provides for a special acreage reserve of not to exceed 1 million acres to make adjustments because an old wheat farm had a low ratio of wheat acreage allotment to cropland. Finally, Section 334 provides for a State reserve of not to exceed 3 percent of the State acreage allotment for wheat to adjust county acreage allotments in order to provide fair and equitable allotments.

It is proposed that all reserves for 1986 be limited to 2 percent of the State acreage allotment for wheat. The reserve will be used to correct errors, establish acreage allotments for new wheat farms, and make adjustments as needed to establish a fair and equitable acreage allotment.

Section 713.201 of this proposed rule provides for the distribution of the national acreage allotment for wheat for the 1986 crop year among States on the basis of each State's wheat acreage allotment for the 1977 crop year, with adjustments for loss of allotment acreage, transfers, and established crop rotation practices.

Section 713.202 of this proposed rule provides for the distribution of the State acreage allotment for wheat for the 1986 crop among counties on the basis of each county's wheat acreage allotment for the 1977 crop year, adjusted as determined to be necessary by the State committee for the purpose of determining a fair and equitable county allotment.

Section 713.203 of this proposed rule provides for the distribution of the county acreage allotment for wheat for the 1986 crop year among old wheat farms on the basis of each farm's wheat acreage allotment for the 1977 crop year, adjusted for established crop-rotation practices and such other factors as the Deputy Administrator, State and County Operations, ASCS, determines should be considered for the purpose of establishing a fair and equitable allotment.

Section 713.204 of this proposed rule adds a provision for obtaining a new farm wheat acreage allotment from the reserve. In order to obtain a new farm acreage allotment, the farm operator must have experience in producing wheat but must not have an interest in another farm for which a 1986 wheat acreage allotment has been established. The farm for which a new farm wheat acreage allotment is established must not have an existing wheat acreage allotment but must be suited to the production of wheat.

Section 713.205 of the proposed rule has also been added to provide for a referendum on wheat marketing quotas if the Secretary proclaims that wheat marketing quotas will be in effect for the 1986 crop year. The regulations found at 7 CFR Part 717 govern the conduct of marketing quota referenda. Section 713.205 would make Part 717 also applicable to any wheat marketing quota referendum. Section 713.205 would further specify which producers shall be eligible to vote in a wheat marketing quota referendum. In general, any person who is a producer of wheat on a farm for which a wheat acreage allotment is established for a crop year will be an eligible voter with respect to the wheat marketing quota referendum conducted for such year.

In order for producers to make informed decisions before voting in a wheat marketing quota referendum, they should be notified of the wheat acreage allotment established for the farm for the 1986 crop year. Because time is required to prepare for holding such a referendum, it is necessary that the final rule on these matters be published as soon as possible. Accordingly, comments on this proposed rule must be received on or before July 15, 1985 in order to be assured of consideration.

List of Subjects in 7 CFR Part 713

Acreage allotments, Wheat.

Proposed Rule

Accordingly, it is proposed that Part 713 of Subchapter A of Chapter VII of Title 7 of the Code of Federal Regulations be amended as follows:

PART 713—[AMENDED]

1. A new subpart to Part 713 is added to read as follows:

Subpart—Wheat Acreage Allotments and Marketing Quotas for 1986 Crop

Authority: Secs. 301, 332, 333, 334, 336; 52 Stat. 38, as amended, 53, as amended, 54, as amended, 55, as amended; 7 U.S.C. 1301, 1332, 1333, 1334, 1336; Pub. L. 74, 77th Cong., 55 Stat. 203, as amended; 7 U.S.C. 1330, 1340.

Subpart—Wheat Acreage Allotments and Marketing Quotas for 1986 Crop

§ 713.200 National wheat acreage allotment.

The national wheat acreage allotment for the 1986 crop year has been determined and announced by the Secretary to be 54 million acres.

§ 713.201 Apportionment of the national wheat acreage allotment among States.

The national allotment of wheat for the 1986 crop year is distributed on a pro rata basis to the States on the basis of each State's wheat acreage allotment for 1977, adjusted for: (a) The administrative transfer of farms between States; (b) decreases resulting from farms no longer engaged in agricultural production, farms losing an allotment for failure to plant wheat during 1975–77, and farms voluntarily relinquishing their allotment; and (c) established crop-rotation practices in the States of Colorado, Oregon, Utah, and Washington. State wheat acreage allotments are available for inspection in State ASCA offices.

§ 713.202 Apportionment of the 1986 State acreage allotment of wheat among counties.

(a) The State acreage allotment for wheat for the 1986 crop year, less reserves for new farms, appeals and corrections, is apportioned among the counties in the State on the basis of each county's allotment for 1977, adjusted for:

(1) The administrative transfer of farms between counties;

(2) Acreage allocated to new farms from the State reserve;

(3) Acreage removed from farms no longer engaged in agricultural production, farms removed from the eminent domain pool, farms losing an allotment for failure to plant wheat during the period 1975–77, and farms voluntarily relinquishing their allotment; and

(b) Such other factors as determined necessary by the State committee to provide for a fair and equitable apportionment of the State wheat acreage allotment among the counties in the State and among farms in the county. County wheat acreage allotments are available for inspection in the county ASCS office.

§ 713.203 Farm wheat acreage allotment.

(a) *How obtained.* Except as otherwise provided in § 713.204, the farm wheat acreage allotment for the 1986 crop year shall be determined by the county committee by apportioning the county wheat acreage allotment among farms in the county on the basis of the farm wheat allotment for 1977, adjusted to reflect established crop-rotation practices and such other factors as the Deputy Administrator determines should be considered for the purpose of establishing a fair and equitable allotment. Allotments determined as set forth in this paragraph shall be approved by a representative of the State committee.

(b) *Reducing allotments.* Notwithstanding any other provisions of this subpart, farm wheat acreage allotments shall be reduced as follows:

(1) *Permanent reductions.* The wheat acreage allotment shall be reduced:

(i) To the extend requested in writing by the farm owner not later than the date established by the State committee;

(ii) To the extent the acreage of cropland on the farm is permanently removed from agricultural production;

(iii) If the 1977 wheat planted and considered planted acreage was less than 90 percent of the 1977 wheat acreage allotment, the 1986 preliminary wheat acreage allotment shall be reduced by the percentage by which the 1977 planted and considered planted acreage was less than the 1977 allotment, but such reduction shall not exceed 20 percent of the 1977 allotment. If the wheat planted and considered planted acreage was zero for the years 1975–77, the acreage allotment shall be reduced to zero.

(2) *Reductions for current year.* The 1986 wheat acreage allotment shall be reduced to the extent that the wheat acreage allotment exceeds the amount of cropland, which, under normal conditions, could reasonably be expected to produce wheat.

(c) *Correcting allotments.* In any case in which the owner or operator of a farm believes that the wheat acreage allotment established for a farm is incorrect, includng cases where records of 1977 allotments are missing, the owner or operator of the farm may file an appeal with the county committee to have the wheat acreage allotment corrected. Such appeals shall be handled in accordance with the administrative Appeal Regulations, 7 CFR Part 780. The total increase in wheat acreage allotments in any county approved under this paragraph (c) shall not exceed the total reserve established for the county from the 1986 wheat acreage allotment established for the State.

§ 713.204 New farm allotments.

(a) *Written application.* The farm owner or operator must file an application for a new farm wheat acreage allotment for the 1986 crop year at the office of the county committee where the farm is adminstratively located on or before July 1, 1985 in the winter wheat area and February 15, 1986 in the spring wheat area. The spring wheat area shall include any area where spring wheat is normally grown, even though winter wheat is also grown in the area.

(b) *Eligibility requirements for owner and operator.* A new farm wheat acreage allotment may be established if each of the following conditions is met:

(1) *Interest in another farm.* Neither the farm owner nor the farm operator must own, have an ownership interest in, or operate any other farm in the United States for which a 1986 wheat acreage allotment is established.

(2) *Previous experience.* The applicant must have produced wheat for harvest in the 1985 crop year or in an earlier crop year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities necessary to the production of wheat on the farm.

(4) *Income requirement.* The operator must expect to obtain during the 1986 crop year more than 50 percent of the operator's income from the production of agricultural commodities or products. The operator's income shall be determined in accordance with instruction issued by the Deputy Administrator.

(c) *Eligibility conditions for the farm.* A new farm wheat acreage allotment may be established if each of the following conditions is met:

(1) *Current allotment.* On the date of approval of a new farm what acreage allotment, the farm must not have a wheat acreage allotment established for the 1986 crop of wheat.

(2) *Available land, type of soil, and topography.* The available land, type of soil, and topography of the land on the farm must be suitable for wheat production. Also, continuous production of wheat must not result in an undue erosion hazard.

(d) *Limitations.* (1) The county committe shall limit the wheat acreage allotment to the smaller of the allotment requested or the wheat acreage expected to be planted for harvest on the farm for the 1986 crop year.

(2) The total new farm wheat acreage allotments approved in a State for the 1986 crop shall not exceed a reserve established by the State committee of not more than 1 percent of the total wheat acreage allotments for all farms in the State.

(3) Notwithstanding any other provision of this subpart, if the wheat planted and considered planted acreage for the 1986 crop year is less than 90 percent of the wheat acreage allotment, the wheat acreage allotment for such year shall be reduced to the acreage planted and considered planted to wheat and such reduced wheat acreage allotment shall be effective for all purposes for that crop year.

(e) *Approval.* The 1986 wheat acreage allotment for a new farm shall be that acreage which the county committee, with the approval of the State committee, determines is fair and reasonable for the farm.

(f) *Cancellation for misrepresentation.* Any new farm wheat acreage allotment which was determined by the county committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant shall be canceled by the county committee as of the date the wheat acreage allotment was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the wheat acreage allotment shall be cancelled effective for the current crop year.

§ 713.205 Wheat marketing quota referenda.

(a) When the Secretary proclaims a national wheat marketing quota for a corp year, a marketing quota referendum shall be conducted in accordance with this section and with Part 717 of this chapter.

(b) Any producer on a farm for which a wheat acreage allotment has been established for a corp year shall be eligible to vote in a wheat marketing quota referendum for such corp year. A person shall be considered to be a producer if the person is entitled to share in the crop of wheat, or the proceeds thereof, or would have been so entitled had the crop been produced, because the person shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper. Any landlord whose return from the crop is established at a fixed amount regardless of the quantity of wheat which is produced shall not be considered to be a producer.

Signed at Washington, D.C. on June 20, 1985.

Merrill Marxman,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-15271 Filed 6-24-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-12-AD]

Airworthiness Directives; SIAI-Marchetti Models F260, F260B and F260C (Including SF260) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of NPRM comment period.

SUMMARY: This action extends, by 30 days, the comment period of the subject NPRM which provides for inspections or modifications of the unwelded tip tank fuel tubes of SIAI-Marchetti Models F260, F260B and F260C (Including SF260) airplanes to preclude engine failure.

DATES: Extends comment period of Docket No. 85-CE-12-AD to July 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. B. Sexton, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: The FAA issued an NPRM on March 27, 1985, applicable to SIAI-Marchetti Models F260, F260B and F260C (Including SF260) airplanes. The comment period closed May 13, 1985. The Notice would require inspection of the tip tank fuel tube to determine the affixation of the fuel tube and requires repetitive inspections or modification of unwelded tip tank fuel tubes. SIAI-Marchetti reported movement due to vibration of unwelded fuel tube which could result in the obstrucion of fuel from the tip tanks, engine fuel starvation and engine stoppage. This action would preclude engine failure.

Subsequent to the closing date for comments on this NPRM, a telegraphic request was received from Fox 51 Ltd., the United States representative for SIAI-Marchetti to reopen the comment period to allow it sufficient time to comment on the proposed rule. Their representative stated he had been out of the country and when he returned the comment period had lapsed. Accordingly, the FAA believes it is the public interest to reopen and extend the comment period for 30 days in order to allow any comments deemed necessary.

This document involves only an extension of a comment period for a proposed regulation. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory evaluation has not been prepared for this action as the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of 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 by revising the effective date of the comment period for Docket No. 85-CE-12-AD as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85; 49 CFR 1.47.

2. By adding the following new date for comment:

DATE: Comments must be received on or before July 19, 1985.

Issued in Kansas City, Missouri, on June 4, 1985.

Edwin S. Harris,

Acting Director, Central Region.

[FR Doc. 85-15257 Filed 6-24-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-16]

Proposed Alteration of the Detroit, MI, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Detroit, MI, Terminal Control Area (TCA). Since the initial design of the Detroit TCA, Runway 3R/21L has been added. The new runway has provided an availability of simultaneous instrument landing system (ILS) approaches. Consistent with the purpose of a TCA, the new capability has created a need to modify the current TCA airspace designation to totally contain aircraft inbound to Detroit Metropolitan Airport.

DATES: Comments must be received on or before July 29, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-16, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rule Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Wasington, D.C. 20591; telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rule Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.401(b) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Detroit, MI, TCA. Section 71.401(b) of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Detroit Metropolitan terminal airspace is a high density traffic area which is complex due to the number of airports served and various operational configurations. The intended effect of this action is to return to general aviation use a significant amount of airspace which is presently and practically unavailable for use while making necessary adjustments to the present TCA configuration to ensure that all appropriate aircraft are fully contained within TCA limits. Consideration was given to increasing the glide path angle or relocating the glide path antenna as alternatives to modifying the TCA; however, neither alternative proved feasible.

Among the benefits expected from the modified TCA are:

(a) Aircraft inbound to the primary airport would be contained within the TCA after once entering.

(b) Establishment of a larger Visual Flight Rules (VFR) corridor along the Detroit River as opposed to the current available VFR corridor.

(c) Consistent with a design principle of a TCA, the newly configured areas would aid in the objective of segregating Instrument Flight Rules (IFR) traffic within the TCA from VFR traffic outside the TCA.

(d) Raising the TCA floor, where possible, would help to relieve compression of VFR traffic operating below the floor.

(e) Enhancement of the identification of the TCA by establishing Very High Frequency Omni-Directional Radio Range (VOR) radials and prominent landmarks as boundaries to the maximum extent possible.

(f) Establishment of TCA entry points with initial call-up frequencies which will reduce pilot frequency change and controller verbiage.

This amendment to the Detroit TCA entails no increase in the height of TCA airspace, no impact on air traffic or air navigational facilities, no need for additional equipment or personnel, and no change to flight patterns. Also, the amended description of the Detroit TCA utilizes existing navigational aids rather than geographical lines.

Explanation of Changes

Surface to 8,000 feet Area (Surface to 80). The airspace area of the core of the TCA area is expanded to a 7-nautical-mile arc. This change allows for maneuvering room for aircraft inbound to Runway 3R/21L. The expansion eliminates the small wedge of airspace created by control zone extensions and allows the 2,300, to 8,000 feet area to be eliminated in all areas except a small portion southwest of Detroit Metropolitan Airport, which is raised to 2,500 to 8,000 feet mean sea level (MSL) to accommodate arrivals on Runways 3L and 3R and departures on Runway 21L.

2,300 to 8,000 feet area (23/80). This area has been eliminated with the exception of that airspace from 2,500 feet to 8,000 feet between the 7- and 11-nautical-mile Distance Measuring Equipment (DME) arcs of the Detroit ILS Localizer, Runway 3L (I-DTW) and which generally begins at the southern boundary of the Willow Run (YIP) (Ypsilanti) Control Zone and proceeds easterly to YIP Terminal Very High Frequency Omni-Directional Radio Range (TVOR) 105° radial.

3,000 to 8,000 feet Area (30/80). This area extends to the east and encompasses airspace over an existing Canadian Positive Control Zone. It provides for VFR operation below 3,000 feet MSL along the Detroit River. A lower altitude is not needed in this area and it is believed the airspace user will be better served by improved availability of VFR arrival and departure routes for airports underlying this airspace.

5,000 to 8,000 feet Area (50/80). Both north and south ends of the TCA were reduced in lateral size altitude. The redesigned area has a reduced floor of 4,000 feet. Although reduced, the floor permits simultaneous ILS approaches to Runways 21L/3R and 21R/3L. The reduced lateral limits allow VFR flights a more direct route to or from the Salem VORTAC.

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

List of Subjects in 14 CFR Part 71

Terminal control areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation of Part 71 is revised to read as follows:

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

§ 71.401 [Amended]

2. Section 71.401(b) is amended as follows:

Detroit, MI [Revised]

Primary Airport, Detroit Metropolitan Wayne County Airport (lat. 42° 13′07″ N., long. 83°20′55″ W.).

Boundaries.

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within the lateral limits of the airspace beginning at the intersection of the Willow Run, MI, VOR 050°T(053°M) radial and the Detroit Willow Run Airport, MI, Control Zone; thence northeast along the Willow Run VOR 050°T(053°M) radial until intercepting the 7-mile DME arc of the Detroit Instrument Landing System (ILS) Localizer Runway 3L (I-DTW); thence clockwise along the I-DTW 7-mile DME arc until intercepting the Detroit Willow Run Airport Control Zone; thence counterclockwise along the Detroit Willow Run Airport Control Zone to the point of origin.

Area B. That airspace from 2,500 feet MSL to and including 8,000 feet MSL within the lateral limits of the airspace beginning at the intersection of the I-DTW 7-mile DME arc and the Detroit Willow Run Airport Control Zone counterclockwise along the I-DTW 7-mile DME arc until intercepting the Willow Run VOR 105°T(108°M) radial; thence southwest on a 216°T(221°M) bearing from that intersection until intercepting the I-DTW 11-mile DME arc; thence clockwise along the I-DTW 11-mile DME arc until intercepting the Willow Run VOR 190°T(193°M) radial; thence direct to the point of origin.

Area C. That airspace from 3,000 feet MSL to and including 8,000 feet MSL within the airspace (excluding Areas A and B) beginning at the intersection of the Salem, MI, VORTAC 200°T(203°M) radial and the I-DTW 17-mile DME arc, counterclockwise along the I-DTW 17-mile DME arc until intercepting the Windsor, Canada, VOR 226°T(231°M) radial; thence northeast along the Windsor VOR 226°(231°M) radial until intercepting the I-DTW 20-mile DME arc; thence counterclockwise along the I-DTW 20-mile DME arc until intercepting the Windsor VOR 324°T(329°M) radial; thence northwest along the Windsor VOR 324°T(329°M) radial; until intercepting the U.S./Canadian international boundary; thence southwest along the U.S./Canadian international boundary until intercepting the I-DTW 11-mile DME arc; thence counterclockwise along the I-DTW 11-mile DME arc until intercepting the Salem VORTAC 5-Mile DME arc; thence clockwise along the Salem VORTAC 5-mile DME until intercepting the Salem VORTAC 200°T(203°M) radial; thence southwest along the Salem VORTAC 200°T(203°M) radial to the point of origin.

Area D. That airspace from 4,000 feet MSL to and including 8,000 feet MSL within lateral limits beginning at the intersection of the Salem VORTAC 050°T(053°M) radial and the I-DTW 19-mile DME arc; thence clockwise along the I-DTW 19-mile DME until intercepting the Windsor VOR 324°T(329°M) radial; thence southeast along the Windsor VOR 324°T(329°M) radial until intercepting the U.S./Canadian international boundary; thence southwest along the U.S./ Canadian international boundary until intercepting the I-DTW 11-mile DME arc; thence counterclockwise along the I-DTW 11-mile DME arc until intercepting the Salem VORTAC 5-mile DME arc; thence counterclockwise along the Salem VORTAC 5-mile DME arc until intercepting the Salem VORTAC 050°T(053°M) radial; thence northeast along the Salem VORTAC 050°T(053°M) radial to the point of origin; and that airspace within the lateral limits beginning at the intersection of the Salem VORTAC 200°T(203°M) and the I-DTW 17-mile DME arc counterclockwise along the I-DTW 17-mile DME arc until intercepting the Windsor VOR 226°T(231°M) radial, thence southwest along a 216°T(221°M) bearing until intercepting the I-DTW 20-mile DME arc, thence clockwise along the I-DTW 20-mile DME arc until intercepting the Salem VORTAC 200°T(203°M) radial thence north along the Salem VORTAC 200°T(203°M) radial to the point of origin.

Issued in Washington, D.C., on June 5, 1985.

John Walterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-15258 Filed 6-24-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 161, and 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: June 14, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of comments filed.

SUMMARY: The Federal Energy Regulatory Commission is giving notice that it will consider the American Gas Association's preliminary comments and request for clarification filed on June 6, 1985, along with the other comments filed in response to the notice of proposed rulemaking issued in Docket No. RM85-1-000 (Parts A-D) concerning regulation of natural gas pipelines after partial wellhead decontrol. (50 FR 24130, (June 7, 1985)).

FOR FURTHER INFORMATION: Charles E. Teclaw, Director, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, Telephone (202) 357-8100.

SUPPLEMENTARY INFORMATION:

June 14, 1985.

The American Gas Association filed preliminary comments and a request for clarification in this proceeding on June 6, 1985. The Commission has determined to consider the comments and questions raised along with the other comments that are filed in response to the May 30, 1985, notice of proposed rulemaking in this docket.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15184 Filed 6-24-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-165 (Kansas—2]

High-Cost Gas Produced From Tight Formations; Order Remanding Jurisdictional Agency Recommendation for Tight Formation Designation; Kansas

Issued: June 20, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Remanding Recommendation.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the Federal Energy Regulatory Commission remands the recommendation of the Kansas Corporation Commission that the "Tarkio sands" of the Wabaunsee Group underlying portions of Russell, Ellsworth, and Lincoln Counties, Kansas, be designated as a tight formation under § 271.703(d).

DATE: This order is effective June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Winters, (202) 357-5578 or C.W. Gray, Jr., (202) 357-8731.

Order Remanding Jurisdictional Agency Recommendation for Tight Formation Designation

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On December 16, 1982, the Federal Energy Regulatory Commission (Commission) received a recommendation, pursuant to § 271.703 of the Commission's regulations [1] from the Kansas Corporation Commission (Kansas) that the "Tarkio sands" [2] of the Wabaunsee Group, underlying portions of Ellsworth, Russell, and Lincoln Counties, Kansas, be designated as a tight formation.

The recommendation was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (Director), issued on August 2, 1983.[3]

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[1] 18 CFR 271.703.

[2] The "Tarkio sands" of the Wabaunsee Group are Late Pennsylvanian marine deposits. They consist of three shaley sand stringers located in the interval between the base of the Willard Shale and the top of the Dry Shale Member of the Stotler Limestone. The total thickness of these three zones is 20 to 30 feet; the average depth to the top of the proocducing zone is 2200 feet.

[3] 48 FR 35663 (August 5, 1983). No comments were received in support of the recommendation. No public hearing was requested and none was held.

Background

In order to meet § 271.703(c)(2)(i) tight formation guidelines, it is necessary that the "estimated average *in situ* gas permeability, throughout the pay section, is expected to be 0.1 millidarcy or less"; that the stabilized production rate against atmospheric pressure is not expected to exceed a specified level; and that no well drilled into the recommended tight formation is expected to produce, without stimulation, more than five barrels of crude oil per day.

Consideration will also be given to a tight formation recommendation under § 271.703(c)(2)(ii), even though it does not meet the 0.1 millidarcy permeability standard. In that case, applicant must show that the tight formation exhibits "low permeability characteristics" and the incentive price "is necessary to provide reasonable incentives for production of natural gas from the recommended formation due to the extraordinary costs associated with such production." Here Kansas has requested that its recommendation that the "Tarkio sands" of the Wabaunsee Group be considered under both §§ 271.703(c)(2)(i) and 271.703(c)(2)(ii).

Under the tight formation program, as detailed in Order No. 99,[4] tight formation recommendations submitted to the Commission by the various jurisdictional agencies are approved under the Commission's rulemaking authority. The Commission is not limited by the evidence in the record presented to it by the jurisdictional agency and the various commenters, and accordingly is free to request or to develop any additional evidence which it deems necessary in order for it to issue a rule in a tight formation designation proceeding.

Although Kansas responded to two requests for additional information made by the Director on January 17 and May 4, 1983, it did not respond to an October 18, 1983 letter requesting additional information on expected permeability, oil production and economic factors.

Discussion

The Kansas—2 recommendation divides the area into three discontinuous segments based on "expected" permeability. Kansas' recommendation stated that permeability is expected to exceed 0.1 millidarcy in 9% of the area, is less than 0.1 millidarcy in 51% of the area, and is unknown in 40% of the area, but no explanation was given as to how the sizes and shapes of these segments were determined. The recommendation includes permeability data from five wells; all the permeability data exceeds the estimated average 0.1 maximum millidarcy guideline. Thirteen of the fifteen wells completed by applicant are in areas which exceed the 0.1 millidarcy guideline. No explanation was given as to why the permeability data was expected to meet Commission guidelines. Also, no explanation was given as to why the applicant's well in the area would not produce oil, since other oil wells exists in the area with completions in a zone called "Tarkio".

The recommendation does not include sufficient information under § 271.703(c)(2)(ii) to be considered under those economic guidelines. Without data to calculate a rate of return, it is not possible to determine whether the tight formation maximum lawful price is necessary to provide applicant reasonable incentives for this production.

The Commission Orders

Based on the discussion herein, the Commission remands to the Kansas Corporation Commission its recommendation that the "Tarkio sands" of the Wabaunsee Group underlying portions of Russell, Ellsworth, and Lincoln Counties, Kansas, be designated as a tight formation. This action is without prejudice to resubmittal of the recommendation in accordance with § 271.703, should Kansas obtain additional information which it believes should be considered by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15186 Filed 6-24-85; 8:45 am]

BILLING CODE 6717-01-M

[4] Docket No. RM79-76, issued August 22, 1980, FERC Statutes and Regulations ¶ 30,183.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Public Comment and Opportunity for Public Hearing on a Modification to the Arkansas Permanent Regulatory Program

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

ACTION: Proposed rule..

SUMMARY: OSM is announcing procedures for public comment and for a public hearing on the substantive adequacy of a revised program amendments submitted by the state of Arkansas as a modification to the Arkansas Permanent Regulatory Program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments would allow for the extension of the 90-day abatement period and would establish procedures for conducting informal assessment conferences.

This notice sets forth the times and locations that the Arkansas program and proposed amendment are available for public inspection and the comment period during which interested persons may submit written comments on the proposed program elements.

DATES: Comments not received on or before 4:00 p.m., July 25, 1985 will not necessarily be considered.

If requested, a pubic hearing on the proposed modifications will be held on July 23, 1985 beginning at 10:00 a.m. at the location shown below under "**ADDRESSES**".

ADDRESSES:

Written comments should be mailed or hand delivered to: Mr. Robert Markey, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103

If a public hearing is held, its location will be at: U.S. Post Office and Courthouse, South 6th and Rogers Avenue, Room 229, Fort Smith, Arkansas

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 745-7927.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Arkansas program, the proposed modifications to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the Tulsa Field Office listed below.

Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Office of Surface Mining, Reclamation and

Enforcement, 1100 "L" Street, N.W., Washington, D.C. 20240

Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after July 25, 1985 will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person under "**FOR FURTHER INFORMATION CONTACT**" by the close of business by July 16, 1985. If no requests to comment at a public hearing are received, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting will be included in the Administrative Record.

Filing a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written standards in advance of the hearing will allow OSM officials to prepare appropriate questions.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**".

II. Background on the Arkansas State Program

On February 19, 1980, Arkansas submitted its proposed regulatory program to OSM. The Secretary approved the program on November 21, 1980 (45 FR 77003–77017).

On May 23, 1985, OSM received proposed program amendments submitted by the State of Arkansas pursuant to 30 CFR 132.17. The proposed program amendments would allow for the extension of the 90-day abatement period and would establish procedures for conducting informal assessment conferences. The proposed amendment would allow the Arkansas Department of Pollution Control and Ecology (ADPCE) to extend the time set for abatement if the responsible person meets any of the circumstances identified in the proposed rules at 843.12(f). ADPCE proposes to add section 845.18 which would establish procedures for conducting informal assessment conferences. Also, ADCPE proposes language changes in Section 845.19 which would allow the person charged with the violation to request a hearing. In addition, ADCPE proposes language changes at 845.20 of its regulations which would address final assessment and payment of penalty.

Therefore, OSM is seeking comment on the State's proposed amendments. If the Director determines that the proposal modifications are in accordance with SMCRA and no less effective than the Federal regulations, the amendment will become part of the Arkansas permanent regulatory program.

III. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs.

Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

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

Dated: June 19, 1985.

Brent W. Blauch,

Acting Director, Office of Surface Mining.

PART 904—ARKANSAS

The authority citation for 30 CFR Part 904 continues to read as follows:

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

[FR Doc. 85–15250 Filed 6–24–85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Liver Transplantation

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed amendment provides for coverage by the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) of the costs of liver transplantation. The amendment is necessary to state the principles by which coverage of liver transplantation will be provided, in keeping with Pub. L. 98–94, which amended title 10, chapter 55, United States Code, to provide for CHAMPUS coverage of liver transplant operations performed on or after July 1, 1983.

DATES: Written public comments must be received on or after July 25, 1985.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Reta M. Michak, Policy Branch, OCHAMPUS, telephone (303) 361–4078.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

Section 199.10(e)(5) states "CHAMPUS Basic Program benefits are available for otherwise covered services and/or supplies in connection with an organ transplant procedure: *Provided* such transplant procedure is generally in accordance with accepted professional medical standards and is not considered to be experimental." CHAMPUS has considered liver transplantation to be excluded from coverage by the terms of this provision.

The Defense Authorization Bill for fiscal year 1984, Pub. L. 98–94, included language authorizing CHAMPUS to cover the costs of liver transplantation, including the costs of acquisition and transportation of the donated liver retroactively effective for liver transplantation procedures performed on and after July 1, 1983. The amendment to title 10, chapter 55, United States Code, the basic statute governing CHAMPUS, provides that the Secretary of Defense, after consulting with the Secretary of Health and Human Services and other entities, will determine the persons who are appropriate candidates for liver transplantation and the health care facilities that are qualifed to receive reimbursement for the procedure.

We have determined that the law requires that CHAMPUS benefits for liver transplantation services be available for all beneficiaries, regardless of age, who are suffering from irreversible liver injury, have exhausted alternative medical and surgical treatments, and are approaching the terminal phase of their illness. Guidelines for CHAMPUS coverage of liver transplants include the following conditions which have progressed to the point of end-stage liver failure:

Extrahepatic biliary atresia, for patients who fail to respond to hepatoportoenterostomy (Kasai procedure);

Chronic active hepatitis, except in the case of drug-induced chronic active hepatitis, which usually responds to the removal of the chemical agent, and hepatitis-B induced disease when viremia persists;

Primary biliary cirrhosis in the final stages of liver failure;

Inborn errors of metabolism which have caused end-stage liver damage or irreversible extrahepatic complications, including alpha$_1$ antitrypsin deficiency in children with Pi ZZ phenotype and adults with phenotype Pi ZZ, MS, or SZ where evidence of hepatic failure is present; Wilson's disease unresponsive to chelation therapy with penicillamine; Crigler-Najjar syndrome, Type I; tyrosinemia; Byler's disease; Wolman's disease; glycogen storage disease, types O and IV; and certain genetic diseases associated with severe neurological complications, such as hereditary deficiency of urea cycle enzymes and disorders of lactate/pyruvate or amino acid metabolism;

Hepatic vein thrombosis (Budd-Chiari syndrome) in patients with severe hepatic decompensation, who have not responded to anticoagulation or appropriate surgery for portal decompression;

Primary sclerosing cholangitis, when appropriate attempts at biliary tract diversion and dilation have failed, and death from liver failure is imminent.

Primary hepatic malignancy confined to the liver but not amenable to resection; and

Alcoholic liver disease, in patients who develop evidence of progressive liver failure despite appropriate medical treatment and a minimum of one year of abstinence from alcohol.

Since this is a new benefit area we will be asking approved centers to agree to certain procedures that will enable us better to monitor the benefit. First, the center will be asked to notify the Director, OCHAMPUS, or designee, as soon as a CHAMPUS beneficiary is accepted as a transplant candidate. It will also be asked to submit bills that itemize each service and supply and the charge for each. Finally, we will ask the center to agree to bill on behalf of the donor hospital for the services provided to the donor following the declaration of brain death. The donor hospital will bill those services to the transplant center, which will include the costs in its bill to the CHAMPUS beneficiary submitted for CHAMPUS payment.

These guiding principles that CHAMPUS will follow in providing coverage for liver transplantation services will be included in the CHAMPUS Policy Manual. This Policy Manual provides guidance, policy interpretations and decisions implementing the CHAMPUS.

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense and with other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR, Part 199 is amended to read as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.10 is amended by revising paragraph (e)(5)(iii)(*b*), adding paragraph (e)(5)(v), and revising paragraph (g)(71) to read as follows:

§ 199.10 Basic program benefits.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(*b*) With respect to kidney transplants, in most cases, Medicare (not CHAMPUS) benefits will be applicable (Refer to § 199.9(e)(3)(vi), "Eligibility."

* * * * *

(v) *Liver transplants.* Notwithstanding the provisions of this or any other section of this Part 199, effective July 1, 1983, CHAMPUS benefits are payable for services and supplies related to liver transplantation under the following circumstances only:

(*a*) *Medical indications for liver transplantation.* CHAMPUS shall provide benefits for services and supplies related to liver transplantation performed for beneficiaries who have an end-stage liver disease which has not responded or no longer responds to conventional medical therapy and is considered appropriate for liver transplantation according to guidelines adopted by the Director, OCHAMPUS, and who have a life expectancy of six months or less without liver transplantation, or where irreversible damage to the central nervous system is inevitable.

(*b*) *Contraindications.* CHAMPUS shall not provide coverage if any of the following contraindications exist:

(*1*) Alcoholism not in remission for at least one year;

(*2*) Active substance abuse;

(*3*) Malignancies metastasized to or extending beyond the margins of the liver; or

(*4*) Viral-induced liver disease when viremia is still present.

(*c*) *Specific covered services.* CHAMPUS shall provide coverage for the following services related to liver transplantation:

(*1*) Medically necessary services to evaluate a potential candidate's suitability for liver transplantation, whether or not the patient is ultimately accepted as a candidate for transplantation;

(*2*) Medically necessary pre- and post-transplant inpatient hospital and outpatient services;

(*3*) Surgical services and related pre- and post-operative services of the transplant team;

(*4*) Services provided by a donor organ acquisition team, including the costs of transportation to the location of the donor organ and transportation of the team and the donated organ to the location of the transplantation center;

(*5*) Medically necessary services required to maintain the viability of the donor organ following a formal declaration of brain death;

(*6*) Blood and blood products;

(*7*) Services and drugs required for immunosuppression, provided the drugs are approved by the United States Food and Drug Administration;

(*8*) Services and supplies, including inpatient care, which are medically necessary to treat complications of the transplant procedure, including management of infection and rejection episodes; and

(*9*) Services and supplies which are medically necessary for the periodic evaluation and assessment of the successfully transplanted patient.

(*d*) *Specific non-covered services.* CHAMPUS benefits will not be paid for the following:

(*1*) Services and supplies for which the beneficiary has no legal obligation to pay. For example, CHAMPUS shall not reimburse expenses that are waived by the transplant center, or for which research funds are available; and

(*2*) Out-of-hospital living expenses and any other non-medical expenses, including transportation, of the liver transplant candidate or family members, whether pre- or post-transplant.

(*e*) *Implementation guidelines.* The Director, OCHAMPUS, shall issue such guidelines as are necessary to implement the provisions of this paragraph.

* * * * *

(g) * * *

(71) *Transportation.* All transportation except by ambulance, as specifically provided under paragraph (d), and except as authorized in paragraph (e)(5) of this section.

3. Section 199.12 is amended by adding a new paragraph (b)(4)(ii) and redesignating the existing paragraphs (b)(4)(ii) through (b)(4)(viii) as paragraphs (b)(4)(iii) through (b)(4)(ix).

§ 199.12 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(ii) *Liver transplantation centers.*

(a) CHAMPUS shall provide coverage for liver transplantation procedures performed only by experienced transplant surgeons at centers complying with the provisions outlined in paragraph (b)(4)(i) of this section and meeting the following criteria:

(*1*) The center is a tertiary care facility with a program in graduate medical education;

(*2*) The center has an active solid organ transplantation program (involving liver transplants as well as other organs);

(*3*) The transplantation program must have at least a 50% one year survival rate for ten cases. At the time CHAMPUS approval is requested, the transplant center must provide evidence that they have performed at least ten liver transplants and that at least 50% of these transplanted patients have survived one year following surgery. The 50% one year survival rate must be maintained for continued CHAMPUS approval;

(*4*) The center has allocated sufficient operating room, recovery room, laboratory, and blood bank support and a sufficient number of intensive care and general surgical beds and specialized staff for these areas;

(*5*) The center participates in a donor procurement program and network;

(*6*) The center has established procedures by which the suitability of candidates for transplantation is determined on an equitable basis;

(*7*) The transplantation surgeon is specifically trained for liver grafting and a trained team is available to function whenever a donor liver is available;

(*8*) The transplantation program has available the services of experts in the fields of hepatology, pediatrics, infectious disease, nephrology with dialysis capability, pulmonary medicine with respiratory therapy support, pathology, immunology, and anesthesiology;

(*9*) The transplantation program has the assistance of sophisticated microbiology, clinical chemistry, and radiology;

(*10*) The transplantation program has extensive blood bank support; and

(*11*) The transplantation program includes the availability of psychiatric and social services support for patients and family.

(b) In order to receive approval as a CHAMPUS Liver Transplant Center, a center must submit a request to the Director, OCHAMPUS, or a designee. The CHAMPUS Liver Transplant Center shall agree to the following:

(*1*) Notify the Director, OCHAMPUS, or a designee, upon the acceptance of a CHAMPUS beneficiary as a candidate for liver transplantation; and

(*2*) Bill for all services and supplies related to the liver transplantation performed by its staff and bill also for services rendered by the donor hospital following the declaration of brain death. The center shall agree to submit all charges on the basis of fully itemized bills. This means that each service and supply and the charge for each is individually identified.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 20, 1985.

[FR Doc. 85-15196 Filed 6-24-85; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2854-7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) for Carbon Monoxide (CO). This proposed rulemaking incorporates a June 14, 1984, Opinion and Order of the Illinois Pollution Control Board (IPCB), PCB 84-19, into the SIP. This Order grants to Midwest Solvent Company (MSC) a variance from IPCB Rule 206(a) that governs CO emissions from the Fluidized Bed Combustion (FBC) boiler for MSC's facility, which is located in Tazewell County, Illinois. This action is taken in response to a January 16, 1985, request from the State of Illinois.

DATE: Comments on this revision and on the proposed USEPA action must be received July 25, 1985.

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) 353-0396, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: (Please submit an original and five 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, (312) 353-0396.

SUPPLEMENTARY INFORMATION: On January 16, 1985, the Illinois Environmental Protection Agency (IEPA) submitted a variance from Illinois Rule 206(a) for a FBC boiler at MSC's facility in Tazewell County, Illinois, as a proposed revision of its CO SIP. Tazewell County is an area that is classified as attainment with respect to the National Ambient Air Quality Standard (NAAQS) for CO.

The proposed variance will allow CO emissions from the new FBC boiler of up to 700 parts per million (ppm), (based on wet flue gas and adjusted to 50 percent excess air) until June 14, 1987. Because the FBC boiler is a major new source in an attainment area, it must meet the best available control technology (BACT) requirement of the Prevention of Significant Deterioration (PSD) regulations. The PSD program in Illinois was delegated to the IEPA on April 7, 1980. It is the IEPA's responsibility to make a BACT determination for this facility. In addition, a new source is required to meet the Illinois SIP limit for new sources of CO. In today's rulemaking, USEPA's finding is limited to determining that the CO NAAQS will not be violated by this variance. In this notice, USEPA makes no findings regarding the State's BACT determination.

The IPCB granted MSC a variance from the Rule 206(a) which allows a temporary CO limit of 700 ppm. MSC's new FBC boiler, is subject to the following operating conditions:

1. This variance will expire on June 14, 1987.
2. MSC have committed itself to develop and implement a program to study and evaluate any technical advances in the control of CO in FBC boilers.
3. MSC has committed itself to develop a program to evaluate the operating characteristics of its FBC boiler. This program shall include the periodic testing of the FBC boiler for CO emissions so that the operation of the boiler can be optimized to minimize the emissions of CO while maintaining the design efficiency.
4. MSC has committed itself to submit to IEPA every 6 months a written report describing the progress of the aforementioned program, as set forth in item numbers 2 and 3.

MSC asserts that no available control technology could reduce the CO emissions to the SIP level without greatly decreasing combustion efficiency, and increasing NO_x emissions. The air quality analysis section of the preconstruction permit application shows that the predicted CO impacts are well below the maximum 1-hour and 8-hour secondary NAAQS. In reaching today's findings, USEPA only utilized the State's air quality analysis that was completed as part of the PSD requirements. The details of this analysis are contained in the January 16, 1985, State submittal. This analysis, which relies on USEPA's Multiple Point Terrain (MPTER) reference model, predicted a maximum 1-hour CO impact of 50.62 $\mu g/m^3$. The 1-hour standard for CO is 40,000 $\mu g/m^3$, and the 8-hour standard for CO is 10,000 $\mu g/m^3$.

Consequently, it can be concluded that the MSC's new FBC boiler will not have a significant impact on CO air quality in Tazewell County and, therefore, will not interfere with attainment and maintenance of the CO NAAQS. USEPA, is today proposing to approve PCB 84–19 as a revision to the Illinois SIP. However, USEPA is not affirming the 700 ppm emission limit for CO as BACT for FBC boilers. USEPA believes that FBC boilers can meet a 200 ppm CO emission limit. MSC must comply with all the PSD requirements including BACT for CO. The proposed approval of this SIP revision does not in any way eliminate the requirements for MSC to comply with the PSD regulations or any other applicable new source regulation.

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 listed at the front of this notice.

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, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a)))

Dated: May 6, 1985.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 85–15233 Filed 6–24–85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-2854-8]

Approval and Promulgation of Implementation Plans; Rhode Island; Additional BACT Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. These revisions will require the use of best available control technology (BACT) for each air pollutant emitted when permitting new stationary sources and modifications to existing stationary sources not otherwise subject to lowest achievable emission rate (LAER) requirements. The revisions also require the owners/operators of fuel burning equipment to have a sampling valve in the fuel line to the boiler to facilitate sampling. The intented effect of this action is to propose that these revisions be approved as part of the Rhode Island SIP under Section 110 of the Clear Air Act.

DATES: Comments must be received on or before July 25, 1985. Public comments will be considered before taking final action on these SIP revisions.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203, and Air and Hazardous Materials Division, Department of Environmental Management, 75 Davis Street, Cannon Bldg., Room 204, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (617) 223–4868.

SUPPLEMENTARY INFORMATION: On January 17, 1985, the Rhode Island Department of Environmental Management (DEM) submitted proposed revisions to the SIP. These revisions include amendments which require that BACT be used for all new stationary sources and modifications to existing sources for every air pollutant emitted. This requirement is an addition to the current version of Regulation 9 "Approval to Construct, Install, Modify or Operate" of the Rhode Island SIP which already requires, that for air pollutants regulated under the Clean Air Act, BACT be used by all new major stationary sources and major modifications in attainment areas and the lowest emission rate (LAER) be met by new major stationary sources and major modifications in nonattainment areas. The requirement that BACT be used for every air pollutant emitted by all new stationary sources and modifications to existing sources, not otherwise subject to LAER, make Rhode

Island's permitting regulation more stringent than federal requirements.

An additional aspect of the NSR regulation will be affected by the proposed amendments. It concerns the air quality analysis currently required as part of the application for major sources. A new major source must perform an air quality analysis for each pollutant it would have the potential to emit in a significant amount and a major modification must perform the analysis for each pollutant for which there would be a significant net emission at the source.

Under the existing regulations, there are 15 air pollutants for which an air quality analysis might be necessary depending upon the level of emissions. Implementation of the proposed amendments will expand the number of air pollutants for which an air quality analysis is currently required. In addition to the 15 air pollutants currently required, any other pollutant that will increase by 25 tons per year will have to be included in the analysis. The analysis will still only be required in connection with major sources and major modifications.

EPA is proposing to approve the Rhode Island 25 tpy threshold level for requiring other pollutants be included in an air quality impact analysis. This proposed approval is done with the understanding that at such time EPA determines that for another pollutant the threshold for requiring an air quality impact analysis is less than 25 tpy, then all States, including Rhode Island, will have to amend their permitting requirements accordingly.

These revisions also include an amendment to Regulation 8 "Sulfur Content of Fuels" of the Rhode Island SIP to require any owner or operator of a fuel burning source to have a sampling valve in the fuel line to the boiler, between the fuel pump and the burner, to facilitate the taking of fuel samples.

EPA is proposing to approve these revisions proposed by the Rhode Island DEM, and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

These revisions are being proposed under a procedure called parallel-processing (47 FR 27073). Under parallel-processing, EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revisions are substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made to the proposed revisions, EPA will publish a final rulemaking notice. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by the State of Rhode Island and submitted for incorporation into the SIP.

Proposed Action

EPA is proposing to approve revisions to Regulations 8 and 9 of the Rhode Island SIP as proposed and submitted by the DEM on January 17, 1985. This proposed approval is done with the understanding that at such time EPA determines that for another pollutant the threshold for requiring an air quality impact analysis is less than 25 tpy, then all States, including Rhode Island, will have to amend their permitting requirements accordingly.

Under 5 U.S.C. 605(b), I certify that this SIP revision will 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.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clearn Air Act, as amended, and EPA regulations in 40 CFR Part 51.

Authority: 42 U.S.C. 7401–7642.

Dated: May 10, 1985.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 85-15234 Filed 6-24-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-472, RM-4688, RM-4832, RM-4833, RM-4897]

FM Broadcast Stations in Block Island, Middleton, Newport, and Wakefield, RI and Fairhaven and Fall River, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes alternatively the assignment of Channel 262A to Fall River, Massachusetts, at the request of Tim G. English, or the assignment of Channel 296A to Fairhaven, Massachusetts, with the concomitant substitution of Channel 262A for Channel 296A at Middletown, Rhode Island, at the request of Southern Massachusetts Broadcasters, Inc. The channel allocations could provide Fall River or Fairhaven with its first local FM service. The request of Nick DePetrillo to allocate Channel 261A to Block Island, as that community's second local channel has not been proposed. The request of James P. Hughes to assign Channel 262A to Wakefield, Rhode Island, is denied.

DATES: Comments must be filed on or before August 12, 1985, and reply comments on or before August 27, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Further Notice of Proposed Rule Making and Order To Show Cause and Memorandum Opinion and Order

In the matter of amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Block Island, Middletown [1], Newport [1], Wakefield [1], Rhode Island, and Fairhaven [1] and Fall River [1], Massachusetts). MM Docket No. 84-472, RM-4688, RM-4832, RM-4833, RM-4897.

Adopted: June 7, 1985.

Released: June 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 22513, published May 30, 1984, proposing the allocation of FM Channel 261A to Block Island, Rhode Island, as that community's second local service, at the request of Nick DePetrillo ("DePetrillo"). Comments in support were filed by DePetrillo, reiterating his intention to apply for the channel, if allotted. Counterproposals to the Block Island allocation were filed by: (1) James P. Hughes ("Hughes") requesting the allocation of Channel 262A to Wakefield, and Channel 274A to Block Island, Rhode Island; (2) Southern Massachusetts Broadcasters, Inc. ("SMB") requesting the allocation of Channel 296A to Fairhaven, Massachusetts, and the substitution of Channel 262A for Channel 296A at

[1] These communities have been added to the caption.

Middletown, Massachusetts; and (3) Tim C. English ("English") requesting the allocation of Channel 262A to Fall River, Massachusetts.

2. Hughes' counterproposal seeks the allocation of Channel 262A to Wakefield, Rhode Island, as that community's first local FM service (RM-4832)[3], and the allocation of Channel 274A to Block Island in lieu of the proposed Channel 261A. The opposition of Hughes is not to the Block Island allocation, *per se*, but rather to the proposal in the omnibus *Notice* in Docket 84-231[3], which sought the allotment of Channel 274A to Wakefield-Peacedale, Rhode Island. He contends that the Channel 274A allocation at Wakefield would require a site restriction away from the community in an area which consists largely of beaches with their attendant environmental concerns. The use of Channel 262A would not pose such problems, according to Hughes, as the channel could be allocated without requiring the imposition of a site restriction. He also states that without regard to his counterproposal for Wakefield, the allotment of Channel 274A to Block Island should be preferred as it does not require the imposition of a site restriction whereas the use of Channel 261A would be limited to the lower half of the Island.

3. Hughes' counterproposal for Wakefield will not be proposed herein. By a *First Report and Order* in Docket 84-231[4], the Commission allocated Channel 259A to Wakefield-Peacedale. We believe that this channel should not pose the problems raised by Hughes in that the site restriction is of a lesser degree and requires the transmitter to be located in a different direction. As the interest of Hughes is in a first, not second, allotment at Wakefield, we believe his interest has been satisfied. His proposal for the allocation of Channel 274A at Block Island also will not be considered further as it conflicts with the recently assigned Channel 274A at Narragansett Pier, Rhode Island. See *First Report and Order*, Docket 84-231, *supra*.

4. SMB requests the allocation of Channel 296A to Fairhaven, Massachusetts, as that community's first local service (RM-4833)[5]. It states that it has conducted an allocation study and found there is no FM channel which is available to Fairhaven on a "drop-in" basis. It has found, however, that if Channel 262A is substituted for Channel 296A at Middletown, Massachusetts, Channel 296A can then be utilized at Fairhaven in compliance with the Commission's mileage separation requirements. To this end, SMB requests that the license of Station WOTB-FM at Middletown be modified to specify operation on Channel 262A in lieu of Channel 296A. It also states that it will reimburse Station WOTB, should it become the successful applicant at Fairhaven. SMB argues that Fairhaven, with a 1980 population of approximately 15,800 persons, deserves its first local broadcast service before Block Island, with its considerably smaller population, receives its second. Further, it contends that the residents of Block Island also receive full-time aural service from stations located in New London and New Haven, Connecticut.

5. The counterproposal, filed by English, requests the allotment of Channel 262A to Fall River, Massachusetts (RM-4897), as its first local service. He states that he will apply for the channel, if allocated. English claims that Fall River, with a full-time population of almost 100,000 persons, should receive its first local allocation before Block Island, a community of approximately 640 persons, receives its second.

6. DePetrillo filed comments and reply comments reiterating his interest in the Channel 261A Block Island allocation. As to the proposal for Fall River, DePetrillo states that using the site proposed by English would not allow the required city-grade coverage to be provided as the transmitter would be located at Tiverton, Rhode Island, and the city limits of Fall River extend for 11 miles past Tiverton's city's limits. However, he does note that Channel 262A can be assigned to Fall River and utilized at a site within the community itself, which would provide the requisite signal level to the community. While acknowledging that proposal for Fairhaven, advanced by SMB, represents a first local service for that community, he contends that Fairhaven already receives service from two stations located in nearby New Bedford. Further, DePetrillo questions whether an FM station at Fairhaven would be justifiable economically if the reimbursement to Station WOTB includes what is sees as the "substantial losses" which would be incurred during the adjustment period to its new frequency. He argues that spectrum efficiency would be furthered if Channel 261A is allocated to Block Island, and situated on the southern half of the island, as it would then enable the allocation of Channel 262A to Fall River and Channel 274A to Wakefield. He concludes by stating that a second allocation at Block Island would be in the public interest as it could provide service to two different groups, comprised of: (1) The local population, including beachfront towns, within 25 miles of Block Island; and (2) the marine interests of both commercial and pleasure boaters.

7. Contrary to DePetrillo's assertions, the proposals for Block Island and Fall River are mutually exclusive. The Commission's mileage separation rules require first adjacent Class A channels to be separated by at least 64 kilometers (40 miles). See § 73.207 of the Rules. Here, Block Island is located only 59 kilometers from Fall River and 51 kilometers from Middletown. Therefore, each of these proposals must be given comparative consideration.

8. Block Island, with a population that English states is approximately 640 persons, has one FM channel. Channel 257A is allocated to Block Island and a permit has been issued to Station WITQ, Block Island Sound, Inc. Fall River, with a 1980 U.S. Census population of 92,574 persons, and Fairhaven, with a 1980 U.S. Census population of 15,759 persons, have no local FM service, although we note the Fall River has two full-time AM stations. We do not believe that a second local FM service to a community especially one as small as Block Island, could be justified before a first local service is provided at either of the two substantially larger communities. As stated earlier, were we to assign Channel 261A to Block Island, then neither the Fairhaven nor Fall River proposals could be effectuted. See *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982). As to DePetrillo's statement that Fairhaven already receives service from nearby stations, the Commission's policy is the service from stations located outside the community cannot be a substitute for local service. Therefore, we believe that the comparative determination to be made is whether to assign a first local FM service to either Fall River or Fairhaven. Accordingly, we shall not further propose the allocation of Channel 261A to Block Island in this *Further Notice*.

9. Channel 262A can be allotted to Fall River, in compliance with the Commission's mileage separation requirements, with a site restriction of 10.6 kilometers (6.6 miles) south. This

[2] *Public Notice* of the filing of the counterproposal was given July 30, 1984. Report No. 1470.

[3] *Notice of Proposed Rule Making*, 49 FR 11214, published March 26, 1984.

[4] 50 FR 3514, published January 25, 1985.

[5] Public Notice of the filing of the counterproposal was given on August 2, 1984. Report No. 1472.

restriction will avoid a short-spacing to Station WHEB-FM, Channel 262, Portsmouth, New Hampshire. Channel 262A can alternatively be substituted for Channel 296A at Middletown, Rhode Island, and utilized at Station WOTB's present site. Channel 296A can then be allocated to Fairhaven, without any site restriction. Additionally, we note that Station WOTB's Channel 296A at Middletown is actually allocated at Newport, Rhode Island, in the FM Table of Allotments. Therefore, we also propose to amend the FM Table to reflect its actual use at Middletown, regardless of which community receives the new FM channel.

10. Accordingly, we believe the public interest would be served by proposing the amendment of the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Option I		
Fall River, MA		262A
Middletown, RI		296A
Newport, RI	296A	
Option II		
Fairhaven, MA		296A
Middletown, RI		292A
Newport, RI	296A	

11. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allocated.

12. Interested parties may file comments on or before August 12, 1985, and reply comments on or before August 27, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Tim G. English, 355 Center Road, Easton, Connecticut 06612 (Petitioner for Fall River)

George Gray, Radio Station WBSM, 220 Union Street, New Bedford, Massachusetts 02740 (Petitioner for Fairhaven)

13. It is ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, Leisure Market Radio, Inc., the licensee of Station WOTB, Middletown, Rhode Island, shall show cause why its license should not be modified to specify operation on Channel 262A.

14. Pursuant to § 1.87 of the Commission's Rules, Leisure Market Radio, Inc. may, not later than August 12, 1985, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, Leisure Market Radio, Inc. may, not later than August 12, 1985, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on Leisure Market Radio, Inc. to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referring to above, Leisure Market Radio, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final Order will be issued by the Commission, if the channel assignment at Fairhaven is ultimately found to be in the public interest.

5. It is further ordered, That the Secretary of the Commission shall send by certified mail, return receipt requested, a copy of this *Order* to the following: Leisure Market Radio, Inc., 527 Madison Avenue, New York, New York 10022.

16. It is further ordered, That the counterproposal of James P. Hughes (RM-4832) is denied.

17. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

18. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 85-15225 Filed 6-24-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-200; RM-4943]

FM Broadcast Stations in Key West and Hialeah, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to substitute Channel 223C1 for Channel 222 at Key West, Florida, in response to a petition filed by Florida Keys Broadcasting Corporation, licensee of Station WFYN-FM, Key West, Florida. In addition, the licensee of Station WCMO-FM, Hialeah, Florida, seeks the substitution of Channel 222C2 for Channel 221A at Hialeah. The modification of license to the new channel is requested in both cases.

DATES: Comments must be filed on or before August 12, 1985, and reply comments must be filed on or before August 27, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations (Key West and Hialeah, Florida); MM Docket No. 85-200, RM-4943.

Adopted: June 7, 1985.

Released: June 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Florida Keys Broadcasting Corporation ("WFYN") ("petitioner"), licensee of Station WFYN-FM, which seeks to substitute Channel 223C1 for Channel 222 at Key West, Florida, and to have its license modified to specify the new channel. Additionally, petitioner has requested substitution of Channel 222C2 for Channel 221A at Hialeah, Florida. Great Joy, Inc. licensee of Station WCMQ-FM at Hialeah (Channel 221A) filed comments consenting to the proposed channel change and modification of is license.

2. In justification of the request, WFYN states that in previous action the Commission substituted Channel 222 for Channel 223 at Key West in order to provide for the allotment of Channel 224A to Marco.[1] However, since no party has been granted a construction permit for use of Channel 224A at Marco, petitioner states that it has not been required to modify its facilities and remains operational on Channel 223. Petitoner further notes that the present facilities for Station WFYN-FM (100 kw, 550 ft. HAAT) is less than the minimum requirements for a Class C station but meets the conditions for Class C1, in accordance with the provisions of BC Docket 80-90. Petitioner adds that, due to the lack of site availibility based on aeronautical safety standards, it would be virtually impossible to meet the requirements for a Class C operation. Therefore, it is willing to accept Class C1 status immediately, rather than switching to Channel 222. This proposal is said to save a disruption of WFYN-FM's service and the reimbursement cost to the ultimate permittee for Channel 224A at Marco. We are also told by petitioner that Channel 223C1 at Key West would fully protect the Marco allocation.

3. Additionally, WFYN has requested the substitution of Channel 222C2 for Channel 221A at Hialeah, Florida (WCMQ-FM), to allow that station to upgrade its facilities. In comments, counsel for the licensee, Great Joy, Inc. stated that its client's willingness to accept a modification of the license to specify Channel 222C2 for Channel 221A.

4. In view of the above, we shall propose to substitute Channel 222C1 for 222 at Key West, Florida, and Channel 222C2 for 221A at Hialeah and the modification of the licenses accordingly. Pursuant to the Commission's Rules, § 1.420(g), the modification of the license for Station WCMQ-FM cannot be implemented if other parties express an interest in the proposed allotment unless an additional equivalent channel is available for allotment to Hialeah. See *Modification of FM Station Licenses*, 98 F.C.C. 2d 916 (1984). This procedure (see § 1.420(g) of the Commission's Rules) would not apply to the Key West proposal since no upgrade in facilities is contemplated. To avoid short spacing to Station WNGS (FM), West Palm Beach, Florida, the allotment of Channel 222C2 is restricted to a transmitter site 0.8 km (0.5 miles) south of Hialeah.

5. Comments are invited on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the communities listed below:

City	Present	Proposed
Key West, FL	222, 228A, 254, 258, 296A, and 300C1.	223C1, 254, 258, 296A, and 300C1.
Hialeah, FL	221A	222C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before August 12, 1985, and reply comments on or before August 27, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Howard J. Braun, Fly, Shuebruk, Gaguine, Boras, Schulkind and Braun, 1211 Connecticut Avenue, NW., Washington, D.C. 20036, (Counsel for

[1] BC Dockets 81-487 and 81-818, 48 FR 19879, published May 3, 1983.

Florida Keys Broadcasting Corporation)

James M. Weitzman, Shrinsky, Weitzman and Eisen, 1120 Connecticut Avenue—Suite 270, Washington, D.C. 20036, (Counsel for Great Joy, Inc.).

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 397(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-15224 Filed 6-24-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-198; RM-4937]

FM Broadcast Stations in Brookfield, WI; Waukegan, and Des Plaines, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Tran Broadcasting Corporation, proposes the allotment of Channel 295A to Brookfield, Wisconsin, and the reallotment of Channel 294 from Waukegan, Illinois, to reflect it actual use in Des Plaines, Illinois.

DATES: Comments must be filed on or before August 12, 1985, and reply comments on or before August 27, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations (Brookfield, Wisconsin; Waukegan, and Des Plaines, Illinois); MM Docket No. 85-198, RM-4937.

Adopted: June 7, 1985.

Released: June 21, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by Tran Broadcasting Corporation ("petitioner"), seeking the allocation of FM Channel 295A to Brookfield, Wisconsin, as that community's first FM service. Petitioner has stated its intention to apply for the channel.

2. The channel can be allotted in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.8 kilometers (4.9 miles) northeast of the community. This restriction is necessary to avoid short spacings to Station WSJY, Channel 297 at Fort Atkinson, Wisconsin, and Station

WYEN, Channel 294 at Des Plaines, Illinois. Channel 294 is presently allocated to Waukegan, Illinois, and we are proposing to reallot the channel to reflect its actual use in Des Plaines, Illinois.

3. The allotment of Channel 295A to Brookfield, Wisconsin, could provide that community with its first FM allotment. We are also proposing to reallot Channel 294 from Waukegan, Illinois to Des Plaines, Illinois, to reflect its actual usage. Comments are invited on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with regard to the following communities:

Channel No.	City	Present / Proposed
Brookfield, WI		295A
Waukegan, IL	272A, 294	272A
Des Plaines, IL		294

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before August 12, 1985, and reply comments on or before August 27, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Hal Nichol, President, Trans Broadcasting Corporation, Inc., 10828 W. Appleton Avenue, Milwaukee, WI 53225 (Petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner consitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Comunications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-15223 Filed 6-24-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-199; RM-4952]

FM Broadcast Stations in Spotsylvania, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Keith E. Angstadt, proposes the allotment of Channel 257A to Spotsylvania, Virginia, as that community's first FM service.

DATES: comments must be filed on or before August 12, 1985, and reply comments on or before August 27, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Raido broadcasting.

The authority citation continues to read:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Spotsylvania, Virginia) (MM Docket No. 85-199, RM-4952).

Adopted: June 7, 1985.

Released: June 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Keith E. Angstadt ("petitioner"), seeking the allotment of FM Channel 257A to Spotsylvania, Virginia, as that community's first FM service. Petitioner has stated his intention to apply for the channel.

2. The channel can be allotted in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.4 kilometers (7.1 miles) southwest of the community. This restriction is necessary to avoid short spacing to FM Station WGAY on Channel 258 in Washington, D.C. However, a site 11.4 Km removed from the center of the city may prove difficult to provide a city-grade (70 dBu) signal to the principal community. The petitioner or other interested parties, therefore, should provide information that a site is available that will meet the minimum spacing requirements and provide a city-grade signal to the community.

3. In view of the fact that Spotsylvania, Virginia could receive its first local FM service the Commission finds it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Spotsylvania, VA		257A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before August 12, 1985, and reply comments on or before August 27, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel, or consultant, as follows: Keith E. Angstadt, P.O. Box 5523, Falmouth, Virginia 22403.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is Proposed to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if the only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments,

reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C

[FR Doc. 85-15226 Filed 6-24-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 85-22]

Frequency Coordination of Repeaters in the Amateur Radio Service; Order Extending Time for Filing Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the deadline for filing comments in this proceeding from July 1, 1985 to August 15, 1985 to allow the American Radio Relay League additional time in which to evaluate complex technical issues and membership input in order to formulate a position on this matter.

DATES: Comments must be filed on or before August 15, 1985. Reply comments must be filed on or before September 30, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of part 97 of the Commission's rules concerning frequency coordination of repeaters in the amateur radio service; PR Docket No. 85-22.

Adopted: June 17, 1985.

Released: June 19, 1985.

By the Chief, Private Radio Bureau.

1. The American Radio Relay League, Incorporated, (ARRL) has filed a Motion for Extension of Time to Submit Comments in response to the *Notice of Proposed Rule Making,* 50 FR 6219, February 14, 1985, (*Notice*) in this proceeding. The *Notice* required that comments be filed on or before July 1, 1985, and that reply comments be filed on or before September 30, 1985.

2. The ARRL seeks a forty-five day extension of the comment period through August 15, 1985. In support of this request, the ARRL stated that it needed this additional time to evaluate the large amount of input it is receiving from the amateur community on the complex technical issues related to this matter. This would permit its Board of Directors to reach a position on this proceeding at its next scheduled meeting on July 25 and 26, 1985.

3. Good cause having been shown, it is ordered, That the Motion for Extension of Time to Submit Comments filed by the American Radio Relay League, Incorporated on April 3, 1985, is granted. This action is taken pursuant to the authority contained in sections 4 (i) and (j) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154 (i) and (j) and 303(r)) and pursuant to the provisions of Sections 0.131(a) and 0.331 of the Commission's rules (47 CFR 0.131(a) and 0.331).

4. The current reply comment date of September 30, 1985 permits a forty-six day reply comment period even after the extended comment period. It appears that this reply comment period should still be sufficient.

5. Therefore, comments in this matter may be filed on or before August 15, 1985. Reply comments may be filed on or before September 30, 1985.

6. For further information about this matter contact John J. Borkowski at (202) 632-4964.

Federal Communications Commission.

Robert S. Foosaner,

Chief, Private Radio Bureau.

[FR Doc. 85-15217 Filed 6-24-85; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 50, No. 122

Tuesday, June 25, 1985

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

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meetings:

Name: Federal Grain Inspection Service Advisory Committee.

Date: July 15, 1985.

Place: U.S. Department of Agriculture, 1400 Indepéndence Avenue, SW., Room 3109 South Building, Washington, D.C. 20250.

Time: 8:30 a.m.

Purpose: To provide advice to the administrator of the Federal Grain Inspection Service on the efficient and economical inplementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) Subcommittee reports on corn moisture and dust, (2) insect infestation, (3) corn and soybean quality, and (4) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Dr. Kenneth A. Gilles, Administrator, FGIS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-0219.

Dated: June 19, 1985.

K.A. Gilles,

Administrator, Federal Grain Inspection Service.

[FR Doc. 85-15204 Filed 6-24-85; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

National Surface Water Survey; Access to Western Wilderness Area Lakes

AGENCY: Forest Service, USDA.

ACTION: Notice of decision; finding of no significant impact.

SUMMARY: The Forest Service hereby give notice of the Chief's decision to authorize the Environmental Protection Agency to collect water samples from lakes in western wilderness areas under Forest Service jurisdiction by a combination of helicopter and ground access.

DATE: The Chief's decision was effective on May 24, 1985.

FOR FURTHER INFORMATION CONTACT: James G. Byrne, Watershed and Air Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, 202-235-8096.

SUPPLEMENTARY INFORMATION: The Environmental Protectión Agency (EPA) has published an Environmental Assessment (EA) and Finding of No Significant Impact on their proposed sampling of the Western Wilderness Area Lakes portion of the National Surface Water Survey (NSWS). EPA proposes to collect water samples from 425 lakes in 74 federally designated wilderness areas in National Forests to evaluate the extent of aquatic resources sensitive to acidic deposition and to assess the environmental, social, and economic effects on these resources. The EA documents EPA's analysis of the use of helicopters and/or access ground for this survey.

The United States Department of Agriculture, Forest Service (FS) is responsible for management of the wilderness areas that include these lakes. Accordingly the FS is responsible for authorizing access to these wilderness areas for EPA's proposal.

EPA proposes the use of helicopters for all sample collection. The Wilderness Act of 1964 prohibits use of motorized equipment and landing of aircraft in wilderness areas except in very limited circumstances. Under section 4(c) of the Act, helicopter use can be authorized if "* * * necessary to meet minimum requirements for the administration of the area for the purpose of this Act * * *" Further, FS may authorize "* * * any activity * * * for the purpose of gathering information about * * * resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment." [Sec. 4(d)(2)]. Helicopter use is generally considered to be incompatible with the wilderness environment.

The FS has independently evaluated and adopted the information contained in EPA's EA. My decision is based on that information. EPA has cooperated with the FS in analyzing modifications of Alternative 3 to find a solution that will protect the unique resource of wilderness while gathering accurate data necessary to assess acid deposition in western lakes.

All of the alternatives in the EA were considered as well as four modifications of Alternative 3.

Alternatives considered were:

Alternative 1—Sampling of all lakes in wilderness by helicopter access.

Alternative 2—Sampling of all lakes in wilderness by ground access.

Alternative 3—Sampling of lakes in wilderness by a combination of ground and helicopter access methods based on sample protocol holding times. The following four modifications of Alternative 3 do not have time-restrictive protocols:

(a) EPA would sample the lakes outside wilderness with helicopters and FS would sample the lakes inside wilderness using ground access. The agencies will conduct a comparability test of helicopter and ground access sampling methods. This test will require helicopter sampling of some lakes in wilderness areas.

(b) EPA will sample the lakes outside wilderness with helicopters and FS would sample the lakes inside wilderness using ground access next year after analysis of the results of a comparability test.

(c) EPA would change their sampling design and select enough lakes outside wilderness to characterize western lakes outside of wilderness. FS would sample a smaller number of lakes inside wilderness by ground access and a comparability test would be conducted. This would make wilderness a separate sampling stratum.

(d) EPA would change their sampling design and select enough lakes outside wilderness to characterize western lakes outside of wilderness. A comparability test would be conducted.

but no sampling would occur in wilderness lakes.

Alternative 4—No sampling in wilderness, the no action alternative.

I have decided to authorize Alternative 3, a combination of helicopter and ground access as modified in (a) above. This Alternative is selected because it meets the needs of the Western Wilderness Area Lakes Survey and is consistent with the Wilderness Act by limiting the use of helicopter access to the minimum required "for the administration of the area for the purpose of this Act" [Sec. 4(c)]. Data on current condition of wilderness lakes can be used to protect the natural condition of wilderness areas. To make certain the wilderness ground collected data is correlated with helicopter collected data outside of wilderness, a comparability test using helicopter and ground sampling in a number of the same lakes, inside and outside of wilderness, is necessary. Phase I of the NSWS, which is the subject of the EPA's EA, will be followed with more indepth data collection and analysis (Phase II) and the establishment of a monitoring system (Phase III) outside wilderness areas. To assure that future data collection, analysis, and monitoring of lakes outside wilderness, (i.e. Phases II and III of the NSWS), can be applied to wilderness lakes, the limited use of helicopters for the comparability test is necessary. The number and identity of lakes with characteristics requiring double sampling in wilderness areas will be determined. Such characteristics may include elevation, geology, orographic effects, and other factors. Site specific analyses of the sampling system to be used for these lakes will be completed to determine if there are any significant environmental effects. Alternative 1 was not selected because the EA states that samples could be gathered by ground access with some changes in sampling protocols; the minimum helicopter use necessary for the administration of wilderness areas, was not demonstrated; and use of helicopters for all sample collection would have a substantial effect on solitude making it incompatible with the wilderness environment.

Alternative 2 was not selected because it does not provide for assessment of the accuracy and comparability of the data to be gathered.

Alternative 3 as described in the EA was not selected because the EA states that samples could be gathered by ground access with some changes in sampling protocols, and the minimum helicopter use necessary for the administration of wilderness areas was not demonstrated.

Modifications b, c, and d of Alternative 3 were not selected because there would be a delay in completion of the survey or wilderness would not be fully included in the NSWS.

Alternative 4 was not selected because it would not meet the goals of the NSWS or protection of the wilderness resource.

I have determined this decision to authorize a combination of helicopter and ground access for EPA's proposal is not a major federal action that would significantly affect the quality of the human environment. Therefore, an environmental impact statement is not needed. This determination is based on the following:

1. There are no irreversible resource commitments.

2. There are no significant adverse cumulative effects.

3. The physical and biological effects are minimal and are limited to the small area of planned activity.

Requests to review EPA's March 1985 draft EA and April 1985 EA, which contain summaries of agencies and persons consulted and comments received should be directed to: Wayne D. Elson, EA Project Officer, M/S 443, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, Telephone: (206) 442-1463.

Implementation of this decision may occur after the Environmental Protection Agency and the Forest Service sign an Interagency Agreement to complete the joint Western Wilderness Lakes Survey.

This decision is subject to appeal pursuant to 36 CFR 211.18.

The foregoing decision notice and finding of no significant impact was signed May 24, 1985, by R. Max Peterson, Chief of the Forest Service.

Dated: June 18, 1985.

F. Dale Robertson,

Associate Chief.

[FR Doc. 85-15259 Filed 6-24-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351-003]

Small Diameter Welded Carbon Steel Pipes and Tubes From Brazil; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Terminate Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Terminate Suspended Countervailing Duty Investigation.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty case on small diameter welded carbon steel pipes and tubes from Brazil. The review covers the period from December 27, 1982. The petitioner and the other domestic interested party to this proceeding have notified the Department that they are no longer interested in the countervailing duty case. These affirmative statements of no interest provide a reasonable basis for the Department to terminate the suspended investigation. Therefore, we intend to terminate the suspended investigation. The termination will apply to all small diameter welded carbon steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after December 27, 1982. Interested parties are invited to comment on these preliminary results and tentative determination to terminate.

EFFECTIVE DATE: December 27, 1982.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1982, the Department of Commerce ("the

Department") published in the Federal Register (47 FR 57551) a notice of suspension of countervailing duty investigation on small diameter welded carbon steel pipes and tubes from Brazil.

In a letter dated May 1, 1985, United States Steel Corporation, the petitioner in this proceeding, informed the Department that it was no longer interested in the case and stated its support of termination of the suspended investigation. The Department received a similar letter from the other domestic interested party to the proceeding, Bethlehem Steel Corporation which further stated that Bethlehem was no longer a producer of the merchandise. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty case that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of Brazilian small diameter welded carbon steel pipes and tubes. The term "small diameter welded carbon steel pipes and tubes" covers welded carbon steel pipes and tubes with walls not thinner than 0.065 of an inch, of circular cross section and 0.375 of an inch or more in outside diameter but not more than 16 inches. Such merchandise is currently classifiable under items 610.3208, 610.3209, 610.3231, 610.3241, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, and 610.3258 of the Tariff Schedules of the United States Annotated. Pipes and tubes suitable for use in boilers, superheaters, heat exchangers, condensers, and feed water heaters, or conforming to A.P.I. specifications for oil well tubing with or without couplings, cold-drawn pipes and tubes and cold-rolled pipes and tubes with wall thickness not exceeding 0.1 inch are *not included*. The review covers the period from December 27, 1982.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty case on small diameter welded carbon steel pipes and tubes from Brazil provide a reasonable basis for termination of the suspended investigation.

Therefore, we tentatively determine to terminate the suspended investigation on this product effective December 27, 1982. The current requirements of the agreement suspending the investigation will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to terminate within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on termination, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to terminate, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: June 19, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-14651 Filed 6-24-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-503]

Preliminary Affirmative Countervailing Duty Determination: Lamb Meat From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers, processors or exporters of lamb meat in New Zealand. The estimated net bounty or grant is $NZ0.2612/lb. and the bonding rate is $NZ0.2532/lb.

We are directing the U.S. Customs Service to suspend liquidation of all entries of lamb meat from New Zealand that are entered, or withdrawn, from warehouse for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in the amount equal to the bonding rate.

If this investigation proceeds normally, we will make our final determination by September 3, 1985.

EFFECTIVE DATE: June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-0161 (Taverman) or (202) 377-3464 (Martin).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are provided to producers, processors or exporters of lamb meat in New Zealand. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Meat Producters Board Price Support Scheme;
- Supplementary Minimum Price Scheme;
- Export Performance Taxation Incentive;
- Export Market Development Taxation Incentive;
- Export Suspensory Loan Scheme;
- Government Contributions to the Meat Industry Research Institute;
- Livestock Incentive Scheme;
- Fertilizer and Lime Transportation Subsidy;
- Fertilizer and Lime Bounty;
- Fertilizer Price Subsidy; and
- Meat Industry Hygiene Grants.

We preliminarily determine the estimated net bounty or grant to be $NZO.2612/lb., and the bonding rate to be $NZO.2532/lb., for all producers, processors or exporters of lamb meat in New Zealand.

Case History

On March 26, 1985, we received a petition in proper form from the American Lamb Company of Chino, California; the Denver Lamb Company of Denver, Colorado; and the Iowa Lamb Corporation of Hawarden, Iowa, filed on behalf of the U.S. Industry producing lamb meat. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that producers, processors or exporters of lamb meat in New Zealand directly or indirectly receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

On April 1, 1985, (after the filing of the petition and prior to the initiation of this investigation), the Office of the United States Trade Representative terminated New Zealand's status as a "country under the Agreement" within the meaning of section 701(b)(1) of the Act.

Since New Zealand is no longer a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise under investigation is dutiable, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, the ITC will not determine whether imports of these products cause or threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 15, 1985, we initiated the investigation (50 FR 15949). We stated that we expected to issue our preliminary determination by June 19, 1985.

On April 25, 1985, we presented a questionnaire to the New Zealand government in Washington, D.C. concerning the petitioners' allegations. Responses to the questionnaire were received on May 31, 1985, with supplementary information submitted on June 17, 1985.

Scope of the Investigation

The product covered by this investigation is lamb meat from New Zealand as currently classified in the *Tariff Schedules of the United States* (TSUS) under item 106.30.

Analysis of Programs

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

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to verification. If a response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants (the review period) is April 1, 1984, to March 31, 1985 (the government of New Zealand's fiscal year). Based upon our analysis for the petition and the response to our questionnarie submitted by the government of New Zealand, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are provided to producers, processors or exporters of lamb meat in New Zealand under the following programs:

A. *Meat Producers Board Price Support Scheme.* Pursuant to the Meat Export Prices Act of 1955 (amended in 1976 and 1982), the Meat Board Price Support Scheme was established to compensate meat producers for fluctuations in market price and to guarantee them a minimum return on export sales of their products. The scheme is administered by the Meat Producers Board (the Board), the Ministry of Agriculture and Fisheries, and the Meat Export Prices Committee. It is financed through the Meat Income Stabilization Account (MISA), an account maintained by the Board at the Reserve Bank of New Zealand.

Each production season, the Board establishes a "schedule price" for each grade of lamb slaughtered for export. Those prices are set at the beginning of the season and remain in effect for the entire season. At the time of slaughter, the processing company pays the schedule price, less slaughtering and freezing costs, to the producers. The processing company, in turn, is reimbursed by the Board at the same price. The Board, in effect, buys all the meat which is subsequently exported.

The Meat Export Prices Committee (the Committee), an independent, non-governmental committee, annually establishes a second set of prices: (1) A "minimum price" for each grade of meat; and (2) a "trigger price" above whch the meat income stabilization levy is collected. The meat income stabilization levy is deposited into the MISA when the schedule price exceeds the trigger price.

The Board has two methods by which it can support the prices of meat. If the schedule price falls below the minimum price, the Board may either: 1) purchase meat at the minimum price, or 2) purchase meat at the schedule price and make a stabilization payment equal to the difference between the minimum price and the schedule price. In either case, the funds used to support the price are drawn from the MISA.

According to the response, the MISA is meant to be self-balancing, *i.e.*, producer levies collected during periods of high prices cover the cost of support payments made during periods of low prices. When the MISA is in a deficit position, the government will authorize the Board to meet its commitments through low-cost overdraft arrangements with the Reserve Bank of New Zealand. The New Zealand Meat Producers Board 1984 Annual Report indicates that no interest or principal will be payable until September 30, 1989.

We do not consider the minimum price support payments funded by producer levies to constitute a bounty or grant within the meaning of the countervailing duty law. However because this program operates to guarantee producers a mimimum return on export sales, and provides government funds to the Meat Producers Board on terms that are not available from commercial sources, we preliminarily determine that it provides a bounty or grant on exports within the meaning of the countervailing duty law. to calculate the benefit, we treated the outstanding MISA deficit incurred on lamb as a one-year, interest-free loan. For our benchmark, we used an average interest rate charged on three month prime commercial bills in 1984, as reported in the *New Zealand Reserve Bank Bulletin.* While we would have preferred an interest rate on one year loans for our benchmark, we were unable to find one. Dividing the value of the benefit by the total weight of the lamb products exported during the review period resulted in an estimated net bounty or grant amount of $NZO.0436/lb.

B. *Supplementary Minimum Prices Scheme (SMP).* The Ministry of Agriculture and Fisheries established the SMP in 1978 to augment the support payments provided under the Meat Producers Board Price Support Scheme. Each year, the government establishes a supplementary minimum price support level (supplementary price) which is set above the Meat Board's minimum price level. When the schedule price, described above, falls below the supplementary price, support payments are drawn from the government-funded Supplementary Minimum Meat Prices Account (SMMPA). If the schedule price falls below the Meat Board's minimum price, payments are then made from both the Meat Board's Minimum Price Support Scheme and the Supplementary Minimum Price Support Scheme. Supplementary payments are only made on meat sold for export consumption.

In September, 1984, the Minister of Finance terminated the SMP and instead provided the SMMPA with a lump-sum payment estimated to equal the value of payments that were provided under the SMP. Because of the overlap between the government's fiscal year (April–March) and the production period (October–September), the Meat Producers Board received payments under both the SMP and lump-sum disbursement during the review period.

Because price support payments provided under the SMP and lump-sum schemes represent direct government payments on the exported product, we preliminarily determine them to be bounties or grants within the meaning of the countervailing duty law. To calculate the benefit from this program, we divided the value of the 1984–85 payments (SMP's and lump-sum payments) by the total weight of lamb products exported during the review period. This resulted in an estimated net bounty or grant of $NZ0.1316/lb.

C. *Export Performance Taxation Incentive (Section 156A, Income Tax Act 1976).* Under the 1979 Amendment of the Income Tax Act 1976, exporters receive a tax credit based on the f.o.b. value of qualifying goods exported. Credits are available as a deduction against income tax payable, and if the tax credit exceeds the income tax payable, the balance is paid to the taxpayer in cash. The rate, or specified percentage, of the tax credit is dependent upon the government predetermined value-added category into which the product falls. The amount of the tax credit is calculated by multiplying the specified percentage corresponding to the value-added category into which the product falls by the f.o.b. value of export sales. Lamb meat processed beyond the primal cut stage falls into value-added category D for which the corresponding specified percentage is 7.7 percent. According to the response, specified percentages under this program will be reduced in the tax years ending on March 31, 1986, and March 31, 1987. During the review period, The Meat Export Development Company (N.Z.) Ltd. (Devco) received benefits under this program.

Because eligibility for this program is limited to exporters, we preliminarily determine that it provides a bounty or grant within the meaning of the countervailing duty law. To calculate the tax benefit, we divided the amount of the tax credit claimed for qualifying lamb products exported to the United States in 1983/84 by the weight of lamb products exported to the United States during the review period. This resulted in an estimated net bounty or grant of $NZ0.0288/lb.

D. *Export Market Development Taxation Incentive (Section 156F, Income Tax Act 1976).* Under the 1979 Amendment of the Income Tax Act 1976, export market development expenditures, such as expenses incurred principally for seeking and developing markets, retaining existing markets, and obtaining market information, qualify for a tax credit equal to 67.5 percent of the total expenditure. However, an exporter who takes advantage of this program may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. Because the normal corporate tax rate in New Zealand is 45 percent, the net benefit to exporters under this program is 22.5 percent of the qualifying expenditure amount. In its response, the government of New Zealand reported that Devco received benefits under this program during the review period.

Inasmuch as eligibility for this program is limited to exporters, we preliminarily determine that it is a bounty or grant within the meaning of the countervailing duty law. Accordingly, we divided 22.5 percent of the U.S.-related qualifying expenditures incurred by Devco in 1983/84 by the weight of the lamb products exported to the United States during the review period. This resulted in an estimated net bounty or grant amount of $NZ0.0343/lb.

E. *Export Suspensory Loans Scheme.* The Export Suspensory Loan Scheme (ESLS), administered by the Department of Trade & Industry and the Development Finance Corporation, was established in the 1973 Budget, modified by Cabinet decision in 1978. The purpose of the program is to provide loans to assist exporters in purchasing equipment needed to expand their production of export goods. The loans may cover up to 40 percent of the eligible expenditure and can be converted to a grant if a pre-determined export target is met. If the export targets are not met, the loans are to be repaid at the Development Finance Corporation's normal long-term interest rates. The government of New Zealand reports that the ESLS terminated on March 31, 1985, and that no new loans will be granted.

Because this program is contingent on export performance and provides funds to borrowers at rates lower than those available from commercial sources, we preliminarily determine that it provides a bounty or grant within the meaning of the countervailing duty law. To calculate the benefit from this program, we treated the loans which had not yet been forgiven as a series of one-year loans rolled over each year. For our benchmark, we used the interest rate charged on prime commercial bills in 1984, as described above. For loans which had been forgiven because the export targets were met, the amount forgiven was treated as a grant. The amounts forgiven prior to the review period were small enough that the benefits would have been allocated to the year of forgiveness. Therefore, we have not included these grants in our calculation. We have included the forgiveness that occurred during the review period and allocated the entire benefit to the review period because the *ad valorem* benefit was less than 0.5%.

Adding the value of the benefits from the loan and grant portions of the program, and dividing by the total weight of the lamb products exported during the review period, resulted in an estimated net bounty or grant amount of $NZ0.000042.lb. Despite the fact that this program was formally terminated on March 31, 1985, because certain benefits were in the form of loans that may be converted to grants after the suspension of liquidation, we are not adjusting the bonding rate to reflect the program-wide change.

F. *Government Contributions to the Meat Industry Research Institute.* In 1955, under the administration of the Department of Scientific and Industrial Research, the government of New Zealand established the Meat Industry Research Institute (MIRI). The role of MIRI was to carry out research and development in all aspects of meat and by-product processing and storage, and to promote the adoption of new technology in the meat industry. MIRI is funded by the Meat Board, the New Zealand Freezing Companies Association and the government. The government funding of research appears to be limited to the meat industry. Moreover, we have no indication that the results of the research and development are available and applicable to producers other than New Zealand meat producers. Therefore, we preliminarily determine that this assistance is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. Dividing the value of the government contribution by the total weight of lamb products sold during the review period, we calculated an estimated bounty or grant of $NZ0.0012/lb.

G. *Livestock Incentive Scheme.* The Livestock Incentive Scheme (the scheme) was introduced in 1976 under section 174 of the Income Tax Act of 1976 and is administered by the Rural Banking and Finance Corporation (RBFC). The RBFC was established in 1974, with the principal function of providing loans and other development assistance for farming, other primary industries, and related service industries.

This particular scheme encourages farmers to increase permanently the numbers of livestock carried. Under the scheme, a farmer employing a stock increase program for a minimum of one and a maximum of three years may opt for one of two incentives: (1) An interest free suspensory loan of NZ$12.00 for each additional qualifying stock unit carried, or (2) a deduction of NZ$24.00 from assessable income tax for each additional qualifying stock unit carried. (A "stock unit" represents one breeding ewe equivalent; *e.g.*, breeding ewe=1 stock unit, other sheep=0.7 stock unit, dairy cow=7 stock units, etc.) The last date for making applications under the scheme was March 31, 1982.

Under the loan option, no interest was charged on the loan if the recipient complied with the conditions of the scheme. Upon breach of the conditions, the principal was repayable in cash or over a term with interest at the RBFC rate for development loans.

Farmers choosing the tax incentive could claim deductions at the time of livestock increases or at the end of the program plus the two-year sustaining period. All other qualifying criteria are the same as for the loan option.

If the livestock increase was sustained for two years following the development program's completion, farmers who elected to take out suspensory loans could write the loans off as a tax-free grant. For farmers electing to use the tax option, the provisional tax deduction was confirmed and could be applied toward tax liability for any of the three tax years after completion of the development program.

Because benefits under this program are limited to farmers with livestock herds, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit received from the loan option portion of this program, we treated as grants the amounts forgiven and allocated those benefits over 10 years, the average useful life of machinery and equipment used for agricultural activities. The discount rate chosen for allocation purposes was the national weighted-average trading bank loan rate. For the portion that has not yet been forgiven, we multiplied the total amount of the principal outstanding as of March 31, 1984, by a percentage estimated to represent the number of lamb farmers choosing that option. We treated the amount as a one year loan and compared the interest rate charged to our benchmark interest rate as described above. The benefit under the tax option was calculated by multiplying the average annual amount report by the estimated number of lamb farmers choosing the tax option. Adding the value of the benefits from the loan and tax option portions of the program, and dividing by the total weight of the lamb products sold during the review period, resulted in an estimated net bounty or grant amount of $NZ0.0023/lb.

H. Fertilizer and Lime Transportation Subsidy. Under the administration of the Ministry of Agriculture and Fisheries, the government of New Zealand provided payments to retailers and wholesalers of fertilizer and lime to cover their costs of transporting those products from the superphosphate works, ports of landing, or approved limeworks. The response indicates that these payments are, in turn, passed on to farmers in the form of reduced prices. The stated purpose of the program is to help ensure that the rate of fertilizer application is kept at levels allowing for both adequate pasture maintenance and development.

Because benefits under this program are provided almost exclusively to sheep and other livestock farmers, we preliminarily determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable. While the response indicates that the program was terminated on November 8, 1984, payments were made to sheep farmers during the period for which we are measuring bounties or grans. Dividing that amount by the total weight of the lamb products sold during the review period, resulted in an estimated net bounty or grant amount of $NZ0.0071/lb. However, in cases in which program-wide changes have occurred in a program after the period for which we are measuring subsidization and prior to a preliminary determination, and where the changes are verifiable, the Department's practice is to adjust the bonding rate to correspond as nearly as possible to the eventual duty liability. *See Final Affirmative Countervailing Duty Determination: Oil County Tubular Goods from Brazil* (49 FR 46570). In this case, because the response indicates that this program has been terminated, we have set the bonding rate at $NZ0.00/lb. for this program. At verification, we will ascertain whether payments under this program have ceased.

I. *Fertilizer and Lime Bounty.* Under the administration of the Ministry of Agriculture and Fisheries, the government of New Zealand sponsored two programs under this heading. The first, called 'The Fertilizer and Lime Bounty' was terminated in 1979. We have no information on the benefits provided under this program. The second, called 'The Fertilizer Aerial Spreading Bounty,' provided payments to aerial spreading companies, payments which were then credited to the farmer.

Since the response indicates that 75 percent of the payments under this program were allocated to sheep farmers, and because information has not been provided on the other commodities receiving benefits under this program, we preliminarily determine that the fertilizer aerial spreading bounty was limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable. While the response indicates that the program was terminated in November, 1984, payments were made to sheep farmers during the period for which we are measuring bounties or grants. Dividing that amount by the total weight of the lamb products sold during the review period, resulted in an estimated net bounty or grant amount of $NZ0.0009/lb. However, or the reasons described above, and because the response indicates that this program has been terminated, we are setting the bonding rate at $NZ0.00/lb. for this program. At verification, we will ascertain whether payments under this program have ceased.

J. *Fertilizer Price Subsidy.* Under the administration of the Ministry of Agriculture and Fisheries, the government of New Zealand provides payments to wholesalers or importers of phosphate rock, phosphatic, potassic, nitrogenous and compound fertilizers, and on all organic fertilizers. The response indicates that these benefits are passed through to farmers in the form of reduced prices. The stated purpose of this program is to maintain a low cost of fertilizer to farmers in order to encourage adequate pasture maintenance and development.

Because benefits under this program are provided almost exclusively to sheep and other livestock producers, we preliminarily determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable. Dividing the value of the price reduction to lamb producers by the total weight of the lamb products sold during the review period, resulted in an estimated net bounty or grant amount of $NZ0.0097/lb.

K. *Meat Industry Hygiene Grants.* The government of New Zealand, in its 1977 budget, provided special temporary grants to assist meat export processing companies in upgrading buildings, plant and machinery and operations in freezing works required to meet the hygiene standards imposed by importing countries. The response indicates that the scheme expired on September 30, 1981, and that final payments were made in 1983/84.

Since this program provided benefits which were limited to processors who produce meat for export, we preliminarily determine it to be countervailable. Despite the fact that payments have been terminated, because these are grants, we are allocating the benefits over 10 years, the average useful life of machinery and equipment used for agricultural activities. Applying the grant methodology, and dividing by the amount of the total weight of the lamb products exported during the review period, we calculated an estimated net bounty or grant amount of $NZ0.0017/lb. At vertification, we will ascertain whether payments under this program have ceased.

II. Programs Preliminarily Determined Not To Confer Bounties or Grants

We preliminarily determine that bounties or grants are not provided to producers, processors or exporters of lamb meat in New Zealand under the following programs:

A. *Meat Producers Board Loans and Loan Guarantees.* The New Zealand Parliament established the Meat Producers Board through the Meat Export Control Act of 1921–22. The Meat Producers Board controls virtually all aspects of the meat trade including grading, handling, polling, slaughtering, storing, shipping, selling, and disposing of all meat exported from New Zealand.

Although established by Act of Parliament, the Meat Producers Board is not an agency of the government. Of the nine members of the Board, two are appointed by the government, six are elected as representatives of sheep and dairy farmers and one is appointed by the Dairy Board. While the Meat Producers Board is subject to government audit of its activities and finances, it does not report to the government and is not legally required to follow government policy.

The Meat Producers Board appears to have two sources of revenue: (1) An export levy set by the board and collected by processors from lamb growers at the time of slaughter; and (2) return on investments. The petitioners alleged that the Meat Producers Board is issuing loans and providing guarantees for various companies involved in lamb production and exportation. We determined that the Meat Board entered into these financial transactions as one independent party, whose funds are its own, dealing with another. Therefore, we peliminarily determine that these programs operated by the Meat Producers Board are not bounties or grants within the meaning of the countervailing duty law.

B. *Suspension of Government Inspection Fees.* This service, administered by the Ministry of Agriculture and Fisheries, ensures that all meat and meat by-products comply with domestic inspection and hygiene standards, and requirements of overseas importing countries. Since 1978, government inspection fes on meat for domestic consumption, as well as for export, have been paid by the New Zealand Government.

As the government bears the cost of inspecting meat for both the domestic and export markets, inspection fee payments do not confer a subsidy on exports. Moreover, numerous agricultural products, such as poultry and fish, appear to be similarly inspected. The provision by the government of this type of service is as beneficial to consumers as to producers, *i.e.*, consumers get a better quality product and producers receive higher returns for their commodities. Thus, we preliminarily determine that this practice is not countervailable as an export subsidy, nor is it limited to a specific enterprise or industry, or group of enterprises or industries.

C. *Noxious Plants Control Scheme.* The Ministry of Agriculture and Fisheries provides payments under this scheme to farmers equal to 50 percent of their costs for chemical or mechanical control of specified weeds. While projects must be approved in order to receive funding under this scheme, there is no indication that this scheme is limited to producers of any particular agricultural commodities. Therefore, we preliminarily determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, and is not countervailable.

D. *Deductions for Capital Expenditures for Development of Domestic Farmland.* This program is administered by the Inland Revenue Department. Under sections 126, 127 and 129 of the Income Tax Act 1976, a deduction is available for certain expenditures incurred in clearing and preparing farming and agricultural land. The deductions may be taken in the year incurred or spread over that year and the next four tax years. Any taxpayer engaged in farming or agricultural business on land in New Zealand may claim a deduction for qualifying capital expenditures.

Since the eligibility criteria specify that "any taxpayer engaged in any farming or agricultural business or land in New Zealand" may apply for this deduction, we preliminarily determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, and is not countervailable.

E. *Land Development Loans.* Under the administration of the Rural Bank, contingent liability loans were provided for the development of pastoral and agricultural land. All farmers were eligible for financing provided the minimum area for development was 10 hectares. Expenditures qualifying for these loans included sowing of permanent pastures, clearing, cultivation, seeding, fertilizing, and drainage. The program, which was open for applications from August 1, 1978, to March 31, 1981, offered maximum loans of $NZ250 per hectare of land. The loans were for a 15-year term, and provided the land was maintained to the satisfaction of the Rural Bank, no interst was payable and half of the principal could be written off.

This program was preliminarily found to be countervailable in our *Preliminary Affirmative Countervailing Duty Determination: Lamb Meat from New Zealand* (46 FR 58128). However, information now indicates that this program neither designates specific agricultural products for receipt of funding, nor establishes differing terms for specific products. Therefore, we preliminarily determine it is not countervailable. *See Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097). At verification, we will closely examine the *de facto* provision of benefits under this program.

III. Programs Preliminary Determined Not To Be Used

In accordance with our practice of accepting a response to an allegation which denies the receipt of benefits under a program, we preliminarily determine, subject to verification, that producers, processors or exporters of lamb meat in New Zealand did not use the following programs which were listed in our notice of initiation.

A. *The Export Programme Suspensory Loan Scheme (EPSLS) and the Export Programme Grants Scheme (EPGS).* The Export Programme Grants Scheme was established in the 1979 Budget and converted to the Export Programme Suspensory Loan Scheme in June 1982. Funds for the programs are appropriated annually by Parliament to assist exporters with marketing programs in targeted overseas markets. The grants covered 64 percent of budgeted expenditures and were renewable for up to three years. The loans cover 40 percent of eligible expenditures and are renewable for up to three years when they may be converted to a grant if export targets are met. If the export targets are not met, the loans must be repaid with interest.

Because the government of New Zealand reported that no EPGS grants were provided with respect to export sales to the United States, and that no EPSLS loans to the producers or exporters lamb meat were outstanding during the review period, we preliminarily determine this program was not used.

B. *Rural Export Suspensory Loans*. The purpose of this program, which was introduced in 1974 and closed to new applicants on March 31, 1985, was to promote the export of non-traditional agricultural, horticultural and fish products not previously exported, or products for which market expansion was possible. The response indicates that lamb meat, considered a traditional export product, has never been an eligible product for this program, and that no loans have been granted for the production, processing, packaging or marketing of lamb. Therefore, we preliminarily determine that this program was not used.

IV. Program for Which Additional Information Is Needed

A. *Standard and Nil Value of Livestock*. Under section 85 of the Income Tax Act of 1976, trading stock (inventory) must be valued at either cost, market or replacement value. The choice and use of the valuation method is subject to review by the Commissioner of Inland Revenue. If inventory increased in value and is recorded as such by the taxpayer, that increase must be included as (assessable) taxable income for that year. If an end of the year valuation of trading stock results in a decrease of value, the loss is allowed as a deduction in calculating the assessable income for that year. As an alternatve to this system, owners of livestock may adopt the standard value and a nil value of livestock method for recording inventory for income tax purposes.

Under the standard value of livestock system, the Commissioner of Inland Revenue will periodically establish minimum acceptable levels of standard value, *i.e.*, value per head of livestock. These values are based on average market returns over a period of time, taking into account costs of production, and serve as a buffer against price fluctuations. A farmer may elect to value his inventory using the standard value or any higher value. However, once a standard value has been adopted by a farmer for a class of livestock, it cannot be reduced without the approval of the Commissioner. This system has been in operation since 1915.

Under the nil value of livestock system, a farmer can elect to adopt a nil value for all or part of the increase in his herd over a basic number of livestock. That basic number is established as the greater of the number of livestock on hand at the end of either of the two income years immediately preceding the year in which the decision is made to join the system. By using this scheme, the farmer can defer part of his tax liability by not paying tax on increases in stock until the livestock is actually sold. Upon sale, income taxes are payable on the net proceeds.

While these tax provisions do not appear to bestow countervailable bounties or grants on the producers, processors, or exporters of lamb meat, we will seek additional information on these programs for our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of lamb meat from New Zealand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond equal to $NZO.2532 for each entry of this merchandise from New Zealand. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 1:30 p.m. on July 30, 1985, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participants in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests for a hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by July 23, 1985. Oral presentation will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: June 19, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-15255 Filed 6-24-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-501]

Initiation of Countervailing Duty Investigation; Lime Oil From Peru

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Peru of lime oil, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. Since Peru is not a "country under the Agreement", section 303 of the Tariff Act of 1930, as amended (the Act) applies to this investigation. However, because Peru is a member of the General Agreement on Tariffs and Trade (GATT) and the lime oil subject to this investigation is non-dutiable, the petitioner is required to allege that, and the ITC is required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry. Therefore, we are notifying the U.S. International Trade Commission (ITC) of this action.

The ITC will make its preliminary determination on or before July 15, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before August 22, 1985.

EFFECTIVE DATE: June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washingon, D.C. 20230, telephone: (202) 377-0189 or 377-1785.

SUPPLEMENTARY INFORMATION:

The Petition

On May 29, 1985, we received a petition from counsel for Parman-Kendall, Inc. on behalf of the U.S. industry producing lime oil. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters of lime oil in Peru receive bounties or grants within the meaning of section 303 of the Act.

Since Peru is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 applies to this investigation. However, because Peru is a member of the General Agreement on Tariffs and Trade (GATT) and the lime oil subject to this investigation is non-dutiable, the petitioner is required to allege that, and the ITC is required under section 303(a)(2) of the Act (19 U.S.C. 1303(a)(2)) to determine whether, imports of this product materially injure, or threaten material injury to, a U.S. industry. Under the provision of this paragraph, the Department lacks the authority to impose duties on duty-free goods from Peru unless an affirmative injury determination has been made.

Initiation of Investigation

Under section 702(c) of the Act, we must determine within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably to the petitioner supporting the allegations.

We have examined the petition on lime oil from Peru, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Peru of lime oil, as described int he "Scope of Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, well will make our preliminary determination by August 22, 1985.

Scope of Investigation

The product covered by this investigation is lime oil which is currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item number 452.3800. Lime oil is extracted from the peel of lines from two varieties of the acid lime tree. Extraction is done either by a distillation or a cold-pressed process. The end product may be used in soft drinks, food flavorings, perfumes and cosmetics.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Peru of lime oil receive benefits under the following programs which constitute bounties or grants:

• Certificate of Tax Rebate System (CERTEX)

• Nontraditional Export Fund (FENT); and

• Law for the Promotion of Exports of Nontraditional Goods (Export Law).

—Articles 8 and 9
—Article 12
—Article 13
—Article 14
—Article 16
—Article 23
—Article 31

• Regional Incentives.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-confidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 15, 1985, whether there is a reasonable indication that imports of lime oil from Peru materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

June 18, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-15256 Filed 6-24-85; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. 626]

Piher Semiconductores, S.A.; Order Amending Temporary Denial of Export Privileges

In the mater of Piher Semiconductores, S.A., Avda San Julian, s/n Apartado Correos 177, Granallers (Barcelona), Spain.

As an amendment of the Order of February 25, 1982, 47 FR 9044 (March 3, 1982) Temporarily Denying Export Privileges, Piher International Corp. has been authorized to make certain exports. Such authorization was issued first in the Order of April 9, 1982, 47 FR 16819 (April 20, 1982), and has been extended without interruption at several-month intervals, most recently by the Order of April 3, 1985, 50 FR 14002 (April 9, 1985).

Each such extension provided that Piher International Corp. could apply for an extension of is authorization to export if serious economic hardship would be caused by a failure of such extension coupled with a continuing consideration of a motion filed by Piher International Corp. that requested exception from the provisions of Paragraph III of the Order of February 25, 1982.

Consideration of this motion to except Piher International Corp. is still continuing, and it has now applied for an enlargement of its authorization to make certain exports under the Order of April 3, 1985 (which authorizes exports through June 30, 1985), asserting that failure to obtain the enlargement will entail serious economic hardship. All of the authorizations to make exports heretofor have applied only to certain exports to Canada and Singapore; the requested enlargement would add two specific companies located in Hong Kong to these permitted destinations.

Based on the representations made by Piher International Corp., I find that its application for an enlargement of its authorization to make certain exports is justified, and that granting this extension will not jeopardize the purpose of the Order of February 25, 1982.

Accordingly, it is hereby ordered that the Order of February 25, 1982 is further amended by excepting, from its denial of export privileges, Piher International Corp., with addresses at 903 Feehanville Drive, Mt. Prospect, Illinois 60056, and at Post Office Box 91969, Chicago, Illinois 60680, insofar as Piher International Corp. exports variable resistors and potentiometers to its two customers in Hong Kong in fulfillment of shipments scheduled from June 7 through June 30, 1985 in the documents filed by Piher International Corp. in support of its Application for this amendment, provided all such exports are G-DEST under the Export Administration Regulations (15 CFR Parts 368-399 (1984)). Piher International Corp. may apply for an extension of this Amendment to shipments scheduled after June 1985 should a continuing consideration of its aforesaid motion entail serious economic hardship if such an extension is not issued.

This Amendment of the Order was issued orally today, June 19, 1985, at 12:15 p.m. Eastern Daylight Time, to be effective as of June 7, 1985; and such oral issuance is hereby confirmed by this written Amendment of the Order.

Dated: June 19, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-15187 Filed 6-24-85; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Maritime Mammals; Application for Permit: Daniel H. Mann

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammals Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulation Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name, Daniel H. Mann (P361).

b. Address, College of Forest Resources, AR-10, University of Washington, Seattle, Washington 98195.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: 20 unidentified whale bones for radiocarbon dating.

4. Type of Take: Import.

5. Location of Activity: Norway.

6. Period of Activity: 4 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammals Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. These individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and options contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E. BIN C15700, Seattle, Washington 98115.

Dated: June 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-15209 Filed 6-24-85; 8:45 am]

BILLING CODE 3510-22-M

Change in the Construction Setback Line in the Town of Gulf Shores, AL., Proposed Amendment to the Alabama Coastal Area Management Program Under the Coastal Zone Management Act

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of Preliminary Determination to Approve Amendment.

SUMMARY: The Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the State of Alabama to amend its Coastal Area Management Program (ACAMP) to change the regulatory definition of the "Construction Setback Line" for the Town of Gulf Shores. The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(g) and implementing regulations at 15 CFR 923.81. The change consists of the reduction of the Construction Setback Line (CSL) for the Business, Tourist and Lodging (BTL) and the Business, Central Resort (BCR) zones as defined on July 16, 1984 by the zoning maps of the Town of Gulf Shores to five feet instead of forty feet behind the most inland point of the crestline of the primary dune system.

The proposed amendment allows for increased predictability and consistency in the management of the ACAMP and more specifically for the highly developed and developing areas of the Town of Gulf Shores.

The Director of the Office of Ocean and Coastal Resource Management has reviewed the amendment request and has made a preliminary determination that it should be approved, and that the ACAMP, as changed, will still constitute an approvable program under § 923.82; and the procedural requirements of section 306(c) of the CZMA will have been met.

The Director also determined that approval of the proposed change does not constitute a major Federal action having a significant effect on the environment. Therefore, an environmental impact statement on the approval of the ACAMP amendment under the National Environmental Policy Act of 1969, as amended, will not be required. Copies of the Finding of No Significant Impact (FONSI), including the supporting Environmental Assessment (EA), and the Director's preliminary determination of approvability are available at the address below.

Comments on the Preliminary Determination to approve the Alabama amendment request and on the EA and FONSI should be made within 30 days from the date of this notice. Address comments to: James P. Burgess, Acting Chief, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634-1672.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: June 10, 1985

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85-15172 Filed 6-24-85; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Permit Modification; Mr. Randall S. Wells; Modification No. 2 to Permit No. 417

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Permit No. 417 (48 FR 22181) issued to Mr. Randall S. Wells, Dolphin Biology Research Associates Inc., 163 Siesta Drive, Sarasota, Florida 33581 on May 20, 1983 and first modified on July 3, 1984 (49 FR 27361), is modified for a second time as follows: Sections A.5 and A.6 are added as follows:

"5. Up to 125 Atlantic bottlenose dolphins may be taken during 1986, 1987 and 1988."

"6. Selected individuals may be recaptured up to three (3) times per year for follow-up testing under the conditions of the Permit."

Section B.8 is deleted and replaced by the following:

"8. This Permit is valid with respect to the taking authorized herein until December 31, 1988."

This modification became effective on June 18, 1985.

The Permit as modified, is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: June 18, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-15263 Filed 6-24-85; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, D.C. 20503, (202) 395-7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Regulations and Forms Relating to Registration with the Commission.

Control number: 3038-0023.

Action: Extension.

Respondents: Business (excluding small businesses)

Estimated annual burden: 79,652

Estimated number of respondents: 99,525

Issued in Washington, D.C., on June 19, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-15181 Filed 6-24-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems; Rescheduling of Advisory Committee Meeting

SUMMARY: The meeting date for the Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems scheduled for 21-22 August 1985 in the Pentagon, Arlington, Virginia as published in the **Federal Register** (Vol. 50, No. 113, Wednesday, June 12, 1985, FR Doc. 85-14124) has been cancelled. Instead the Task Force's Leadership Subpanel will meet on 13-15 August at the Pentagon, Arlington, Virginia. In all other respects the original notice remains unchanged.

Dated: June 20, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-15197 Filed 6-24-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

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).

Dates of Meeting: Saturday thru Monday, 13-15 July 1985.

Times and Places:

13 July-0900-1500 hours at HQS REDCOM, MacDill AFB, FL.

14 July-0900-1600 hours at HQS 3d USA Ft. McPherson, GA.

15 July-0800-1500 hours at HQS USA FORSCOM, Ft. McPherson, GA.

Agenda: The Doctrine and Training Integration Subpanel of the Army Science Board 1985 Summer Study on Training and Training Technology-Applications for AirLand Battle and Future Concepts will meet to discuss training concepts and programs to support contingency operations in the joint operational environment. 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 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administration Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 85-15190 Filed 6-24-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; 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 (ASG).

Dates of Meeting: Tuesday and Wednesday, 16-17 July 1985.

Times and Places: 0800-1700 (Closed) The Pentagon, Washington, DC.

Agenda: The Active and Reserve Army Subpanel of the Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle will meet on 16-17 July to write their initial draft report. 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 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board 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. 85-15189 Filed 6-24-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Meeting Cancellation

The following meeting of the Army Science Board Ad Hoc Subgroup of Chemical/Biological Warfare Intelligence, which was originally scheduled for 24-25 June 1985 (Closed), has been cancelled.

Place: The Pentagon, Washington, DC.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 85-15191 Filed 6-24-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP85-585-000 et al.]

Natural Gas Certificate Filings; Arkla Energy Resources et al.

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP85-585-000]

June 17, 1985.

Take notice that on June 6, 1985,[1] Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-585-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued transportation of natural gas for W. R. Grace and Co. (W. R. Grace), an existing retail industrial sale customer, and operation of jurisdictional facilities in connection therewith, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Arkla proposes to transport up to 37,463 Mcf of gas per day for use in W. R. Grace & Co.'s industrial plant near Memphis, Tennessee, for a term expiring five years from the date of initial delivery or the termination date of its retail sales contract with W. R. Grace, whichever occurs earlier.

Arkla indicates it would receive from Grace's supplier, Mid Continent Gas Company, volumes of gas at various points in Oklahoma, Arkansas, and Louisiana, and would redeliver thermally equivalent volumes to Texas Gas Transmission Corporation (Texas Gas) at various points in Arkansas and Louisiana. Arkla also states that Texas Gas and a local distribution company, the utility division of the City of Memphis, would also be required to provide subsequent transportation.

Arkla states that it would charge the transportation rate applicable to the service as currently on file and effective from time to time in its FERC Gas Tariff.

Arkla also requests flexible authority to add and/or delete sources of gas and/or receipt/delivery points. With respect to such flexible authority Arkla states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt or delivery points, to file with the Commission the following information:

(1) A copy of the gas purchase contract between the seller and the end-user;

(2) A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor and if so, identification of the parties, and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) A statement as to whether the gas is committed or dedicated within the meaning of NGPA section 2(18);

(5) If the new source of supply involves release gas which is committed or dedicated as defined in No. 4, reference the suppliers' Natural Gas Act section 7(b) abandonment authorization;

(6) Location of the receipt/delivery points being added or deleted;

(7) Identity of any other pipeline involved in the transportation.

Arkla submits that any changes made pursuant to such flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the volume levels proposed herein.

Comment date: July 8, 1985, in accordance with Standard Paragraph F at the end of this notice.

[1] The application was initially tendered for filing on June 6, 1985; however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until June 11, 1985; thus, filing was not completed until the latter date.

2. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP85-579-000

June 17, 1985.

Take notice that on June 5, 1985, Arkla Energy Resources, a division of Arkla, Inc., formerly known as Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-579-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related jurisdictional facilities necessary to deliver gas from one of its jurisdictional pipelines to one or more consumers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc., under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 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.

It is stated that Arkla proposes to construct and operate a sales tap on its Line 635-1 in Atoka County, Oklahoma, for the delivery of natural gas to Amis Materials Company, which would use approximately 202,000 Mcf per year for industrial purposes.

Arkla states that this would be a routine delivery of gas to a customer service by Arkansas Louisiana Gas Company, a division of Arkla, Inc. The gas would be delivered from Arkla's general system supply, which it is stated is adequate to provide the service.

Comment date: August 1, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP85-542-000]

June 18, 1985.

Take notice that on May 24, 1985, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-542-000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon service by transfer of certain production properties, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to transfer all of its natural gas production properties, appurtenances and the service rendered thereby to its affiliate, Columbia Natural Resources, Inc. (CNR). Applicant further states that it does not believe the transfer requires abandonment authorization pursuant to section 7(b) of the NGA since CNR has concurrently filed an application pursuant to section 7(c) of the NGA for authorization to continue the identical service. Applicant requests that the Commission find Applicant's application for abandonment authorization moot. Applicant states, however, that to the extent the Commission determines that abandonment authorization is required, Applicant is applying for the grant of such authorization pursuant to section 7(b) of the NGA.

Applicant states that the transfer of properties to CNR is necessary in furtherance of a general corporate reorganization of operations of the Columbia Gas System, Inc., along functional lines. Applicant indicates that the properties to be transferred include all of its Appalachian production properties that are committed or dedicated to interstate commerce within the meaning of the Natural Gas Policy Act of 1978 (NGPA) and which are not excluded from the Commission's NGA jurisdiction by operation of section 601(a)(1) of the NGPA. Applicant states that upon completion of the transfer all Appalachian exploration, development and production operations would be performed by CNR, while all gathering, interstate transportation and storage facilities and operations would remain with Applicant.

Comment date: July 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Consolidated Gas Transmission Corporation

[Docket No. CP85-564-000]

June 18, 1985.

Take notice that on June 4, 1985, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85-564-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate the appurtenant measuring and regulating facilities necessary to provide one additional point of delivery to an existing customer, North Penn Gas Company (North Penn), under the certificate issued in Docket No. CP82-537-000 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.

Consolidated proposes to construct and operate approximately 300 feet of 2-inch pipeline and install and operate a meter and appurtenant measuring and regulating facilities to connect its production facilities to North Penn's 2-inch distribution line located in Tioga County, Pennsylvania. Consolidated then proposes to add a new delivery point on North Penn's 2-inch distribution line receive approximately 17,301 dt equivalent of natural gas per year from Consolidated's own local production. Consolidated states the new delivery point would be known as the Knapp connection.

Consolidated states that the Knapp connection would provide an outlet for its newly developed local supplies which are distant from its own transmission system and would enable Consolidated to maintain a continuing, dependable supply of gas to North Penn. Consolidated asserts the additional volumes to be provided through the proposed new point of delivery are within Consolidated's currently authorized level of sales and that such volumes would have a *de minimis* impact on Consolidated's system-wide peak day and annual deliveries.

North Penn is served under Consolidated's Requirements Service Rate Schedule RD.

Comment date: August 2, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP85-562-000]

June 18, 1985.

Taken notice that on June 4, 1985, Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonnet, Houston, Texas 77005, filed in Docket No. CP85-562-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon part of its transportation of gas for service to Union Electric Company (Union Electric) for the State of Missouri government buildings in Jefferson City, Missouri, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that deliveries of natural gas were being made to Union Electric pursuant to an industrial gas contract dated May 1, 1983. It is explained that following receipt of Commission authorization for the proposed abandonment, gas service would be provided to Union Electric pursuant to a gas sales contract dated May 14, 1984. Panhandle submits that the change from nonjurisdictional to jurisdictional service was requested by Union Electric in a letter dated February 10, 1984, in which Union Electric stated that it would perfer to receive the gas from Panhandle as part of its contract demand. It is asserted that no change in the volumes delivered would result from the abandonment and that no facilities would be abandoned.

Comment date: July 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Trunkline Gas Company

[Docket Nos. CP84-577-008 et al.]

June 17, 1985.

Take notice that on June 7, 1985, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket Nos. CP84-577-008, CP84-577-009, CP84-577-010, CP84-577-011, CP84-577-012, and CP84-577-013 requests pursuant to section 7 of the Natural Gas Act and § 157.205 of the Regulations under the Natural Gas Act for authorization to make off-system sales of natural gas. The requests are pursuant to authorization granted by the Commission's order issued October 29, 1984, in Docket No. CP84-577-000, authorizing a sales for take-or-pay relief program (STOPR), all as more fully set forth in the requests which are on file with the Commission and open for public inspection.

The Appendix attached hereto provides the purchasers and volumes for each of the referenced dockets under which Applicant proposes to make off-system sales.

Applicant states that each purchaser would use the gas for general system supply for resale within each purchaser's service area. It is stated that the sales price which the purchasers would pay Applicant is $2.8417 per dt equivalent of gas. The sales price consists of Applicant's average cost of gas, the CGI surcharge, and an added margin pursuant to the authorization in the STOPR order, it is explained.

Applicant states that it would deliver the contract quantity, on an interruptible basis, in each referenced docket at the outlet of Applicant's measuring station at the existing point of interconnection between Applicant and Columbia Gulf Transmission Company (Columbia Gulf) at Centerville, St. Mary Parish, Louisiana. It is indicated that Columbia Gulf would deliver the gas to Columbia Gas Transmission Corporation for further delivery to each purchaser.

It is stated that the service is conditioned upon the availability of capacity sufficient to provide service without detriment to Applicant's existing customers. The term of the service under the authorizations sought herein would be from the date of the first delivery, with termination to coincide with the expiration under the STOPR program, it is indicated.

APPENDIX

Docket No. and PUrchaser	Volume (dt equivalent per day)
CP84-577-008; Columbia Gas of New York, Inc	800
CP84-577-009; Columbia Gas of Kentucky, Inc	1,180
CP84-577-010; Columbia Gas of Maryland, Inc	240
CP84-577-011; Columbia Gas of Ohio, Inc	12,400
CP84-577-012; Columbia Gas of Virginia, Inc	740
CP84-577-013; Columbia Gas of Pennsylvania, Inc	4,640

Comment date: August 1, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. DC85-527-000]

June 18, 1985.

Take notice that on May 20, 1985, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-527-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Monsanto Company (Monsanto), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport natural gas for Monsanto on an interruptible basis. It is said that the volume of natural gas to be transported would be the amount by which the aggregate volume of gas delivered to Monsanto at its Luling plant in St. Charles Parish, Louisiana, is less than 33,000 Mcf. It is stated that Monsanto would deliver gas to Applicant by using existing facilities located on the Eugene Island area, Block 95 platform, offshore Loiusiana, and at other mutually agreed upon points. It is further stated that Applicant would transport this gas and deliver it to Monsanto in St. Charles Parish, Louisiana. Applicant proposes to charge Monsanto the transportation rate in effect for Applicant's southern rate zone, currently said to be 30.01 cents per Mcf plus 1.25 cents per Mcf for the Gas Research Institute surcharge.

Comment date: July 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 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 and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15183 Filed 6-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES85-41-000 et al.]

Electric Rate and Corporate Regulation Filings; El Paso Electric Co. et al.

June 18, 1985.

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Company

[Docket No. ES85-41-000]

Take notice that on June 7, 1985, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act, proposing to enter into a leveraged lease financing transaction whereby the Company will sell a new 300-mile (approximate) transmission line to be constructed by the Company from Springerville, Arizona to El Paso, Texas to an unrelated third party purchaser for approximately $75,000,000 cash and leaseback the Springerville Line under a long-term lease.

Comment date: July 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. El Paso Electric Company

[Docket No. ES85-42-000]

Take notice that on June 10, 1985, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act, to issue, either on a secured or unsecured basis, short-term obligations and commercial paper, not to exceed in the aggregate $200,000,000 principal amount at any one time outstanding, and, in no case, to mature later than December 31, 1986.

Comment date: July 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Arkansas Power and Light Company

[Docket No. ER85-563-000]

Take notice that on June 7, 1985, Arkansas Power and Light Company tendered for filing Electric Rate Schedule WA85. The rare schedule is applicable to service required by a rural, non-profit, electric cooperative corporation for redistribution to persons, firms and corporations which such electric cooperative corporation legally serves. The rate schedule is also applicable to service required by a municipally owned electric distribution system for resale to its customers in corporate limits and in territory allocated by the Arkansas Public Service Commission (Commission) when the purchaser contracts with the Company for its entire purchased power and energy requirements.

Comment date: July 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. El Paso Electric Company

[Docket No. ER85-567-000]

Take notice that on June 10, 1985, El Paso Electric Company (El Paso) tendered for filing as an initial rate filing, an "Interchange Agreement between the State of California Department of Water Resources and El Paso Electric Company" dated April 18, 1985 (Agreement). El Paso states that this Agreement provides a basis for the exchange of energy between parties on a returnable basis and on an economy basis. El Paso requests that this Agreement be accepted for filing and made effective sixty (60) days from the date of filing.

El Paso further states that copies of this filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission and the State of California Department of Water Resources.

Comment date: July 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Electric Company

[Docket No. ER85-566-000]

Take notice that on June 10, 1985, Commonwealth Electric Company ("Commonwealth") filed, pursuant to § 35.12 of the Commission's Regulations, an agreement governing the sale by Commonwealth of System Power (as defined therein) to New England Power Company ("Buyer").

By the provisions of the Agreement, Commonwealth proposes to sell to Buyer certain quantities of electric power upon terms and conditions and in amounts mutually acceptable to both parties. Commonwealth has requested the Commission to waive its notice requirements pursuant to § 35.11 of its regulations for good cause shown and to permit the tendered agreement to become effective as proposed on January 6, 1984.

A copy of this filing has been served upon Buyer and upon the Massachusetts Department of Public Utilities.

Comment date: July 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. KPL Gas Service

[Docket No. ER85-564-000]

Take notice that on June 10, 1985, KPL Gas Service tendered for filing a newly executed contract dated May 29, 1985, with the City of Girard, Kansas for wholesale service to that community. KPL Gas Service states that this contract permits the City of Girard to receive service under rate schedule WSM-12/83. The proposed effective date shall be upon all necessary regulatory approvals and procurement by City of an effective contract for delivery of power and energy from Company's system to City-owned substation. In addition, KPL Gas Service states that copies of the contract have been mailed to the City of Girard and the State Corporation Commission.

Comment date: July 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp

[Docket No. ER85-565-000]

Take notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on June 10, 1985, tendered for filing, in accordance with § 35.13 of the Commission's Regulations, an application for an increase in rates for service provided under Pacific's FERC Electric Tariff, Original Volume No. 4, Service Schedules PPL-4 and PPL-5 (Tariff).

The proposed changes would increase revenues from jurisdictional sales and service by $3,270,144 based on the 12-month period ending March 31, 1984.

The proposed changes have been filed to more nearly reflect the cost of Pacific's investment, operating expenses and capital costs through June 30, 1986.

Copies of the filing were served upon all parties hereto, the Wyoming Public Service Commission and the Montana Public Service Commission.

Comment date: July 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric Company

[Docket No. ER85-569-000]

Take notice that on June 11, 1985, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during April of 1985, along with a cost justification for the rates charged. This filing also includes new Service Agreement with Eugene Water and Electric Board.

Portland General Electric Company requests an effective date of May 31, 1985 and therefore requests a waiver of the Commission's notice requirements.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-131 and the Oregon Public Utility Commission.

Comment date: July 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Western Massachusetts Electric Company et al.

[Docket No. ER85-568-000]

Take notice that on June 10, 1985, Western Massachusetts Electric Company (WMECO) tendered for filing a proposed Purchase Agreement with Respect to Various Gas Turbine Units (Purchase Agreement) dated December 1, 1984 between WMECO, and The Connecticut Light and Power Company (CL&P, collectively the NU Companies) and the City of Chicopee Municipal Lighting Plant (Chicopee).

WMECO states that the Purchase Agreement provides for a sale to Chicopee of specified percentages of capacity and associated energy from eight gas turbine generating units during the period from December 1, 1984 to November 30, 1985, together with related transmission service.

WMECO requests that the Commission, pursuant to Section 35.11 of its regulations, waive its customary notice period and permit the rate schedule to become effective on December 1, 1984.

WMECO states that the Capacity Charge for the proposed service was determined on a cost of service basis at the time that the sale was made and was determined in accordance with Appendix C and Exhibits thereto of the Purchase Agreement. The Transmission Charge rate is the annual average cost of transmission service on the Northeast Utilities (NU) system at the time that the sale was made, and was determined in accordance with Appendix E and Exhibits thereto of the Purchase Agreement. The monthly Transmission Charge is determined by the product of (i) the transmission charge rate divided by twelve ($/KW-month), and (ii) the number of kilowatts of winter capability which Chicopee is entitled to receive during each month. The Variable Maintenance Charge is derived from historical costs and the Additional Maintenance Charge is twice the Variable Maintenance Charge, based on manufacturer's recommendations.

WMECO states that copies of this rate schedule have been mailed or delivered to CL&P and Chicopee, Chicopee, Massachusetts.

CL&P has filed a Certificate of Concurrence in this Docket.

WMECO further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: July 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. West Texas Utilities Company

[Docket No. ER85-562-000]

Take notice that on June 4, 1985, West Texas Utilities Company ("WTU") tendered for filing a notice of cancellation of WTU's Service Agreement with the City of Sonora, Texas under WTU's FERC Electric Tariff Original Volume No. 1. WTU requests an effective date of May 9, 1985 and, accordingly, requests waiver of the Commission's notice requirements.

Comment date: July 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15182 Filed 6-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-444-001 et al.]

Columbia Gas Transmission Corp. et al.; Natural Gas Certificate Filings; Correction

June 20, 1985.

Taken notice that in Item 7 (Bridgeline Gas Distribution Company) of the notice published in the **Federal Register** June 7, 1985, beginning at 50 FR 23822, the following corrections shoud be made on page 23824, column 3, second full paragraph:

1. The comment date should be July 11, 1985.

2. The Standard Paragraph should be "F".

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15195 Filed 6-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI84-332-000 et al.]

Cities Service Oil & Gas Co. et al.; Notice of Quarterly Status Conference and Rescheduling of Conferences

June 7, 1985.

In the matter of Cities Service Oil & Gas Company, Docket No. CI84-332-000; Columbia Gas Transmission Corporation, Docket No. CI83-432-000; Panhandle Eastern Pipe Line Company, Trunkline Gas Company, and PanMark Gas Company, Docket No. CP83-333-000; Tenneco Oil Company, Docket No. CI83-269-000; Yankee Resources, Inc., Docket No. CI84-564-000.

Take notice that a quarterly status conference has been scheduled pursuant to the Commission's order of September 26, 1984, to evaluate whether the implementation of Yankee Resources' special marketing program is achieving the Commission's purposes. The Conference will be held at the Commission at 825 North Capitol Street, N.E., Washington, D.C. on June 19, 1985, at 10:00 a.m. All interested persons and Staff are invited to attend.

Take notice, also, that the following previously-scheduled quarterly conferences have been rescheduled:

CI84-332-013, Cities Service Gas Co. (COGS), June 18, 1985, at 2:00 p.m.
CP83-452-027, Columbia Gas Transmission, Co., July 1, 1985, at 2:00 p.m.
CP83-333-029 PanMark Gas Co., July 2, 1985, at 10:00 a.m.
CI83-269-038 Tenneco Oil Co., July 2, 1985, at 2:00 p.m.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15239 Filed 6-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-616-000 and CI85-508-000]

Gas Gathering Corp. and Houston Oil & Minerals Corp.; Notice of Application

June 20, 1985.

Take notice that on June 14, 1985, Gas Gathering Corporation ("GGC") and Houston Oil & Minerals Corporation ("Houston Oil") ("Applicants"), filed a joint application, pursuant to Section 7(b) of the Natural Gas Act and Parts 156 and 157 of the Regulations of the Federal Energy Regulatory Commission, for authorization to abandon certain acreage and sales for resale of natural gas which is committed or dedicated to interstate commerce, all as more fully set forth in the application; which is on file with the Commission and open to public inspection.

More specifically, Houston Oil seeks authorization to abandon acreage dedicated to GGC and GGC seeks authorization to abandon the sale of natural gas which it purchases from Houston Oil and other producer-suppliers in or adjacent to the Atchafalaya Basin Floodway in southern central Louisiana for resale and delivery to GGC's sole jurisdictional sale for resale customer, Transcontinental Gas Pipe Line Corporation ("Transco"). Applicants submit that approval of the instant application will remove GGC from the middle of a pricing dispute in which it has virtually no interest and allow the parties primarily affected to negotiate directly. In addition, GGC submits that it will continue to transport the gas supplies of its producer-suppliers once the instant abandonment is authorized. Lastly, Applicants submit that all of the parties involved in this service support the application. Accordingly, Applicants believe that the abandonment authorization sought herein is in the public interest.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 8, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 and 211 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 this proceeding or to participate as a party in any hearing herein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15241 Filed 6-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-34-000]

Gulf States Utilities Co.; Petition for Declaratory Order, Complaint and Motion for Order To Show Cause

June 20, 1985.

Take notice that on June 7, 1985, Gulf States Utilities Company (GSU) filed a petition for a declaratory order to terminate a controversy under Rule 207(a)(2) of the Commission's Rules of Practice and Procedure. GSU also designated its pleading as a complaint under Rule 206, seeking Commission action under section 314 of the Federal Power Act, and a motion for an order to show cause under Rule 209(a)(2).

GSU seeks a declaration by the Commission that the Commission has exclusive and preemptive jurisdiction over the rates for wholesale electric service provided by the Sabine River Authority of Texas (SRAT) and that SRAT must file any changes in such rates with the Commission pursuant to the Federal Power Act (Act).

GSU further seeks a declaratory order that SRAT will be in violation of the Act if it does not withdraw proposed changes in rate that it has filed with the Public Utility Commission of Texas (PUCT) and refrain from any such further filings with the PUCT. GSU also seeks the issuance of an order by the Commission directing the filing of an appropriate action under section 314 of the Act to enjoin actions by SRAT in violation of the Act and the Commission's Regulations. GSU also seeks an order for SRAT to show cause why it should not withdraw its filing of proposed rates with the PUCT and cease and desist from further violations of the Act and Commission regulations.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15242 Filed 6-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-503-000]

Pennzoil Co., Pennzoil Producing Co., and Pennzoil Oil & Gas, Inc.; Notice of Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization

June 20, 1985.

Take notice that on June 12, 1985, Pennzoil Company, Pennzoil Producing Company, and Pennzoil Oil & Gas, Inc., P.O. Box 2967, Houston, Texas 77252-2967, filed an Application, pursuant to sections 4 and 7 of the Natural Gas Act and the Commission's regulations thereunder, for limited partial abandonment authorization and a Blanket Limited-Term Certificate of Public Convenience and Necessity authorizing each of the Applicants to conduct a short-term spot sales marketing program; hereinafter referred to as the Pennzoil Special Marketing Program ("PSMP"), all as more fully set forth in the Application on file with the Federal Energy Regulatory Commission ("Commission") and open to the public inspection.

Approval would (i) authorize the sale of natural gas by the Applicants for resale in interstate commerce; (ii) permit temporary partial abandonment of certain natural gas sales; (iii) confer pregranted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (iv) authorize transportation of natural gas by interstate pipeline companies able and willing to paricipate in PSMP; and (v) confer pregranted abandonment authorization for the transportation service allowed under the requested certificate. This authority is necessary for implementing a short-term experimental spot sales marketing program. Under PSMP, the Applicants propose to sell on a spot basis contractually committed natural gas that qualifies for the sections 102, 103, 107 or 108 maximum lawful price under the Natural Gas Policy Act of 1978. Applicants will seek temporary releases of gas from the purchasers to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be given relief from take-or-pay liability for any volumes of gas released and sold under the PSMP.

Any person desiring to be heard or to make any protest with reference to said Application should on or before July 8, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 protestant parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as Parties in any hearing must file a Petition to Intervene in accordance with the Commission's regulations.

Under the procedure herein provided for, unless Applicants are otherwise advised, it will be unnecessary for them to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15243 Filed 6-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-451-000 and ER85-473-000]

Southern California Edison Co.; Order Accepting Rates for Filing, Suspending Certain Rates, Noting Intervention, and Establishing Hearing Procedures

Issued June 19, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On April 22, 1985, Southern California Edison Company (Edison) tendered for filing proposed increased rates for interruptible transmission service in its separate agreements with the Cities of Anaheim, Riverside, Banning, Colton, and Azusa, California (Cities) in Docket No. ER85-451-000. On May 1, 1985, Edison tendered for filing proposed rate increases for interruptible, firm monthly and firm emergency service to eight other customers in Docket No. ER85-473-000. [1] The revised rates reflect Edison's additional investment in the Pacific Intertie AC and DC Voltage Upgrade of February 1985, the Palo Verde-Devers line as of December 1984, and the Mira Loma transmission facilities as of December 1984. Edison states that under its agreements with these customers, a redetermination of the rates based on a change in investment may become effective as of the first day of the month following the date the rates are redetermined. Edison therefore requests an effective date of May 1, 1985 for the proposed rates, and requests waiver of the 60 day notice requirement to accomplish that result.

Notice of Edison's filings were published in the **Federal Register**, with comments due on or before May 10, 1985 and May 22, 1985, respectively.[2] The Cities filed a timely motion to intervene in Docket No. ER85-451-000. Cities do not raise any specific arguments, but claim that Edison did not provide sufficient information for them to evaluate fully the basis for the rate increase. In order to permit a thorough review, the Cities request that the Commission suspend the proposed rate increases and initiate hearing procedures. Cities do not oppose Edison's request for an effective date of May 1, 1985. Edison filed an answer to the protest and motion to intervene on May 28, 1985. Edison states that it does not oppose a one-day suspension of its rates. No motions to intervene were filed in Docket No. ER85-473-000.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the Cities' timely motion to intervene serves to make them parties to the proceeding in Docket No. ER85-451-000.

Our review of Edison's filings and the pleading indicates that Edison's rates

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[1] City of Glendale, San Diego Gas & Electric Company, M-S-R Public Power Agency, City of Pasadena, Arizona Electric Power Cooperative, City of Burbank, Imperial Irrigation District, and the California Department of Water Resources. *See* Attachment for Rate Schedule Designations.

[2] 50 FR 19227.

appear to be cost justified. Since no party protested the rate increases in Docket No. ER85–473–000, we shall accept them for filing without suspension. However, since all of the parties in Docket No. ER85–451–000 have agreed to a nominal suspension in order to protect the customers' rights, we shall suspend these proposed rates for one day, to become effective, subject to refund, on May 2, 1985, as ordered below. The proposed effective date is consistent with the contractual provision. Further, Edison tendered the filing shortly after the rate redetermination was initiated, and no party opposes waiver of the notice requirementt. Accordingly, we find that good cause exists to waive the notice requirements so that the rates may become effective as set forth in the parties' agreements.

The Commission orders:

(A) Edison's request for waiver of the notice requirement is granted for good cause shown.

(B) Edison's proposed rates in Docket No. ER85–451–000 are hereby accepted for filing, and suspended for one day, to become effective, subject to refund, on May 2, 1985.

(C) Edison's submittal in Docket No. ER85–473–000 is hereby accepted for filing, to become effective on May 1, 1985, without suspension or a hearing. Docket No. ER85–473–000 is hereby terminated.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held in Docket No. ER85–451–000 concerning the justness and reasonableness of Edison's rates.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT A.—SOUTHERN CALIFORNIA EDISON COMPANY, RATE SCHEDULE DESIGNATIONS, DOCKET NOS. ER85–451–000 AND ER85–473–000

Supplement Nos.	Rate schedule	Supersedes supplement No.	Other party
1 to 9	130		Anaheim.
1 to 7	129		Riverside.
1 to 4	160		Azusa.
1 to 4	159		Banning.
1 to 4	162		Colton.
1 to 8	143		Glendale.
1 to 8	151		SDG&E.
1 to 7	153		M-S-R.
1 to 4	158		Pasadena.
1 to 4	161		AEP Coop.
1 to 4	166		Burbank.
10	135	9	Do.
9	136	8	Glendale.
10	137	9	Pasadena.
9	136	8	IID.

[FR Doc. 85–15244 Filed 6–24–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85–548–000]

Southern Indiana Gas and Electric Co., v. ANR Pipeline Co.; Notice of Complaint

June 19, 1985.

Take notice that on May 24, 1985, Southern Indiana Gas and Electric Company (SIGECO), 20–24 N.W. Fourth Street, Evansville, Indiana 47741, filed in Docket No. CP85–548–000 a complaint pursuant to § 385.206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) and sections 7, 16, 20 and 21 of the Natural Gas Act (NGA) to prohibit ANR Pipeline Company (ANR) from transporting natural gas to an aluminum processing plant in Warrick County, Indiana, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

SIGECO explains that Aluminum Company of America (Alcoa) is in the process of constructing a natural gas pipeline with which it expects to bypass SIGECO's facilities and connect either directly or indirectly to ANR's system. It is asserted that Alcoa's new pipeline would receive interstate gas owned by Alcoa that is to be transported from outside Indiana through the facilities of ANR. It is further asserted that this gas would be delivered to Alcoa through a new connection either on ANR's system or at ANR's existing sales tap with Lincoln Natural Gas Company (Lincoln), an Indiana distributor whose state-certified gas service territory does not include Alcoa's Warrick Plant.

SIGECO asserts that ANR's connection to the Alcoa pipeline and the proposed transportation arrangement are impermissible under the NGA and the Natural Gas Policy Act of 1978. It is explained that applicable orders under section 7 of the NGA authorize ANR only to deliver and sell through its existing tap Lincoln's requirements for resale, up to certain volumetric limits. SIGECO also asserts that delivery through the tap of gas transported by ANR for Alcoa is outside the scope of the authorized use of the tap and would, in any case, exceed the volumetric limitations.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before July 19, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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. ANR's answer to the complaint shall also be due on or before July 19, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–15240 Filed 6–25–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE85–3–000]

Wisconsin Electric Power Co.; Application for Exemption

June 20, 1985.

Take notice that Wisconsin Electric Power Company (WEPCO) filed an application on May 2, 1985 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to File on or prior to June 30, 1986 and biennially thereafter, information on the costs of providing electric service as specified in Subpart B, C, D and E or Part 290.

In its application for exemption WEPCO states that it should not be required to file the specified data for the following reasons:

The basic intent of Section 133 of PURPA is to require electric utilities to gather information which is necessary to provide the costs associated with providing electric service and to make the information available to state utility regulatory agencies and other interested parties. Subparts B, C, D, and E of the Regulations were designed to facilitate the collection of this information.

For many years, WEPCO has been required by the Public Service Commission of Wisconsin (PSCW) and Michigan Public Service Commission (MPSC) to provide data equivalent or similar to that required by Section 133 of PURPA when filing a rate case. These filing requirements will continue to be part of each rate application and will provide PSCW and MPSC with the information required by the intent of Section 133. In both jurisdictions the filing time periods and formats differ from those required by Part 290. Consequently, the filings with the state authorities are more timely and useful than the Part 290 data. The filings are available to any other interested party and provide ample data on cost of service. Therefore, the purposes of Section 133 will continue to be served by the existing rules of the PSCW and MPSC. WEPCO files applications on an annual basis with the PSCW and as required with the MPSC for authority to change its electric rates. Pursuant to the above mentioned PSCW nd MPSC directives, WEPCO files with its application, prepared testimony and exhibits in support of said applications. Interested parties are given adequate time to review the filings prior to formal hearings. By viture of Section 290.103 of the regulations, these filings by WEPCO may be considered an alternate method of fulfilling requirements of Subparts B, C, D and E of the regulations.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45 day period, such person must also serve a copy of such comments on: Thomas J. Cassidy, Senior Vice-President, Wisconsin Electric Power Company, 231 West Michigan, Post Office Box 3046, Wilwaukee, Wisconsin 53201.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15245 Filed 6-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-156-001]

Raton Natural Gas Co.; Change in Rates

June 19, 1985.

Take notice that Raton Natural Gas Company (Raton) on June 14, 1985, tendered for filing Third Substitute Thirty-Third Revised Sheet No. 3a and First Substitute Thirty-Fourth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1. Raton states that this filing is a revision to its filing of June 3, 1985. The result of this revision is to reduce Raton's proposed Rate of Return on its investment rate base to 12.00 percent and to eliminate the cash working capital component in the rate base.

Raton indicates the copies of this filing have been served on Midwest Energy Corporation and the Public Service Commission of New Mexico.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 24, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15185 Filed 6-24-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Engery solicits comments concerning the appropriate procedures to the followed in refunding $425,000 (plus accrued interest) in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving the DOE and Eastern of New Jersey, Inc.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this noitce in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF-0065.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 100 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Engergy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by the DOE and Eastern of New Jersey, Inc. (Eastern). This Consent Order settled possible pricing violations in Eastern's sales of No. 4 residual fuel oil to its customers during the period November 1, 1973 through March 31, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the Eastern escrow account. The DOE has tentatively decided that these funds should be distributed to those customers of Eastern who establish that they were injured by the firm's alleged overcharges. Such customers will receive refunds proportionate to the volume of No. 4 residual fuel oil they purchased from Eastern. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set froth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 11, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 11, 1985.

Name of Firm: Eastern of New Jersey, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0065.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement a proceeding to distribute the funds received pursuant to a Consent Order entered into by the DOE and Eastern of New Jersey, Inc. (Eastern), a firm located in Jersey City, New Jersey.

I. Background

Eastern is a "reseller-retailer" of "No. 4 residual fuel oil" as these terms were defined in 10 CFR 212.31. An ERA audit of Eastern revealed possible violations of the Mandatory Petroleum Price Regulations in the amount of $2,271,245.32 with respect to the firm's sales of No. 4 residual fuel oil during the period November 1, 1973 through March 31, 1974 (the audit period). In order to settle all claims and disputes between Eastern and the DOE regarding these sales, Eastern and the DOE entered into a Consent Order on December 12, 1979, in which Eastern agreed to remit $425,000 to the DOE. This Consent Order refers to the ERA's allegations of overcharges, but notes that no findings of violation were made. In addition, it states that Eastern does not admit that it committed any such violations. Eastern's payments are currently being held in an interest-bearing escrow account pending distribution by the DOE.[1]

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

II. Proposed Refund Procedures

We have considered the ERA petition to implement a Subpart V proceeding with respect to the Eastern consent order fund and have determined that it is appropriate to establish such a proceeding. Insofar as possible, the consent order fund should be distributed to those customers of Eastern who were injured by Eastern's pricing practices which allegedly were in violation of DOE regulations. In the present case, the ERA audit file lists the names and addresses of customers who purchased No. 4 residual fuel oil from Eastern during the consent order period, along with the number of gallons they purchased.[2] This information is listed in the Appendix to this Proposed Decision and Order. In our view, these identified customers are most likely the parties who were adversely affected, at least initially, by any overcharges by Eastern. However, we recognize that there may be other purchasers of No. 4 residual fuel oil from Eastern who were not listed in the ERA audit files and who may have been injured by the firm's pricing practices during the consent order period.

We therefore propose to accept applications from any party that can show injury resulting from Eastern's alleged overcharges.

Eastern's customers include petroleum product resellers, i.e., retailers and wholesalers. We propose that in order to receive a refund, these firms be required to demonstrate that they did not pass on to their customers the price increases implemented by Eastern. *See, e.g., Vickers.* In other words, to qualify for a refund, firms which resold Eastern No. 4 residual fuel oil must show that during the consent order period they would have maintained their prices for the residual fuel at the same level had the alleged overcharges not occurred. There are a variety of ways to make this showing. For example, a reseller may demonstrate that at the time it purchased the No. 4 residual fuel oil from Eastern, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In any case, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we propose to adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Eastern during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of

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[1] The Eastern Consent Order required Eastern to remit $425,000 to the DOE in 6 installments from January 1, 1980 through July 1, 1982. We have been informed by the ERA, that as of March 31, 1985, five of these installments (totaling $356,165) had been paid into the Eastern consent order escrow account.

[2] The consent order period is the same as the audit period, November 1, 1973 through March 31, 1974.

product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. In the present case the information available in the ERA audit files is insufficient to base refunds on the amount each individual applicant was allegedly overcharged. We therefore propose to use the volumetric method to allocate the Eastern consent order fund.[3] To determine the volumetric factor, the $425,000 Eastern consent order amount will be divided by the total volume of No. 4 residual fuel oil sold by Eastern during the consent order period. This results in a refund amount of $0.007907 ($425,000 ÷ 53,753,070 gallons) for each gallon of No. 4 residual fuel oil which an applicant has purchased from Eastern during the consent order period. The maximum volumetric refund amount for each identified customer of Eastern is set forth in the Appendix.[4] The interest which has accrued on the money in the Eastern escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

We also propose to adopt a presumption of injury with respect to small claims. The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Eastern Consent Order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and use its limited resources more efficiently. Finally, we know that these smaller claimants did purchase No. 4 residual fuel oil from Eastern and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumption we are proposing to adopt, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is base on purchase below a threshold level.[5] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose that the same approach be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. Since the proposed per gallon refund amount is fairly low and the time period of the Consent Order was quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable in the present proceeding.[6] *See id.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Eastern Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and class cited therein. We have therefore concluded that end-users of No. 4 residual fuel oil purchased from Eastern need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g.*, Uban Oil Co., 9 DOE ¶ 82, 541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of final Decision and Order, where detailed procedures for filing applications will be provided. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the **Federal Register**, copies will be provided to Eastern's customers

[3] We recognize that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application for an amount above the volumetric level based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

[4] If Eastern does not remit the balance of the consent order amount before the processing of refund applications in this proceeding, refunds to the firm's customers will be reduced proportionately.

[5] We also propose that resellers and refiners who made only spot purchases from Eastern be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchases:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. *See Office of Special Counsel*, 1 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttal presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimant who was a spot purchaser must submit additional evidence to establish that it was unable to exercise discretion as to where and when it made the purchase(s) on which its refund claim is based.

[6] Any reseller whose potential refund exceeds the threshold level may elect to apply for a refund based on the threshold amount.

whose names and addresses are listed in the Appendix.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is therefore ordered that:

The fund amount remitted to the Department of Energy by Eastern of New Jersey, Inc. pursuant to the Consent Order entered into on December 12, 1979, will be distributed in accordance with the foregoing Decision.

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Dairy Pak, P.O. Box 760, Morristown, NJ 07960	45,321	$358.35
Lafayette Gdns., 37 Mountain Ave., Springfield, NJ 07081	18,673	147.65
Lionel Toy-W Staheli, 26 Sager Pl., Hillside, NJ 07205	155,069	1,226.13
ABC Crating Co., 121 Erie St., Paterson, NJ 07524	20,676	163.49
1304 Springfield Assoc. Inc., M.J. Goldstein, 2810 Morris Ave., Union, NJ 07083	14,890	117.73
A.C. Chevrolet, 3085 Blvd., Jersey City, NJ 07306	14,269	112.82
A.J. Realty Co., 91 Chatham Terrace, Clifton, NJ 07013	9,456	74.77
D. Szabadhegy, C.P.A., 666 Fifth Ave., New York, NY 10019	14,873	117.60
Independent Mgt. Co., 744 Broad St., Newark, NJ 07102	58,252	460.60
Abels Lewit Co., Inc., 237 Park Ave., Paterson, NJ 07501	11,155	88.40
Tzeses Bros., Inc., 343 Cumberland Rd., S. Orange, NJ 07079	14,863	117.73
Academy of Holy Angels, 355 Hillside Ave., Demarest, NJ 07627	37,160	293.67
Accurate Bushing Company, 443 North Avenue, Garwood, NJ 07027	41,895	331.07
Accurate Mgf. Co., 44 Hepworth Pl., Garfield, NJ 07026	49,188	388.87
Accutec Inc., 168 Main Ave., Wallington, NJ 07057	9,665	76.50
Acme Air Appliance Co., Inc., 100 Pennsylvania Avenue, Brooklyn, NY 11207	22,795	180.20
Acme Leather Sports, 335 S. Park St., Elizabeth, NJ 07206	15,008	118.58
Acme Metal Goods Mfg. Co., 2 Orange St., Newark, NJ 07102	17,533	138.55
Danco Mfg. Co., 163 Bloomfield Ave., Verona, NJ 07044	12,714	100.73
Dartmouth Village, Inc., P.O. Box 25, Parsippany, NJ 07054	119,771	946.90
Data Trends, Inc., P.O. Box 82, Mountain Lakes, NJ 07046	6,000	47.60
Devanne Realty, 101 Terrace, S. Orange, NJ 07079	7,352	58.23
David Gardens, Inc., 1055 S. Elmora Ave., Elizabeth, NJ 07202	7,872	62.05
James-Helen Delaney, 19 Franklin Terrace, So. Orange, NJ 07079	24,196	191.25
Dell Products Corp., 447 Hillside Ave., Hillside, NJ 07205	26,852	212.07
DeVoe Realty Co., 384 E. 21st St., Paterson, NJ	19,441	153.65
R.D. Serr Co., P.O. Box 322, Short Hills, NJ 07078	22,355	176.80
Devonshire Tower Assoc., 20 Evergreen Place, E. Orange, NJ 07018	45,742	361.67
DeWildes Greenhouses, 11 Roome Avenue, Pompton Plains, NJ 07444	24,907	196.78

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Wilson Kaplan, 80 Huguenot Ave., Englewood, NJ 07631	43,140	341.28
Garden Homes Ag.-Parsip., 1640 Vauxhall Rd., Union, NJ 07083	102,146	807.49
Lakeview Gdn. Rlty. Corp., P.O. Box 633, Fairlawn, NJ 07410	22,260	175.95
Robert D. Schlenger Co., 225 Millburn Ave., Millburn, NJ 07041	12,187	96.48
Star Glo Rubber Co., 45 Carlton Ave., E. Rutherford, NJ 07073	29,994	237.15
Airport Realty Corp., 19 Wall St., Passaic, NJ 07055	21,281	168.30
Le Courtenay Co., 5 Main St., Newark, NJ 07109	3,550	28.05
Wills Oil Co., Rt. 183, Netcong, NJ 07857	62,442	493.85
Severino Realty Co., 15 Washington Ave., Cliffside Park, NJ 07010	21,866	172.98
Leeming Pacquin, Div. of Pfizer, Inc., 100 Jefferson Rd., Parsippany, NJ 07054	89,377	706.77
Adamas Carbide Corp., Market-Passaic, Kenilworth, NJ 07033	8,847	70.13
Adam Industries, 1110 Springfield Rd., Union, NJ 07083	99,655	787.52
Adams Laundry Service, Inc., 601 65th St., West New York, NJ 07093	12,915	102.00
Aero Marine Term. Plt., Bushwich Realty Corp., 401 Broadway, New York, NY 10013	49,317	389.73
Airwick Inc., P.O. Box 203, Carlstadt, NJ 07072	41,500	328.10
All Disc Records, 625 W. 1st Ave., Roselle, NJ 07203	187,219	1,480.26
Allied Distilled Water, 101 Clifton Blvd., Clifton, NJ 07011	20,942	165.75
All Star Dairies, Inc., P.O. Box 1250, Perth Amboy, NJ 08862	41,495	328.10
Diamond Expan Bolt Co., 500 North Ave., Garwood, NJ 07027	51,482	407.15
Diamond Shamrock Chem., 60 Park Pl., Newark, NJ 07102	70,903	560.58
Dillan Assoc., 180 Madison Avenue, New York, NY 10016	27,114	214.20
Display Box Co., 310 Passaic St., Harrison, NJ 07029	24,351	192.53
Ditto, Inc., Route 17, Lodi, NJ 07544	26,816	212.07
Don Bosco High School, N. Franklin Tpk., Ramsey, NJ 07446	45,912	362.95
Don Bosco Tech. Hi School, 202 Union Ave., Paterson, NJ 07502	41,686	329.80
All State Can Co., 40 Isabella St., Clifton, NJ 07012	17,409	137.70
Allyn-Bacon Co., Industrial Pk., Rockleigh, NJ 07647	31,507	249.05
General Cable Co., 25 Van Dyk, N. Brunswick, NJ 08903	33,244	262.65
William Givone, 42 Fencask Ave., Elmwood Park, NJ 07470	14,714	116.45
Ardis-Leigh Assoc., 425 Christiani St., Roselle, NJston 07203	14,265	112.63
Ardmore House, Inc., 1428 South Ave., Plainfield NJ 07062	8,820	69.70
Eastborne Corp., 349 E. Northfield Rd., Livingston, NJ 07030	10,786	85.43
Mr. Jos. Bigel, 60 Park Pl., Newark, NJ 07102	27,163	214.62
Arlington Molding Co., 287 Laurel Ave., Kearny, NJ 07032	7,622	60.35
John J. Armitage & Co., 245 Thomas St., Newark, NJ 07114	33,197	262.65
Arol Chemical Co., Inc., 649 Ferry St., Newark, NJ 07105	30,340	239.70
Herman Neuman, 388 Old Country Rd., Garden City, L.I., NY 11530	39,306	310.67
Arrow Uniform Supply, 385 Fifth Ave., Newark, NJ 07107	33,122	261.80
Artistic Creations, P.O. Box 591, Linden, NJ 07036	13,938	110.07
Artley Studios Inc., 2 School St., Newark, NJ 07103	9,056	71.83
Ashland Rd. Greenhouse, 213 Ashland St., Summit, NJ 07901	12,216	96.48

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Atlantic Alloy Ind., Polk & Jefferson Ave., Union, NJ 07083	17,946	141.95
Atlantic Chem. Corp., 10 Kingsland Rd., Nutley, NJ 07110	195,985	1,549.55
Atlantic Highland Real Est. Co., 10 Ocean Blvd., Atlantic Highlands, NJ	39,246	310.25
Alphonsus College, 87 Overlook Drive, Woodcliff Lakes, NJ 07680	22,272	175.95
Joseph M. Bass, 134 Evergreen Pl., E. Orange, NJ 07018	26,620	210.38
American Aluminum Co., 230 Sheffield St., Mountainside, NJ 07092	49,643	392.70
American Can Co., Pierson Ave., Edison, NJ 08817	122,205	966.02
Anderson Florist, 40 Brookdale Rd., Florham Pk., NJ 07932	54,429	430.52
Andrea Towers, Inc., 70 So. Munn Ave., E. Orange, NJ 07018	48,137	380.37
Annin Co., 163 Bloomfield Ave., Verona, NJ 07044	21,702	171.70
Apex Apartments, 27 Douglas Dr., Clark, NJ 07066	12,905	102.00
Apex Chemicals Co., Inc., 200 So. 1st St., Elizabeth Port, NJ 07206	32,803	259.25
Atlantic Tubing Co., 107 E. 17th St., Paterson, NJ 07514	7,833	62.48
Ayerst Labs., Inc., 245 Paterson Ave., Little Falls, NJ 07424	19,595	155.13
Henry Lesher, 561 Northfield Rd., West Orange, NJ 07052	29,561	233.75
Dorien Realty, 1009 S. Orange Ave., Newark, NJ 07106	18,864	149.17
Dorlen Realty, 393 Hartford Rd., So. Orange, NJ 07079	17,530	138.55
Dover Handbag Co., Inc., Rt. 46 Flanders Rd., Netcong, NJ 07857	28,481	225.25
R.L. Draisin Co., 229 Main St., Belleville, NJ 07109	9,056	71.40
Drawad Inc., P.O. Box 8, W. Orange, NJ 07052	2,430	19.13
Drico Industrial Corp., 480 Main Ave., Wallington, NJ 07055	20,688	163.63
H.O. Keller, 12 Ferndale Rd., Short Hills, NJ 07078	61,906	489.60
Dumont Terrace, 155 Riverside Dr., New York, NY 10024	175,029	1,383.36
Duncan Terrace, 26 Journal Sq., Jersey City, NJ 07306	43,628	345.10
Dunlop Tire Rubber, P.O. Box 1109, Buffalo, NY 14240	63,476	501.92
Dwight Manor Apt., Inc., 25 Bway, Room 2240, New York, NY 10004	49,540	391.85
B G B Company, 407 Mulberry St., Newark, NJ 07102	21,339	168.73
Baime Brothers, 195 Prospect St., East Orange, NJ 07017	44,381	351.05
Balmoral Arms, c/o Liv Kelly, 33 Evergreen Place, East Orange, NJ 07018	27,919	220.58
Bambergers-Expense Pay Dept., Box 489, Newark, NJ 07101	216,676	1,720.82
Leland Gdns., c/o Wilson R. Kaplan, 80 Huguenot Ave., Englewood, NJ 07631	105,166	831.29
Theo Leonard Wax Co., P.O. Box 8385, Haledon, NJ 07508	9,900	78.02
Wm. J. Phillips, Inc., 2056 Lemoine Ave., Ft. Lee, NJ	13,551	107.10
Leonia Manor Inc., 574 Grand Ave., Englewood, NJ 07631	27,133	214.63
Les-Gertrude Apt., 345 Broad St., Red Bank, NJ 07701	33,913	268.17
Lexington Improvement Co., P.O. Box 817, Somerville, NJ 08876	24,691	195.08
Lexington Gdns., P.O. Box 752, E. Orange, NJ 07017	26,111	206.55
Mid-Atlantic Mgt. Corp., 10 Parsonage Road, Edison, NJ 08817	30,452	240.97
Liberty Optical Mfg. Co., Inc., 380 Verona Ave., Newark, NJ 07104	17,481	138.13
Liberty Provisions Inc., 200 Piaget Ave., Clifton, NJ 07011	31,673	250.32
Lidgerwood Apts. Inc., P.O. Box 306, South Orange, NJ 07079	20,929	165.35

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Lily White Laundry Co., 234 Scotland Rd., Orange, NJ 07050	30,041	237.15
Lincoln Tech. Inst., 2299 Vauxhall Rd., Union, NJ 07083	19,300	152.58
Doris Inc., Suite 401, 91-31 Queens Blvd., Elmhurst, NY 11373	34,192	270.30
Linden Arms, P.O. Box 43, Livingston, NJ 07039	24,652	195.08
Plaza Corp., 560 Sylvan Ave., Englewood, NJ 07631	9,925	78.63
Linden Packing Co., Inc., 324 Astor St., Newark, NJ 07114	29,723	235.03
Lindsley Arms Apts., P.O. Box 2126, Union, NJ 07083	68,765	543.57
Investor Furnd Corp., 630 Fifth Ave., New York, NY 10020	47,377	374.42
Frank H. Taylor & Sons, Inc., 23 S. Harrison St., E. Orange, NJ 07018	46,169	365.07
R.D. Serr Co., P.O. Box 322, Short Hills, NJ 07078	30,461	240.98
Chestnut Assoc., Box 175, Florham Park, NJ 07952	8,908	70.55
londat Aetz Fabric Co., 940 Woodruff La., Elizabeth, NJ 07205	34,250	270.72
Thomas Fuel Corp., 702 Ramsey Ave., Hillside, NJ 07205	16,766	132.60
John Lukiw, 40 Ridgewood Avenue, Irvington, NJ 07111	5,297	42.08
Luminal Paints, 411 Wilson Avenue, Newark, NJ 07105	32,849	259.67
Lyndhurst Laundry, 290 Grant Ave., Lyndhurst, NJ 07071	18,665	147.48
Lisher Realty Corp., 20 New York Ave., Jersey City, NJ 07307	6,871	54.40
Alexander Summer Inc., 222 Cedar Lane, Teaneck, NJ 07666	173,408	1,371.05
M.H. Properties, 10 Kirkvw Cle., Westfied, NJ 07079	19,100	150.87
Madan Plastic Inc., 370 North Ave., Cranford, NJ 07016	22,469	177.65
Madison Ave. Apts., 19 Franklin Terr., So. Orange, NJ 07079	12,943	110.06
Bonded Realty Co., 744 Broad St., Newark, NJ 07102	16,718	132.18
Almire Assoc., 71 Valley St., S. Orange, NJ 07079	22,291	176.37
Madison Mall, 2414 Morris Ave., Union, NJ 07083	35,230	278.37
Madsen-Christensen, 304 Hackensack St., Woodridge, NJ 07075	14,291	113.05
Magnus Organ Corp., 1600 W. Edgar Rd., Linden, NJ 07036	25,451	201.03
Magruder Color Co., 1 Virginia St., Newark, NJ 07114	21,421	169.58
Majestic Ind. Inc., 80 Leuning St., S. Hackensack, NJ 07606	20,977	165.75
Manner Dye Finish Co., 293 Morrissee Ave., P.O. Box 8036, Haledon, NJ 07508	74,426	588.62
Manning-Lewis Engr. Co., 675 Rahway Ave., Union, NJ 07083	6,700	53.13
Passaic Pros. Rlty., 210 Delawanna Ave., Clifton, NJ 07014	11,158	88.40
Mr. David De Vaney, 210 W. Passaic St., Rochelle Park, NJ 07662	12,249	96.90
85-68th St. Corp., c/o Frieman Rlty. Co., 1969 Morris Ave., Union, NJ 07083	27,705	218.87
85-68th St. Corp., c/o Frieman Rlty. Co., 1969 Morris Ave., Union, NJ 07083	10,157	80.33
E.C. Electro Plating, 125 Clark St., Garfield, NJ 07026	34,309	271.15
F. Weisbrod-Wilfred, 61 S. Munn Avenue, E. Orange, NJ 07018	86,584	684.67
Leslie Prop. Inc., 137 Mineral Spring Ave., Passaic, NJ 07055	27,782	219.73
Mrs. Halpren Rec., Eastern-Shok Beton, 45 East High St., Sommerville, NJ 08876	42,517	336.17
East Park Apts., 1480 Rt. 46, Parsippany, NJ 07054	15,362	121.55
Eastwood Nealley Corp., 28 Joralemon St., Belleville, NJ 07109	133,271	1,053.57
Echo Lanes Inc., Rt. 22, Mountainside, NJ	19,698	155.55
Edenboro Apts., 1150 Springield Ave., Irvington, NJ 07111	25,868	204.43
Edgar Gdns. Assoc., 249 W. Jersey St., Elizabeth, NJ 07202	9,158	72.25
Efka Plastics Corp., 163 Ave. A, Bayonne, NJ 07002	18,407	145.35
Egan Machinery, P.O. Box 671, Somerville, NJ 08876	21,440	170.00
Mr. Samuel Scott, 49 Woodbridge Ave., Highland Park, NJ 08904	16,630	131.33
Elberon Devel. Co., Inc., 1439 N. Broad St., Hillside, NJ 07205	53,972	426.70
Electro Minature Corp., 600 Huyler Ave., S. Hackensack, NJ 07606	12,326	97.33
Elizabeth Cart Rlty., 1155 E. Jersey St., Elizabeth, NJ 07201	36,727	290.27
R.E. Scott Co., 400 Westfield Ave., Elizabeth, NJ 07208	121,649	971.77
Elizabeth Daily Journal, 295 N. Broad St., Elizabeth, NJ 07207	20,700	163.63
Mr. Jacob Rudd, P.O. Box 277, Maplewood, NJ 07040	16,672	132.17
Elm Gardens Inc., 165 Valley St., So. Orange, NJ 07079	12,067	95.63
Bambergers, c/o Mr. S. Sward, 131 Market St., Newark, NJ 07107	21,400	169.15
C-R Bard Inc., 731 Central Va., Murray Hill, NJ 07971	51,017	403.32
Barhite & Holzinger, 342 Madison Ave., New York, NY 10017	10,000	79.05
Barnet Memorial Temple, 13th & Wall Ave., Paterson, NJ 07504	9,095	71.83
Barry Gardens, 245 Passaic Ave., Passaic, NJ 07855	36,260	286.87
Baum Realty Co., 35 Mayflower Dr., Tenafly, NJ 07670	65,783	520.20
Rojay Mgt. Co., 20 Evergreen Pl., E. Orange, NJ 07018	138,616	1,095.65
General Looms Inc., 411 Alfred Ave., Teaneck, NJ 07666	39,754	314.50
Beamil Rlty. Co., Boright Ave., Kenilworth, NJ 07033	25,551	201.88
Beckley Perforating Co., 299 North Avenue, Garwood, NJ 07027	30,406	240.55
Beecham Prod. Div. Beecham, 101 Possumtown Rd., Piscataway, NJ 08854	183,952	1,454.35
Beecham Pharm-Div. Beecham, 101 Possumtown Rd., Piscataway, NJ 08854	139,505	1,102.87
Beechwood Gardens, 71 Valley St., So. Orange, NJ	29,976	237.15
Beisler Weidmann Co., 233 Cortlandt St., Belleville, NJ 07109	26,475	209.53
Belar Realty Co., 110 Edison Pl., Newark, NJ 07102	55,677	440.30
Belfer Realty Co., 9060 Palisade Ave., No. Bergen, NJ 07047	74,708	590.75
Renee Law Realty Agency, 125 Northfield Ave., W. Orange, NJ 07052	17,246	136.42
Bella Vista Apts., 574 Grand Ave., Englewood, NJ 07631	78,394	619.65
J-J Realty Co., 22 John St., Haledon, NJ 07508	6,820	53.98
Bellemead Devel Co., 1099 Wall St. W., Lyndhurst, NJ 07071	215,490	1,703.81
Belmont-Winograd, 880 Bergen Avenue, Jersey City, NJ 07306	12,215	96.48
Mr. Mayer Winograd, 880 Bergen Avenue, Jersey City, NJ 07306	15,537	122.83
Benedectine Mother House, 851 N. Broad St., Elizabeth, NJ 07208	37,618	297.50
Bensall Rlty. Co., 45 Church St., Paterson, NJ 07505	50,844	402.05
Mr. Donald S. Kates, 47 Orient Way, Rutherford, NJ 07070	16,174	127.93
Bergen Investments Inc., P.O. Box 747, Teaneck, NJ 07666	25,608	202.30
Bergen Point Brass, 179 W. 5th St., Bayonne, NJ 07002	17,767	140.67
Grove St. Apts., 20 N. Maple Ave., Irvington, NJ 07111	85,442	675.75
Ricalda Rlty. Co., 30 Jabez St., Newark, NJ 07105	11,994	94.78
Bernsol Realty Co., 744 Broad St., Newark, NJ 07102	30,329	239.69
Ascher Teich, 970 Collidge Rd., Elizabeth, NJ 07208	7,048	55.68
Best Dyeing Finishing Co., 140 Spring St., Murray Hill, NJ 07971	29,999	237.15
Stanley Blackman Labs, 130 Wesley St., S. Hackensack, NJ 07605	7,702	60.78
The Black Prince Dist., 691 Clifton Ave., Clifton, NJ 07011	87,163	689.35
Mediterranean Twrs., 2100 Linwood Ave., Ft. Lee, NJ 07024	160,711	1,270.74
Wm. Meltzer, 605 Riverside Dr., Hillside, NJ 07205	28,647	226.52
Capitol Mgt. Corp., Executive Plaza Suite 300, 10 Parsonage Rd., Edison, NJ 08817	88,924	702.95
Meridan Develop Co., 1750 Oaktree Road, Iselin, NJ 08830	3,700	29.33
Merritt Gardens Apts., 10 Knickenbocker Rd., Dumont, NJ 07628	47,226	374.00
Merten Bros. Florist, 25 Floral Ave., Newark, NJ 07114	10,945	86.70
Blair House-Cranston Corp., 225 Millburn Avenue, Millburn, NJ 07041	37,641	297.50
Blanda & Amlicki, c/o M.G. Amlicke, 39 The Circle, Passaic, NJ 07055	17,595	138.98
Mr. Donald McKay, 360 Lexington Ave., New York, NJ 10017	44,553	352.33
Bofors Steel Co., 1075 Edward St., Linden, NJ 07036	11,207	88.40
Bogen Communications Div., P.O. Box 500, Paramus, NJ 07652	39,019	308.55
Boonton Molding Co. Pt. #1, 300 Myrtle Ave., Boonton, NJ 07005	81,992	648.12
Frontenac Apts., 280 N. Central Ave., Hartsdale, NY 10530	55,906	442.42
Walter & Frank Frykberg, 164 So. Harrison St., East Orange, NJ 07017	20,357	161.08
H.B. Fuller Co., 59 Brunswick Ave., Edison, NJ 08817	33,357	263.93
Fulton Towers, 106 So. Harrison St., E. Orange, NJ 07018	56,296	444.97
Furniture Clearence Inc., 1100 Morris Ave., Union, NJ 07083	15,497	122.40
Furniture Dst. America, 224 E. Rt. 4, Paramus, NJ 07652	3,678	28.90
Maybrook Plaza Apts., P.O. Box 798, Maywood, NJ 07607	67,641	534.65
Estate of Dr. Conti, c/o Garden State National Bank, 170 Main St., Hackensack, NJ 07661	14,767	116.88
Mayflower Apts., P.O. Box 747, Piscataway, NJ 08854	48,160	380.80
Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	23,104	182.75
Mayflower Gdns. Corp., c/o Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	22,211	175.52
Fidelity Bond-Mtg. Co., Property Mgt. Dept., S E Cor 17 St. & Walnut, Philadelphia, PA 19102	54,545	431.37
Mead-Wilbert Co., 28 Burgess Pl., Wayne, NJ 07470	13,600	107.53
Albert Brockie, Mgr., 144 S. Harrison Ave., E. Orange, NJ 07018	16,397	129.62
Mediterranean Towers-West, 2100 Linwood Ave., Fort Lee, NJ 07024	180,531	1,427.57
Mediterranean Towers-South, 2100 Linwood Ave., Fort Lee, NJ 07024	174,503	1,379.55
Boro.-Annex-Fairfield, Boro. of Fairfield, NJ, 230 Fairfield, Rd., Fairfield, NJ 07007	11,041	87.13
Bower St. Assoc., P.O. Box 367, Linden, NJ 07036	7,236	57.38
Wamber Realty—Greenberg Agy., 908 18th Ave., Newark, NJ 07106	51,285	405.45
Castle Products Co., 487-501 Lyons Ave., Irvington, NJ 07111	29,186	230.78
120 Randolph Co., Inc., c/o Kohn Mahack & Nolke, 22 Bank St., Summit, NJ 07902	39,538	312.90

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Grove Assoc., 197 Rutgers La., Parsippany, NJ 07054	107,378	849.15
Cedar Lane Gdns., Inc., P.O. Box 747, Teaneck, NJ 07666	19,336	153.00
National Cold Storage., 215 Coles St., Jersey City, NJ 07302	50,935	402.90
National Hose Co., P.O. Box 151, Dover, NJ 07801	68,602	542.30
National Standard Co., Athenia Div., 714-716 Clifton Ave., Clifton, NJ 07015	106,726	843.63
National Starch & Chem. Corp., 225 Belleville Ave., Bloomfield, NJ 07003	113,633	898.45
National Warehouse Ind., 22 1234 Paterson Plank Rd., Secaucus, NJ 07094	25,473	201.45
R. Neumann Co., 300 Observer Hi Way, Hoboken, NJ 07030	92.041	727.60
New Age Mirror & Tile Ind. Inc., 37 Empire St., Newark, NJ 07114	11,294	89.25
New Amsterdam Village, 1 Van Delft Dr. Rental Office, S. Amboy, NJ 08879	200,674	1,586.51
5 Holding Co., 297 S. 21st St., Irvington, NJ 07111	23,333	184.45
Reel Strong Fuel Oil Co., 3 North Ave. East, Cranford, NJ 07016	11,777	93.08
WGK Realty Co., c/o Wm. Spitalny, 23 Wingate Dr., Livingston, NJ 07039	24,572	194.22
Frank H. Taylor & Sons, 23 S. Harrison St., E. Orange, NJ 07018	23,095	182.75
44 S. Munn Apts., P.O. Box 567, West Paterson, NJ 07424	90,891	718.68
47 Elm St. Associates, P.O. Box 175, Florham Park, NJ 07932	10,744	85.00
434 Lincoln Ave. Associates, 116 Main St., Orange, NJ 07050	21,775	172.12
Herbert Goldberg Realtors, Box 62, S. Orange, NJ 07079	17,899	140.67
FHA-C/O P.J. Inganamort Mgmt. Co., 515 Mt. Prospect Ave., Apt. 1G, Newark, NJ 07207	10,914	86.28
Brunell & Kramer Mgmt., 1435 Morris Ave., Union, NJ 07083	8,086	64.18
Mr. Max Rothstein, 410 Riverside Dr., New York, NY 10025	17,621	139.40
5907 Blvd. East Corp., c/o Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	45,967	363.37
Manufacturers Village, 356 Glenwood Ave., E. Orange, NJ 07017	37,317	294.95
Mr. Max Kessel, 20 Willett St., Bergenfield, NJ 07621	3,136	25.06
Maple Gardens, c/o Mr. F. Schonholtz, 80 Park Place, Newark, NJ 07102	15,051	119.00
Newman-Fink Realty, 2540 Rt. 22, Union, NJ 07083	13,948	110.06
Maplewood Plaza, Box 62, E. Orange, NJ 07079	52,091	411.82
Marc Assoc. Inc., P.O. Box 69, Matawan, NJ 07747	52,389	414.37
Martin Motor Oil Co., 520 Collins Ave., Hasbrouck Heights, NJ 07604	40,478	320.02
Marist High School, 1241 Kennedy Blvd., Bayonne, NJ 07002	47,847	378.25
Markay Bags, 15 E. 32nd St., New York, NY 10016	29,272	231.62
Market High Assoc., 19 Sunset Terrace, Maplewood, NJ 07040	14,014	110.93
Joseph Markovitz Inc., 1115 Broadway, New York, NY 10010	108,922	861.05
Grove West Grand Rlty., 188 Wilder St., Hillside, NJ 07205	17,497	138.55
Housing Auth. of Plainfield, 510 E. Front St., Plainfield, NJ 07060	53,953	426.70
Kora-Ostrow, 880 Bergen Ave., Jersey City, NJ 07306	24,977	197.62
Empire Realty, 400 Park Ave., New York, NY 10022	10,000	79.05
Thomas M. Graham Co., 217 Prospect Ave., Cranford, NJ 07011	57,426	453.90
N. Hoffman-Enlpse., 640 Anderson Ave., Cliffside Park, NJ 07010	3,670	28.90
Equitable Bag Co., P.O. Box 1388, Long Island City, NY 11101	8,770	69.70
Mr. Sam Lipman, 1020 Park Ave., New York, NY 10028	19,150	151.30
Essex Chair Co., Box 314, Union, NJ 07083	23,475	185.73
Essex County College, 31 Clinton St., Newark, NJ	37,263	294.52
Essex Housing, 20 N. Maple Ave., Irvington, NJ 07111	45,818	362.10
Essex Passaic Rlty., 681 Main Ave., Belleville, NJ 07109	11,765	93.08
Essex Paper Box Co., 281-297 Astor St., Newark, NJ 07114	16,714	132.18
Rockwell Realty Co., 1640 Vauxhall Rd., Union, NJ 07083	14,657	116.03
Mr. Leo Tzeses, 343 Cumberland Rd., So. Orange, NJ 07079	20,047	158.52
Mr. Isadore Attinger, P.O. Box 309, N. Brunswick, NJ 08903	7,529	59.50
Executive House, Box 43, Livingston, NJ 07039	7,725	61.20
Mr. Karl Theurar, 517 Brook Ave., Hillsdale, NJ 07642	9,960	78.63
Readington Assoc., R.D. 1 Cedar Rd., Whitehouse Station, NJ 08889	25,430	121.98
Equity Assoc., 156 Linwood Plaza, Fort Lee, NJ 07024	16,700	132.18
Beinlang Paper Co., Inc., 125 Jackson Ave., Edison, NJ 08817	44,526	351.90
Bigelow Sanford Inc., Box 3089, Greenville, SC 29602	76,818	607.32
Bishop Electric, Div Sola Basic Inc., 10 Canfield Rd., Cedar Grove, NJ 07009	16,750	132.60
Harry & Arnold Black, 274 Central Ave., Newark, NJ 07103	13,242	104.55
F. & E. Realty Co., c/o Goldberg, Box 62, So. Orange, NJ 07079	92,825	733.97
FHA M. Krone Assoc., 1510 Corliss Ave., Neptune, NJ 07753	79,169	626.02
Mr. J. Reibel, 645 Wyoming Ave., Elizabeth, NJ 07208	8,019	63.75
A.W. Faber Castell Corp., 41 Dickerson St., Newark, NJ 07103	56,456	446.25
Faber Cement Block Co., Inc., P.O. Box 225, Paramus, NJ 07652	61,652	487.47
Fabian Theatre, 45 Church St., Paterson, NJ 07501	24,462	193.38
Omnia Properties Inc., #1, 30 Broad St., New York, NY 10004	146,622	1,158.96
Fairleigh Apts., 20 Willet St., Bergenfield, NJ 07621	27,525	217.60
The Fairmount, 585 Newark Ave., Elizabeth, NJ 07201	45,918	362.95
T.A. Farrell Plating Co., 39 Atlantic St., Garfield, NJ 07026	14,257	112.63
Feldman Light Fixtures, 610 E 32nd St., Paterson, NJ 07513	14,332	113.48
Fern Towers, 1135 Clifton Ave., Clifton, NJ 07013	72,741	575.02
Meadow Builders J.V., 145 A. Jerome St., Roselle Park, NJ 07204	18,548	146.63
Fine Organics Inc., 205 Main St., Lodi, NJ 07644	89,682	708.90
First Congreg Church, S. Fullerton Ply St., Montclair, NJ 07042	34,850	275.40
Fisher Scientific Co., 52 Fadem St., Springfield, NJ 07081	33,647	266.05
G.M. Papastamatis, 49 Driftwood Dr., Sayreville, NJ 08859	8,448	66.73
Food Concentrates Inc., P.O. Box 1014, Rahway, NJ 07065	60,435	477.70
L. Schlesinger, 41 Bowdin St., Maplewood, NJ 07040	39,860	315.35
Hersig Rlty Co., 325 Grafton Ave., Newark, NJ 07104	137,024	1,083.32
C.H. Forsman Co., Inc., 20-01 Pollitt Drive, Fairlawn, NJ 07410	21,653	171.27
Fort Lee Corp., P.O. Box 747, Teaneck, NJ 08840	17,350	137.
Franco Mfg. Co., Inc., High St., Metuchen, NJ 08840	29,254	231.20
Forest Hills Properties, 342 Madison Ave., New York, NY 10017	594,696	4,701.77
Franklin Gardens, 155 Riverside Dr., New York, NY 10024	82,756	654.50
Marlborough Hotel, 89 N. Arlington Ave., E Orange, NJ 07017	12,584	99.45
Marriott Motor Hotel, Rt. 80, Saddle Brook, NJ 08559	98,373	777.75
Marriott Hot Shoppes, Hangar Dr. Airport Bldg. 95, Newark, NJ 07114	69,996	553.35
Marshall Warehouse Co., 200 Greene St., Teterboro, NJ 07608	8,192	64.60
Martha Bell Corp., Mr. Adam Reibel, 3 Ramsgate Rd., Cranford, NJ 07016	17,599	139.40
Mar Vreeland Assoc., 375 Broadway, Paterson, NJ 07501	16,591	131.33
Mr. M. Albert, 58 Raymond Ave., S. Orange, NJ 07079	27,545	217.60
525 Realty Holding Co., 11 Sloan St., S. Orange, NJ 07079	62,571	494.70
The Matheson Co., Inc., P.O. Box 85, E. Rutherford, NJ 07083	105,023	830.45
Jas. H. Matthews Co., Inc., 1151 Bloofield Ave., Clifton, NJ 07012	9,569	75.65
Maxine Shops, 1027 Stuyvesant Ave., Union, NJ 07083	1,380	11.05
Brady Marine Repair Co., 900 Jefferson St., Hoboken, NJ 07030	10,956	86.70
Branch Brook Manor, 216A Branch Brook Drive, Belleville, NJ 07109	216,894	1,714.87
Briarcliff Village Apts., P.O. Box 745, Piscataway, NJ 08854	33,277	263.07
Briar Hall Apts. P.O. Box 422, Rutherford, NJ 07070	25,189	199.33
Capitol Mgmt. Corp., Executive Plaza, Suite 300, 10 Parsonage Rd., Edison, NJ 08817	51,659	408.42
Broadway Grove Realty Co., 258 Main Ave., Passaic, NJ 07055	30,609	241.82
Fisher Stevens Inc., 120 Brighton Rd., Clifton, NJ 07012	20,075	158.33
The Flintkote Co., 480 Central Ave., E. Rutherford, NJ 07073	133,653	1,056.55
Allison Mgmt. Corp., 175-20 Hillside Ave., Jamaica, NY 11438	36,713	290.28
Metal Powder Chem. Works, 701 Spring St., Elizabeth, NJ 07201	39,231	310.25
Metalwash Mach. Co., 901 North Ave., Elizabeth, NJ 07201	52,078	411.83
Metuchen Manor, 77 Milltown Rd., E. Brunwick, NY 08816	54,051	427.55
Midland Ross Corp., Machinery Div., Box 791, N. Brunswick, NJ 08903	76,739	606.90
Rosko Phil Inc., 3 Stanford Ct., W. Orange, NJ 07052	19,538	154.28
Monroe Mgmt. Co., 55 Monroe Place, Bloomfield, NJ 07003	23,466	185.73
CH Tatelbaum, TR, 801 1st National Bank, Baltimore, MD 21202	14,656	116.03
Montclair Academy, Lloyd Rd., Montclair, NJ 07047	38,267	302.60
Dr. Walter T. Darden, 266 Orange Rd., Montclair, NJ 07042	15,038	119.00
Kruvant Bros., 71 Valley St., S. Orange, NJ 07079	27,986	221.43
Montclair Midland Realty, 180 Walnut St., Montclair, NJ 07042	35,364	279.65
Mr. Howard Zindel, 52 Harmon Rd., Edison, NJ 08817	19,996	158.10
J. Morecraft, 27 E. 35th St., Bayonne, NJ 07002	8,249	65.03
Mother's Div. Vita Food Prod., 80 Ave. K, Newark, NJ 07105	57,983	458.58
Motomoc Inc., 89 Terminal Ave., Clark, NJ 07056	6,040	47.61
Mountainview Gdn. Apts., 1640 Vauxhall Rd., Union, NJ 07083	28,352	223.93
Mt. Calvary Homes, 244 Chadwick Ave., Newark, NJ 07108	56,195	444.58
Brookview Terrace Apts., 303 Plainfield Ave., Edison, NJ 08817	13,336	105.40
841 E. Realty Co., 115 Frelinghuysen Ave., Newark, NJ 07004	27,755	219.30

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Leonard Associates, P.O. Box 1411, 1 Hartz Way, Secaucus, NJ 07094	91,594	724.20
Brynwood Gdns., Box 37, Parlin, NJ 08859	82,441	651.95
Button Corp. of America, 49 Dickerson St., Newark, NJ 07103	71,383	564.40
Mr. F.H. Miller, 116 Prospect St., E. Orange, NJ 07017	62,285	492.15
Seven Haven Realty Co., P.O. Box 651, Bloomfield, NJ 07003	231,784	1,832.17
Mt. Saint Andrew Villa, W. 55 Midland Ave., Paramus, NJ 07652	34.231	270.72
Mulberry Metal Prod., P.O. Box 443, Union, NJ 07083	17,700	139.83
Associated Realty Co., 8500 River Rd., N. Bergen, NJ 07047	18,916	149.60
Jo Munch, 339 New Providence Rd., Mountainside, NJ 07092	7,713	60.78
Murphy Door Bed Co., Inc., 40 E. 34th St., New York NY 10016	5,218	41.65
Murray Hill Apts., 185 Valley St., S. Orange, NJ 07079	68,811	544.00
C & S Enterprises, 117 Chestnut St., Roselle, NJ 07203	24,409	192.95
First Essex Corp., 2185 Lemoine Ave., Suite 1-E, Fort Lee, NJ 07024	76,005	600.95
Raymond T. Marzulli Co., 336 Broad St., Bloomfield, NJ 07003	14,789	116.88
Bender Realty Inc., 197 Rutgers Lane, Parsippany, NJ 07054	32,884	260.10
Milton Flamm, Route 9W, Englewood Cliffs, NJ 07632	15,803	124.95
Mr. Roy Weltchek, 27 Prince St., Elizabeth, NJ 07208	56,514	446.67
95 Mgmt. Co., P.O. Box 442, Teaneck, NJ 07666	43,568	344.67
96 N. Walnut St., Co. Mgmt., Box 442, Teaneck, NJ 07666	21,139	167.03
Henry M. Lesher Agy., 561 Northfield Rd., E. Orange, NJ 07052	10,638	84.15
Mrs. S. Ceverino, 48 Bonn Pl., Weehawken, NJ 07087	10,729	85.00
912 S. Ave. Corp., 912 S. Ave., Plainfield, NJ 07062	15,698	124.10
N L Industries Inc., 195 Clinton Rd., W. Caldwell, NJ 07006	30,579	241.82
Garden Motor Lodge, 83 Broadway, E. Paterson, NJ 07407	21,031	166.18
Garden State Mtg. & Fin. Co., 780 Ferlinghuysen Ave., Newark, NJ 07114	37,557	297.08
Garden State Plaza Corp., Rt. 4 & Central Plnt., Paramus, NJ 07652	299,286	2,366.39
Canterbury At Arlington Inc., 39 4th St., N. Arlington, NJ 07032	59,938	473.87
Mr. Joel Sondak, 17 Academy St., Newark, NJ 07102	27,165	214.62
Peter F. Pasjerg Co., Inc., 18 Beaver St., Newark, NJ 07102	23,741	187.85
Broadway Manor Corp., 153 Franklin St., Bloomfield, NJ 07003	24,200	191.25
Terrace Rlty. Co., c/o Mr. L. Bernstein, 1064 Clinton Ave., Irvington, NJ 07111	16,286	128.77
Feist & Feist, 58 Park Place, Newark, NJ 07102	18,951	150.02
Free Public Library, 11 So. Broad St., Elizabeth, NJ	20,855	164.90
G C C Co., Box 236, Livingston, NJ 07039	11,363	90.10
General Motors Corp., 780 Dowd Ave., Elizabeth, NJ 07207	35,330	279.23
G & O Assoc., P.O. Box 253, Roselle, NJ 07203	18,346	144.93
Galaxy Chemical Corp., P.O. Box 443 River St., Paterson, NJ 07524	21,373	169.15
Galler 7-Up Bottling Co., 88 Polifly Rd., Hackensack, NJ 07601	55,053	435.20
Gallo Seed & Pet Supplies, P.O. Box 113 E. Rutherford, NJ 07073	18,237	144.08
P.F. Pasbjerg Co., Inc., 18 Beaver St., Newark, NJ 07102	23,975	189.55
Midland Ross Corp., 530 W. Mt. Pleasant Ave., Livingston, NJ 07039	24,196	191.25
Midtown Hi Way Laundry, 306 Bergen Blvd., Fairview, NJ 07022	7,963	62.90
George A. Milton Can Co., 580 Division St., Elizabeth, NJ 07201	25,825	204.00
Modern Plastic Mach. Inc., 64 Lakeview Ave., Clifton, NJ 07011	65,886	521.05
Mohasco Industries, 57 Lyon St., Amstrom, NJ 12010	6,644	52.70
Moldcast Mfg. Co., 164 Delancy St., Newark, NJ 07105	56,290	444.98
Monroe Mgmt. Co., 55 Monroe Pl., Bloomfield, NJ 07003	42,747	337.88
Brookdale Apts., 20 N. Maple Ave., Irvington, NJ 07111	187,318	1,481.12
Mr. J.A. Davidson, 383 Park St., Upper Montclair, NJ 07043	5,927	47.18
Brooklawn Gdns. Inc., 2013 Morris Ave., Union, NJ 07083	192,849	1,524.89
Adco, 1480 Route 46, Parsippany, NJ 07054	25,576	202.30
Mr. P. Perone, Supt., 500 Main St., Chatam, NJ 07928	18,265	144.50
Garden Homes Agency, 1640 Vauxhall Rd., Union, NJ 07083	16,271	128.78
Garfield Mfg. Co., 10 Midland Ave., Wallington, NJ 07055	31,933	252.45
Garry Holding Co., 1620 Manhattan Ave., Union City, NJ 07087	20,283	160.23
Garry Mfg. Co., 1010 Jersey Ave., New Brunswick, NJ 08901	18,339	144.93
Goerling's Greenhouses, 496 William St., Piscataway, NJ 08854	56,357	445.40
Genal Co., Box 214, Hasbrouch Hgts, NJ 07604	39,928	315.77
General Color Co., 24 Ave. B, Newark, NJ 07114	29,945	236.73
General Diaper of N.J. Inc., 823 North Ave., Plainfield, NJ 07060	8,156	64.60
General Electric Co., 116 Washington St., Bloomfield, NJ 07003	23,403	184.87
General Export Clothing Corp., 323 Cortlandt St., Belleville, NJ 07109	22,042	174.25
General Footwear, 210 Orchard St., E. Rutherford, NJ 07073	23,381	184.87
Norpak Corp., 70 Blanchard St., Newark, NJ 07105	19,286	152.58
Newark Star Ledger, Star Ledger Plaza, Newark, NJ 07601	76,736	606.90
Cedar Wright Gdns. Inc., 342 Madison Ave., New York, NY 10017	335,674	1,654.11
Cellofilm Corp., Box 25, Woodbridge, NJ 07075	17,375	137.28
Center Lumber Co., 85 Fulton St., Paterson, NJ 07501	29,469	232.90
Central Bergen YMCA, 160 Main St., Hackensack, NJ 07601	44,726	266.48
Central Evergreen, 576 Central Ave., E. Orange, NJ 07018	9,619	76.08
Central Glass Dist., 651 Lehigh Ave., Union, NJ 07083	38,794	306.85
Central Service Corp. Ldry., 646 Frelinghuysen Ave., Newark, NJ 07114	248,440	1,964.35
MH. Rubin Sons, Box 817, Somerville, NJ 08876	17,003	134.30
Mrs. O'Neill, 92 Elizabeth St., River Edge, NJ 07661	35,052	277.10
General Green Village, 37 Mountain Ave., Springfield, NJ 07081	71,311	563.97
Chanel Inc., 876 Centennial Ave., Piscataway, NJ 08854	35,972	283.90
Chateau Apartments, P.O. Box 422, Rutherford, NJ 07070	23,776	187.85
Dweck Rlty Co., 85 Market St., Newark, NJ 07102	14,716	116.45
Chatham Ward Co., P.O. Box 54, Mendham, NJ 07945	18,355	144.92
Chester Parlavecchio, 276 Vermont Ave., Irvington, NJ 07111	6,063	48.03
Brounell Kramer Mgt. Co., 1435 Morris Ave., Union, NJ 07083	29,055	229.92
Cherry Park Arms Inc., Box 214, Millburn, NJ 07041	18,324	144.92
Cherry Pine Apts., Mr. A. Reibel, 3 Ramsgate Rd., Cranford, NJ 07016	33,459	264.79
Chestnut Willow Apts., c/o Liv Kelly, 33 Evergreen Place, E. Orange, NJ 07018	36,900	291.55
Childhood Interest Inc., 180 Westfield Ave., Roselle Park, NJ 07204	31,739	250.75
Jersey Mtg. Co., 430 Westfield Ave., Elizabeth, NJ 07207	60,667	479.82
Meadow Bldrs., J.V., 145 A. Jerome St., Roselle Park, NJ 07204	13,133	103.70
Chilton Towers, Box 43, Livingston, NJ 07039	80,827	639.20
Chock Full O Nuts, 425 Lexington, Ave., New York, NY 10017	19,827	156.83
Church Twrs. UR, P.O. Box M-82, Hoboken, NJ 07030	138,796	1,097.35
Claraco, c/o Mr. Rothman, 460 Otisco Dr., Westfield, NJ 07080	14,605	115.60
David Cronheim Co., 1186 Raymond Blvd., Newark, NJ 07102	124,956	988.12
Robert Silverman, 28 N. Baums Court, Livingston, NJ 07039	16,341	129.20
Clark Bowling Lanes, 140 Central Ave., Clark, NJ 07066	4,694	36.98
Clark Door Co., Inc., 69 Myrtle St., Cranford, NJ 07016	13,643	107.95
Jacob Max, 22 Journal Square, Jersey City, NJ 07306	8,066	63.75
W.A. Cleary Corp., P.O. Box 10, Somerset, NJ 08873	28,147	222.70
Mr. Harry Kadish, 377 So. Harrison St., East Orange, NJ 07018	19,207	151.73
Cliff House, 2205 N. Central Rd., Ft. Lee, NJ 07024	49,247	389.30
Cliffwood Gdns. Assoc., 350 Cross Road, Matawan, NJ 07747	33,951	268.60
Cliffside Office Supply, P.O. Box 1087, So. Hackensack, NJ 07606	40,776	322.57
Mr. J. Bigel, 60 Park Pl., Newark, NJ 07102	77,460	612.42
Mr. W.L. Spitalny, 23 Wingate Dr., Livingston, NJ 07039	17,790	140.68
Clinton Court, c/o James Hanson MFGT., 400 State St., Hackensack, NJ 07601	8,964	70.98
Clinton House Co., 450-7th Ave., New York, NY 10001	25,287	199.75
Cloverleaf Gdns., 272A Roanoke St., Woodbridge, NJ 07094	140,773	1,112.65
Coast Metals Co., 201 Redneck Ave., Little Ferry, NJ 07643	7,786	61.63
Colannade Apt., Corp., 65 Clifton Blvd., Clifton, NJ 07015	12,534	99.03
Cold Indian Springs Inc., Box 218, Eatontown, NJ 07724	309,242	2,445.02
Colfax Manor Gardens, 1135 Clifton Ave., Suite 200, Clifton, NJ 07013	97,317	769.25
Geral Laurence, 14 Elm St., Elizabeth, NJ	18,852	149.18
College Twrs., Apt., 37 College Dr., Jersey City, NJ 07305	40,473	320.20
College Towers Apts., 37 College Dr., Jersey City, NJ 07305	132,463	1,031.47
Colonial Container Corp., Vanderhoff Ave., Denville, NJ 07834	50,995	403.32
Mr. John Borea, 276 Cypress Ave., Bogota, NJ 07603	28,762	227.38
Colonial Heights Inc., Box 25, Parsippany, NJ 07054	186,524	1,474.75
Mr. John Apgar, 500 Main St., Chatham, NJ 07928	14,750	116.88
Americana Assoc., 1530 Palisade Ave., Fort Lee, NJ 07024	286,406	2,264.39
B. & K. Properties, 140 Hepburn Rd., Clifton, NJ 07012	111,035	878.05
Colony Furniture, 1125 West Elizabeth Ave., Linden, NJ 07036	30,568	241.82
Commercial Cor. Cont. Co., 615 Ferry St., Newark, NJ 07105	39,802	314.50
Ernest Perlmutter, 3 Haran Circle, Millburn, NJ 07041	16,453	130.48
Constantine Village, 147 Vose Ave., South Orange, NJ 07079	30.276	239.28
Continental Coffee Co., 10 Empire Blvd., Moonachie, NJ 07074	27,398	216.75

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Omnia Properties Inc., 30 Broad St., New York, NY 10004	140,636	1,111.80
Continental Pack Corp., 555 N. Michigan Ave., Kenilworth, NJ 07033	56,606	447.52
Continental Plastics, 10 Production Way Avenel, NJ 07001	117,851	931.60
Cooper Laboratories Inc., Fairfield Rd., Wayne, NJ 07470	61,729	487.90
Corona Plastic Inc., Rt. 53, Denville, NJ 07834	10,202	80.75
Cosmair Inc., 220 Terminal Ave., Clark, NJ 07066	109,971	869.55
Cott Bottling Co. of N.J., 535 Dowd Ave., Elizabeth, NJ 07202	25,000	197.63
Country Club Pd. Camb., 1640 Vauxhall Rd., Union, NJ 07083	22,569	178.50
B & K. Realty Country Club, 140 Hepburn Rd., Clifton, NJ 07012	148,168	1,172.14
Cranford Meth. Church, 201 Lincoln Ave., Cranford, NJ 07016	8,944	70.98
Cranford Towers, Mr. Ernest Winter, P.O. Box 810, Manaronack, NY 10543	26,873	212.50
Harwill Homes Inc., 1640 Vauxhall Rd., Union, NJ 07083	53,130	419.90
Crosley Terrace, c/o Punia & Marx, 16 Court St., Brooklyn, NY 11241	50,475	399.09
Ashley Goodman—Apt. 27A, 1221 Magie Ave., Union, NJ 07083	21,854	172.98
Ashley Goodman-Apt. 27A, 1221 Magie Ave., Union, NJ 07083	7,613	60.35
Governor Morris Inn, 2 Whippany Rd., Morristown, NJ 07960	64,233	507.67
Grand Bellevue Apts., Box 691, Union, NJ 07083	12,562	99.45
Grand Furniture, 59 Market St., Newark, NJ 07102	11,694	92.65
Grand Lawn Assts., Box 747, Teaneck, NJ 07666	21,102	167.03
Grand Lee Apts., 33-06 Fairlawn Ave., Fairlawn, NJ 07410	48,539	383.35
Mr. Richard Selznick, 34 Manchester Dr., Westfield, NJ 07090	6,243	49.30
The Boyle Co., Mrs. Walsh, 1143 E. Jersey St., Elizabeth, NJ 07201	13,651	107.95
Grandview Grdns.-3, M.D. Assts., 1808 Springfield Ave., Maplewood, NJ 07040	24,013	189.97
M.D. Assts., 1808 Springfield Ave., Maplewood, NJ 07040	15,602	123.25
Carl Spears, Abbington Dr., Apt. B-1, Highstown, NJ 08520	31,790	251.17
Mr. Leon Sigall, 135 W. 30th St., New York, NY 10001	22,759	179.78
Wills Oil Co., Rt. 206, Netcong, NJ 07857	26,759	211.65
General Rubber Co., 9 Empire Blvd., S. Hackensack, NJ 07606	38,070	300.90
Melber Operating Co., c/o Mr. M. Berlow, 972 Broad St., Newark, NJ 07102	28,112	222.28
Georgian Gdns., 71 Valley St., S. Orange, NJ 07079	28,399	224.40
Georgia Bonded Fibers, 15 Nuttman St., Newark, NJ 07103	36,128	285.60
Gibson Associates Inc., 90 Myrtle St., Cranford, NJ 07016	28,983	229.08
Aimar Realty Co., Boright Ave., Kenilworth, NJ 07033	12,450	98.60
Gilton Mfg. Co., 99 Fifth Ave., Paterson, NJ 07524	45,037	356.15
M. Giangali Silk Co., E. Weiner, 24 Rockingham Pl., Glen Rock, NJ 07452	28,766	227.80
Parnes Bros., 200 W. 5th St., Rm. 402, New York, NY 10019		
Glenwood Apts., 55 Glenwood Ave., E. Orange, NJ 07017	77,343	611.57
Ashley Goodman, 1221 Magie Ave., Union, NJ 07083	10,546	83.73
Greenwood Gdns., 2013 Morris Ave., Union, NJ 07083	30,008	237.15
D. Cronheim Rec., 1186 Raymond Blvd., Newark, NJ 07112	149,475	1,181.92
Mr. Jos. Bigel, 60 Park Place, Newark, NJ 07102	28,276	223.55
Grey Realty Co., 921 Bergen Ave., Jersey City, NJ 07306	13,140	103.70
Guardian Sprinkler Co., 965 W. Grand St., Elizabeth, NJ 07202	5,001	39.95
Edward Guttmann & Son Realty Co., 729 Glenwood Ave., Teaneck, NJ 07666	32,399	256.27
H.H. Provision Co., 62 Berry St., Somerset, NJ 08873	17,802	140.68
Mr. Philip Mandelbaum, 17 Academy St., Newark, NJ 07102	2,928	23.38
Chas. J. Rocco Enterprises, 450C Essex St., Hackensack, NJ 07602	58,499	462.40
Halsey Grdns., 185 Valley St., S. Orange, NJ 07079	15,924	125.80
Capitol Mgmt. Corp., Executive Plaza, Suite 300, 10 Parsonage Rd., Edison, NJ 08817	22,449	177.65
Gummersell Prop., 383 Park Ave., Montclair, NJ 07043	13,893	109.65
Hamilton Laundry-Dry Cleaning 276 Hamilton St., Rahway, NJ 07065	34,524	272.85
Hamiltonian Apts., c/o Mr. J. Friemen, 1959 Morris Ave., Union, NJ 07083	61,818	496.82
First Real Est. Invest. of NJ, c/o S. Hekemian Sons, 477 Main St., Hackensack, NJ 07601	34,244	270.73
J.L. Hammett Co., 2393 Vauxhall Rd., Union, NJ 07083	43,100	340.85
Mr. Milton Coleman, 61 MacArthur Dr., Clifton, NJ 07013	17,554	138.98
Mr. Sanford Field, 1010 Clifton Ave., Clifton, NJ 07013	11,992	94.78
Noel Homes, 1640 Vauxhall Rd. Union, NJ 07083	44,320	350.62
Sherman Park Inc., 710 Westfield Ave., Elizabeth, NJ 07208	7,328	57.80
Samuel Geltman & Co., 1435—10th St., Fort Lee, NJ 07024	43,001	340.00
Harmor Plastics Div., APL Corp., 505 Manor Ave., Harrison, NJ 07029	169,304	1,338.32
Harrison Essex Realty, 681 Main St. Bldg. 43, Belleville, NJ 07109	27,704	218.88
243 S. Harrison St. Corp., Box 447, Fort Lee, NJ 07024	35,751	282.63
Hart Products, 207 Van Vorst St., Jersey City, NJ 07302	37,059	292.83
Hartz Mountain Corp., 700 S. Fourth St., Harrison, NJ 07029	67,941	537.20
Hastings Gdns., Box 422, Rutherford, NJ 07070	121,346	959.21
Hellring Bros. Inc., 420 North Ave. E., Cranford, NJ 07016	3,717	29.75
Hencar Holding Corp., 30 62nd St., West New York, NJ 07093	13,635	107.95
Wm. Henry Co., Templer Div., Whitehead Ave., S. River, NJ 08882	56,336	445.40
Mobit Inc., 116 Main St., Orange, NJ 07050	34,139	269.88
Hewitt Robins Inc., 270 Passaic Ave., Passaic, NJ 07055	90,684	716.97
Cottage Arms Co., Dr. F. Weisbrod, 61 S. Munn Ave., E. Orange, NJ 07018	18,885	149.18
Crown Life Corp., 155 Riverside Dr., New York, NY 10024	25,044	198.05
Cypress Gardens, 2013 Morris Ave., Union, NJ 07083	105,168	831.72
Riverview Assoc., 155 N. Ean St., Englewood, NJ 07631	50,647	400.35
River West Apts., P.O. Box 422, Rutherford, NJ 07070	19,579	154.70
Rober Towers, 1135 Clifton Ave., Suite 200, Clifton, NJ 07013	63,183	499.37
Julius Roehrs Co., Rt. #33, Farmingdale, NJ 07727	139,131	1,099.89
H. D. Epstein, 504 Bloomfield Ave., Verona, NJ 07044	33,627	266.05
Mr. Carl Rohner, RD #1, Denver, PA 17517	15,671	124.10
Rolane Maint. Co., 1043 E. 8th St., Brooklyn, NY 11230	109,404	864.87
Dr. F. Lapeyroleria, 114 High St., Montclair, NJ 07104	13,606	107.53
Ronther, Inc., Rt. #46, Little Falls, NJ 07424	24,648	195.08
Union Theatre, 990 Stuyvesant Ave., Union, NJ 07083	6,689	53.13
A.J. Realty, J. Braverman, 91 Chatham Terrace, Clifton, NJ 07013	13,126	103.70
David Urman, 724 Beechwood Rd., Linden, NJ 07036	8,948	70.55
Valley Nursing Home, Old Hook Rd., Westward, NJ 07675	26,279	207.82
Verona Lake Apts., 39 Lakeview Ave., Verona, NJ 07044	12,406	98.18
Vestal Development Co., 1439 N. Broad St., Hillside, NJ 07205	58,768	464.52
Village Apts., Ashley Goodmen—Apt. 27A, 1221 Magie Ave., Union, NJ 07083	64,176	507.45
Vornado Exp. Act. Pay, 174 Passaic St., Garfield, NJ 07026	50,232	396.95
Redmond Rlty Mgt. Co., 147 Vose Ave., S. Orange, NJ 07079	15,317	121.12
Atlantic Steamer Supply Co., 1100 Adam St., Hoboken, NJ 07030	37,290	294.95
Atlantic Tool Die Co., 3461 S. Clinton Ave., Plainfield, NJ 07063	12,095	95.63
Branson Equip. Co., 51 Terminal Rd., Clark, NJ 07066	13,485	106.68
Costa Development Corp., S10 Rt. 17, Paramus, NJ 07652	293,256	2,318.80
Brookchester Sec. 3, 854 River Rd., New Milford, NJ 07646	120,407	952.00
J.J. Brunett Const. Co., 200 Rt. #9, Old Bridge, NJ 08857	541,147	4,278.46
Bulleys & Sons, 91 B'way, Jersey City, NJ 07306	4,801	37.83
Royal Gardens II, 968 Stuyvesant Ave., Union, NJ 07083	45,978	363.37
Ronel Gdns.—O'Neill, 92 Eliz. St., River Edge, NJ 07661	11,767	93.06
Roman Products Corp., Phillips Ave., So. Hackensack, NJ 07606	95,155	752.25
St. Vincents Church, 26 Green Village Rd., Madison, NJ 07940	9,645	76.08
Plaza Corp., 560 Sylvan Ave., Englewood Cliffs, NJ 07638	64,983	513.82
Sealed Air Corp., 19-01 Rt. 208, Fairlawn, NJ 07401	28,062	221.85
Sears Roebuck Co., 3196 Kennedy Blvd., Union City, NJ 07087	31,354	247.78
Sears Roebuck & Co., 436 Main St., Hackensack, NJ 07601	14,516	114.75
Sector Realty, 117 Sylvan Ave., Newark, NJ 07104	6,111	48.88
Anchor Concrete Products, 875 Burnt Tavern Rd., Bricktown, NJ 08723	22,229	175.95
Aspen Industrial Co., 2 Aspen St., Passaic, NJ 07055	7,973	62.90
All Star Daries Inc., P.O. Box 1250, Perth Amboy, NJ 08862	33,301	263.50
Adams Tanning Co., 126 South St., Newark, NJ 07114	14,672	116.03
Ava Mgt. Co., 2190 Center Ave., Ft. Lee, NJ 07024	8,554	67.58
Beecham Prod. Div. Beecham, 65 Industrial So., Clifton, NJ 07012	32,041	253.30
Mr. Mayer Winogard, 880 Bergen Ave., Jersey City, NJ 07306	21,311	168.30
Belmont Greeting Card, 195 Allwood Rd., Clifton, NJ 07012	14,196	112.20
Blum Bindery, 1405 N. Board St., Hillside, NJ 07205	20,154	159.37
Bogert & Carlough Co., 509 Straight St., Paterson, NJ 07503	19,802	156.40
Boonton Molding Co. Pl.#2-3, 300 Myrtle Ave., Boonton, NJ 07005	34,242	270.72
Burns & Roe Inc., 700 Kinderkamack Rd., Oradell, NJ 07649	23,806	188.28
Calver Knit Corp., 357 County Rd., Secaucus, NJ 07094	13,235	104.55
James V. Cascio, 109 Aldene Rd., Roselle, NJ 07203	50,425	398.55

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Chemical Prod. Corp., 125 Main Ave., East Paterson, NJ 07407	10,166	80.33
Clarkwood Service Corp., 690 Union Blvd., Totowa, NJ 07512	23,357	184.88
Coca Cola Bott. Co. N.Y., 425 E. 34th St., New York, NY 10016	44,798	354.30
Commercial Trust Co., 15 Exchange Pl., Jersey City, NJ 07302	6,825	54.40
Continental Apts. Inc., 2375 Hudson Ter., Ft. Lee, NJ 07024	7,830	62.05
Cook Machinery Co., Inc., 380 Pleasantview Ave., Hackensack, NJ 07661	45,231	357.42
Riverview Gardens, 1 Garden Terr., N. Arlington, NJ 07032	186,470	1,474.31
Royal Gardens #1, 968 Stuyvesant Ave., P.O. Box 471, Union, NJ 07083	89,951	711.02
Pines Apts., Mr. Adam Reibel, 3 Ramsgate Rd., Cranford, NJ 07016	11,006	87.13
Pinefield Manor, Box 25, Parsippany, NJ 07054	43,394	342.98
Mr. Murray Pantirer, 644 Salem Ave., Elizabeth, NJ 07208	38,189	301.75
Harold M. Pitman Co., 515 Secaucus Rd., Secaucus, NJ 07094	19,075	150.88
Rose Associates, P.O. Box 175, Florham Park, NJ 07932	24,682	195.08
Rego Const. Co., 416—63rd St., West New York, NJ 07093	30,318	239.70
Leonard Feinen, 320 Lincoln Ave., Hasbrouck Heights, NJ 07604	34,988	276.68
Plateau Gardens, 1241 Anderson Ave., Ft. Lee, NJ 07024	62,442	493.85
Robert Schneider, 19 Sunset Terrace, Maplewood, NJ 07040	2,201	17.85
Piscataway Assoc., 80 Huguenot Ave., Englewood, NJ 07631	450,358	3,560.19
Polyplastex United Inc., 870 Springfield Rd., Union, NJ 07083	50,805	401.62
J.S. Popper, 200 Liberty St., Little Ferry, NJ 07643	31,512	249.05
Potdevin Machine Co., 200 North St., Teterboro, NJ 07608	32,787	259.25
Precast Products Co., 190 Rt. 206 South, Somerville, NJ 08876	39,360	311.10
Precision Lighting Inc., 1285 Central Ave., Hillside, NJ 07205	27,678	218.88
T.C. McGee Rec., 634 Rivervale Rd., Rivervale, NJ 07675	13,831	109.23
Prentice Hall Inc., Route 9W, Englewood Cliffs, NJ 07632	142,881	1,129.64
1615 Park Ave. Corp., c/o Slyvan Cooper, 400 Deal Lake Dr., Asbury Park, NJ 07712	31,910	252.45
Prime Auto Parts, 13-21 Montgomery St., Hillside, NJ 07205	8,357	66.30
Peter F. Pasbjerg Co., 18 Beaver St., Newark, NJ 07102	23,765	187.85
Prospect Equities Inc., 209 Prospect St., East Orange, NJ 07017	43,644	345.10
Paled Realty Co. Inc., c/o Galgano, 80 Claredon Place, Hackensack, NJ 07601	37,028	292.82
Prospect Point Gardens, 2 Prospect Place, Matawan, NJ 07747	17,458	138.13
Prudent Mgt. Realty, 689 Sanford Ave., Newark, NJ 07106	9,905	78.20
Public Service Elec. & Gas, 722 Ferry St., Newark, NJ 07105	9,286	73.53
Public Warehouse Corp., 665 Central Ave., Harrison, NJ 07029	53,525	423.30
Puerto Rican Forwarding Co., 2121-91st. St., North Bergen, NJ 07047	27,938	221.00
Quaker Oats Co., P.O. Box 176, New Brunswick, NJ 08902	84,050	664.70
Uaker Village, 34 Cornell St., West Orange, NJ 07052	63,479	501.92
Clayton Holding Co., 11 Sloan St., South Orange, NJ 07079	74,565	589.46
Mr. M. Shalita, 50 Court St., Brooklyn, NY 11201	33,122	261.80
R & L Realty Co., Stern & Dubrow, 76 So. Orange Ave., South Orange, NJ 07079	48,697	385.05
Rab Associates, 73 Parker Ave., Maplewood, NJ 07040	11,481	90.95
Rahway Joint Venture, 350 Warren St., Jersey City, NJ 07302	74,052	585.65
Raman Associates, 73 Parker Ave., Maplewood, NJ 07040	34,157	269.88
Randolph Village, 197 Rutgers Lane, Persippay, NJ-07054	34,319	271.15
Rapid Boiler Co. of N.J., Fadem-Diamond Rd., Springfield, NJ 07081	45,312	358.27
Raven Hill Associates, P.O. Box 747, Teaneck, NJ 07666	46,482	367.62
Raytheon Co., 141 Spring St., Lexington, MA 02178	22,975	181.48
Hugh M. Leonard-Rec., 275 Thomas St., Newark, NJ 07114	18,977	150.03
Reformed Church Home, 720 Nye Ave., Irvington, NJ 07111	21,001	166.18
Suburban Estates, P.O. Box 2127, Ocean, NJ 07712	4,999	39.95
Regent Uniform Rental, 237 N. 12th St., Newark, NJ 07107	30,041	237.57
The Reginal Corp., 313 Regina Ave., Rahway, NJ 07065	112,983	893.35
Rego Const. Corp., 416–63rd St., West New York, NJ 07093	10,823	85.43
Reheis Chem. Armour Phar., 235 Snyder Ave., Berkeley Heights, NJ 07922	136,383	1,078.81
Roiter Schneider Connor, 619 Jackson St., Hoboken, NJ 07030	30,401	240.55
Remington Rand Systems, P.O. Box 28, Cranford, NJ 07016	14,694	116.03
Rexnord Inc. Specialty, Fasterns Div., 22 Spring St., Paramus, NJ 07652	14,214	112.20
Mr. Robert Dinerman, 432 Park Ave., New York, NY 10016	27,634	218.45
Mr. J. Ratner, 342 Madison Ave., New York, NY 10017	107,664	851.27
C.J. Rocco Enterprises, 450C Essex St., Hackensack, NJ 07602	25,184	199.33
River Drive Apt., 380–400 River Dr., Passaic, NJ 07055	8,247	65.03
River Heights Inc., P.O. Box 1371, Highland Park, NJ 08904	130,727	1,033.60
Est. of Charles Shilowitz, 26 Journal Sq., Jersey City, NJ 07306	48,091	380.37
Mr. Albert Foschini, 466 Burton Ave., Hasbrouck Hgts., NJ 07602	6,583	51.85
Riverside Terrace, Inc., c/o Mr. A.C. Wolf, Jr., 10 East End Ave., New York, NY	25,690	203.15
Riverview Gardens, 1 Garden Terrace, North Arlington, NJ 07032	137,809	1,089.69
Placid, Inc., 5 Colt St., Paterson, NJ	21,525	170.00
Pan Rotary Corp., 45 Hartmann Ave., Garfield, NJ 07206	3,085	24.65
Pepsi Cola-Metro Bot., 1007 Livingston Ave., No. Brunswick, NJ 08902	16,941	133.88
T.C. McGee Rec., 634 Rivervale Rd., Rivervale, NJ 07675	29,415	232.47
D. Gelber-Prestige Prop., 53 Main St., Hackensack, NJ 07601	6,802	53.98
Anber Realty Co., 272 Sussex Ave., Newark, NJ 07107	74,915	592.02
Franklin Estates Inc., 1640 Vauxhall Rd., Union, NJ 07083	6,567	51.85
Wood Plaza Theatre, 400 No., Wood Ave., Box 174, Linden, NJ	13,038	103.70
Radice Realty Const. Co., 30 Glen St., White Plains, NY 10603	14,075	111.35
Oxford Panda Flex Corp., Clinton Road, Garden City, L.I., NY 11530	37,960	300.05
Dr. Frank Lapeyrolerie, 114 High St., Montclair, NJ 07042	12,650	99.88
Mr. F. Schnoholtz, 60 Park Place, Newark, NJ 07102	67,293	532.10
Rabbinacal College, 226 Sussex Ave., Morris Township, NJ 07960	49,437	391.00
Robert Silverman, 28 N. Baums Ct., Livingston, NJ 07039	16,151	127.50
Kent Realty, Co., 90 Livingston Ave., New Brunswick, NJ 08902	6,252	49.30
Repak Corp., 113 No. 13th St., Newark, NJ 07107	21,107	167.03
Lehigh Const. Co., 300 South Ave., Garwood, NJ 07207	40,459	320.02
Rhodes Plastic Corp., 1075—Edwards St., Linden, NJ 07036	24,948	197.20
Wesley, Winter & Moore, 1026 W. Elizabeth Ave., Linden, NJ 07036	15,409	121.98
Westcourt Apts., Box 162, Kearny, NJ 07032	18,888	149.18
West End Apts. Inc., 2013 Morris Ave., Union, NJ 07083	49,704	393.12
Housing Auth. of Plainfield, 510 E. Front St., Plainfield, NJ 07060	91,935	726.75
Westbound Homes Inc., 1640 Vauxhall Rd., Union, NJ 07083	45,314	358.27
West Mill Gdns. Inc., 1640 Vauxhall Rd., Union, NJ 07083	287,075	2,269.50
Westmount Country Club, Rifle Camp Rd., W. Paterson, NJ 07425	5,617	44.20
Mr. P. Mandelbaum, 17 Academy St., Newark, NJ 07102	15,862	125.38
Society African Missions, 23 Bliss Ave., Tenafly, NJ 07670	8,697	68.85
Solar Compounds Co., 1201 W. Blanche St., Linden, NJ 07036	140,318	1,109.25
Solvents Rec. Ser. of NJ, Sylvan St., Linden, NJ 07036	214,192	1,694.05
Rosko Phil, 3 Stanford St., W. Orange, NJ 07052	16,797	132.80
Kruvant Bros., 71 Valley St., S Orange, NJ 07079	31,001	245.22
Spartell Realty Co., Box 108, Glen Ridge, NJ 07028	12,447	98.60
Stephanie Gdns., Richard Plotkin, 17 Oak Ave., W. Orange, NJ 07052	12,287	96.90
Mr. H. Diamond, 595 Union Blvd., Totowa, NJ 07512	10,008	79.05
Sperry Hutchinson Co., Rt. 27 & Vineyard Rd., Metuchen, NJ 08840	82,392	651.52
Spiral Binding Co., Inc., 2 Bridewell Pl., Clifton, NJ 07014	12,301	97.33
Romile Co., E. 210 Route #4, Paramus, NJ 07652	26,868	212.50
Springview Gdns., 37 Mountain Ave., Springfield, NJ 07081	30,117	238.00
Standard Overall, 50–56 Woolsey St., Irvington, NJ 07111	105,407	833.42
Stanley Theatre, 2932 Blvd., Jersey City, NJ 0730	38,938	307.70
Starbrook Apts., Box 224, Englewood, NJ 07631	12,096	95.63
Star Poultry Inc., 191 Gould Ave., Paterson, NJ 07503	9,226	73.10
Stauffer Chem. Co., 2 Paulison Ave., Passaic, NJ 07055	138,307	1,093.51
Wm. Steinen Mfg. Co., 29 E. Halsey Rd., Parsippany, NJ 07054	25,977	205.28
Mr. Henry H. Bassford, Jr., 158 Douglas Rd., Emerson Hill, Staten Island, NY	10,259	81.18
Stern Bros., Accounts Pay., C & C Bldg., S. 60 Rt. 17, Paramus, NJ 07652	71,270	563.98
Steven Realty Co., 3 Stanford Ct., W. Orange, NJ 07052	19,540	154.70
Robert Silverman, 28 N. Baums Court, Livingston, NJ 07039	11,831	93.50
Stexon Realty Co., 15 Wilkenson Ave., Jersey City, NJ 07305	24,753	195.50
Steven Holding Corp., 1000 Park Ave., New York, NY 10028	24,118	190.83
Rental Invest. Prop. Inc., Box 163, Elizabeth, NJ 07207	9,532	75.23
Starathmore House Realty, Box 422, Perth Amboy, NJ 08862	26,604	210.37
Stuyvesant Manor, 20 N. Maple Ave., Irvington, NJ 07111	323,141	2,554.87
Stuyesant Town, 20 N. Maple Ave., Irvington, NJ 07111	202,237	1,598.85
Stuyvesant Village Inc., 20 N. Maple Ave., Irvington, NJ 07111	131,061	1,035.72
Albert H. Saers Inc., 1051 Bloomfield Ave., Clifton, NJ 07012	144,104	1,039.85

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Suburban Court, 500 Main St., Chatham, NJ 07928	14,720	116.45
Suburban Laundry 22 Temple Ave., Hackensack, NJ 07601	5,001	39.53
Audi No Inc., 645 Main St., Hackensack, NJ 07601	14,451	114.33
Mr. Hyman Zaik, 106 W. 8th St., Bayonne, NJ 07002	27,168	214.83
Peter F. Pasjerg Rlety. & Ins. Co., 18 Beaver St., Newark, NJ 07102	29,842	235.87
Summit Realty Co., 9060 Palisade Ave., N. Bergen, NJ 07047	75,776	599.25
Frank Schoenholtz, 60 Park Place, Newark, NJ 07102	43,061	340.42
Tzeses Bros. Inc., 343 Cumberland Rd., S. Orange, NJ 07079	21,285	168.30
Sunnyfield Gdns., 343 Academy Terrace, Linden, NJ 07036	51,752	409.27
Sunny Lane Farms, Box 314, 471 Union Ave., Murray Hill, NJ 07974	29,048	229.50
Sunset Gdns.-Schoenholtz, 60 Park Place, Newark, NJ 07102	42,192	333.63
Sunny Towers Inc., 235 S. Harrisons St., E. Orange, NJ 07018	19,934	157.68
Supreme Laundry Supply, 124 Delancey St., Newark, NJ 07105	48,242	381.22
Elmwood Terr. Inc., Surry Manor, 155 Riverside Dr., New York, NY 10024	204,479	1,616.70
Mr. Wm. Moke, 22 Bank St., Summit, NJ 07901	15,950	126.23
Swan Motel, U.S. Highway 1, Linden, NJ 07036	16,690	131.75
Sycamore Terrace Apts., 968 Stuyvesant Ave., Union, NJ 07083	20,980	165.75
Carl Spears, 500 S. Centers St., Orange, NJ 07050	19,547	154.70
1082 Broad St. Assoc., c/o Kruvant, 71 Valley St., S. Orange, NJ 07079	7,691	61.20
Sutton Apts., 2375 Hudson Terrace, Fort Lee, NJ 07024	26,906	213.35
Supermarkets General Co., Acct. Pay. Non-Merchandise, Box B, Woodbridge, NJ 07095	28,414	224.82
Suburban Prime Foods, 1053 Raymond Blvd., Newark, NJ 07102	8,540	67.58
Huffman & Boyle Co., State Hwy. #4, N. Hackensack, NJ 07661	4,399	34.85
Hartz Mountain Corp., 700 S. 4th St., Harrison, NJ 07029	335,040	2,648.60
Stauffer Chem. Co., 800 Montrose Ave., S. Plainfield, NJ 07080	16,304	128.78
Star Graphic Systems Inc., E. Wesely & S. Main St., S. Hackensack, NJ 07606	32,294	255.43
Standard Tool Mfg., Co., 738 Schuyler Ave., Lyndhurst, NJ 07071	50,862	402.47
Spiral Binding Equip., Div., 858 Summit Ave., Newark, NJ 07104	9,272	73.10
Morris Rubinfeld, 1715 Caton Ave., Brooklyn, NY 11226	5,811	45.90
Mr. Frank Schoenholtz, 60 Park Place, Newark, NJ 07102	28,417	244.82
Mr. David Gelber, Atty., 55 Main St., Hackensack, NJ 07601	21,654	171.27
Washington Dodd Apts., Levin Sagner, 336 Carol St., Orange, NJ 07079	86,459	683.40
Kruvant Bros., 71 Valley St., S. Orange, NJ 07079	57,508	454.75
R.D. Serr. Co., Box 322, Short Hills, NJ 07078	17,044	134.72
Freant Realty Co., Inc., c/o Broadway Fruit, 109 Broadway, Passaic, NJ 07055	9,775	76.93
Omnia Prop. Inc., 30 Broad St., Newark, NJ 10004	63,670	504.90
Wella Corp., 524 Grand Ave., Englewood, NJ 07631	10,518	83.30
Westfield Pine Apts., Box 68, Parsippany, NJ 07054	6,037	47.60
Oldwood Corp., c/o T. Yet Pang, 961 Mountain Ave., Mountainside, NJ 07092	4,400	34.85
West Park Apts., 33-06 Fairlawn Ave., Fairlawn, NJ 07410	26,028	205.70

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Washington Park U.R. Corp., 576 5th Ave., New York, NY 10036	127,051	1,004.70
Wheeling Transport Inc., 1235 Central Ave., Hillside, NJ 07205	8,416	66.73
James & Lucille White, 104 N. 17th St., E. Orange, NJ 07017	7,670	60.78
Mrs. J. Sessa, 12 Brookwood Drive, Maplewood, NJ 07040	10,873	85.85
Willette Corp., Joyce Kilmer Ave., N. Brunswick, NJ 08901	3,546	28.05
R.D. Serr Co., Box 322, Short Hills, NJ 07078	20,846	164.90
Rudolph Strom, 521 Fisk Avenue, Brielle, NJ 08730	6,703	53.13
Wilson Sporting Goods, 60 Paige Rd., Clifton, NJ 07012	14,038	110.93
A.R. Winarick Inc., 100 Jersey Ave., New Brunswick, NJ 08901	85,037	672.34
Witco Chemical Co., Inc., 100 Bauer Dr., Oakland, NJ 07436	15,233	120.28
Sine-George Realty Co., c/o Mr. Jack Friedman, 1969 Morris Avenue, Union, NJ 07083	30,326	239.70
Jarc Realty Co., 299 Broadway, New York, NY 10007	170,576	1,348.52
Bishop Invest. Trust, 216 Tremont St., Boston, MA 02116	32,638	257.98
Mr. Philip Mandelbaum, 17 Academy St., Newark, NJ 07102	532	4.25
Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	108,585	858.50
Hancock House, 1425 Morris Ave., Union, NJ 07083	37,724	298.35
Valanjoy Realty Co., 431 Park Ave., Orange, NJ 07052	5,000	39.53
Hancord Mfg. Co., 125 Monitor St., Jersey City, NJ 07304	57,072	451.35
Chock Full of Nuts, 425 Lexington Ave., New York, NY 10017	13,984	110.50
Hartz Mountain Corp., 700 S. Fourth St., Harrison, NJ 07029	110,686	875.06
Hawthorne Realty Co., 39 Ave. C. Bayonne, NJ 07002	57,120	451.77
Hewlett-Packard Inc., 120 Century Rd., Paramus, NJ 07652	20,301	160.65
Hexacon Electric Co., 161 W. Clay Ave., Roselle Park, NJ 07204	8,836	69.70
Hewitt Robins, Inc., 270 Passaic Ave., Passaic, NJ 07055	29,933	236.73
Bell Associates, Box 62, S. Orange, NJ 07079	27,329	215.90
R.B.H. Assoc., 955 Lafayette Ave., Hawthorne, NJ 07507	22,369	176.80
Hilltop Nursing Home, Hook Mt. Rd., Pinebrook, NJ 07058	22,426	177.22
Holiner Leather Prod., 945 Julia St., Elizabeth, NJ 07201	9,100	71.83
Holy Name Rectory 99 Marsellus Ave., Garfield, NJ 07026	6,686	53.13
Home News Publishing Co., 123 How Lane, New Brunswick, NJ 08902	26,059	206.12
Hospital Equipment Co., 215 Central Ave., Newark, NJ 07103	14,025	110.93
Hotel New Tremont, 16-18 Fulton St., Newark, NJ 07102	22,271	175.95
Hotel Plaza 91 Sip Ave., Jersey City, NJ 07306	16,203	127.93
Housing Auth. Carteret, E. Dolan Homes, Bergen St., Carteret, NJ 07008	67,261	531.67
Hudson Terrace Assoc., 2339 Hudson Ter., Fort Lee, NJ 07024	97,920	774.35
Huffman Koos Co., 50 Rt. 46, Totowa, NJ 07512	7,420	58.65
Huffman Koos Co., Rt. 50 #46, Totowa, NJ 07512	11,794	93.08
Brunswick Mgmt. Corp., 2550 Kingston Rd., York, PA 17402	120,670	954.12
Verona-Div. Bachem, Iorio Court, Union, NJ 07083	8,760	69.28
S.S. Voorhees Sons, 1775 Burnett Ave., Union, NJ 07083	47,457	375.27
J.H. Delaney, 19 Franklin Terr., S. Orange, NJ 07079	11,515	90.95

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Gretchun Grant Kitchen, 200 Rutgers Av., Maplewood, NJ 07040	11,867	93.93
Dunroven Nursing Home, 221 County Rd., Cresskill, NJ 07626	22,003	173.82
Dura Electric Lamp, Co., 64 E. Bigelow St., Newark, NJ 07114	16,656	131.75
Drawad Inc., Box 8—Twn Ctr. Br., W. Orange, NJ 07052	6,000	47.60
Dillan Assoc., 180 Madison Ave., New York, NY 10016	30,068	237.57
Extruded Products Corp., Box 62, New Road, Madison, CT 06443	15,071	119.00
Brounell-Kramer Mgmt., 1435 Morris Ave., Union, NJ 07083	4,176	33.15
Harold Simon Esq., 272 N. Broad St., Elizabeth, NJ 07208	10,224	80.75
Edgcomb Steel Alum. Corp., 460 Hillside Ave., Hillside, NJ 07205	51,903	410.55
Eastern Union Co. YW H. Assn., Green Lane Cor. Magee Ave., Union, NJ 07083	31,197	246.50
EBS Data Process Ctr., 600 Passaic Ave., W. Caldwell, NJ 07006	8,416	66.73
Flexicote Processing Co., 614 River Rd., Delawanna, NJ 07014	23,631	187.00
Robert Ginsberg, 24 Commerce St., Newark, NJ 07102	19,104	150.88
Park Towers Apts. Inc., Box 185, Bayonne, NJ 07002	21,369	169.15
Peerless Bindery, 60 West St., Bloomfield, NJ 07003	31,920	252.45
J.C. Penny Co., Sayre Woods Shop Center, Parlin, NJ 08859	19,500	154.28
Perma Form, 605 E. 21st St., Irvington, NJ 07111	13,448	106.25
P.J. Inganamort Mgt. Corp., 601 Bergen Mall, Paramus, NJ 07652	23,476	185.73
Evans Aristocrat Inc., 700 Frelinghuysen Ave., Newark, NJ 07114	56,429	446.25
Mr. Sam Lipman, 1020 Part Ave., New York, NY 10028	28,790	227.80
Essex Court Gardens, 342 Madison Ave., New York, NY 10017	73,267	578.85
Essex Catholic High School, 300 Broadway, Newark, NJ 07104	45,892	362.95
Edison Housing Auth., J. C. Engel Gardens, Willard Dunham Dr., Edison, NJ	48,306	382.07
Emkay Realty Corp., 1000 Park Ave., New York, NY 10028	8,381	66.30
Elizabeth-Elm Inc., 1155 W. Chestnut St., Union, NJ 07308	11,572	91.38
Wyckoff Steel Co., 720 Frelinghuysen Ave., Newark, NJ 07114	117,687	930.32
Wyckoff Steel Co., 722 Frelinghuysen Ave., Newark, NJ 07114	6,466	51.43
X.L. Rlty. Co., 384 Trenton Ave., Paterson, NJ 07503	24,421	192.95
YMCA Madison Area, 1 Ralph Stoddard Dr., Madison, NJ 07940	22,674	179.35
YMCA-YWCA Joint Mgt., 112 Oak St., Ridgewood, NJ 07450	25,264	199.75
YM-YHA of Essex Co., 760 Northfield Ave., W. Orange, NJ 07052	58,862	405.37
YMHA, 2 S. Adelaide Ave., Highland Pk, NJ 08904	13,553	107.10
Mr. J. Ratner, 342 Madison Ave., New York, NY 10017	54,948	434.35
Yantacaw Schoenholz, 60 Park Pl., Newark, NJ 07102	45,646	360.83
Yardley of London, 700 Union Blvd., Totowa, NJ 07512	29,897	236.30
Yavneh Academy, 413-12th Ave., Paterson, NJ 07514	12,730	101.15
Yeast Products Inc., 455-5th Ave., Paterson, NJ 07514	30,168	238.43
Falstrom Co., Inc., Box 188, Passaic, NJ 07055	48,656	384.62
Alison Mgmt. Corp., 175-20 Hillside Ave., Jamaica, NY 11432	50,703	400.77
Falcon Apts. Inc., 270 Prospect St., E. Orange, NJ 07018	37,663	297.92
Omnia Properties Inc., 30 Broad St., New York, NY 10004	55,894	442.00

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Grobet File Co. of America, Washington Ave., Carlstadt, NJ 07072	5,930	46.75
Greenville Hospital, 1825 Blvd., Jersey City, NJ 07305	28,217	223.13
Mr. Albert Foschini, 466 Burton Ave., Hasbrouck Heights, NJ 07602	24,984	197.63
Goldsmith Bros., 670 Dell Rd., Carlstadt, NJ 07972	36,151	286.03
Gerbert Metal Supply, 40-50 Montgomery St., Hillside, NJ 07205	12,375	97.75
Gerrling Greenhouses, 496 William St., Piscataway, NJ 08854	73,509	581.40
Mrs. B. Johnson, 151 E. Palisade Ave., Englewood, NJ 07631	1,405	11.05
Wigton Abbot Corp., 1225 S. Ave., Plainfield, NJ 07061	34,371	271.58
Stephanie Gdns., Richard Plotkin, 17 Oak Ave., W. Orange, NJ 07052	12,267	96.90
C.J. Rocco Enter., 450C Essex St., Hackensack, NJ 07602	34,435	272.42
Ralph Carletta Enter. Inc., 450C Essex St., Hackensack, NJ 07602	203,071	1,605.24
Ridge View Apt. Inc., 132 Ridge Rd., No. Arlington, NJ 07032	16,822	133.03
Jos J. Brunetti Const. Co., 200 Rt. #9, Old Bridge, NJ 08857	137,460	1,086.72
J.J. Brunetti Const. Co., 854 River Rd., New Milford, NJ 07646	126,535	1,000.45
D. Pavlosky Rec., 528 N. Brunswick Ave., Fords, NJ 08863	13,779	109.23
Mrs. Stephanie Coverino, 48 Bonn Pl., Weehawken, NJ 07087	29,416	232.47
Pen Rotary Corp., 45 Hartmann Ave., Garfield, NJ 07206	12,474	98.60
Panta Sote Prod., 250 Hamburg Turnpike, Butler, NJ 07405	36,853	291.55
David Friedbaur, 663 Main St., Passaic, NJ 07055	19,645	155.13
Park East Apts., 55 Mountain Blvd., Warren NJ 07060	31,571	249.47
Valley Fair Ent., 15 Jackson Rd., Totowa, NJ 07513	79,764	630.70
Yeshiva Hudson City, 2501 New York Ave., Union City, NJ 07087	9,393	74.80
Weinstein Steiner Co., P.O. Box 214, Hasbrouck Hts., NJ 07604	15,230	120.28
Young Mens Ch. Assoc., 9 Livingston Ave., New Brunswick, NJ 08901	29,214	230.77
Mr. David Zeiff, 2025 S. 17th St., Pompano Beach, FL	7,475	59.50
Shelton Mfg. Co., 591 Ferry St., Newark, NJ 07105	17,102	135.15
Skyview Apts., 2013 Morris Ave., Union, NJ 07083	12,346	97.75
J.K. Smit Sons Inc., 571 Central Ave., Murray Hill, NJ 07971	28,335	223.98
31 Trinity Assoc., c/o S. Muroff, 18 Thurston Dr., Livingston, NJ 07039	10,958	86.70
Plaza Corp., 560 Sylvan Ave., Englewood Cliffs, NJ 07632	108,984	861.47
B. Levine, 67 Speir Dr., S. Orange, NJ 07079	14,701	116.03
Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	23,460	185.30
333 Fairmont Rlty, c/o Frieman Rlty, 1969 Morris Ave., Union, NJ 07083	30,577	241.63
1062 Broad St. Assoc., c/o Kruvant, 71 Valley St., S. Orange, NJ 07079	6,337	50.58
T.L.S. Realty Co., c/o Jerry Silverman, 530 Seventh Ave., New York, NY 10018	6,451	51.00
Jarc Rlty Co., 299 Bway, New York, NY 10007	98,126	775.62
Trinity Mgt. Co., 57 W. So. Orange Ave., So. Orange, NJ 07079	53,545	423.30
Terrance Gardens, Main Investment Co., New Brunswick, NJ 08903	13,735	108.80
Terri Girl Inc., 1501 Bloomfield St., Hoboken, NJ 07030	13,520	107.10
Mr. Leonard Feinen, 320 Lincoln Ave., Habrouck Hgts., NJ 07604	36,469	288.15
Reel Stron Fuel Co., 3 North Ave., Cranford, NJ 07016	35,035	277.10

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
United Community Fund, 45 Branford Pl., Newark, NJ 07102	13,571	107.10
United Veil Dye Finish, 28-50 Bostwick Ave., Jersey City, NJ 07305	69,795	551.65
Mr. Jos. Iarussi, 1165 Evergreen Dr., Bridgewater, NJ 08876	8,820	70.13
Inglemoor Nursing Home, 311 Livingston Ave., Livingston, NJ 07039	26,570	209.95
Pastroy Assoc. 85 Central Ave., Clifton, NJ 07011	23,069	182.32
L. Riseck-JC Realty, 100 Stonehill Rd., Springfield, NJ 07081	8,832	70.13
Benjamin Jacobs, 330 W. Jersey St. Apt. 6H, Elizabeth, NJ 07202	18,921	149.60
Amelia Jasieniecki, 11 Park Pl., Bloomfield, NJ 07003	14,483	114.33
Jersey Mtg. Co., 430 Westfield Ave., Elizabeth, NJ 07207	19,922	157.68
Jewish Community Center, 1051 Boulevard, Bayonne, NJ 07002	16,367	129.20
Kriso's Electric Plating Co., 11 Paterson Ave., Wallington, NJ 07055	20,274	160.23
Jacques Kreisler Mfg., 9015 Bergenline Ave., N. Bergen, NJ 07070	79,401	627.72
Knollcroft Gdns., 33-06 Fairlawn Ave., Fairlawn, NJ 07410	74,541	589.47
Ketchum Jersey Div., South Ave. W. Lincoln, Cranford, NJ 07016	45,210	357.42
Kesril Assoc., 40 Warren St., Paterson, NJ 07524	42,000	331.92
Max Kass Trust, 1290 6th Ave., Suite 1344, New York, NY 10019	30,576	241.82
Kaysam Corp. of Amer., 27 Kentucky Ave., Paterson, NJ 07502	96,986	766.70
Kaiser Alum-Chem. Sales, 200 Rt. #22, Hillside, NJ 07205	30,675	242.67
Rose Manor, 1640 Vauxhall Rd., Union, NJ 07083	257,361	2,034.47
White Cap Preserves, 34 De Forest Ave., E. Hanover, NJ 07936	24,997	197.63
Whitestone Const. Co., 1640 Vauxhall Rd., Union, NJ 07083	74,300	587.35
Whittredge Gardens, Inc., 216 Tremont St., Boston, MA 02116	28,590	226.10
Wiggins Plastics Inc., 180 Kingsland Rd., Clifton, NJ 07013	49,356	390.15
Wilds Baking Co. Inc., 214 S. Dean St., Englewood, NJ 07631	6,242	49.30
Wilkata Fold Box, 300 Hoyt St., Kearny, NJ 07032	18,631	147.48
Fay Mac Corp., 20 Willett St., Bergenfield, NJ 07621	12,304	97.33
Parnes Bros., 200 W. 57th St., New York, NY 10019	33,063	261.37
Willow Holding Co., 297 S. 21st St., Irvington, NJ 07111	17,477	138.13
Mr. Nicholas Martini, 663 Main Ave., Passaic, NJ 07055	22,193	175.53
Brounell & Kramer Apt., 1435 Morris Ave., Union, NJ 07083	29,052	229.50
Winbrock Rlty Co., c/o Jaffee Spindler Co., 111-1st St., Jersey City, NJ 07302	53,599	423.72
Windsor Hotel, 171 Broadway, Jersey City NJ 07306	12,752	100.73
Wilson R. Kaplan, 80 Huguenot Ave., Englewood, NJ 07631	30,669	242.68
Macam Co., 20 Willet St., Bergenfield, NJ 07621	20,008	158.10
Wonder Cont. Corp., Kingsland Schuyler Aves., Lyndhurst, NJ 07071	42,693	337.45
Woodmere At Eatontown, P.O. Box 218, Eatontown, NJ 07724	51,317	405.87
Woodward Plastics Corp., 557 Lehigh Ave., Union, NJ 07083	16,569	130.90
Barba Rlty. Investments, 159 Main Ave., Chatham, NJ 07928	73,242	579.27
Mr. F. Schonholtz, 60 Park Place, Newark, NJ 07102	97,319	769.25
Hilltop Estates, 272 Roanoke St., Woodbridge, NJ 07095	116,812	923.31
Hilltop Manor, 272A Roanoke St., Woodridge, NJ 07095	71,452	564.82

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Lowe Mgmt. Co., 44 Glenwood Ave., E. Orange, NJ 07017	14,661	117.30
Hi Way Concrete Prod. Corp., 147 5th St., Saddle Brook, NJ 07662	30,332	239.70
Hoffman La Roche, Kingsland Road, Nutley, NJ 07110	17,743	140.25
Hamilton House Invest Co., Box 306, S. Orange, NJ 07079	20,127	158.95
J. I. Holcomb Mfg., 210 S. Newman St., S. Hackensack, NJ 07601	30,674	242.68
Holsey Auto Sales, 2395 Blvd., Jersey City, NJ 07304	13,049	103.70
Stanley Jojnowski, 365 Undercliff Ave., Edgewater, NJ 07020	20,228	159.80
Knoxley Realty Co., 4-42 St. Francis St., Newark, NJ 07105	24,522	193.80
Hotel Carlton, 22 E. Park St., Newark, NJ 07102	28,037	221.85
Feist & Feist, 58 Park Place, Newark, NJ 07102	11,400	90.53
Hotel Plaza, 91 Sip Ave., Jersey City, NJ 07306	67,688	535.08
Newark Star Ledger, Star Ledger Plaza, Newark, NJ 07601	24,126	190.82
New England Village, 105 New England Ave., Summit, NJ 07901	97,078	767.55
New Jersey Bell Telephone Co., 315 Park Ave., Linden, NJ 07036	9,228	72.93
New Jersey Bell Telephone Co., 923 Rahway Ave., Union, NJ 07083	14,364	113.91
New Jersey Bell Telephone Co., 18 Paterson St., New Brunswick, NJ 08901	14,926	118.15
N.J. Tanning Co. Inc., 410 Frelinghuysen Ave., Newark, NJ 07114	39,977	316.20
Norpak Corp., 70 Blanchard St., Newark, NJ 07105	11,764	93.08
New Providence Gardens, 185 Valley St., South Orange, NJ 07079	85,719	677.45
New Quality Laundry Service, 205 Liberty Ave., Jersey City NJ	21,864	172.97
New Yorker Peters Corp., 805 Grand St., Elizabeth, NJ 07201	9,950	78.63
Norpak Corp., 70 Blanchard St., Newark, NJ	11,163	88.40
Norris Industries, P.O. Box 2750, Newark, NJ 07114	37,660	297.92
Norris Industries, P.O. Box 2750, Newark, NJ 07114	90,972	719.10
North Arlington Lyndhurst Joint Meeting, 214 Ridge Road, No. Arlington, NJ 07032	5,424	42.90
No. Broad Manor-Eliz., 21 Bleeker St., Millburn, NJ 07041	13,000	102.85
Brounell & Kramer, 1435 Morris Ave., Union, NJ 07083	45,328	358.27
Ace Const. Co., 60 Far Brook Dr., Short Hills, NJ 07078	22,171	175.10
Edison Housing Auth., J.C. Engel Gardens, Edison, NJ 08817	70,783	559.72
North Salem Terrace Apts., 644 Salem Ave., Elizabeth, NJ 07208	14,675	116.03
Mr. G. Goldschmidt, 737 W. 177th Street, New York, NY 10033	11,865	93.93
North Village Apts., 911 Village Dr. E., No. Brunswick, NJ 08902	202,353	1,599.27
Mr. J.H. Rosensaft, 58 Park Place, Newark, NJ 07102	13,906	110.08
Mr. J. Ratner, 342 Madison Ave., New York, NY 10017	37,401	295.37
Nycal Co., Inc., 700 Washington Ave., Carlstadt, NJ 07072	5,467	43.35
Mr. I. Robert Scheffen, 663 Main Ave., Passaic, NJ 07055	21,804	172.55
103 No. Walnut St. Co., P.O. Box 442, Teaneck, NJ 07666	22,619	178.93
120 Grand Avenue Co., 574 West End Ave., New York, NY 10024	4,536	35.70
125 Prospect St. Corp., 125 Prospect St., E. Orange, NJ 07017	31,861	252.02
Mr. J. Shilowitz, 57 Highland Ave., Jersey City, NJ	19,801	156.40
141 Grand Ave. Co., 574 West End Ave., New York, NY 10024	2,901	22.95

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
146 Manhattan Ave. Corp., c/o Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	15,402	121.98
Martha Goodman, Box 367, Linden, NJ 07036	7,724	61.20
Morris & Sons, 333-7th Ave., New York, NY 10001	11,102	87.98
Plaza Corp., 560 Sylvan Ave., Englewood Cliffs, NJ	20,660	163.20
176 Bergen Corp., 616 Kinderkamack Rd., River Edge, NJ 07660	10,212	80.75
1009 Change Realty Co., 2810 Morris Ave., Union, NJ 07083	10,260	81.18
O.K. Towel & Uniform Supply Co., 65 Cherry St., Elizabeth, NJ 07202	67,872	538.35
Wilson R. Kaplan, 80 Huguenot Ave., Englewood, NJ 07631	45,246	357.85
O'Dowd Dairy, Rt. #46, Pinebrook, NJ 07058	43,172	341.27
Oliver Mfg. Supply Co., 730 Port Reading Ave., Port Reading, NJ 07065	55,826	441.57
Olympia Apts. Inc., Mr. Adam Reibel, 3 Ramsgate Rd., Cranford, NJ 07016	9,656	76.50
Orbit Processing Corp., 1109 Grand Ave., No. Bergen, NJ 07047	39,462	311.95
Orchard Gardens Assoc., 277 So. 11th St., Highland Park, NJ 08904	141,946	1,122.00
Turkan Rlty-Omnia Prop., 30 Broad St., New York, NY 10004	39,821	314.92
Leopold Landau Mgt. Office, 529 W. Westfield Ave., Roselle Pk., NJ 07204	71,666	566.52
Rose Tree Gardens Inc., Broad Ave. & Slocum, Ridgefield, NJ 07657	38,068	300.90
Ross Realty Co., 1 Horizon Rd., Forth Lee, NJ 07024	14,014	110.93
Ross St. Apt., 145 A Jerome St., Roselle Pk, NJ 07204	13,045	103.28
Royal Apex Mgt. Co., 1355 W. Front St., Plainfield, NJ 07061	31,934	252.45
Brandino Entp. Inc., 97 Linden Ave., Elmwood Park, NJ 07407	26,011	205.70
Sanford Silverman, 24 Commerce St., Newark, NJ 07102	19,973	158.00
Rutgers Builders, 197 Rutgers La., Parsippany, NJ 07054	116,692	922.25
Fabers Builders, 197 Rutgers Lane, Parsippany, NJ 07054	82,025	648.55
Rutherford Manor Apts., c/o Mr. S. Morganroth, 51 Chambers St., New York, NY 10007	62,741	495.97
M. Winograd, 37 Emory St., Jersey City, NJ 07304	12,650	99.88
65 Summit Ave. Corp., 215 Englewood Ave., Englewood, NJ 07631	14,716	116.45
David Tulchinsky, 177 Irvington Ave., S. Orange, NJ 07079	11,985	94.78
Geo. J. Gannon Inc., 107 E. Mt. Plsnt. Ave., Livingston, NJ 07039	54,096	428.40
76 Carnegie Ave. Corp., P.O. Box 302, Millburn, NJ 07041	12,639	99.88
775 No. Broad St. Co., 235 So. Harrison St., E. Orange, NJ 07018	37,700	297.92
789 Realty Co., 3 Haran Place, Millburn, NJ 07041	11,205	88.40
6701 Blvd. East Corp., 1969 Morris Ave., Union, NJ 07083	31,645	250.32
SCM Corp., 5 Dean St., Englewood, NJ 07631	17,929	141.95
Mr. Ed Salz, 1108 Clinton Ave., Irvington, NJ 07111	7,222	56.95
Safair Flying Service, Hgr. Airport 46, Teterboro, NJ 07608	7,019	56.10
Selecco Ins. Group, 666 Kindermack Rd., River Edge, NJ 07661	26,398	208.68
Arbur Realty Co., 22 Hemlock Terr., Springfield, NJ 07081	56,517	446.67
Mr. Vidal Ortiz, 3 Salem Ave., Elizabeth, NJ 07208	59,504	470.47
Salvation Army Social Center, 248 Erie St., Jersey City, NJ 07302	33,171	262.22
Samoset Launory Service, 902 North Ave., Plainfield, NJ 07062	14,753	116.45
Sanford Theatre, 1269 Springfield Ave., Irvington, NJ 07111	29,351	232.05
Sar Company, Box 43, Livingston, NJ 07039	16,743	132.18
Savoy Residence, 161 So. Park Dr., Woodbridge, NJ 07095	25,926	204.85
Mr. M. Scalera, 14 Rolling Hills Rd., Short Hills, NJ 07078	14,542	115.18
Howard Johnson Mtr., Clark, Central Ave., Clark, NJ 07066	20,940	165.75
Howell Electric Motors, Div. Howell International Inc., 90 North Ave., Plainfield, NJ 07062	91,962	727.17
Patrick H. Hu, 57 Kline Place, Berkeley Heights, NJ 07922	9,193	72.68
Hud Cin Bldg. Prod., 700 North Ave. East, Westfield, NJ 07090	18,602	147.05
Park Court Inc., 60 Clarendon Place, Hackensack, NJ 07601	17,568	138.97
Hudson Towers, 7112 Blvd. E., N. Bergen, NJ 07047	71,386	564.40
S. Fiedler, 83-86 Lefferts Blvd., Kew Gdns., NJ 11415	13,182	104.13
Huffman Koos, 50 Rt. 46, Totowa, NJ 07512	13,642	107.95
Huguenot Apts., 80 Huguenot Ave., Englewood, NJ 07631	15,031	119.00
Hutton Lafayette Apts., 185 Valley St., S. Orange, NJ 07079	153,983	1,217.20
Renee Lew Realty Agy, 125 Northfield Ave., W. Orange, NJ 07052	276,506	2,184.80
Hymur Co., 60 Park Place, Newark, NJ 07102	16,316	129.20
Leo Brock Agt., 60 Park Pl., Newark, NJ 07102	17,810	140.68
The Palnut Co., Glen Road, Mountainside, NJ 07092	135,864	1,074.40
Panta Sole Products, 250 Hamburg Turnpike, Butler, NJ 07405	75,645	597.97
Paradise Gardens, 1071 Springfield Ave., Irvington, NJ 07111	18,145	143.65
Paramount Ind., 1711 So. Second St., Piscataway, NJ 08854	141,077	1,115.61
Parisian Towers, 333 Bergen Ave., Kearny, NJ 07032	9,902	78.20
M.D. Assts., 1808 Springfield Ave., Maplewood, NJ 07040	34,583	273.28
Park Lake Village Apts., 350 Baldwin Rd., Parsippany, NJ 07054	101,379	801.55
Parnes Bros., 200 W. 57th St., New York, NY 10019	14,862	117.30
Cranston Corp., 225 Millburn Ave., Millburn, NJ 07041	50,037	395.67
Mr. & Mrs. J. Comer, 828 Nancy Way, Westfield, NJ 07090	7,311	58.23
Walnut Associates, Box 1284, Union, NJ 07083	6,935	54.83
Walworth Co., 400 S. 2nd Avenue, Harrison, NJ 07029	2,001	15.73
Warner Theater, 190 E. Ridgewood Avenue, Ridgewood, NJ 07450	16,570	130.90
Washington Dodd Apts., Levin Sagner, 336 Carroll St., Orange, NJ 07079	22,527	178.08
Twon & Country Homes, 297 S. 21st St., Irvington, NJ 07111	32,442	256.70
Private Realty Ser. Corp., 125 Northfield Rd., W. Orange, NJ 07052	26,442	209.10
Kay Realty Co., 290 Woodland St., Tenafly, NJ 07670	12,474	98.60
Wayne Village, 80 Hughuenot Ave., Englewood, NJ 07631	93,083	736.10
Web Publications, 150 5th Ave., Hawthorne, NJ 07507	12,562	99.45
Wedgewood Apts., 1640 Vauxhall Rd., Union, NJ 07083	41,887	331.07
Elwin Inc., 514 Madison Ave., Plainfield, NJ 07060	7,616	60.35
Weldon Roberts Rubber Co., 351 Sixth Ave., Newark, NJ 07107	38,624	305.57
The Wella Corp., 524 Grand Ave., Englewood, NJ 07631	60,759	480.25
Wesley Towers, 444 Mt. Prospect Ave., Newark, NJ 07104	57,000	450.50
Organon Inc., 375 Mt. Pleasant Ave., West Orange, NJ 07052	58,974	466.22
Oritani Theatre, 300 Main St., Hackensack, NJ 08601	36,695	290.27
Our Lady of Good Counsel, 654 Summer Ave., Newark, NJ 07104	42,061	332.35
Our Lady of Mt. Virgin, 188 Mac Arthur Ave., Garfield, NJ 07026	12,618	99.88
Our Lady Queen of Peace, 400 Maywood Ave., Maywood, NJ 07607	13,700	108.38
Overlook Terrace Mgt. Co., 5601 Blvd. East, West New York, NJ 07093	260,223	2,057.41
Mr. Sam Lipman, 1020 Park Ave., New York, NY 10028	22,686	179.35
P.P.G. Realty Co., 58 Elmora Ave., Elizabeth, NJ 07202	17,864	141.10
Packaging Media Inc., 354 Thomas St., Newark, NJ 07114	58,205	460.27
Paco Holding Corp., 25 Linden Ave. E., Jersey City, NJ 07305	15,002	118.58
Padco Holding Corp., 440 Lincoln Blvd., Middlesex, NJ 08846	16,697	132.18
Paige Realty, c/o Arthur Brown, 3177 So. Ocean Dr., Hallandale, FL 33009	13,292	104.98
Leo Bruck Agt., 60 Park Pl., Newark, NJ 07102	22,684	179.35
Harold Epstein Realty Co., 173 Essex Avenue, Rt. 27, Metuchen, NJ 08840	26,002	205.70
Photo Lamp Itt Lamp, 133 Terminal Ave., Clark, NJ 07066	6,256	49.73
ITT Rayonier Inc., S. Jefferson Rd., Whippany, NJ 07981	49,941	394.82
Imperial Container Co., 141 N. 13th St., Newark, NJ 07107	19,629	155.13
Friedman Mgmt. Co., 5 E. 86th St., New York, NY 10028	43,731	345.95
Mr. Albert Foschini, 75 Lodi St., Hackensack, NJ 07601	12,600	99.45
Mylod Feinberg, 345 Ampere Parkway, Bloomfield, NJ 07003	43,279	342.12
Inglemoor Inc., 333 Grand Ave., Englewood, NJ 07631	11,955	94.35
International Harvester, 525 Linden Ave. West, Linden, NJ 07036	15,017	118.57
International Harvester Co., 191 Broadway, Jersey City, NJ 07306	11,525	91.38
International Paint Co., Morris & Elmwood Aves., Union, NJ 07083	56,006	442.85
International Vitamin Corp., 2530 Polk St., Union, NJ 07083	19,683	155.55
Partroy Assoc., 85 Central Ave., Clifton, NJ 07011	17,534	138.55
Partroy Associates Co., 85 Central Ave., Clifton, NJ 07011	17,870	141.10
Partroy Assoc., 85 Central Ave., Clifton, NJ 07011	13,379	105.83
Inwood Knitting Mills, 1500 Main Ave., Clifton, NJ 07011	563,113	4,452.29
Mr. J. Pasternak, Box 922, Clark, NJ 07066	29,030	229.50
J.B. Associates, 274 Central Ave., Newark, NJ 07100	15,955	126.23
Mr. J. Reibel, 645 Wyoming Ave., Elizabeth, NJ 07202	6,651	52.70
Renee Holding Corp., 365 Colt St., Irvington, NJ 07111	12,705	100.30
Jackson House, Box 242, Orange, NJ 07051	11,876	93.93
Japato Realty Co., Inc., 80 Claredon Place, Hackensack, NJ 07601	22,943	181.47
James Phillip Co., Inc., E. 24th St. & McLean Blvd., Paterson, NJ 07514	14,462	114.33
James W. Higgins, 594 Penn Ave., Elizabeth, NJ 07201	8,268	65.45
Ernest Jarvis Co., 78 Empire St., Newark NJ 07114	8,620	68.00
Jefferson Gdns., 155 Riverside Dr., New York, NJ 10024	65,213	515.52
Jefferson House, Box 306, S. Orange, NJ 07079	30,252	239.27
Jefferson Screw Co., 720 Dowd Ave., Elizabeth, NJ 07201	22,600	178.50
Jeronal Corp., 510 Belmont Ave., Haledon, NJ 07508	10,550	83.30

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Jersey National Liquor, 209 McLean Blvd., Paterson, NJ 07504	11,655	92.22
Jewish Community Center, Bergen & Belmont Ave., Jersey City, NJ 07304	29,476	232.90
P&C Realty Co., Inc., 24 Sheridan Ave., Clifton, NJ 07011	6,120	48.88
Johnson House—1, 709 Cedar Lane, Teaneck, NJ 07666	17,754	140.25
Johnson House—2, Real Estate Office, 709 Cedar Lane, Teaneck, NJ 07666	19,688	155.55
Robert A. Johnston Co., 4023 W. National Ave., Milwaukee, Wisconsin	50,559	399.50
F.A. Loballo, Michael Smith, 33 Evergreen Place, E. Orange, NJ 07017	17,374	137.27
Mr. Sanford I, Feld, 28 Main St., W. Orange, NJ 07052	8,321	65.88
Wachesberg Pickle Wks., Broadway & 12th St., Bayonne, NJ 07002	4,176	33.56
S.A. Wald Co., Inc., 39 Essex St., Jersey City, NJ 07302	9.202	72.67
Walger Realty Co., c/o W. Petrich, Esq., 4808 Bergenline Ave., Union City, NJ 07087	21,419	196.15
Park Rest Inc., 912 South St., Plainfield, NJ 07060	28,666	226.52
Parkview Assoc. of Millburn, 1804 Springfield Ave., Maplewood, NJ 07040	2,401	19.13
Part River Toweres, 8800 Blvd. East, No. Bergen, NJ 07047	37,345	287.30
Dr. Weisbrod-Park Royal, 61 So. Munn Ave., East Orange, NJ 07018	11,460	90.53
Parkside Gardens, 2013 Morris Ave., Union, NJ 07083	53,942	426.70
Parkstone Apt. Inc., Box 638, Newark, NJ 07101	21,721	171.70
Mr. A. Weinstein, P.O. Box 214, Hasbrouck Heights, NJ 07604	47,957	379.10
Parktown House Apts., 11 Raritan Ave., Highland Park, NJ 08904	37,742	298.35
Mr. David Krugman Agency, 1330 Main Ave., Clifton, NJ 07011	30,245	239.276
Parkview Assoc.-Swersky, 744 Broad St., Newark, NJ 07102	21,696	161.70
Sidney Newman Co., 33 W. Hawthorne Ave., Valley Stream, NY 11580	16,783	132.60
Feist & Feist, 58 Park Pl., Newark, NJ 07102	51,344	405.87
Parnes Bros. 200 W. 57th St.-Room 1003, New York, NY 10019	31,047	245.65
Passaic Color Chem. Co., 28–36 Paterson St., Paterson, NJ 07501	13,514	106.68
Passaic Rubber Corp., 45 Derrest Dr., Wayne, NJ 07470	50,181	396.95
Pastor Const. Co. Inc., 907 Studyvesant Ave., Irvington, NJ 07111	24,500	193.80
Paterson Bleachery Chem., 209 E. 15th St., Paterson, NJ 07524	101,840	805.37
H. Patterson & Sons, 332 E. Main St., Bergenfield, NJ 07621	64,368	506.72
Pavilion Gardens, 6 Priscilla Lane, Englewood Cliffs, NJ 07632	6,401	50.58
Perfay Corp., 183 Monroe St., Passaic, NJ 07055	12,836	101.58
Mr. Sam Lipman, 1020 Park Ave., New York, NY 10028	25,659	202.72
Chas. Pfizer Co. Inc., 230 Brighton Rd., Clifton, NJ 07012	31,584	249.90
J. W. Pierson Co., 89 Dodd St., E. Orange, NJ 07017	84,656	699.38
A. J. Pilar Inc., Chapen St.-Lister Ave., Newark, NJ 07105	21,527	170.00
Scancelli Prints Inc., 190 Van Winkle St., E. Rutherford, NJ 07073	42,855	338.73
Scandia Packing Mach. Co., 180 Brighton Rd. Clifton, NJ 07012	8,609	68.00
Scarborough Manor, 10 Knickerbocker Rd., Dumont, NJ 07628	45,756	361.68
Schnefel Bros. Corp., 660 So. 17th St., Newark, NJ 07103	74,169	586.08
Scholastic Magazines, 900 Sylvan Ave., Englewood Cliffs, NJ 07632	94,651	748.42
New Jersey Realty Co., 830 Broad St., Newark, NJ 07102	453.861	3,614.89
Sci Pat Yarn Dye Co., Box 482, Paterson, NJ 07514	37,628	297.50

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Scotch Plains Gdns., 1640 Vauxhall Rd., Union, NJ 07083	58,224	460.27
Scotland Gardens, 185 Valley St., S. Orange, NJ 07079	30,186	238.85
Sears Roebuck Co., 201 South St., Morristown, NJ 07960	4,194	33.15
Sears Roebuck-Wayne-Ser. Ctr., Willowbrook Rt. 23–46, Wayne, NJ 07470	44,918	355.30
Sears Roebuck Inc., 212 Madison Ave., Passaic, NJ 07055	9,202	72.68
Sears Roebuck Co., 115 Maywood Ave., Maywood, NJ 07607	111,815	883.57
Seifer Dist. Inc., 343 Cortland St., Belleville, NJ 07109	53,156	420.32
Sol Rex Corp., 71 River Rd., Nutley, NJ 07110	95,413	754.37
Seven Up Bottling Co., 109 W. 5th St., Plainfield, NJ 07060	8,425	66.73
Sevilla Realty Co., 2801 Boulevard, Jersey City, NJ 07306	45,117	356.57
Seward Luggage Co., 133 Kossuth St., Newark, NJ 07105	25,101	198.48
Sheffield Gardens, 28 Sheffield Ave., Englewood, NJ 07631	21,075	166.80
Shiman Industries Inc., P.O. Box 1260, Newark, NJ 07101	24,385	192.95
Short Hills Ctry Day School, Country Day Drive, Short Hills, NJ 07078	19,527	154.28
Short Hills Gardens, 435 W. 23rd St., New York, NY 10011	84,532	668.52
Kaslow-Jeffrey, 806 Morris Turnpike, Short Hills, NJ 07078	62,920	497.67
Short Hills Village, 4 Forest Dr., Springfield, NJ	107,593	850.85
Sika Chem. Corps., 875 Valley Brook Ave., Lyndhurst, NJ 07071	111,293	879.74
Singer's Downtown Mkt., 26 Wayne St., Jersey City, NJ 07302	62,934	497.67
S. Hekemian Co., 477 Main Street, Hackensack, NJ 07601	384,380	3,039.26
2 Broadway Enterprises, 2 Broadway, Paterson, NJ 07505	1,202	9.35
12–18 Riverside Dr. Corp., 912 South Ave., Plainfield, NJ 07062	13,006	102.85
Passaic Bros. Rlty, 210 Dalawanna Ave., Clifton, NJ 07014	9,581	76.08
25 So. Munn Ave., 980–18th Ave., Newark, NJ 07106	35,170	277.95
Winana Mgmt Co., P.O. Box 442, Teaneck, NJ 07666	13,800	109.23
G&L Realty Co., P.O. Box 1656, Passaic, NJ 07055	13,287	104.98
All American Brush Mfg., 37 Empire St., Newark, NJ 07114	23,601	186.57
Mrs. S.F. Stettner, 670 Prospect Ave., West Orange, NJ 07052	4,201	33.15
Louis J. Osterstock, 297 S. 21st St., Irvington, NJ 07111	23,326	184.46
Phalia Rlty Corp., c/o Plaza Corp., 560 Sylvan Ave., Englewood Cliffs, NJ 07632	1,000	8.07
280 Gregory Ave. Co., 864 Warren Parkway, Teaneck, NJ 07666	41,975	331.50
275 Glenwood Corp., 109 Glenwood Road, Cranford, NJ 07016	11,166	88.40
WGK Realty Co., 23 Wingate Dr., Livingston, NJ 07039	11,178	88.40
J.H. Delaney, 19 Franklin Terr., So. Orange, NJ 07079	9,813	77.78
Feist & Feist Inc., 58 Park Place, Newark, NJ 08102	14,503	114.75
T.M. Apts. Inc., 901 Broad St., Elizabeth, NJ 07208	12,134	96.05
Mr. Philip Talkow, 15 Morningside Ct., Short Hills, NJ 07078	19,048	150.45
Tanatex Chem Corp., Page Schuyler Ave., Lyndhurst, NJ 07071	182,091	1,439.90
Teaneck Gardens, P.O. Box 747, Teaneck, NJ 07666	95,038	751.40
Teaneck Nursing Home, Teaneck Rd. Rt. 4, Teaneck, NJ 07666	19,408	153.43
Concrete Plank Co. Inc., 2 Porete Ave., N. Arlington, NJ 07032	35,249	278.80
Technical Rubber Plastic Co., 180 Getty Ave., Clifton, NJ 07015	20,379	161.08

APPENDIX.—EASTERN OF NEW JERSEY, HEF-0065—Continued

Name and address of firm	Volume purchased (in gallons)	Proposed maximum refund (excluding interest)
Tecnorm Co.-Signal Div., 523 Kent Ave., Brooklyn, NY 11211	57,033	450.92
Wolfe Geo. Teister, 9 Pitney St., W. Orange, NJ 07052	11,705	92.65
Reel Stron Fuel Co., 3 No. Ave. E., Cranford, NJ 07016	10,836	85.85
Temple Beth El, 2419 Blvd., Jersey City, NJ 07304	13,323	105.40
Skytop Gardens, P.O. Box 737, Parlin, NJ 08859	326,208	2,579.88
Temple Israel, 423 Scotland Rd., S. Orange, NJ 07079	23,742	187.85
P.E. Forst, 107 St. Nicholas Ave., Hillsdale, NJ 07642	15,814	124.95
H&W Inc., 272 A. Roanoke St., Woodbridge, NJ 07095	101,228	800.27
P.J. Inganamort, 601 E. Bergan Mall, Paramus, NJ 07652	29,757	235.45
Jos. Teshon Inc., 196–21st Ave., Paterson, NJ 07501	38,673	305.58
Thermal Amer. Fused Co., Rt. 202, Montville, NJ 07045	40,462	320.02
Thermo Electric Co., 109–5th St., Saddle Brook, NJ 07663	18,572	147.05
Thermwell Prod. Co., 150 E. 7th St., Paterson, NJ 07524	34,550	273.26
S.B. Thomas, Inc., 930 Riverview Dr., Totowa, NJ 07512	191,001	1,509.59
J.G. Tilp Inc., 80 Miltown Rd., Union, NJ 07083	12.574	99.45
Top Line Foods Corp., 1 Greene St., Jersey City, NJ 07302	23,201	183.60
Topps Cleaners, 357 State St., Hackensack, NJ 07601	4,566	36.13
Topps Cleaners, 22–02 Fairlawn Ave., Fairlawn, NJ 07410	10,918	86.29
Mr. B. Torcivia-Torcon, 201 Groave St., Westfield, NJ 07090	7,291	57.80
The Towers-W Kaplan, 80 Hugeonot Ave., Englewood, NJ 07631	66,237	523.17
Town Fuel Company, 395 Sol River St., Hackensack, NJ 07601	60,185	476.00
Towne Cleaners Inc., 814 E. St. Geo. Ave., Roselle, NJ 07203	15,572	123.25
Townhall Vill. Apts., 60 Park Pl., Newark, NJ 07102	30,345	240.13
Parnes Bros., 200 W. 57th St. Room 1003, New York NY, 10013	8,802	69.70
Trafalgar Builders, 272 A Roanoke St., Woodbridge, NJ 07095	109,002	8,611.47
Trelawn Terrace, Rojay Mgt. Co., 20 Evergreen Pl. E. Orange, NJ 07018	86,012	680.00
Triangle Garden Apts., P.O. Box 747, Teaneck, NJ 07666	8,725	68.85
Donal Tribus, 363 Cedar La., Teaneck, NJ 07666	12,717	100.73
Trio Dye & Finishing Co., 420 E. 22nd St., Paterson, NJ 07524	104,560	825.62
George W. Seiler, E.J. McCormick, 519 Main St., E. Orange, NJ 07018	24,624	194.65
Mr. Harry Rachmiel, Arcade Gardens, Old Bridge, NJ 08857	52,741	416.92
Troy Hills Village, 1480 Route #46, Parsippany, NJ 07054	281,549	2,225.72
Troy Village Rlty Co., Giller & Stein, 521 Fifth Ave., New York, NY 10017	270,256	2,136.90
Robert Goldberg, 12 So. Orange Ave., South Orange, NJ 07079	678,615	5,365.27
Tudor Hall Inc., 275 Engle St., Englewood, NJ 07631	38,346	303.03
U.K. Dye Works, 11 E. 12th St., Paterson, NJ 07524	12,346	97.75
Ultra Div. Wilco Chem. Co., 2 Wood St., Paterson, NJ 07407	280,095	2,214.67
Union Container Corp., 439 Frelinghuysen Ave., Newark, NJ 07114	19,058	150.88
Leonard Feinon, 320 Lincoln Ave., Hasbrook Heights, NJ 07604	14,606	115.60
Union Co. Newsdealers Supply, Box 113, Elizabeth, NJ 07201	16,928	133.88

[FR Doc. 85–15032 Filed 6–24–85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51574; FRL-2848-3]

Certain Chemicals Premanufactures Notices

Correction

In FR Doc. 85-13884, beginning on page 24936 in the issue of Friday, June 14, 1985 make the following corrections:

On page 24937, second column:

1. In the first line of P 85-1005, "Key-Fries, Inc. "should have read "Kay-Fries, Inc."

2. In the sixth line of P 85-1007, "<5.0g/kg" should have read ">5.0g/kg".

BILLING CODE 1505-01-M

[OPP-66119; FRL-2850-1]

Certain Pesticide Products; Intent To Cancel Registrations

Correction

In FR Doc. 85-14281 appearing on page 24833 in the issue of Thursday, June 13, 1985, the zip codes were inadvertently omitted from the table under **SUPPLEMENTARY INFORMATION.** The table is therefore reprinted in its entirety below.

Registration No.	Product name	Registrant	Date registered
150-26	Anderson's 18½% DDVP Concentrate	Anderson Chemical Co., P.O. Box 1041 Litchfield, MN 55355	May 20, 1965.
655-4	Prentox * 50% Sabadilla Dust Concentrate	Prentiss Drug and Chemical Co., Inc., C.B. 2000 21 Vernon St., Floral Park, NY 11001.	May 24, 1948.
1266-116	Rat-Rid Kills Rats and Mice	Malter International Corp., International Headquarters, P.O. Box 6099, New Orleans, LA 70174.	May 24, 1972.
2204-2	Nopcocide * 130	Diamond Shamrock Chemicals Co., Porcess Chemicals Div., P.O. Box 2386-R, Morristown, NJ 07960.	July 7, 1971.
2204-6	Nopcocide * 150	do	Aug. 11, 1971.
2204-13	Nopcocide * 152	do	July 22, 1974.
2460-36	Gowan's 5% Malathion Dust	Howerton Gowen Co., Inc., P.O. Box 247, E. 11th St., Roanoke Rapids, NC 27870.	Aug. 15, 1960.
3509-95	Safe-Way Brand Fly Bait	Safe-Way Farm Products Co., Inc., 2519 East 5th St., Austin, TX 78702	Aug. 6, 1975.
3837-33	Meth-O-Sect	LuBar Co., 1700 Campbell, P.O. Box 586, Kansas City, MO 64141	June 5, 1973.
4887-111	Warfarin Rat Bait Meal	Stephenson Chemical Co., Inc., P.O. Box 87188, College Park, GA 30337	Nov. 2, 1962.
5011-42	Carmel Food Protectant Formula F-7	Carmel Chemical Corp., P.O. Box 406, Westfield, IN 46074	May 15, 1958.
7122-76	Guardian Methoxychlor 2E	The Archem Corp., 1514 Eleventh St., Portsmouth, OH 45662	Feb. 16, 1971.
8142-1	Vet-Aid Vapona Insecticide Fly Spray	Vet-Aid Industries, 459 West 78th St., Minneapolis, MN 55420	July 5, 1963.
8590-48	60 Spray Oil Trithion E	Agway Inc., Chemical Div., P.O. Box 4741, Syracuse, NY 13221	Feb. 15, 1965.
8590-178	Thiram-Trithion-9.6-6D	do	Sept. 9, 1965.
8698-2	Parapet (Kills Fleas, Lice, and Ticks)	Eight In One Pet Products, Inc., 100 Emjay Blvd., Brentwood, NY 11717	Apr. 22, 1965.
8898-3	AVC Residual Insecticide	Ace Exterminating Co., 7666 B Production Dr., Cincinnati, OH 45237	Aug. 7, 1974.
9275-44	Berrien 15% Formate Dust	Berrien Products Co., Inc., P.O. Box 725 Nashville, GA 31639	Jan. 15, 1968.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 85-143; Filed No. 50223-CM-P-82 and 50059-CM-P-83]

Attaway Broadcast Group, Inc. and Early D. Monroe, Jr.; Applications for Construction Permits in the Multipoint Distribution Service for a new Station at Shreveport, LA; Memorandum Opinion and Order

Adopted May 8, 1985.

Released June 14, 1985.

By the Common Carrier Bureau:

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Shreveport, Louisiana. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and Section 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Attaway Broadcast Group, Inc., Early D. Monroe, Jr. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-15222 Filed 6-25-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-146; File No. 22179-CD-P-82]

Order Designating Application for Hearing; Professional Communications, Inc.

Adopted May 7, 1985.
Release June 19, 1985.

By the Common Carrier Bureau:

In re application of Professional Communications, Inc., for a construction permit for additional one-way facilities to operate on a frequency within the 900 MHz band for Station KGI780 in the Domestic Public Land Mobile Radio Service at Erie, Pennsylvania.

1. Before the Chief, Mobile Services Division is the captioned application of Professional Communications, Inc. (Professional). A review of the application raises a question concerning whether Professional has demonstrated a need for an additional frequency for Station KGI780 at Erie, Pennsylvania. The application has not been protested. We find Professional to be otherwise legally and technically qualified.

2. Professional has submitted traffic load studies for its presently authorized 158.70 MHz and 43.58MHz one-way facilities for Station KGI780 as required by § 22.516 of the Commission's Rules. From the traffic load studies submitted, the grade of service on its 158.70 MHz facility is greater than the required 0.50 necessary to justify an additional channel. However, the grade of service on its frequency 43.58 MHz was found to be only 0.05.

3. On January 27, 1983, in the a Further Notice of Proposed Rulemaking in CC Docket 20870, FCC 83-38 released February 14, 1983, the Commission adopted interim objective need standards governing one-way applications requesting an additional frequency. Pursuant to this standard applications for one additional paging channel will be granted only if the application shows that the existing system's present grade of service is 0.50 or greater or that the existing grade of service is 0.40 or greater, with a projected grade of service of 0.50 or greater. Applications which do not meet this standard are returned as defective. However, the standard has been applied only to application filed after February 14, 1983, the date the new standard became effective. Since the Professional application was filed prior to this date we will apply the Division's standard prior to the adoption of the *Further Notice, supra*. Under this standard, applications which do not meet the 0.50 grade of service are set for hearing.

4. Accordingly, it is ordered that the application of Professional Communications, Inc., File No. 22179-CD-P-82 is designated for hearing pursuant to Section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

a) to determine whether Professional has demonstrated a need for an additional frequency for State KGI780; and

b) to determine, in light of the evidence adduced pursuant to the need for an additional frequency issue, what disposition of the application would best serve the public interest, convenience and necessity.

5. It is further ordered, That the hearing shall be held at the Commission offices at a time and place and before an Administrative Law Judge to be specified in a subsequent order.

6. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

7. It is ordered, that the applicant may avail itself of an opportunity to be heard by filing with the Commission pursuant to § 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on that date for a hearing and present evidence on the issues specified in the Memorandum Opinion and Order.

8. This order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

9. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-15220 Filed 6-25-85; 8:45 am]

BILLING CODE 6712-01-M

Broadcast Data Corp. et al.; Hearing Designation Order

In re Application of:

Broadcast Data Corp; For Construction Permit in the Multipoint Distribution Service for a new station at Rio Grande, New Jersey.	CC Docket No. 85-160; File No. 5515-CM-P-80.
South Jersey Radio, Inc.	File No. 6873-CM-P-80.
Contemporary Multichannel Service, Inc; For Construction Permits in the Multipoint Distribution Service for a new station at Wildwood, New Jersey.	File No. 10394-CM-P-80.

Adopted May 14, 1985.
Released June 20, 1985.

By the Common Carrier Bureau:

1. For consideration are the above-reference applications. These applications are for construction permits in the multipoint Distribution Service and they propose operations on Channel 1 at Rio Grande/Wildwood, New Jersey. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291,

the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Broadcast Data Corp., South Jersey Radio, Inc., Contemporary Multichannel Service, Inc. and the Chief of Common Carriers Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, That any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service Inc., et al.* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of the proceeding.

7. The Secretary shall cause a copy of this Order to be published in the Federal Register.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-15221 Filed 6-25-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

[MM Docket No. 85-150]

Hearing Designation Order; Buena Vista Broadcasters and Buena Vista Radio

In re Applications of Buena Vista Broadcasters, Buena Vista, Colorado, Req: 1450 kHz, 0.25 kW, U (File No. BP-840720AA), William J. Murphy, Mary Ellen Murphy, and Lester M. Messamer, d.b.a. Buena Vista Radio, Buena Vista, Colorado (File No. BP-841026AC), Req: 1450 kHz, 0.25 kW, 0.5 kW-LS, DA-D, U For Construction Permit.

Adopted: May 7, 1985.

Released: June 19, 1985.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Buena Vista Broadcasters and William J. Murphy, Mary Ellen Murphy and Lester M. Messamer d/b/ Buena Vista Radio.

2. *Buena Vista Broadcasters.* The Commission has not yet received Federal Aviation Administration clearence for this applicant. As is our practice, the Federal Aviation Administration will be made a party to this proceeding, and an appropriate issue will be specified.

3. *Buena Vista Radio.* This proposal constitutes a major environmental action as defined by § 1.1305(a) of the Commission's Rules, and therefore requires the submission of the environmental impact information described in § 1.1311. The environmental narrative statement furnished by Buena Vista Radio did not contain information concerning access roads and power lines to the site. Consequently, this applicant must file within 30 days of the release of this Order an amended environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy will be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied. sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

4. Except as indicated by the issues specified below, both applicants are qualified to construct and operate as proposed.[1] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

5. Accordingly, It is Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications Are Designated for Hearing in a Consolidated Proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the heights and locations of the antenna towers proposed by Buena Vista Broadcasters.

2. If a final environmental impact statement is issued with respect to the proposal of William J. Murphy, Mary Ellen Murphy and Lester M. Messamer d/b/a Buena Vista Radio which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) whether the proposal is consistent with the National Environmental Policy Act, as implemented by § 1.1301-1319 of the Commission's Rules; and

(b) whether in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applicants should be granted.

6. It is further ordered, That the Federal Aviation Administration is made a party to these proceedings.

7. It is further ordered, That William J. Murphy, Mary Ellen Murphy and Lester M. Messamer d/b/a Buena Vista Radio shall submit the amendment specified in paragraph 3 to the presiding Administrative Law Judge within 30 days of the release of this Order.

8. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bueau, Room 350,

[1] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

1919 M Street, NW., Washington, D.C. 20554.

9. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commisssion's Rules, the applicants shall, within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, That pursuant to section 311(a)(2) of the Communications Act of 1934, as amneded, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the Rule, and shall advise the Commission of the publications of such as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-15229 Filed 6-24-85; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Margaret Ann Cole and Robert Everett Cole et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Margaret Ann Cole and Robert Everett Cole; Long Beach, WA	BPH-840416IB	85-159
B. Richard R. Leverrier and Leigh Sandoz Leverner, d.b.a. Leverrier Broadcasting Co.; Long Beach, WA	BPH-840611IP	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix) A
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue(s)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8*, the applicant(s) is financially qualified: (A) Cole.

[FR Doc. 84-15219 Filed 6-24-85; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Good Life Radio, Inc. and Jerrell E. Kautz

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Good Life Radio, Inc.; Orchard, NE	BPH-831126AO	85-148
B. Jerrell E. Kautz; Orchard, NE	BPH-840312CB	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1963. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix) A, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. If a final environmental impact statement is issued with respect to (A) Good Life or (B) Kautz which conclude that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1.1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above the applicant is qualified to construct and operate a proposed.

[FR Doc. 85-15218 Filed 6-24-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Key Bancshares of New York; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. No. 85-14079) published at page 24703 of the issue for Wednesday, June 12, 1985.

In the first paragraph, the location of Key Bank of Central New York should be changed to Syracuse, and Key Bank of Northern New York, N.A., Watertown should be added. In the second paragraph, the location of Key Financial Services should be changed to Albany, New York.

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* Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s): (A) Cole.

Deficiency: Applicant certifies financial qualifications, but financial showing indicates net liquid assets of only $44,500 to meet construction and three months operation expenses of $71,425.

Board of Governors of the Federal Reserve System, June 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15192 Filed 6-24-85; 8:45 am]

BILLING CODE 6210-01-M

PNC Financial 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 July 15, 1985.

A. **Board of Governors of the Federal Reserve System,** (William W. Wiles, Secretary) Washington, DC 20551:

1. *PNC Financial Corp*, Pittsburgh, Pennsylvania; to engage through a *de novo* subsidiary, PNC Trust Company of New York, New York, New York, in trust company activities under New York law and § 225.25(b)(3) of Regulation Y. The trust company will engage in trust activities, including settlement and clearing of short-term securities for money market mutual funds and basic fiduciary services such as estate and trust administration and agency and custody accounts. In connection with this proposal, E. M. Warburg, Pincus & Co., Inc., New York, New York, an investment advisory company that sponsors open- and closed-end mutual funds and venture capital investments, would obtain an option to acquire nonvoting shares of the trust company constituting 24.9 percent of the total equity of the company. This application may be inspected at the Federal Reserve Bank of Cleveland. Comments on this application must be received not later than July 8, 1985.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Railroad & Banking Company*, Augusta, Georgia; to engage *de novo* directly in consumer finance activities in Collinsville, Virginia, Redford, Virginia and Knoxville, Tennessee.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gibson Investment Company*, Gibson, Iowa; to engage *de novo* directly in the activities of making commercial, real estate, and consumer loans in the state of Iowa.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Intrawest Financial Corporation*, Denver, Colorado; to engage *de novo* through its subsidiary Intrawest Insurance Company, Denver, Colorado, in underwriting insurance that is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Bank Holding Company Act. These activities would serve the state of Colorado.

Board of Governors of the Federal Reserve System, June 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15193 Filed 6-24-85; 8:45 am]

BILLING CODE 6210-01-M

Sun Bank, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 17, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Sun Bank, Inc.* Orlando, Florida, and *SunTrust Banks, Inc.*, Atlanta, Georgia; to acquire 100 percent of the voting shares or assets or Pan American Bank of Sarasota, Sarasota, Florida.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Trust Bancorp, Inc.*, Ann Arbor, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Trust, Ann Arbor, Michigan, and to acquire 100 percent of the voting shares of Michigan Bank-Midwest, Jackson, Michigan.

2. *Horizon Bancorp Employee Stock Ownerhsip Plan*, Michigan City, Indiana; to become a bank holding company by acquiring 30.95 percent of the voting shares of Horizon Bancorp, Michigan City, Indiana, thereby indirectly acquiring The First Merchants National Bank of Michigan City, Michigan City, Indiana.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Waterloo Bancshares, Inc.*, Waterloo, Illinois; to become a bank hodling company by acquiring 100 percent of the voting shares of First National Bank of Waterloo, Waterloo, Illinois.

2. *Magnolia Banking Corporation*, Magnolia, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Farmers Bank and Trust Company, Magnolia, Arkansas.

3. *Mt. Vernon Bancorp, Inc.*, Mt. Vernon, Illinois; to acquire 82 percent of the voting shares or assets of Bank of Johnston City, Johnston City, Illinois.

Board of Governors of the Federal Reserve System, June 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15194 Filed 6-24-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, Defense Acquisition Regulatory Council, 703-697-7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* This request covers the collection of information to be used to assist in determining whether the intrinsic value of line items within contracts have been distorted through overhead cost allocation and whether such items should be considered for breakout. The proposal requires offerors and contractors under Federal contracts to identify those supplies which they will not manufacture or to which they will not contribute significant value. This information is required by sec. 501 of Pub. L. 98-577 "Small Business and Federal Procurement Competition Enhancement Act of 1984", and sec. 1245 of Pub. L. 98-525 "Defense Procurement Reform Act of 1984".

b. *Annual reporting burden:* This is estimated as follows: Respondent, 7,882; responses, 788,200; and reporting and recordkeeping hours, 66,209.

Obtaining Copies of Proposals: Requestor may obtain copies from the FAR Secretariat (VR), Room 4041, GS Building, Washington, DC. 20405, telephone 202-523-4755.

Dated: June 19, 1985.

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 85-15173 Filed 6-24-85; 8:45 am]

BILLING CODE 6820-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85F-0260]

National Pork Producers Council; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the National Pork Producers Council has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a source of gamma radiation, electron radiation, or x-radiation to control trichinae in pork and pork products.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street, SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (Sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5M3867) has been filed by the National Pork Producers Council, 1015 Fifteenth Street, NW., Suite 200, Washington, DC 20005, proposing that Part 179 (21 CFR Part 179) of the food additive regulations be amended to provide for the safe use of sources of gamma radiation, electron radiation, and x-radiation to control trichninae in pork and pork products.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availibility of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: June 14, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-15213 Filed 6-24-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0261]

Ralston Purina Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ralston Purina Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of cationic soy protein (soy protein isolate modified by treatment with 3-chloro-2-hydroxypropyltrimethylammonium chloride) in the manufacture of paper and paperboard used in the packaging of dry food.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3866) has been filed by Ralston Purina Co., Checkerboard Square, St. Louis, Mo 63164, proposing that § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of cationic soy protein (soy protein isolate modified by treatment with 3-chloro-2-hydroxypropyltrimethylammonium chloride) in the manufacture of paper and paperboard used in the packaging of dry food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: June 14, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-15214 Filed 6-24-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0262]

Ralston Purina Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ralston Purina Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of cationic soy protein hydrolyzed (hydrolyzed soy protein isolate modified by treatment with 3-chloro-2-hydroxypropyltrimethyl-ammonium chloride) in the manufacture of paper and paperboard used in the packaging of dry food.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3865) has been filed by Ralston Purina Co., Checkerboard Square, St. Louis, MO 63164, proposing that § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of cationic soy protein hydrolyzed (hydrolyzed soy protein isolate modified by treatment with 3-chloro-2-hydroxypropyltrimethylammonium chloride) in the manufacture of paper and paperboard used in the packaging of dry food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: June 14, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-15215 Filed 6-24-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[U-51723-BQ]

Utah; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-51723-BQ for lands in Sevier County, Utah, was timely filed and required rentals and royalties accruing from January 1, 1985, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16-⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this Notice.

Having met all the requirements for reinstatement of lease U-51723-BQ as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-15178 Filed 6-24-85; 8:45 am]

BILLING CODE 4310-DQ-M

[A-16868, et al.]

Salt River Project, AZ; Proposed Modification and Continuation of Withdrawals

June 13, 1985.

As a result of the review made pursuant to section 204(1) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754; 43 U.S.C. 1714, the Bureau of Land Management, Department of the Interior, proposes to continue the subject withdrawals on lands described below for a period of 50 years, subject to review and extension of the withdrawals for an additional period, as appropriate. The withdrawals will be terminated as to other lands no longer needed for the purposes of the withdrawals.

The land was withdrawn for use by the Bureau of Reclamation for the Salt River Project, a multi-purpose reclamation project, to provide for a dependable water supply to municipal, industrial, and agricultural users in the project area through control of the waters of the Sale and Verde Rivers. Other project facilities provide for hydrogeneration of electric power; operation and maintenance of dams, reservoirs, water transmission and distribution systems, powerplants, switching stations, substations, and other water and electrical related facilities.

The existing withdrawals, made by Secretarial Orders issued pursuant to the Reclamation Act of June 17, 1902, segregate the lands from operation of the public land laws, including the mining and mineral leasing laws. It is proposed to modify the withdrawals by opening any lands now segregated from leasing to permit applications and offers under the mineral leasing laws. No other change in the segregative effect of the withdrawals or use of the land is proposed.

The following described land is included in the proposed modification:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 2 E.,
  Sec. 30, lot 3, NE¼SW¼, N½SW¼.
T. 2 N., R. 3 E.,
  Sec. 4, S½NW¼SW¼NE¼NW¼, SW¼SW¼NE¼NW¼.
T. 3 N., R. 3 E.,
  Sec. 29, lot 1;
  Sec. 34, E½NE¼, excluding patented mining claims;
  Sec. 35, W½NW¼.
T. 1 N., R. 4 E.,
  Sec. 9, lot 3;
  Sec. 14, N½NE¼;
  Sec. 17, N½.
T. 13 N., R. 4 E.,[1]
  Sec. 12, E½W½NE¼, W½.
T. 1 N., R. 5 E.,
  Sec. 3, lots 6 and 10.
T. 2 N., R. 5 E.,
  Sec. 23, lot 9, W½NW¼NW¼SE¼.
T. 12 N., R. 5 E.,
  Secs. 1 and 2, all land within 1 mile on each side of the Verde River;
  Secs. 11 to 14, inclusive, all land within 1 mile on each side of the Verde River;
  Secs. 23 to 26, inclusive, all land within 1 mile on each side of the Verde River;
  Sec. 36, all land within 1 mile on each side of the Verde River.
T. 12½ N., R. 5 E.,[1]

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[1] Reclamation-withdrawn land lying within the exterior boundaries of the Coconino, Prescott, or Tonto National Forests.

Secs. 34, 35, and 36, all land within 1 mile on each side of the Verde River.
T. 1 N., R. 6 E.,
Sec. 6, the north 305 feet of the west 305 feet of lot 11.
T. 2 N., R. 6 E.,
Sec 13, lots 2 and 3, lots 8 to 20, inclusive, SE¼SW¼, S½SE¼; excepting all land included in the Pima-Maricopa Indian Reservation by the Act of September 30, 1978 (92 Stat. 851);
Sec. 14, all of Arizona Canal;
Sec. 21, Arizona Canal in N½NE¼;
Sec. 22, lot 31 and all of Arizona Canal;
Sec. 23, lot 17, and all of Arizona Canal;
Sec. 24, lots 1, 2, 3, and 4, W½E½, NE¼NW¼, S½NW¼, SW¼ and that portion of NW¼NW¼ excluded from the Pima-Maricopa Indian Reservation by Act of September 30, 1978 (92 Stat. 851);
Sec. 27, lots 4 and 15;
Sec. 28, lot 22;
Sec. 33, SE¼NW¼.
T. 5 N., R. 6 E.,[1]
Sec. 1, lot 1, SE¼NE¼;
Sec. 13, E½SE¼;
Sec. 24, E½;
Sec. 25, NE¼NE¼, E⅝E½NW¼NE¼, NW¼NE¼NW¼NE¼, E½SE¼NE¼, N½NW¼SE¼NE¼, SE¼NW¼SE¼NE¼, NE¼SW¼SE¼NE¼.
T. 7 N., R. 6 E.,[1]
Secs. 1 to 4, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 9 to 16, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 24 and 25, all land within 1 mile on each side of the Verde River.
T. 8 N., R. 6 E.,[1]
Secs. 2, 3, and 4;
Sec. 8, all land within 1 mile on each side of the Verde River;
Secs. 9 and 10;
Secs. 11 and 14, all land within 1 mile on each side of the Verde River;
Secs. 15, 16, and 17;
Secs. 20, 21, and 22;
Sec. 23, all land within 1 mile on each side of the Verde River;
Secs. 26, 27, and 28;
Sec. 29, all land within 1 mile on each side of the Verde River;
Secs. 33, 34, and 35.
T. 9 N., R. 6 E.,[1]
Secs. 1, 2, and 3, all land within 1 mile on each side of the Verde River;
Secs. 9, 10, and 11, all land within 1 mile on each side of the Verde River;
Secs. 13 to 16, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 21 to 28, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 33 to 36, inclusive, all land within 1 mile on each side of the Verde River.
T. 9½ N., R. 6 E.,[1]
Secs. 22 to 28, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 33 to 36, inclusive, all land within 1 mile on each side of the Verde River.
T. 10 N., R. 6 E.,[1]
Secs. 1 and 2, all land within 1 mile on each side of the Verde River;
Secs. 10 to 15, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 22 to 27, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 33 to 36, inclusive, all land within 1 mile on each side of the Verde River.
T. 11 N., R. 6 E.,[1]
Secs. 1 to 5, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 8 to 13, inclusive, all land within 1 mile on each side of the Verde River;
Sec. 14, all land within 1 mile on each side of the Verde River, excluding HES No. 320;
Sec. 15, all land within 1 mile on each side of the Verde River;
Secs. 22 to 26, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 35 and 36, all land within 1 mile on each side of the Verde River.
T. 12 N., R. 6 E.,[1]
Secs. 5 to 8, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 17 to 20, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 28 to 34, inclusive, all land within 1 mile on each side of the Verde River.
T. 12½ N., R. 6 E.,
Sec. 31, all land within 1 mile on each side of the Verde River.
T. 1 N., R. 7 E.,
Sec. 18, those portions of lots 5 and 8 and NE¼SW¼ lying south and east of Usery Pass Road, lots 3 and 6, N½SE¼.
T. 2 N., R. 7 E.,
Sec. 1, lots 1 to 7, inclusive, S½NE¼,S½;
Sec. 2, lots 1 to 6, inclusive, S½NW¼, S½;
Sec. 3, lots 1, 2, 3, and 4, S½N½, S½;
Sec. 4, lots 11 to 17, inclusive, lots 21 and 22, S½NE¼, E½SW¼, SE¼;
Sec. 5, lots 18, 20, 21, and 22, E½SW¼, SW¼SW¼, SE¼;
Sec. 6, lots 12 and 15, SE¼SE¼;
Sec. 7, lots 11, 14, 15, and 18, E½E½;
Sec. 8, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 9 to 16, inclusive;
Sec. 17, lots 1, 2, 3, and 4, NE¼, E½W½;
Sec. 18, lots 16, 17, 18, 19, 20, 24, 25, 26, and 27, E½NE¼, SE¼;
Sec. 19, lots 1, 2, 3, and 4, E½, E½W½;
Sec. 20, NW¼.
T. 3 N., R. 7 E.,[1]
Sec. 25, lots 3 and 4, S½SW¼, W½SE¼;
Sec. 26, S½;
Sec. 27, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof in E½SW¼, SW¼SW¼ and SE¼;
Sec. 28, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof in lot 12 and SE¼SE¼;
Sec. 33, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof in lots 6, 7, 8, 9, 10, 12, 13, 14, 15, and 16, NE¼, N½SE¼;
Sec. 34, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof in lots 1, 2, 4, 5, 6, 8, and 9, N½, N½SW¼;
Sec. 35, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof in lots 1, 2, 4, and 5, E½, NW¼;
Sec. 36, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof.
T. 4 N., R. 7 E.,[1]
Sec. 4, lots 9 to 16, inclusive, S½N½, N½SW¼, NW¼SE¼;
Sec. 5, lots 1 to 11, inclusive, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 8, lot 1;
Sec. 26, lots 1 and 2;
Sec. 27, lots 9, 10, 11, 12, 13, 15, and 16, SW¼NE¼.
T. 5 N., R. 7 E.,[1]
Sec. 2, all land within 1 mile on each side of the Verde River;
Sec. 3, N½ and those portions of S½ within 1 mile on each side of the Verde River;
Secs. 4 to 10, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 16 to 21, inclusive, all land within 1 mile on each side of the Verde River;
Sec. 28, all land within 1 mile on each side of the Verde River;
Sec. 29, lots 1 to 6, inclusive, E½, N½NW¼, SE¼NW¼;
Sec. 30, lots 1 to 8, inclusive, W½NW¼, SE¼NW¼, SW¼, N½SE¼, SW¼SE¼;
Sec. 32, lots 1 to 11, E½E½, SW¼SW¼, E½SW¼;
Sec. 33, all land within 1 mile of the Verde River.
T. 6 N., R. 7 E.,[1]
Secs. 2 to 6, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 8 to 16, inclusive, all land within 1 mile on each side of the Verde River;
Sec. 21, All;
Secs. 22 to 24, inclusive, all land within 1 mile on each side of the Verde River;
Sec. 26, N½, all land within 1 mile on each side of the Verde River and SW¼;
Secs. 27 and 28, all land within 1 mile on each side of the Verde River;
Secs. 32 to 35, inclusive, all land within 1 mile on each side of the Verde River.
T. 7 N., R. 7 E.,[1]
Secs. 6 and 7, all land within 1 mile on each side of the Verde River;
Secs. 17 to 21, inclusive, all land within 1 mile on each side of the Verde River;
Secs. 28 to 34, inclusive, all land within 1 mile on each side of the Verde River.
T. 10 N., R. 7 E.,[1]
Secs. 19, 20, and 30, all land within 1 mile on each side of the Verde River.
T. 11 N., R. 7 E.,[1]
Sec. 5, all land within 1 mile on each side of the Verde River;
Secs. 8 and 9, all land within 1 mile on each side of the Verde River;
Sec. 16, all land within 1 mile on each side of the Verde River;
Sec. 17, all land within 1 mile on each side of the Verde River, excluding HES No. 333;
Secs. 20 and 21, all land within 1 mile on each side of the Verde River, excluding HES No. 333;
Secs. 28 and 29, all land within 1 mile on each side of the Verde River;
Sec. 32, all land within 1 mile on each side of the Verde River.
T. 1 N., R. 8 E.,
Sec. 2, SW¼SW¼.
T. 2 N., R. 8 E.,
Secs. 1 to 9, inclusive, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof.

T. 3 N., R. 8 E.,
Sec. 21, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof;
Secs. 22 and 23;
Sec. 24, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof;
Sec. 25, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof; including all of the Canyon Lake Reservoir;
Sec. 26, NW¼NW¼ and the channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof, including all of the Canyon Lake Reservoir;
Secs. 27 to 36, inclusive, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof, including all of the Canyon Lake Reservoir.
T. 2 N., R. 9 E.,
Secs. 2 to 6, inclusive, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof;
Sec. 8, NE¼ and that portion of NW¼ within the channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof;
Sec. 9, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof, including all of the Canyon Lake Reservoir;
Secs. 10 and 11;
Sec. 15, N½.
T. 3 N., R. 9 E.,[1]
Secs. 22 to 36, inclusive, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof, including all of the Canyon Lake Reservoir.
T. 3 N., R. 10 E.,[1]
Secs. 13 to 32, inclusive, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof, including all of the Apache Lake and the Canyon Lake Reservoirs;
Secs. 35 and 36, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof, including all of the Apache Lake Reservoir.
T. 3 N., R. 11 E.,[1]
Secs. 1 to 4, inclusive, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof, including all of the Apache Lake Reservoir;
Secs. 8 to 23, inclusive, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof;
Secs. 27 to 33, inclusive, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof, including all of the Apache Lake Reservoir.
T. 4 N., R. 11 E.,[1]
Sec. 1, lots 1, 2, and 4, SE¼NE¼, SW¼NW¼, SW¼, N½SE¼, N½SE¼, SW¼SE¼.
Sec. 1, lots 1, 2, and 3, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼;
Sec. 11, NE¼NE¼;
Sec. 12, N½, N½SW¼, SE¼;
Secs. 23 to 26, inclusive, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof;
Secs. 34, 35, and 36, channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof.
T. 5 N., R. 11 E.,[1]
Sec. 7, SE¼SE¼;
Sec. 8, W½SW¼;
Sec. 17, W½NE¼, W½NW¼, SE¼NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 18, E½NE¼, NE¼SE¼;
Sec. 20, E½, N½NW¼, SE¼NW¼, NE¼SW¼;
Sec. 21, NE¼, N½NW¼, S½SW¼, NE¼SE¼, W½SE¼;
Sec. 22, S½N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 23, S½NW¼, SW¼, SW¼SE¼;
Sec. 25, W½NW¼, SE¼NW¼, SW¼, S½SE¼;
Sec. 26, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 27, NE¼, E½NW¼, NW¼NW¼, SW¼, NE¼SE¼;
Sec. 28, N½NE¼, SW¼NE¼, N½NW¼, SE¼NW¼, N½SE¼;
Sec. 34, E½, NE¼NW¼;
Sec. 35, E½, W½NW¼, SE¼NW¼, S½;
Sec. 36, ALL.
T. 4 N., R. 12 E.,[1]
Sec. 4, W½SW¼;
Sec. 5, lots 2, 3, and 4, SW¼NE¼, S½NW¼, S½;
Sec. 6, lots 1 to 6, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 2, 3, and 4, E½, SE¼NW¼, E½SW¼;
Sec. 8, All;
Sec. 9, S½NE¼, W½, SE¼;
Sec. 10, S½N½, S½;
Sec. 11, All;
Sec. 12, SW¼NW¼, SW¼;
Sec. 13, W½, SE¼;
Sec. 14, N½, N½S½, SE¼SE¼;
Sec. 15, N½N½, SE¼SE¼;
Sec. 16, All;
Sec. 17, N½, N½S½, SE¼SW¼;
Sec. 18, lots 1 and 2, NE¼NE¼, SE¼NW¼, SW¼, SW¼SE¼;
Sec. 19, E½, and that portion W½ in the channel of the Salt River from Tonto Creek to the Verde River and all land lying within 1 mile thereof;
Sec. 20, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 21, E½, E½W½, SW¼NW¼, W½SW¼;
Sec. 22, N½N½, SW¼NW¼, W½SW¼, SE¼SW¼, S½SE¼;
Sec. 23, NE¼NE¼, S½N½, S½;
Secs. 24 and 25, All;
Sec. 26, N½, SW¼;
Secs. 27 to 34, inclusive.
T. 5 N., R. 12 E.,[1]
Sec. 31, W½SW¼, SE¼SW¼, SW¼SE¼.
T. 3 N., R. 13 E.,[1]
Sec. 1, N½NE¼, SE¼NE¼, N½NW¼, E½SE¼.
T. 4 N., R. 13 E.,[1]
Sec. 17, SW¼, S½SE¼;
Sec. 18, lots 3 and 4, E½SW¼, SE¼;
Sec. 19, lots 3 and 4, N½NE¼, SE¼NE¼, E½SW¼, S½SE¼;
Sec. 20, N½, SW¼SW¼, E½SE¼;
Sec. 21, S½NW¼, S½;
Sec. 22, S½;
Sec. 23, W½SW¼, SE¼SW¼, S½SE¼;
Sec. 25, S½;
Sec. 26, N½NE¼, SE¼NE¼, W½NW¼, SE¼NW¼, E½SW¼, SW¼SE¼;
Sec. 27, N½, NW¼SW¼, NE¼SE¼;
Sec. 28, N½, N½S½;
Sec. 29, N½, SW¼, N½SE¼;
Sec. 30, lots 1, 2, 3, and 4, N½NE¼, E½W½, SE¼;
Sec. 31, N½NE¼;
Sec. 32, S½NE¼, E½NW¼, NW¼NW¼, NE¼SE¼;
Sec. 33, S½N½, S½;
Sec. 34, All;
Sec. 35, N½NE¼, W½, S½SE¼;
Sec. 36, All.
T. 3 N., R. 14 E.,[1]
Sec. 4, SW¼;
Sec. 5, N½SW¼, SE¼;
Sec. 6, lot 4, SE¼NW¼, NE¼SW¼, SE¼;
Sec. 7, lots 1 and 2, W½NE¼, SE¼NE¼, E½NW¼;
Sec. 8, NE¼, E½NW¼, SW¼NW¼;
Sec. 9, NW¼.
T. 4 N., R. 14 E.,[1]
Sec. 30, lot 4, SE¼SW¼;
Sec. 31, lot 1, E½W½, NW¼SE¼.
T. 1 S., R. 2 E.,
Sec. 12, W½NE¼NW¼NW¼NE¼, NW¼NW¼NW¼NE¼.
T. 1 S., R. 3 E.,
Sec. 6, lot 8.
T. 1 S., R. 6 E.,
Sec. 21, S½S½SW¼SW¼SW¼, SW¼SW¼SE¼SW¼SW¼.
T. 1 S., R. 10 E.,
Sec. 30, lot 4;
Sec. 31, N½ of lot 1, W½NE¼, SE¼NE¼, NE¼NW¼;
Sec. 33, lots 1, 2, 3, and 4;
Sec. 34, N½ of lot 2, N½SE¼.

The areas described contain approximately 168,033.44 acres in Coconino, Gila, Maricopa, Pinal, and Yavapai Counties, Arizona.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources, and will review the withdrawal rejustification to ensure that continuation or modification would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. The authorized officer will also prepare a report for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawals will be continued or modified, and if so, for how long. The final determination will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

All communications in connection with this proposed action should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operation.

[FR Doc. 85-15260 Filed 6-24-85; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 14, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by July 10, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Jefferson County

Birmingham vicinity, *Heaviest Corner on Earth*, 1st Ave., N. and 20th St. N.

Tuscaloosa County

Tuscaloosa, *Audubon Place Historic District*, 1515–1707 (odd) University Blvd. & #8–37 Audubon Pl.

Wilcox County

Camden vicinity, *Bethea, Tristram, House*, AL 28 and CR 22

COLORADO

Mineral County

Creede, *Sevenmile Bridge (Vehicular Bridges in Colorado TR)*, County Rd. 6 Miles SW of Creede

KENTUCKY

Calloway County

Backusburg vicinity, *Archeological Site 15CW64*.

Jefferson County

Louisville, *Madrid Building*, 545 S. 3rd St.

Louisville, *Starks Building*, 455 S. 4th Ave.

McCracken County

Paducah yicinity, *Archeological Site 15McN51*.

Menifee County

Frenchburg vicinity, *Archeological Site 15MF355*.

Mercer County

Harrodsburg vicinity, *Archeological Site 15ME15*, Dry Branch Rd.

MICHIGAN

Lapeer County

Lapeer, *Armstrong, Joseph, House (Lapeer MRA)*, 707 Monroe St.
Lapeer, *Dutton, James B., House (Lapeer MRA)*, 605 Calhoun St.
Lapeer, *Hart, Rodney G., House (Lapeer MRA)*, 326 W. Park St.
Lapeer, *Hevener, John and Julia, House (Lapeer MRA)*, 1444 W. Genesee St.
Lapeer, *Lee, John and Rosetta, House (Lapeer MRA)*, 823 Calhoun St.
Lapeer, *Perry, Warren, House (Lapeer MRA)*, 892 Saginaw St.
Lapeer, *Piety Hill Historic District (Lapeer MRA)*, Roughly bounded by Park, Calhoun, Nepressing, Cramton & Main
Lapeer, *Tomlinson, Samuel J., House (Lapeer MRA)*, 841 Calhoun St.
Lapeer, *Tuttle, Columbus, House (Lapeer MRA)*, 610 N. Main St.
Lapeer, *Van Dyke, Peter House (Lapeer MRA)*, 1091 Pine St.
Lapeer, *Watson, William H. and Sabrina, House (Lapeer MRA)*, 507 Cedar St.
Lapeer, *White, Jay, House (Lapeer MRA)*, 1109 W. Genesee St.

MISSOURI

Jackson County

Kansas City, *Jensin-Salsbery Laboratories*, 520 W. 21st St.
St. Louis (Independent City)
Winkelmeyer Building, 11th and Walnut, Sts.

St. Louis County

Clayton, *Seven Gables Building*, 18–26 N. Meramec

NEW YORK

Cattaraugus County

Olean, *Olean Public Library*, 116 S. Union St.

New York County

New York, *West 67th Street Artists' Colony Historic District*, 1–39 and 40–50 W. 67th St.

Oneida County

Kirkland vicinity, *Norton, Rev. Asahel, Homestead*, Norton Rd.
Utica, *First Baptist Church of Deerfield*, Herkimer Rd.

Otsego County

Middlefield, *Middlefield Hamlet Historic District*, CR 35, Rezen, Whiteman, and Long Patent Rds.
Middlefield, *North, Benjamin D., House*, NY 166, The Plank Rd.

Westchester County

Village of Port Chester, *Life Savers Building*, N. Main St.

NORTH CAROLINA

Durham County

Chapel Hill vincity, *Meadowmont*, Off NC 54

Lee County

Sanford, *Downtown Sanford Historic District*, Roughly bounded by Gordon St., Horner Blvd., Cole and Chatham Sts.

Rutherford County

Golden Valley vicinity, *Melton-Fortune Farmstead*, SR 1006 S. of NC 226

TENNESSEE

Bedford County

Wartrace vicinity, *Clark, Henry A., House*, Fairfield Rd.

Davidson County

Antioch vicinity, *Gray, Benajah, Log House*, 446 Battle Rd.

Lincoln County

Coldwater vicinity, *Lincoln County Poor House Farm*, Yukon Rd.

Rutherford County

Murfreesboro, *East Main Street Historic District*, Roughly E. Main, E. Lytle, College, University and E. Vine Sts.

Scott County

Huntsville, *First National Bank of Huntsville*, #4 Courthouse Sq.

WISCONSIN

Dane County

Madison, *Lathrop Hall*, 1050 University Ave., University of Wisconsin Campus
Madison, *Stock Pavilion*, 1675 Linden Dr., University of Wisconsin Campus

[FR Doc. 85-15216 Filed 6-24-85; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Kesterson Reservoir Closure and Cleanup; Postponement of Scoping Sessions for Draft Environmental Impact Statement

The Bureau of Reclamation (Bureau) is postponing until further notice the public scoping sessions for the environmental impact statement (EIS) on closing and cleaning up Kesterson Reservoir in Merced County, California. On May 28, 1985 (50 FR 21669) the Bureau published a notice of intent to prepare the EIS in cooperation with the Fish and Wildlife Service (Service). Two scoping sessions were originally planned for June 26 and 27 in Mendota and Los Banos California. These were intended to solicit public comments on significant issues, potential environmental effects and other information related to closing and cleaning up Kesterson Reservoir. However, it was decided to postpone the sessions until after the Bureau submits the closure and cleanup plan to the California State Water Resources Control Board.

The Bureau will notify interested parties when the scoping sessions are rescheduled. Bureau contacts for information on the EIS and scoping sessions are Roderick Hall (916) 484-4792 and Bob Schroeder (916) 484-4507. The Service contact is Stephen B. Moore (916) 484-4133.

Dated: June 21, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85-15317 Filed 6-24-85; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than July 5, 1985. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Ms. Melita E. Yearwood, (202) 632-3378, IRM/PE, Room 708B, SA-12, Washington, D.C. 20523.

Date Submitted: June 12, 1985
Submitting Agency: Agency for International Development
OMB Number: 0412-0017
Form Number: AID 1440-3
Type of Submission: Extension
Title: Contractor's Certificate and Agreement with AID—Contractor's Invoice and Contract Abstract
Purpose: When AID is not a party to a contract which it finances, this form provides the means to collect information and to take appropriate action in the event contractors do not comply with AID requirements.
Reviewer: Francine Picoult (202) 395-7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: June 12, 1985.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 85-15261 Filed 6-24-85; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-105X)]

The Baltimore and Ohio Railroad Co.; Abandonment in Clay County, WV; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 4.99-mile line of railroad between milepost 62.2 near Dundon and milepost 67.19 near Hartland.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complaint within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.–Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective July 25, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by July 5, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 15, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Rene J. Gunning, Suite 2204, 100 North Charles St., Baltimore, MD 21201
Peter J. Shudtz, Box 6419, Cleveland, OH 44202

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 10, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-15206 Filed 6-24-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30581 (Sub-1)]

Burlington Northern Railroad Co. and the Milwaukee Road Inc.; Pooling Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Institution of proceeding.

SUMMARY: The Commission is instituting a proceeding to consider the application of the Burlington Northern Railroad Company (BN) and the Milwaukee Road Inc. (MILW) under 49 U.S.C. 11342 for approval of a pooling of car service for handling of traffic between La Crosse, WI and Winona, MI.

DATES: Verified statements supporting or opposing the application must be filed by July 22, 1985. Verified replies must be filed by August 12, 1985.

ADDRESSES: Send pleadings referring to Finane Docket No. 30581 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.
(2) Applicants' representatives:
Peter M. Lee, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.
William L. Phillips, The Milwaukee Road Inc., 516 West Jackson Boulevard, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7936.

SUPPLEMENTARY INFORMATION: BN and MILW presently operate separate routes between La Crosse and Winona. BN's route runs along the east side of theMississippi River and crosses the river on a bridge at Winona. MILW's route crosses the Mississippi River at La Crosse and runs along the western side of the river to Winona. BN's bridge at Winona is in need of extensive repairs. To avoid the expense of repairing the bridge, BN proposes to route traffic over MILW's line under a pooling agreement.

The agreement provides that MILW will handle BN's traffic in MILW trains between La Crosse and Winona. BN traffic to and from Winona will be interchanged with MILW at La Crosse. This traffic while in MILW's custody, will remain in the account of BN. MILW will also perform switching service on BN's behalf at Winona.

The agreement precludes BN from operating on MILW's line, originating or terminating traffic on the line, or permitting any third part to use MILW's track.

BN would pay a $76.62 per car charge for cars handled by MILW between La Crosse and Winona and switched at Winona. The agreement is to remain in effect for five years.

BN and MILW asserts that the agreement does not contemplate pooling of revenue or division of existing traffic.

Interested persons may submit verified statements by the dates set forth above. A copy of the application is available for inspection at the Commission's Public Docket File Room 1221 in Washington, D.C. A copy may also be requested from applicants' representatives.

BN and MILW assert that the requested Commission action will not significantly affect either the quality of the human environment or energy conservation. Any opposing statement may include a statement indicating the presence or absence of any impact of the requested Commission on the quality of the environment or energy conservation. If impacts are alleged to be present, supporting data must be submitted indicating the nature and degree of the anticipated impact.

Decided: June 14, 1985.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-15205 Filed 6-24-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-67X)]

Rail Carriers; the Chesapeake and Ohio Railway Company—Abandonment—in Saginaw County, MI; Exemption

The Chesapeake and Ohio Railway Company (C&O) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a portion of C&O's West Side Belt between Valuation Stations 430+80 near Weiss Street, and 269+30 at Fordney, near Saginaw, in Saginaw County, MI, a distance of approximately 3.06 miles.

C&O has certified (1) that no local traffic has moved over the line for at least 2 years and that no overhead traffic moves over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective July 25, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by July 5, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 15, 1985 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative:

Lawrence H. Richmond, Suite 2204, Chessie System Railroads, 100 North Charles Street, Baltimore, MD 21201

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 21, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-15385 Filed 6-24-85; 11:28 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act Program Announcement

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Availability of Program Announcement.

It is the intention of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to fund a cooperative agreement for providing training and technical assistance in organization and administrative management for private voluntary organizations involved with missing and exploited children.

OJJDP is seeking applicants with experience operating nationwide programs of this type.

For a copy of the program and detailed program requests announcements please contact Dr. J. Robert Lewis, Program Manager, Training Dissemination and Technical Assistance Division, 633 Indiana Avenue, NW., Room 705, Washington, D.C. 20531, (202) 724-773.

Final Applications are due: August 15, 1985.

Dated: June 19, 1985.

Approved:

Alfred. S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85-15211 Filed 6-24-85; 8:45 am]

BILLING CODE 4410-18-M

Missing Childrens Advisory Board; Meeting

Notice is hereby given that the Missing Children's Advisory Board will meet on July 26, 27, and 28, 1985. The meeting will take place at The double Tree Inn in Monterey, California.

The Board will discuss their annual comprehensive plan and other related matters.

For further information, please contact Michelle Easton, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW, Washington, DC 20531, (202) 724-7655.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85-15210 Filed 6-24-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particuar revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics
PMLPC Cooperative Agreement
SF 424, BLS LMI-1A, BLS LMI-2A, and BLS 202C
Monthly and Quarterly
State or Local Governments
43 responses, 6,078; hours, 4 forms
State Employment Security Agencies will provide data identifying and describing the impact of major permanent job cutbacks.

Signed at Washington, D.C., this 20th day of June 1985.

Paul E. Larson,
Departmental Clearance Officer.

[FR Doc. 85-15248 Filed 6-24-85; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

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 June 10, 1985-June 14, 1985.

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 the following case 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.

TA-W-15,807: Trojan Luggage Co., 508 East Bodley Avenue, Memphis, TN

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA-W-15,813: Chemstar Products, Inc., Carlton, MN

U.S. imports of constarch declined both absolutely & relative to domestic production in 1984 compared to 1983. U.S. imports were negligible in 1983 and 1984. The U.S. is a net exporter of cornstarch.

Affirmative Determinations

TA-W-15,818: Mari Anne Bag Corp., New Windsor, NY

A certification was issued covering all workers separated on or after March 11, 1984 and before January 1, 1985.

TA-W-15,819: Martin Jay Casuals, New York, New York

A certification was issued covering all workers separated on or after March 13, 1984 and before June 15, 1984.

TA-W-15,833: Process Machinery Division, Rexnord, Inc., Milwaukee, WI

A certification was issued covering all workers separated on or after March 31, 1984.

TA-W-15,838: FMC Corp., Construction Equipment Group, Cedar Rapids, IA

A certification was issued covering all workers separated on or after March 13, 1984.

TA-W-15,800: ITT Courier Terminal Systems, Div. of ITT Systems, Inc., Tempe, AZ

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-15,801: ITT Grinnell Corp., Princeton, KY

A certification was issued covering all workers of the firm separated on or after February 19, 1984.

TA-W-15,793: Corey Shoe Co., Inc., Sanford, ME

A certification was issued covering all workers separated on or after March 15, 1984 and before April 30, 1985.

TA-W-15,736: North & Judd, Inc., Cromwell, CT and Middletown, CT

A certification was issued covering all workers of the firm separated on or after January 25, 1984.

TA-W-15,804: Reeves Brothers, Inc., Eastman, GA

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA-W-15,797: Harris Graphics Corp., Dayton, OH

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-15,742: Bethlehem Steel Corp., Sparrows Point Plant, Sparrows Point, MD

A certification was issued covering all workers engaged in employment related to the production of cold rolled sheet, hot rolled sheet, steel rod, galvanized sheet, & basic semi-finished steel separated on or after January 19, 1985.

TA-W-15,791: Brunswick Maine Shoe Co., Lewiston, ME

A certification was issued covering all workers of the firm separated on or after

August 1, 1984 and before January 31, 1985.

TA-W-15,794; Crest Shoe Co., Lewiston, ME

A certification was issued covering all workers of the firm separated on or after August 1, 1984.

TA-W-15,763; LTV Steel Co., Warren Works, Warren, OH and Niles, OH

A certification was issued covering all workers of the Warren Works of LTV Steel Company, Warren and Niles Ohio with the exception of those engaged in employment related to the production of galvanized sheet, separated on or after January 28, 1984.

TA-W-15,876; Kennecott Copper Corp., Utah Copper Div., Magna, UT

A certification was issued covering all workers at the Magna, Utah Refinery of Kennecott Copper separated on or after January 12, 1985.

TA-W-15,877; Kennecott Copper Corp., Utah Copper Div., Bingham Canyon, UT

A certification was issued covering all workers at the Bingham Canyon, Utah operation of Kennecott Copper separated on or after February 1, 1984.

TA-W-15,878; Kennecott Copper Corp., Utah Copper Div., Garfield, UT

A certification was issued covering all workers at the Garfield, Utah operation of Kennecott Copper separated on or after February 1, 1984.

I hereby certify that the aforementioned determinations were issued during the period June 10, 1985-June 14, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D street NW., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: June 18, 1985.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-15247 Filed 6-24-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Organization, Function, and Delegations of Authority; Statement of Organization

In accordance with the National Archives and Records Administration Act of 1984 (Pub. L. 98-497, October 19, 1984), the National Archives and Records Administration (NARA) has been established, effective April 1, 1985, as an independent agency within the Executive Branch. NARA will perform functions that had been assigned to the National Archives and Records Service of the General Services Administration. These include the preservation, display, appraisal, disposition, storage, retrieval, and use of records of the United States Government.

The NARA headquarters is located a Pannsylvania Avenue and 8th Street, NW., Washington, DC 20408. NARA is directed by the Archivist of the United States, who is appointed by the President and confirmed by the Senate, in accordance with provisions of Pub. L. 98-497.

NARA has eight major Offices, including that of the Archivist of the United States. Their primary responsibilities are these:

Office of the Archivist

The Archivist of the United States establishes basic policies and priorities of NARA. The Deputy Archivist of the United States and several staff offices described below are part of this Office. The Office of the Archivist also provides administrative support for the National Historical Publications and Records Commission, which reviews and recommends project grants for historical publications and records programs of Federal, States, and local Governments and of private nonprofit institutions.

Audits and Compliance Staff

Plans and carries out financial and internal program audits of NARA operations and serves as liaison with the General Accounting Office (GAO) for any GAO audits of NARA.

Congressional Relations Staff

Coordinates NARA's congressional relations activities, including monitoring legislation of interest to NARA, coordinating testimony, and maintaining close contact with legislators and congressional committee staff.

Public Information Staff

Coordinates NARA public information activities; produces a quarterly publication of information about NARA holdings and activities for scholarly journals to use, a monthly calendar of events, a weekly staff information bulletin, and an occasional employee newsletter; writes or edits speeches for NARA officials; and maintains a Speakers' Bureau.

Legal Services Staff

Provides legal counsel to the Archivist and all other NARA officials, and provides litigation support to the Department of Justice, Offices of United States Attorneys, and other agencies on archival maters.

Archival Research and Evaluation Staff

Explores and advises the Archivist and other NARA offices about the most recent changes in information-handling technology. The staff also oversees the NARA preservation program.

Office of Management and Administration

Has responsibility for NARA's management and administrative operations, including program evaluation, budget and finance, administrative services, and personnel. It also monitors activities of the National Archives Trust Fund Board staff, on behalf of the Board.

Office of the National Archives

Preserves, displays, arranges, declassifies, and provides reference service for the permanently valuable records stored in the National Archives Building and in eleven field branches, ten of which share facilities with the Federal Records Centers. This Office also provides reference and copy services pertinent to these records.

Office of Federal Records Centers

Operates twelve Federal Records Centers nationwide, as well as the National Personnel Records Center (NPRC) in St. Louis, Missouri, and the Washington National Records Center in Suitland, Maryland. These Centers store and service Federal agencies' noncurrent records, prior to disposition. The NPRC maintains the personnel records of former military and Federal civilian personnel.

Office of Records Administration

Coordinates efforts to ensure that Federal agencies create and maintain adequate documentation of their programs and activities. Other functions include the review and approval of agencies' records disposition schedules, which include records of temporary value, as well as those that may have sufficient value to warrant long-term or permanent preservation.

Office of Public Programs and Exhibits

Provides educational programs for teachers and students; sponsors exhibits; conducts tours; workshops conferences, and special ceremonies; and operates the National Audiovisual Center. This Office also publishes general informaton leaflets; educational literature, including *Prologue*, a quarterly journal; facsimiles of certain documents; microfilm publications of archival records; and other publications. It also operates a sales shop in the

Exhibition Hall of the National Archives Building.

Office of Presidential Libraries

Operates seven Presidential Libraries and related museum facilities. The libraries preserve Presidential papers and collections, prepare documentary and descriptive publications, exhibit historic documents and artifacts, and provide reference services. In addition, staffs process the Nixon and Carter Presidential historical materials prior to establishment of formal libraries.

Office of the Federal Register

Prepares and publishes the Federal Register, Code of Federal Regulations, Weekly Compilation of Presidential Documents, Public Papers of the Presidents, Codification of Presidential Proclamations and Executive Orders, and the United States Government Manual. This Office prints acts of Congress as slip laws when they are enacted, and cumulates and publishes these acts, for each session of Congress, in the U.S. Statutes at Large.

For further information about NARA offices and functions, contact Jill Merrill, Public Information Officer, National Archives and Records Administration (NSI), Washington, DC 20408. Phone: (202) 523-3099.

Dated June 20, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 84-15341 Filed 6-24-85; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria will hold a meeting on July 10, 1985, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 10, 1985—1:00 p.m. until the conclusion of business

The Subcommittee will continue review of the NRC's proposed Safety Goal Policy, and the future use of safety goal policy.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 20, 1985.

T.G. McCreless,

Assistant, Executive Director for Technical Activities.

[FR Doc. 85-15251 Filed 6-24-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-456, 50-457]

Commonwealth Edison Co., Braidwood Nuclear Power Station, Units 1 and 2; Prehearing Conference

June 20, 1985.

Pursuant to 10 CFR 2.752 of the Commission's Rules of Practice, all parties are directed to appear at a prehearing conference beginning at 10:00 a.m. on July 23, 1985, at the Will County Courthouse, 14 West Jefferson Street, Joliet, Illinois 60431.

The public is invited to attend the prehearing conference. However, there will be no opportunity for members of the public to participate.

The Atomic Safety and Licensing Board will consider all pending prehearing matters, including:

(1) Simplification, clarification, and specification of the issues;

(2) The necessity or desirability of amending the pleadings;

(3) The obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof;

(4) Identification of witnesses and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence;

(5) The setting of the remaining prehearing and hearing schedule, including the order in which issues will be heard; and

(6) Such other matters as may aid in the orderly disposition of the proceeding.

The Atomic Safety and Licensing Board will also consider any remaining discovery matters, any discussion of pending summary disposition motions deemed necessary, and any other appropriate matter.

The Board will visit the Braidwood site on July 24, 1985, from 9:30 a.m. to approximately 11:30 a.m. No substantive issues will be discussed during the site visit. A manageable small number of representatives of each party may attend the site visit. Any necessary arrangements for advance identification of site visitors may be coordinated by the Applicant.

For the Atomic Safety and Licensing Board.

Lawrence Brenner,

Chairman, Administrative Judge.

June 20, 1985, Bethesda, Maryland.

[FR Doc. 85-15253 Filed 6-24-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-456, 50-457]

Commonwealth Edison Co., Braidwood Nuclear Power Station, Units 1 and 2, Opportunity for Limited Appearance Statements

June 20, 1985.

Members of the public are invited to present oral and written limited appearance statements to the Atomic Safety and Licensing Board presiding in this proceeding on the application of the Commonwealth Edison Company for a license to operate the Braidwood Nuclear Power Station, Units 1 & 2. The Braidwood Nuclear Power Station is a two unit Pressurized Water Reactor now under construction in Reed Township, Will County, Illinois, approximately twenty miles south-southwest of Joliet, Illinois.

The oral and written public appearance statements may be made by any person who is not a party to this proceeding on Tuesday, July 23, 1985, from 7:00 p.m.–9:00 p.m., at: Joliet City Council Chambers, 150 West Jefferson Street, Joliet, Illinois 60431.

Those who wish to speak may submit their names at the above location at the commencement of the public appearance session. In order to give as many people as practicable an opportunity to be heard, oral statements will be limited to five minutes but written statements may be any reasonable length. Those who speak may also submit written statements. Written statements may be presented at the public appearance session or they may be mailed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Both oral and written statements will be maintained with the official record of this proceeding. A limited appearance statement is not evidence which is directly considered as part of the formal litigation in this proceeding. However, persons making limited appearance statements may give their position on the issues to be decided, and they may propose questions they wish answered by Commonwealth Edison and the Nuclear Regulatory Commission Staff and by the evidence in the upcoming hearing. The Board will consider these questions to the extent they are within the scope of the proceeding.

For The Atomic Safety and Licensing Board. June 20, 1985, Bethesda, Maryland.

Lawrence Brenner,

Chairman, Administrative Judge.

[FR Doc. 85-15254 Filed 6-24-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352-OL, 50-353-OL and ASLBP No. 81-465-07 OL]

Philadelphia Electric Co., Limerick Generating Station, Units 1 and 2; Memorandum and Order; Graterford Contentions and Hearing Schedule

June 18, 1985.

This Memorandum is intended to memorialize a telephone conference call of June 17, 1985 conducted by this Board with the Applicant, NRC Staff, Counsel for the Commonwealth of Pennsylvania (with counsel representing the Pennsylvania Department of Corrections also participating), and counsel representing the Graterford inmates. Arrangements had been made by telephone for this conference on June 13 and 14, 1985 with the parties. The purpose of the conference was: (1) To determine the identity of witnesses each party intended to call during the hearing on the contentions of the Graterford inmates admitted by this Board in its Order of June 12, 1985; (2) set schedule for depositions and directed use of stipulation where agreements could be reached; (3) set date for filing of prefiled testimony; and (4) reach an agreement on a hearing schedule.

This conference call took place in the Board's Washington offices and by telephone connection with the parties in their respective offices. The conference began promptly at 1:30 PM (EDT). A verbatim record was made by a reporter located in the Board's office. Transcripts were ordered made available to any party wishing to purchase them from the reporting service. All parties except the Graterford inmates' counsel requested copies of the conference.

In the fifty minute conference the following input was received from the participating parties:

1. Witnesses identified by inmates' counsel were: (a) Major Case; (b) an unnamed University of Pennsulvania witness; (c) Supervisory Giamo of Skippack Township; and (d) Graterford Inmate Thomas Martin. Graterford counsel indicated agreement that this witness would be deposed at the prison to avoid problem of transporting a maximum security prisoner to the hearing.

2. Applicant identified no witness for case-in-chief but advised it may call in rebuttal Mr. Bradshaw, a witness who previously testified on emergency planning for the Applicant in this proceeding.

3. Commonwealth of Pennsylvania; Commissioner of Department of Corrections Jeffes on ETE and PEMA's Donald F. Taylor on the training issue; and

4. NRC Staff idenified Dr. Urbanik and an unnamed FEMA witness.

The parties participating agreed on a conference call for June 19, 1985 of the parties to make arrangements for time and location for deposing the various witnesses. The Board ordered that all prefiled testimony would be filed July 8, 1985. The Board expects, in accordance with its established custom, that the parties understand the prefiled testimony to be delivered in hand to each of the parties no later than 5:00 PM (EDT) on July 8, 1985.

Further decision reached in this conference was the Board's notice to the parties that it would not order briefs at the conclusion of the hearings on the Graterford contention. Rather, the Board advised the parties that oral arguments would be permitted and that any party wishing to do so could file simultaneously with their oral arguments written outlines of their findings of fact and conclusions of law. This accepted procedure by the parties, the Board believes, is in keeping with the Commission's direction for expeditious handling in this case. The Board now announces that it will grant an appropriate period of time not to exceed 24 hours from the conclusion of the testimony to the beginning of the oral arguments by the parties for review and/or preparation.

Finally, the Board set July 15, 1985 for hearings to begin. The location is the U.S. Customs House, Old Customs Courtroom (Room 300), Second and Chesnut Streets, Philadelphia, Pennsylvania 19106. The Board now announces that the hearings will begin at *1:30 PM (e.d.t.)* on July 15, 1985. We have set aside the three days of July 15, 16 and 17, 1985 for the hearings with an option of continuing the hearings on July 18 and 19, 1985, if necessary.

Dated at Bethesda, Maryland, this 18th day of June 1985.

For the Atomic Safety and Licensing Board.

Helen F. Hoyt,

Chairperson, Administrative Judge.

[FR Doc. 85-15252 Filed 6-24-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; New Computer Matching Program

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a Computer Matching Program—OPM/Department of Labor, Office of Workers' Compensation Programs (OWCP).

SUMMARY: OPM is hereby issuing public notice of its intent to conduct a computer matching program with the OWCP. The match will identify individuals receiving concurrent benefits under the Civil Service Retirement Act (CSRA) and the Federal Employees' Compensation Act (FECA). Both Acts prohibits the receipt of concurrent payments covering the same period of time. The match will involve the OPM system of records published as OPM Central-1, Civil Service Retirement and Insurance Records, 48 FR 37120, August 16, 1983, and DOL systems of records published as DOL/ESA-13, 47 FR 30382-30393, July 13, 1982, as amended. The purpose of the match is to identify and/or prevent erroneous payments under both Acts.

DATE: The data exchange will begin at a date mutually agreed upon by the OWCP and OPM after March 1, 1985, unless comments are received which will result in a contrary determination.

Subsequent matches will take place annually until one of the parties terminates the agreement by providing the other party a written notice at least thirty (30) days prior to the effective date of termination.

ADDRESS: Written comments on this proposal may be sent to Jean M. Barber, Assistant Director, Office of Pay and Benefits Policy, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044, or delivered to the Office of Personnel Management, Room 4351, 1900 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Agatha Gray, (202) 254-7052.

SUPPLEMENTARY INFORMATION: The computer matching program between OWCP and OPM will involve the comparison of beneficiaries under the Fedeal Employees' Compensation Act (FECA) and the Civil Service Retirement Act (SCRA). The match will identify beneficiaries receiving payment of compensation for wage loss or death under the FECA and those receiving retirement or death benefits under the CSRA covering the same period of time.

the concurrent receipt of benefits under the FECA based on wage loss and under the CSRA for retirement, or under the FECA or CSRA based on the death of the Federal empolyee is prohibited. It is the responsibility of OPM to monitor retirement annuity and survivor benefits paid under the CSRA to ensure that its beneficiaries are not receiving benefits under the FECA which are prohibited during receipt of benefits under the CSRA. Similarly, it is the responsibility of the OWCP to ensure that Federal employees or dependents of deceased Federal employees receiving benefits under the FECA are not also receiving benefits under the CSRA which are prohibited.

By comparing the information received through the computer matching program between OWCP and OPM on a recurring basis, the agencies will be able to make a timely and more accurate adjustment in the benefits payable. The match will prevent overpayment, fraud and abuse, thus, assuring that benefit payments are proper under the appropriate Act. Both agencies currently rely on voluntary reporting by their beneficiaries. However, this is an inadequate means of keeping the records accurately updated to prevent overpayments.

Additional information regarding the matching program including the authority for the program, a description of the matches, the personal records to be matched, the dates of the program, security safeguards, and plans for disposition following completion of the matches are provided in the text below.

Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Matching of Records Between Office of Workers' Compensation Programs and Office of Personnel Management

A. *Authority*: 5 U.S.C. 8331, et seq.

B. *Description of Computer Matching Program:* The OPM pays annuities and survivor benefits to individuals who may also receive benefits under the FECA. It is the responsibility of the OPM as the administrator of the CSRA to assure that such benefit payments are proper and to prevent fraud and abuse. The computer matching program is an efficient and nonobtrusive method of determining whether these individuals are receiving benefits from the OWCP and the OPM prohibited by the FECA and the CSRA. The OPM and OWCP will exchange extracts of their payment files containing identifying data (name, social security number, date of birth) to determine if an individual is receiving benefits from both organizations at the same time. Both organizations will detect, identify, and follow-up on payment of prohibited dual benefits. Individuals identified as receiving prohibited dual benefits will be afforded the opportunity to elect the benefit he or she wishes to receive. The organization responsible for initiating recovery of the overpayment of benefits will afford the individual due process before any payment modifications are made.

C. *Personal Records To Be Matched:* The OPM system of records published as OPM-Central-1, Civil Service Retirement and Insurance Records, 48 FR 37120, August 16, 1983, which contains payment data on recipients of CSR benefits disbursed by OPM will be match to OWCP records published as DOL/ESA-13, 47 FR 30382-30383, July 13, 1982, as amended in 48 FR 5326, February 8, 1983, which contains data pertinent in the payment of Federal employees and their dependents under the FECA.

D. *Dates:* Data exchanges will begin during calendar year 1985 at a mutually agreeable time and will be an annual process until one of the parties to the agreement advises the other by written request to terminate the agreement.

E. *Privacy Safeguards and Security:* The person privacy of the individuals whose names are included in the tapes is protected by strict aherence to the provisions of the Privacy Act of 1974 and OMB Circular A-108. Security safeguards include limiting access only to the files agreed to and only to agency personnel having a "need to know." All automated data sets will be password protected and the data listings will be locked in file areas after the normal duty hours.

F. *Disposal of Records:* The files will remain the property of the respective source agencies and all records, including those not containing matches will be returned to the source agency for destruction. "Hits," the records relating to matched individuals, will be disposed of in accordance with the provisions of the Privacy Act and the Federal Record Schedules after serving their purpose. The data obtained from the hits will be entered in the claims file, subject to release only under the provisions of the Privacy Act.

[FR Doc. 85-15265 Filed 6-24-85; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14586; (812-6122)]

Greater Washington Investors, Inc; Application for an Order Permitting Proposed Concurrent Investment by Investment Company and Affiliate

June 18, 1985.

Notice is hereby given that Greater Washington Investors, Inc., ("Applicant"), 5454 Wisconsin Avenue, Chevy Chase, Maryland 20815, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, filed an application on June 7, 1985, for an order of the Commission, pursuant to section 17(b) of the Act, exempting Applicant's proposed follow-on Investment in a portfolio affiliate from the provisions of section 17(a)(3) of the Act, and pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, permitting the proposed concurrent follow-on investment by Applicant and an affiliated entry in such portfolio affiliate. All interested person are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant is a venture capital investment company and a small business investment company licensed under the Small Business Investment Act of 1958. Research Industries Incorporated ("Research Industries") is a privately-held company that owns approximately 12.1 percent of the outstanding common stock of Applicant.

Voice Computer Technologies Corporation ("VCT") is a development-stage company engaged in developing microprocessor-based, voice response computer systems for distributors of goods and merchandies for use in remote order entry. Applicant and Research Industries have been investors in VCT since June, 1982, and presently own securities representing 12.2 percent and 12.4 percent, respectively, equity interests in VCT. Both Applicant and Research Industries have a representative on the board of directors of VCT.

VCT is stated to be in urgent need of additional funds in order to continue operations. Accordingly, VCT is offering up to $1.25 million of its 12 percent subordinated debentures due May 13, 1987 ("Debentures"), together with warrants to purchase five shares of its Series B Convertible preferred stock for each dollar or principal amount of Debentures, at a price of $0.20 per share. The offering is being made to VCT's present convertible preferred stockholders, two holders of VCT's common stock who have preemptive rights, and to two holders of VCT's five-year 12.5 percent subordinated convertible debentures issued in 1984. Applicant and Research Industries want to invest an additional $100,000 each in VCT on the terms proposed. Because of its critical need for cash, VCT will be required to complete its offering prior to the time this application could be expected to be acted upon. In order to give the Commission an opportunity to act, therefore, and to preserve its place in the offering in order to avoid a significant dilution of its equity interest in the company, Applicant states that it will enter into a binding commitment with VCT to make the proposed investment, subject only to the Commission's favorable action on its application. Further, because of VCT's immediate need for funds, certain of its investors, including Research Investors, have purchased an aggregate of $450,000 principal amount of 30-day secured notes ("Notes"), bearing interest at the rate of 15 percent a year. The Notes are secured by a lien on substantially all of VCT's assets. Upon receipt by VCT of unconditional commitments to purchase $50,000 principal amount of Debentures, the principal amount of Notes will be converted into an equal principal amount of Debentures, accompanied by warrants to purchase five shares of Series B convertible preferred stock at $0.20 per share. Upon conversion, VCT will pay to each holder of Notes all accrued interest thereon through the date of conversion.

Applicant states that its follow-on investment in VCT, as a result of the financial interest held by Research Industries in VCT, would violate sections 17(a)(3) of the Act. In addition, Applicant's investment, in conjunction with the investment to be made by Research Industries, may be deemed to be a "joint enterprise" within the meaning of Rule 17d-1 under the Act.

Applicant asserts that the requested relief meets the statutory standards of sections 17(b) and 17(d) of the Act, and Rule 17d-1 thereunder. It is asserted that the terms of the VCT offering were negotiated at arms' length between VCT and its investors, taking into consideration the problems and delays experienced by VCT to date, the difficult climate for raising additional venture capital, and the critical need of VCT for cash. Under these circumstances, it is further asserted that the terms of the proposed financing are reasonable and fair and do not involve overreaching. Moreover, Applicant asserts that the terms of the offering are the same for each participant, except to the extent that interim financing was extended by Research Industries under the Notes to accommodate the urgency of VCT's need for additional funds. It is stated further that each investor in VCT, including Applicant and Research Industries, has made, or is in the process of making, an independent decision on whether to invest further in the company and if so, how much. Applicant states that the debenture offering is not fully subscribed and that Applicant and Research Industries will invest exactly the same amount therein on exactly the same terms.

Applicant further asserts that to deny the requested relief would cause its existing investment in VCT to be significantly diluted. Assuming Applicant is not able to invest further in VCT and the entire offering is subscribed, and the warrants issued therein exercised, it is asserted that Applicant's equity interest in VCT would decline from 12.2 percent to 6.0 percent—a 51 percent dilution of its interest.

Applicant asserts that the proposed investment is consistent with its policies as recited in its registration statement and reports filed under the Act. It is stated that an important part of Applicant's support of its portfolio issuers is its participation in subsequent financings. While it would be preferable for the proposed supplemental financing of VCT to be done on more favorable terms, it is asserted to be consistent with Applicant's policy of making follow-on investments in its portfolio companies.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 15, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-215198 Filed 6-24-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23697; 70-6906]

Middle South Utilities, Inc. and Middle South Energy, Inc.; Supplemental Notice Concerning Issue and Sale of Common Stock

May 20, 1985.

On May 13, 1985, this Commission issued a notice of a proposal by Middle South Utilities, Inc., a registered holding company, and its wholly owned subsidiary, Middle South Energy, Inc. ("MSE"), requesting authority for an extension of the period, through July 31, 1986, during which MSE may issue and sell from time to time and MSE may purchase, not in excess of 160,000 shares of common stock at a price of $1,000 per share. That notice stated that the aggregate cash purchase price of the transaction would be $160,000.

The language of the third paragraph, second sentence, should have read and is hereby corrected to read:

MSE requests authority for an extension of the period, through July 31, 1986, during which MSE may issue and sell from time to time and MSU may purchase, not in excess of 160,000 shares of the additional shares at a price of $1,000 per share for an aggregate cash purchase price of $160,000,000.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-15201 Filed 6-24-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22153; File Nos. Amex-85-20; SR-BSE-85-5; SR-CSE-85-3; SR-MSE-85-2; SR-NYSE-85-24; SR-PSE-85-17; SR-Phlx-85-19]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al.; Granting Accelerated Approval to Rule Change

Self-Regulatory Organizations; American Stock Exchange, Inc.; Boston Stock Exchange, Inc.; Cincinnati Stock Exchange, Inc.; Midwest Stock Exchange, Inc.; New York Stock Exchange, Inc.; Pacific Stock Exchange, Inc.; and Philadelphia Stock Exchange, Inc.; Order giving notice and granting accelerated approval to rule changes

The self-regulatory organizations ("SROs") listed above each have filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, copies of proposed rule changes that would implement a recent amendment to the "Plan for the Purpose of Creating and Operating an Intermarket Communication Linkage" [1] ("Intermarket Trading System ("ITS") Plan") ("ITS Amendment"). The proposed rules provide for a complaint procedure for "locked markets" in ITS and otherwise refine the locked market rule.[2]

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and a national market system for securities, and in particular the requirements of sections 6(b)(5), 11A(a)(1)(c) and 11A(a)(1) of the Act and the rules and regulations thereunder.

[1] *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

[2] For a further description of the content of the proposed rule changes, *see* the release approving the ITS amendment, Securities Exchange Act Release No. 22139, (June 12, 1985).

The Commission finds good cause for granting accelerated approval to the proposed rule changes because the filings are substantially identical and contain provision that were developed jointly by representatives from each SRO following extensive discussions with members of each SRO. Moreover, immediate implementation has been scheduled. In this respect, the Commission believes that immediate simultaneous approval of all the SRO proposals is desirable in order to achieve system-wide implementation of the ITS Amendment as soon as possible.

It is therefore ordered, pursuant to section 19(b)(2)(B) of the Act, that the aforementioned proposed rule changes be, and hereby are, approved, effective as of the date of this release.

Request for Comment

Publication is expected in the **Federal Register** during the week of June 24, 1985. In order to assist the Commission in determining whether to abrogate the above mentioned rule changes, interested persons are invited to submit written comments. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. Copies of the filings and any subsequent amendments also will be available at the principal office of the SROs listed above. All submissions should refer to any of the file numbers listed above and should be submitted by July 16, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: June 17, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-15199 Filed 6-24-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/8 62]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 2:00 p.m., Friday, July 12, 1985, in Room 1207, Department of State, Washington, D.C.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the July 12 meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees to Room 1207.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on Saturday, July 13, 1985, in Room 540, National Science Foundation, 1800 G Street, NW., Washington, D.C., in sessions that will not be open to the public. As these sessions will include discussion of classified material, they have been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future negotiations. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctic resources, particularly Antarctic mineral resources. This portion of the meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OPA, Room 5801, Department of State. He may be reached by telephone on (202) 632-3262.

Dated: June 13, 1985.

[FR Doc. 85-15249 Filed 6-24-85; 8:45 am]

BILLING CODE 4710-09-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 122
Tuesday, June 25, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 18, 1985.

TIME AND DATE: 10:00 a.m., Tuesday, June 25, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Black Diamond Coal Mining Co., Docket No. SE 82-48. (Issues include whether the judge erred in concluding that the operator violated 30 CFR 75.400, which deals with the control of coal dust.)

2. Calvin Black Enterprises, Docket Nos. WEST 80-6-M, etc. (Issues include whether the judge erred in concluding that the operator denied an MSHA inspector's entry to the mine in violation of Section 103(a) of the Mine Act.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-15297 Filed 6-21-85; 11:49 am]

BILLING CODE 6735-01-M

2

FEDERAL TRADE COMMISSION

TIME AND DATES: Following the Commission's Open meeting scheduled for 2:00 p.m., Monday, June 24, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Closed.

Discussion of personnel issues in Commissioners' offices.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523-1892; Recorded Message: (202) 523-3806

Emily H. Rock,

Secretary.

[FR Doc. 85-15332 Filed 6-21-85; 2:42 pm]

BILLING CODE 6750-01-M

3

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION: Addition of item to meeting agenda.

DATE OF MEETING: June 26 and 27, 1985.

PLACE: Federal Building, South Auditorium, 915 Second Avenue, Seattle, Washington.

SUMMARY: The Government in the Sunshine Act, 5 U.S.C. 552b, requires **Federal Register** notice whenever an agency adds an item to its meeting agenda after the meeting has been publicly announed. At its June 26-27, 1985 meeting in Seattle, Washington, the Northwest Power Planning Council is expected to vote to add to its agenda "Council Decision Regarding Delegation of Authority to Approve Plan for Temporary John Day Fish Acclimation Ponds (Fish and Wildlife Program Measure 704(i)(2)". On June 19, 1985, notices of the addition were posted in the Council's central office and mailed to those individuals and entities on the Council's fish and wildlife consultation list.

CONTACT PERSON FOR MORE INFORMATION: Ms. Janie Pearcy, (503) 222-5161, 1-800-222-3355 (toll-free in Idaho, Montana and Washington) or 1-800-452-2324 (toll-free in Oregon).

Edward Sheets,

Executive Director.

[FR Doc. 85-15290 Filed 6-21-85; 10:54 am]

BILLING CODE 0000-00-M

4

PAROLE COMMISSION

Pursuant to the Government in the Sunshine Act Public Law 94-409 (5 U.S.C. Section 552b).

DATE AND TIME: Wednesday, June 26, 1985—1:00 p.m. to 2:00 p.m.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, and via a conference telephone circuit.

STATUS: Open.

MATTER TO BE CONSIDERED: 1. Budget Request of the U.S. Parole Commission for Fiscal Year 1987.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth A. Clark, Executive Officer, United States Parole Commission, (301) 492-5974.

Dated: June 20, 1985.

Joseph A Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85-15333 Filed 6-21-85; 2:42 pm]

BILLING CODE 4410-01-M

5

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ENTITY: Synthetic Fuels Corporation.

ACTION: Notice of Meeting.

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings.

MATTERS TO BE CONSIDERED:

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Action on Comprehensive Strategy Report
III. Opinion of the Ethics Officer on Potential Director Conflicts of Interest
IV. Consideration of Financial Assistance Award for Great Plains Project

TIME AND DATE: 9:30 a.m., June 28, 1985.

PLACE: 2121 K Street, NW., Room 503, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchinson, Director—Media Relations, at (202) 822-6455.

Andrew P. Tashman,

Deputy General Counsel.

June 21, 1985.

[FR Doc. 85-15314 Filed 6-21-85; 12:44 pm]

BILLING CODE 0000-00-M

Tuesday
June 25, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Certification of Student Recreational, Recreational, Student Private and Private Pilots; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 24695; Notice No. 85-13]

Certification of Student Recreational, Recreational, Student Private and Private Pilots

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend the regulations to establish recreational pilot certificates, introduce new concepts in pilot certification, add a 2-hour annual training requirement for recreational and private pilots, and establish annual review and recent flight experience requirements for recreational and private pilots with less than 400 hours of flight time. The intent of this proposal is to introduce training techniques that involve a more basic approach to flight fundamentals as well as training and testing to a standard in lieu of traditional aeronautical experience requirements.

DATE: Comments must be received on or before September 24, 1985.

ADDRESS: Comments on the proposals may be mailed in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention, Rules Docket (AGC-204) Docket No. 24695, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: James F. Byers, or Arthur C. Jones, Certification Branch, AFO-840, General Aviation and Commercial Division, Office of Flight Operations, 800 Independence Ave., SW., Washington, D.C. 20591, Telephone (202) 426-8196.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking action by submitting written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the address indicated above. All communications received on or before the closing date will be considered before taking action on this notice of proposed rulemaking. All comments submitted will be available for examination in the rules docket. Persons wishing the FAA to acknowledge receipt of comments received in response to this notice should submit a self-addressed, stamped postcard which states "Comments to Docket No. 24695". The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center APA-430, 800 Independence Ave., SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of ths NPRM.

Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

The primary basis for this proposed rule is a petition submitted to the FAA by a committee formed by the National Association of Flight Instructors (NAFI). The committee was formed in response to an initial proposal submitted to the FAA by the Aircraft Owners and Pilots Association (AOPA) and later withdrawn in anticipation of the committee's recommendations. The purpose of the committee, which was composed of industry and FAA people involved in pilot training, was to review the requirements for certification of student and private pilots. The committee included representatives of the University of North Dakota, University of Illinois, *Flying Magazine*, Embry-Riddle Aeronautical University, Auburn University, AOPA Air Safety Foundation, and Instrument Flight Training, Minneapolis, and Office of Flight Operation FAA.

The committee found that past revisions of Part 61 had imposed an unnecessary burden on a segment of the flying public. These revisions had so changed the requirements for private pilot training in instrumentation that: (1) Less expensive, simple aircraft were no longer used for training because these aircraft were not equipped with the necessary instruments; and (2) the hours for training had necessarily increased even for student pilots whose interests were solely in flying basic aircraft. The committee's solution to the problem was to propose two new categories of pilot certification: student recreational and recreational pilot to be certificated for flying only basic aircraft. According to the NAFI proposal, the student recreational and recreational pilot would not be required to have instrument or radio training because their operations would be restricted to a flying environment where the use of instruments or radios would not be necessary.

The NAFI committee also felt the regulations should be amended to provide more guidance to flight instructors in the training of students. This belief was primarily based on the committee's review of private pilot accident reports which showed a general lack of flight precision and proficiency on the part of the pilots as well as weaknesses in certain operational skills such as takeoff and landing directional control, go around procedures, stall recognition and recovery, and emergency procedures. The committee believed these weaknesses could be rectified by: (1) Requiring flight instructors to train students in specific maneuvers and procedures; (2) requiring students to pass a presolo written exam; and (3) emphasizing current requirements for achieving a certain level of proficiency in pilot skills, i.e., "training to a standard".

In addition, the committee decided that the usually high number of accidents involving pilots with less than 400 flight hours could be reduced by requiring a flight review every 12 months for this pilot population, and requiring instruction with a logbook endorsement by a flight instructor for pilots with less than 400 flight hours who have not flown an aircraft as pilot in command within the preceding 180 days.

The petition which included these proposals was published verbatim for public comment in the Federal Register on March 15, 1982 (46 FR 11026). Comments on the petition are discussed in the following section.

Another basis for the proposed rule was a recommendation from the General Aviation Safety Panel (Safety Panel) which consisted of 13 representatives from the general aviation community. The Safety Panel 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, which is not a structured learning experience, to refresh their skills.

Comments on the NAFI Petition

All interested persons were afforded an opportunity to comment on the NAFI petition, and consideration has been given to all the views presented. A total of 618 written comments were received, and the proposed rules have been changed to reflect certain comments.

Several comments addressed the age requirement for student recreational pilots. The NAFI petition proposed that an individual be 14 years of age to be eligible for a student recreational pilot certificate. Many comments received on age requirements stated that 14 year olds lacked the mature judgment to safely operate an airplane. Although the FAA has no reliable method of assessing the judgment of a 14-year old, the FAA does have considerable experience with 16-year-old student pilots operating powered aircraft and thus has decided to retain the minimum age requirement at 16 years.

Several comments also addressed the issue of home study. Under the NAFI proposal, the only acceptable method for an applicant to acquire aeronautical knowledge on the ground was to have logged ground instruction from an authorized instructor. The NAFI proposal eliminated the alternative home study method allowed under present § 61.105. All commenters on this issue objected ot the elimination of home study on the basis that not allowing home study imposed an economic burden on the student. Since the FAA could discern no justification for the economic impact of the change on students and on the home study industry, the alternative of home study as an acceptable method of receiving ground instruction in aeronautical knowledge has been retained.

Several comments also addressed the issue of the category of aircraft which could be flown by a student recreational and recreational pilot. The NAFI proposal restricted the type of aircraft to single-place gyroplanes and aircraft with 2-seat occupancy and 200 horsepower. In response to many comments, the restrictions on types of aircraft have been changed as follows:

(1) From 2-seat occupancy to 4-seat occupancy;

(2) From 200 horsepower to 180 horsepower; and

(3) From no requirements on the type of landing gear to only non-retractable landing gear.

These restrictions limit the type of aircraft allowed to certain single-engine piston airplanes and helicopters, as well as to single-place gyroplanes.

PROPOSED REVISIONS

General Discussion

Major Proposals in This Rulemaking

Based on the NAFI petition and public comments on that petition, the Safety Panel recommendations, and the FAA's own experience, the proposed rulemaking would significantly amend Part 61 of the current regulations by—

(1) Adding certification categories for student recreational and recreational pilots;

(2) Formalizing and emphasizing the concept of training and testing to a standard or level of proficiency for all types of recreational and private pilot certificates; and

(3) Adding review and training requirements for all types of recreational and private pilot certificates.

Student Recreational and Recreational Pilots

The certification rules contained in Part 61 have been amended over the years to accommodate advances in aviation technology and the increasing complexities of operating aircraft in the national airspace system. These changes in the aviation environment have created additional aircraft equipment needs and training requirements for the pilot. The changes in training requirements have made the private pilot certificate increasingly difficult and expensive to earn.

Overlooked in the revised training procedures are the simpler operations, in less complicated aviation environments, that comprise a large segment of aviation activity known as sport and recreational aviation. Aviation has become technologically more complex, but not for approximately 28,000 pilots who operate simple aircraft without communication equipment (General Aviation Activity and Avionics Survey: Annual Summary Report 1982 Data, p. 2–78). These pilots fly basic, experimental, or homebuilt aircraft. They fly within close proximity to a home airport without air traffic control facilities or radio communications capability. Neither the aircraft they operate nor the environment in which they fly warrant training in radio equipment or instrument navigation. Their range of operations is typically too limited to benefit from the current private pilot training requirements. Thus, the proposed new recreational pilot certificate would allow less expensive and more basic training designed to benefit the recreational pilot. Specifically, the recreational pilot would not be required to train in radio communications and instrument flying. Under the proposed rule, although pilots who are engaged in sport and recreational flying would have to demonstrate a level of competency consistent with operations within the national airspace system, they would not be burdened by the additional certification requirements of the private pilot who flies in a more complex environment.

Limitations

To maintain safety, the student recreational and recreational pilot would be limited to a basic aircraft and a simple operating environment. The limitations in proposed Subparts C and D reflect the operations of those pilots already flying simple aircraft for recreation. With these restrictions, training requirements could be reduced without reducing safety. The three principal restrictions on the student recreational and recreational pilot are as follows:

(1) *Aircraft restrictions*—The recreational pilot would be restricted to (a) a single engine airplane certificated for not more than four occupants with a power plant of 180 horsepower or less that has fixed landing gear; (b) a single engine helicopter for not more than four occupants with a power plant of 180 horsepower; and (c) a single place gyroplane. The proposed recreational pilot certificates do not include gliders, hot air balloons, and airships since pilot certification requirements for those aircraft are presently at a minimum acceptable level.

(2) *Geographic restrictions*—The student recreational pilot and recreational pilot would be limited to a 50-mile radius from the departure airport. Although this restriction would allow a recreational pilot to fly longer distances in 50-mile increments, the intent of the 50-mile radius restriction is to keep the pilot over familiar territory and near a familiar airport. Such proximity to a familiar airport would allow the pilot to return to the airport if he encounters unexpected bad weather and would minimize any need for navigational instruments.

(3) *Other operating restrictions*—The recreational pilot would have certain significant operating restrictions other than the 50-mile tether. Like the private pilot, a recreational pilot could not act as pilot in command for compensation or hire. Furthermore, because the recreational pilot certificate is intended to be used for sport and recreation only, a recreational pilot could not act as pilot in command of an aircraft engaged in any business. A recreational pilot could not, as may a private pilot, act as pilot in command of an aircraft to demonstrate the aircraft for the purpose of selling it to a prospective buyer, nor as pilot in command of an aircraft used in a passenger carrying airlift sponsored by a charitable organization and for

which the passenger has made a donation to the organization. An additional restriction which would minimize the need for navigational instruments is that the recreational pilot could not fly between sunset and sunrise or when flight or surface visibility is less than three statute miles. Also, the recreational pilot could not land at a landing area or airport with an operating control tower, nor could the pilot fly at an altitude of 10,000 feet MSL or 2,000 feet AGC whichever is higher. These restrictions are intended to minimize the pilot's interfering with faster moving, more technically equipped aircraft in the national airspace system. Finally, the recreational pilot would be restricted from flying any international flights.

Requirements

The limitations on the student recreational and the recreational pilot certificate would allow for somewhat reduced eligibility and training requirements in comparison to those required of private pilots:

(1) The proposed rule considers one of two options for the medical eligibility requirements: (1) a third-class medical certificate, or (2) a certification by the prospective recreational pilot that he/she has no known medical defect that would interfere with his/her ability to safely operate an aircraft. The brackets in §§ 61.83 and 61.103 of the proposed rule were inserted to show that only one of the two options would be chosen.

The FAA is still deliberating on the issue of requiring a third class medical certificate pending a review of medical data relating to self-certification and the outcome of a FAA rulemaking action that would extend the duration of third-class airmen medical certificates for student or private pilots (47 FR 54414, December 2, 1982). The medical certificate proposal would require periodic third-class medical examinations at intervals based on the age of the airman. It would relax the medical requirement for many private or student pilots who currently undergo a medical examination every 24 months. Depending on the outcome of that proposed rulemaking and data review, the FAA may decide to require a third-class medical certificate for student recreational and recreational pilots. The FAA solicits comments and supporting documentation on the third class medical certificate requirement, including the degree to which it is a burden and alternative ways to assess an individual's medical fitness, such as using a drivers license which shows the status of the applicant's vision, or a family physician's testament to basic health.

(2) Under the proposed rule, training requirements for recreational pilots do not include learning to fly at night or with instruments. However, for basic operational experience, a certain number of flights would be required of both recreational and private pilots. The following table compares the number of flights that would be required for recreational and private pilot certificates,

	Recreational (airplane, helicopter, gyroplane)	Private	
		Airplane, helicopter	Gyroplane
Flight instruction	10	[1] 15	[1] 10
Cross country	2	2	2
Following solo cross country in preparation for flight test	3	3	3
As sole occupant	10	10	10
Solo cross country	3	4	4

[1] Includes 3 night flights.

During these flights certain maneuvers and procedures would have to be performed. The required flights would assure that a pilot receives a definite amount of operational experience prior to certification. However, proficiency for recreational and private pilots would continue to be the criterion for certification.

Training and Testing to a Standard

A primary objective of this rulemaking is to state the concept of training and testing to a standard as clearly as possible and to emphasize in the proposed rule that the overriding consideration for all pilot certification is proficiency. The "training and testing to a standard" concept would replace the "total operational training concept" that was implemented in the 1973 revision to Part 61. (37 FR 6012 March 23, 1972 and 38 FR 3156 February 1, 1973.) The total operational concept made flight instructors completely responsible for training student pilots to a proficiency standard. The instructor was to assume full responsibility for all phases of the required ground and flight training, for solo and cross country flights, and for the ability of a pilot he or she has instructed to pass the required written flight tests. In accordance with this training concept, specific maneuvers and procedures in the rules were replaced with broader categories of "pilot operations," such as preflight operations and airport and traffic pattern operations. Present § 61.107(a) lists ten separate pilot operations.

To determine that the applicant is competent in each of the ten separate pilot operations, the 1973 revision also requires the applicant to pass a practical test on only those maneuvers and procedures selected by the FAA inspector or designated examiner giving the test (§ 61.103(e)). Particular procedures and maneuvers that might be selected by the examiner are listed in an advisory circular, and the standards for the performance of these procedures and maneuvers are published in appropriate flight test guides.

As stated in current § 61.107(a) (flight proficiency rules for a private pilot), an applicant must log instruction from an authorized flight instructor in specified pilot operations and his logbook must contain "an endorsement by an authorized flight instructor who has found him *competent to perform each of these operations safely* as a private pilot." (Emphasis added.) The flight instructor has thus been required to select from the advisory circulars and the flight test guides those maneuvers and procedures in which he believes the student must be instructed in order to competently perform the specified pilot operations.

The weakness in operational skills cited in the NAFI petition, such as takeoff and landing directional control, go-around procedures, and others, which have been factors in student and private pilot accidents seemed to indicate that instructors should provide training in specific required maneuvers and procedures and that the student should be required to demonstrate proficiency to a specific performance level for each maneuver and procedure. Thus, the proposed revision would eliminate references to pilot operations and add or clarify existing references to training and testing to a performance standard for specific maneuvers and procedures. A student would be required to receive experience through a combination of flight instruction and solo flights in which maneuvers and procedures, as specified by regulation, would be demonstrated and practiced until a level of competency has been achieved. Under the proposed rule, proficiency requirements that parallel current § 61.107 would read: "The student must have received and logged instruction in at least the following maneuvers and procedures and must have demonstrated proficiency to an acceptable performance level as judged by the instructor who endorses the student pilot certificate." The appropriate maneuvers and procedures would be stated in the rule.

Also, current § 61.103(e), eligibility requirements, would be changed. This section states that an applicant for a private pilot certificate must "pass an oral and flight test on procedures and maneuvers selected by an FAA inspector or examiner to determine the applicant's competency *in the flight operations on which instruction is required by the flight proficiency provisions of § 61.107.*"

Under the proposed rule, appropriate eligibility sections (§§ 61.103 and 61.127) would read that an applicant must "pass an oral and flight examination on maneuvers and procedures selected by an FAA inspector or designated pilot examiner to determine the applicant's competency on the maneuvers and procedures of §§ 61.103(d) and 61.127(e).

FAA inspectors and designated pilot examiners will be required to conduct examinations as outlined in the *Practical Test Standards*. The *Practical Test Standards* describes categories of pilot operations and tasks (maneuvers and procedures) that a pilot must be able to perform competently for certification. For each task the *Practical Test Standards* lists objectives in competent performance of the task. For example, under "normal takeoffs and climbs," the applicant must be able to explain elements in a normal takeoff, align the airplane on the runway centerline, advance the throttle smoothly to maximum allowable power, etc. Thus, the *Practical Test Standards* offers exact performance standards for each task.

Flight Requirements

In an effort to further emphasize the training and testing to a standard concept, the proposed rule would eliminate the current flight hour training requirements and would add flight number training requirements which would be linked to instruction in specific maneuvers and procedures. The current § 61.109 (Aeronautical experience) requires an applicant for a private pilot certificate with an airplane rating to have at least a total of 40 hours of flight instruction and solo flight time. The 40 hours must include 20 hours of flight instruction from an authorized flight instructor including: (1) 3 hours of cross country; (2) 3 hours at night; and (3) 3 hours in airplanes in preparation for the private pilot test; and 20 hours of solo flight time: including (1) 10 hours in airplane; (2) 10 hours cross country; and (3) 3 takeoffs and landings at an airport with an operating control tower.

The intent of the flight hour requirements is to assure that an applicant has at least a minimum amount of aeronautical experience prior to testing for certification. However, several problems exist with the flight hour concept. For one, a flight hour if not linked to specific flight maneuvers and procedures does not assure a minimum number of airborne operations, since a single flight hour is a calculation of airborne time and ground time. A flight hour requirement does not assure a minimum amount of aeronautical experience.

A second problem with the 40-hour flight time requirement is that it is not a realistic, useful minimum. At least it is not at all an accurate indication of the number of flight hours typically necessary for the student pilot to gain proficiency. Private pilot applications filed under Part 61 during 1983 and the first half of 1984 show that applicants averaged more than the minimum flight hours. Typically the applicant averaged 71.4 flight hours of which 42.1 hours were flight instruction and 29.3 hours were solo flight. During the same period, the lowest number of total flight hours recorded was 41.6 while the highest number was 168.9. Although it can be argued that less than 40 hours of training will not likely result in proficiency, such a minimum can mislead applicants into the presumption that if they log the minimum hours or slightly more than the minimum they will automatically be proficient. Actually a minimum flight hour requirement gives no indication of proficiency and little indication as to acquired aeronautical experience.

Therefore, the FAA proposes to eliminate the flight hour requirement and has proposed a required number of flights that would be linked with specific maneuvers and procedures. For example, under proposed § 61.131 (operational experience), an applicant for a private pilot certificate with an airplane rating would have to log 15 flights of instruction during which the maneuvers and procedures listed in § 61.117(c)(1) and (2) would be performed. "Flights" as used in the proposed regulation means the operation of an aircraft during which a departure and a landing take place. The listed procedures and maneuvers in this instance include takeoffs including normal and crosswind; level flight, including shallow, medium and steep banked turns; stall entries from various flight altitudes; etc. In this way, an applicant would be assured of a minimum amount of aeronautical experience during flight instruction. However, it should be emphasized that the level of proficiency in performing maneuvers and procedures will remain the criterion for certification.

The FAA recognizes that the proposed flight requirements could be completed with very short flights. However, that is not the intent of the proposal nor would short flights allow for the performance of the required maneuvers and procedures. The FAA envisions that the required flights would be performed on enough different days to allow the individual to experience different weather conditions and different personal, physical, and psychological conditions. It is envisioned that each take-off and landing would require a unique combination of decisions. If the required flights were too short to perform the necessary maneuvers and procedures, additional flights would be needed for the student pilot to reach a level of proficiency worthy of an instructor's endorsement.

The FAA also recognizes that by eliminating the flight hour requirement, recreational pilots in particular may achieve certification in less than 40 hours. This result of the proposal is desirable since it would reduce the regulatory and economic burden on recreational pilots but in no way undermine proficiency standards which would be maintained by the training and testing to a standard concept.

The FAA is still considering the effectiveness of the flights requirement and would appreciate comments on this issue. Some alternatives to the proposed requirements that are being considering are—

(1) A rule that would require only training and testing to a standard, i.e. only proficiency in the appropriate maneuvers and procedures without either flight hour or flight number requirements;

(2) A rule like the current rule with training and testing to a standard and minimum flight hour requirements but without minimum flight number requirements;

(3) A rule with training and testing to a standard plus both minimum flight hour requirements and minimum flight number requirements.

Safeguards in Training and Testing to Standards

The same safeguards against instructor abuses that exist under the current rules would continue under the proposed training and testing to a standard requirements. The first safeguard is that students would continue to have the right to request a free FAA evaluation to determine their level of competency. The FAA evaluation could and should be requested if an individual felt he/she has either received too little or too much instruction.

The second safeguard is the examination itself. Most individuals who are wary of the training and testing to a standard concept fear that fly-by-night instructors would rush people through the training without adequate instruction. However, the test for pilot proficiency, on which certification is based, ensures that this would not happen. The final examination would also serve as a mechanism to review flight instructor competency.

Furthermore, effective September 1, 1985, two changes will occur in the pilot certification testing process which will improve the procedures for training and testing to a standard. First, the Aviation Standards National Field Office of the FAA has developed a practical test book as a standard for FAA inspectors and designated pilot examiners when conducting airman practical tests (oral and flight tests). These standards will supersede the advisory circular flight test guides. They will also be used by flight instructors who will be responsible for training students to the acceptable standards outlined in the objective of each TASK within the appropriate practical test standard.

Second, under the current certification process, the test given to each student pilot consists of a sampling of maneuvers and procedures as outlined in the appropriate practical test guide. The student must be prepared to perform all maneuvers and procedures required for a practicular certificate, but he/she may not be tested on all of them. The new certification process will require a test in which the student pilot must peform all of the required maneuvers and procedures indicated in the *Practical Test Standards.*

The establishment of the *Practical Test Standards* will clearly state the standards for which a pilot must be responsible and on which he/she will be tested. The new testing process will eliminate the possibility of a sampling error, that is a pilot will be tested on all of his/her skills. The combination of the two changes will insure a greater standardization in instruction and examination and a more thorough evaluation of pilot proficiency.

Biennial Review, Proposed Annual Flight Review and Recurrent Training

According to current § 61.57, all pilots must successfully accomplish a biennial flight review and have their logbook endorsed accordingly by the person who gave the review. A flight review consists of: (1) A review of the current general operating and flight rules of Part 91; and (2) A review of those maneuvers and procedures which the review instructor decides are necessary.

The proposed rule would add three new requirements: (1) An annual 2-hour training requirment for recreational and private pilots; (2) an annual flight review requirement for pilots with less than 400 hours of flight time; and (3) recency instruction requirements for pilots with less than 400 hours of flight time who have not flown as a pilot in command within 180 days.

The basis for the proposed annual training requirement was a recommendation from the Safety Panel to require 2 hours of instruction annually for all pilots. The Safety Panel cited studies and accident statistics to support the conclusion that a strong positive relationship exists between recurrent pilot training and reduced accident risk. While the Safety Panel recommended the annual training for all pilots, this proposal would require it only for recreational and private pilots. The public is invited to comment on the need for the broader applicability. In addition the NAFI petition proposed annual review requirements for pilots with less than 400 hours of flight time because private pilot accident statistics show an inordinate number of accidents for pilots in this category. The NAFI petition also recommended that a pilot with less than 400 hours who has not flown an aircraft as pilot in command within the preceding 180 days must have flight instruction and a logbook endorsement before he/she would be competent to pilot the aircraft.

Therefore, the proposed rule would require the following:

• *A proposed annual flight review rule* for all recreational and non-instrutment rated private pilots with less than 400 flight hours (See proposed § 61.50). The review would consist of the same procedures covered under the current biennial review. The FAA believes that requiring an annual, rather than a biennial review for this group, would provide increased assurance of the compentency of the relatively inexperienced pilot. Instrument rated private pilots would not be included in this requirement because they have been tested and found competent in an operational environment that is more difficult than that of non-instrument rated pilots.

• *An annual 2-hour training requirement* added to all recreational and private pilots (See proposed § 61.56). The instruction would consist of 1 hour of ground instruction and 1 hour of flight instruction from an appropriately rated instructor. The training would be based on proficiency standards, but the pilot's competency would not be rated. In other words, a pilot could not fail an annual training requirment. The instructor would endorse the pilot's logbook upon satisfactory accomplishment of the instruction. Pilots wishing to convert this training into the FAA's pilot proficiency wings program, a voluntary program of safety seminars, would be encouraged to do so.

• *A recency requirement for instruction* for all recreational and private pilots with less than 400 flight hours who have not flown as pilot in command within 180 days. In order to act as pilot in command, such pilots would have to receive a flight review from an authorized instructor who would have to certify in the pilot logbook that the pilot is competent to pilot the aircraft for which he/she has been rated. (See proposed §§ 61.109(d) and 61.135(c).)

To prevent duplication of instruction and review requirements, all of these review and instruction programs could be combined at the discretion of the instructor. For example, if during the recreational or private pilot's annual 2-hour training, the flight instructor determines that the biennial or proposed annual flight review requirements have also been satisfied, the instructor could so endorse the pilot's logbook. Likewise, if the instructor conducting the proposed annual flight review determines that the recency requirements for instruction for pilots who have not flown as pilot in command within 180 days have also been met, the instructor could so endorse the pilot's logbook. Thus, review and instruction could be conducted simultaneously, and several requirements could be met at once at the discretion of the flight instructor.

The Use of Simulators in Training

The FAA acknowledges the use of flight simulation as a modern method of training and evaluating pilots. The use of a simulator or training device has been provided for throughout this proposal in meeting the proposed training and proficiency requirements, but hours spent using a simulator or training device would not fulfill flight requirements. The method of granting approval of these devices would be accomplished through the publication of guidelines established by the joint efforts of the FAA and industry. As an interim measure, the FAA would use subjective standards based on practice and policies currently in effect.

Section by Section Discussion

The following discussion of specific changes in the rule covers only those changes not discussed at length in the previous section. Throughout the proposed rule all pronouns have been changed to include both genders.

The format of proposed new §§ 61.87 and 61.89, and the proposed revision in §§ 61.117, 61.119 and 61.129 would be structured so that the common requirements for all aircraft would be listed first, followed by the requirements unique to the category and class of aircraft. This is in contrast to the format of the current rule which lists the requirements for each category and class of aircraft separately.

While this document proposes to redesignate existing subparts in Part 61 and to establish new Subparts C and D to accommodate the student recreational and recreational pilot certificates, the FAA may decide in a final rule to organize Part 61 differently. For example, it may be less confusing for persons familiar with Part 61 if the new provisions were added in a way that did not involve the redisignation of more than 50% of the present sections.

Section 61.50 Flight review.

Proposed § 61.50 included the biennial flight review in current § 61.57 and the added requirement of an annual review for recreational and private pilots (without instrument ratings). The word "calendar" has been inserted between "24" and "month" to establish more uniform expiration dates.

Section 61.57 Recent flight experience: pilot in command.

Proposed § 61.57 is substantatively the same as present § 61.57 except for the biennial flight review requirements which would be moved to § 61.50.

Subpart C—Student Recreational Pilots

Subpart D—Recreational Pilots

Proposed §§ 61.81 through 61.109 contain two new certificates: student recreational pilot and recreational pilot. The following section by section discussion highlights some of the differences between the proposed recreational and private pilot certificates.

Sections 61.83 and 61.103 Eligibility requirements.

In §§ 61.83 and 61.103 student recreational and recreational pilot applicants would not be required to read, speak, and understand the English language. Since these pilots, unlike private pilots, would not be trained in radio communication, command of the English language is not considered a necessary eligibility requirement.

Section 61.87 Requirements for solo flight.

In § 61.87, as recommended by the NAFI committee, the student recreational pilot would be required to demonstrate aeronautical knowledge by satisfactorily completing a written examination that would be administered and graded by the flight instructor who is to endorse the student's pilot certificate for solo flight. This examination would help to assure that he/she has a basic knowledge of the flight rules and operating parameters of the aircraft. An advisory circular would be developed and published to provide guidance to flight instructors in the development and administration of the presolo written test which should be comprehensive enough to test basic knowledge as required by this proposal. The instructor would be required to retain a record of the date and results of this test under the record retention requirements of this part.

Section 61.87 would also allow the use of simulators and training devices for presolo flight instruction. Such instruction, however, could not be applied to the flight requirements for a recreational pilot certificate (§ 61.107).

All of the proposed maneuvers and procedures required for student recreational and recreational pilots would also be private pilot requirements; the private pilot requirements would simply add more maneuvers and procedures to those required for the recreational pilot certificate.

Section 61.89 Cross-country flight requirements.

The proposed language emphasizes the procurement and analysis of aeronautical weather reports and forecasts because weather difficulties continue to be one of the major causes of general aviation accidents.

Section 61.103 Eligibility requirements.

Consistent with the present and proposed requirements for a private pilot certificate, proposed § 61.103 would require a written examination on the subject areas in § 61.105 as a prerequisite to obtaining a recreational pilot certificate. The examination referred to in §§ 61.103(c) and 61.105 would be the same examination.

Section 61.105 Aeronautical knowledge.

Proposed § 61.105 includes the use of the Airman's Information Manual and "weight and balance computations" as part of the aeronautical knowledge the individual must demonstrate. This demonstration through a written examination would provide a more complete evaluation of the overall abilities of the applicant and would be consistent with the privileges and limitations of the certificate holder.

Section 61.107 Operational experience.

Proposed § 61.107 contains the minimum flight requirements for recreational pilots. It references the appropriate manuevers and procedures in §§ 61.87 and 61.89 that would have to be "performed at least once" during the course of the required flights.

Section 61.109 Recreational pilot privileges and limitations.

Section 61.109(e) would require a notation on the recreational pilot's certificate stating that the certificate "holder does not meet ICAO requirements." ICAO requirements parallel present private pilot requirements which include additional training and eligibility requirements that recreational pilots would not satisfy. Recreational pilots would not be allowed to fly internationally; and they would not have to meet ICAO standards in order to fly within the United States.

Subpart E—Student Private Pilot

Proposed §§ 61.111 through 61.123 contain revised student private pilot regulations. These sections would replace current §§ 61.81 through 61.93.

Section 61.117 Requirements for solo flights.

Proposed § 61.117 is essentially the same as current § 61.87. In proposed § 61.117, as in proposed § 61.87 for student recreational pilots, the student private pilot would be required to demonstrate aeronautical knowledge by satisfactorily completing a written examination that would be administered and graded by the flight instructor who is to endorse the student pilot certificate for solo flight. As in the case of recreational pilots, and advisory circular for guidance would be developed and the instructor would have to retain a record of the test results and the date.

Section 61.117(c) would also allow the use of simulators and training devices for presolo flight instruction. Such instruction, however, could not be applied to the flight requirements for a private pilot certificate (§ 61.131).

Section 61.117 (c)(4) has been revised to clarify the maneuvers and procedures for gyroplanes.

A statement is added to paragraph (d) of that section to make it clear that only the flight instructor who has flown with the student may endorse the logbook and student private pilot certificate.

Under § 61.117, a student would have to demonstrate proficiency "to an acceptable performance level" to be endorsed for solo flight. Criteria for measuring what is an "acceptable performance level" may be developed individually, by the instructor, or commercially. Any individual or aviation group wishing to submit a sample performance criteria program for FAA review is encouraged to do so as part of the comments submitted on this proposal. Such a performance criteria package should be comprehensive enough to show an instructor how to develop standards that:

(1) Are measurable;

(2) Can be used to determine when the training objective has been completed; and

(3) Will ensure an acceptable level of safety when the aircraft is being operated by a student pilot.

Section 61.119 Cross-country flight requirements.

Proposed § 61.119 has been revised from the language found in current § 61.93 in order to clarify the requirements and simplyfy the language and format. The language describing maneuvers and procedures has been revised to provide increased guidance and emphasis on those skills in which inadequate knowledge has been identified as a cause of many private pilot accidents.

Section 61.123 Airship limitations: pilot in command.

Proposed § 61.123 would be revised from current § 61.91 only to make necessary language and internal reference changes, and to change the heading to read "Airship limitations" instead of "Aircraft limitations."

Subpart F—Private Pilots

Proposed §§ 61.125 through 61.139 contain revised private pilot regulations. These sections would replace current §§ 61.101 through 61.120.

Section 651.127 Eligibility requirements.

Proposed § 61.127 is essentially the same as current § 61.103. However, paragraph (e) would be changed to cite the requirements of the *Private Pilot Practical Test Standards.*

Section 61.129 Aeronautical knowledge.

Four subject areas have been added to the aeronautical knowledge requirements for a private pilot: elementary principles of aerodynamics, use of the airman's information manual, wake turbulence precautions, and weight and balance computations. These areas are presently covered in the written examination and are contained in the proposal to highlight their importance. The requirement for a written examination, presently found in current § 61.103(d) and in proposed § 61.127(d), would be referenced in proposed § 61.129.

The language proposed in paragraph (b) for gliders has been modified to reflect recent advancements achieved in the launch mechanism for certain types of gliders. The traditional methods of becoming airborne in a glider has changed throughout the world with the recent installation of small engines. This gives the basic glider a self launch capability, a greater amount of duration aloft and extends the flight. These devices permit the pilot to rely more on mechanical means to remain airborn rather than on natural air currents or effects of local meteorological conditions. Gliders equipped with these devices are commonly known as motor-gliders and the FAA would like to receive comments from users of these aircraft on whether the increased range of these gliders creates a need for increased pilot knowledge on meteorology effects, navigation techniques, fuel management, or other instructional areas.

Section 61.131 Operational experience.

The title of this proposed section would be changed from aeronautical experience to operational experience to provide a better description of the primary objective to be gained.

The current night flight requirement would be retained in the form of three night flights during which 10 takeoffs and landings are performed.

The proposed rule would eliminate the requirement in current § 61.109(b)(2) of certain minimum distances for cross-country flight and replace it with cross-country flights containing four legs and requiring landings at three or more airports/landing areas in addition to the departure/arrival airport landing area. The present distance requirements do not add to the cross-country flight experience as a method of acquiring experience. The critical learning elements involved in the cross-country flights are primarily experienced during the planning stages of the cross-country flight and during takeoffs and landings at unfamiliar airports.

Section 61.135 Private pilot privileges and limitations: Pilot in command.

Proposed paragraph (a) from the NAFI petition, has been added to require that a private pilot must receive flight instruction and a log book endorsement prior to acting as pilot in command of an airplane that has a powerplant of more than 200 horsepower, or one with retractable gear or controllable pitch propeller. A review of recent airplane accident data revealed that private pilots involved in an incident or accident in an aircraft with more complex systems usually did not have recent experience with an instructor in that specific make and model of aircraft. An instructor checkout is the minimal requirement to ensure a good operating practice and has been credited with lowering the insurance rates of those who receive such a checkout.

Proposed paragraph (b) would require private pilots to be current for day and/or night flight when carrying passengers. The techniques involved in operating an aircraft through the most critical phases of flight are all accumulated in take-off, traffic pattern, and landing. The recency requirement for three take-offs and landings during the day and/or night would help ensure the safety of these operations while carrying passengers.

Section 61.135(d) of this proposal is aimed at improving the safety of operations for non-instrument rated private pilots with less than 400 hours experience by restricting them from flying in marginal VFR conditions. Pilots often become lost or disoriented because of a lack of visual cues for the area in which the flight is conducted. Pilots with less than 400 hours flight time are less likely to have developed aviation maturity and are in need of greater regulatory control than is available through voluntary programs.

Paragraph (e) would require a notation on a private pilot certificate stating that the certificate "holder does not meet ICAO requirements" if the private pilot has not logged 40 hours of flight time. Although the FAA believes this would be an unlikely eventuality, it would be possible under this proposal, and ICAO standards Annex I require at least 40 hours of flight time. This requirement would not apply to individuals certified under Part 141 since the present 35 hour minimum would be retained.

In paragraphs (i) and (j), the flight hour requirement would be changed to 400 hours in keeping with the analysis of accident data mentioned in the previous discussion of paragraph (c) in this section.

The remaining paragraphs have been taken from existing Part 61. Your comments and rationales for recommended changes, including recommended language for the change, are solicited.

Regulatory Evaluation

I. Analysis of Proposals with Economic Impact

Note:—Sections A and B below analyze proposals for an annual recurrent training program and an annual flight review program, respectively. FAA expects that those pilots affected by both proposals will meet the requirements of each simultaneously and therefore incur the compliance costs only once. Similar assumptions have been made in the analyses for the current biennial flight review requirement. Each proposal has a slightly different focus, and therefore has been analyzed separately.

A. Proposed FAR 61.56—Establishment of a Training Program Requirement for Pilots in Command

The FAA proposes to require that no recreational or private pilot may act as pilot in command of an aircraft for which he/she is rated unless within the preceding 12 calendar months that person has completed a training program consisting of at least one hour of ground instruction and one hour of flight instruction from an appropriately rated instructor.

1. *Overview of Analysis.* The benefits expected to result from this proposal are the avoided casualty costs associated with accidents prevented because of the recurrent training pilots will be required to receive. The costs of the proposal primarily involve the variable operating costs of the additional aircraft operations and the labor cost of the flight instructors' time which will be required for pilots to comply with the training requirement. A break-even approach has been used to compare the relative benefits and costs of the proposal. An accident rate reduction achieved by the middle of the eight-year period following adoption of the proposal has been estimated and assumed to approximate the average reduction for the entire period. The estimated percentage reduction in accident rates necessary for costs and benefits to break even at the mid-point of the period has been assumed to be approximately constant throughout the period because both costs and benefits vary together in proportion ot activity level.

Because this proposal is a new initiative, and precise measurements are not available of the results of previous efforts to improve and maintain pilot proficiency, the analysis of this proposal will attempt to determine only approximately the degree of safety improvement necessary to justify the proposal. The analysis will assess whether or not the required reduction in accident rates is of an order of magnitude that is generally comparable with safety improvement trends following previous FAA actions.[1]

2. *Benefits.* The expected benefits of the proposal are the avoided casualty costs of accidents prevented as a result of the recurrent training pilots will be required to receive. To estimate these benefits it is first necessary to develop an estimate of the average casualty costs associated with a fatal accident.

In a general aviation accident study completed for the FAA by Walton Graham of Questek, Inc., accident records were examined of single engine aircraft engaged in normal operations in daytime visual meteorological conditions during the 1972–77 period. The analysis revealed that there were, on average, 2.0 fatalities for every fatal accident, 2.05 serious injuries resulting from both serious injury and fatal accidents for every fatal accident, as well as 2.3 aircraft destroyed and 14.3 aircraft substantially damaged in all types of accidents for every instance of a fatal accident.

The values used to estimate the costs associated with these casualties are the standard values prescribed in the FAA's *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs* (Report Number FAA–APO–81–3). Applying these standard values to the average ratio of casualties resulting from all accidents per occurrence of a fatal accident yields an average cost per fatal accident of approximately $1.67 million (1984 dollars). However, because the flying activity which will be affected by the proposal also includes some operations of relatively more expensive multi-engine general aviation aircraft, capable of carrying more passengers, FAA has, for the purposes of this analysis, assumed an average total cost of $2.0 million from all accidents per occurrence of a fatal accident. This value has been used to estimate the benefits associated with accidents prevented, and will be discussed further in the comparison of benefits and costs.

3. *Costs.* The break-even analysis is based upon a comparison of the reduction in accidents which would need to be achieved by the middle of the eight-year period following implementation of the proposal to justify its adoption, and the average accident rate observed during the eight year period following the adoption of the biennial flight review requirement in 1973. The assumption is that the trend in the reduction of accident rates following adoption of the new proposal will be somewhat linear, and therefore an accident rate measured during the middle of the period would approximate the average rate for the entire period. The trend in accident rates after adoption of the biennial flight review requirement followed a similar pattern. Estimates have been developed of the cost of compliance by the pilots subject to the rule during 1990, the mid-year of the 1986–1993 period following anticipated adoption of the proposal. The private pilot population estimate for 1990 presented in the 1984 edition of *FAA Aviation Forecasts* is 376,500 pilots.

The cost for each pilot to comply with the requirement includes the costs associated with one hour of flight training and one hour of ground instruction. The instructor's fee has been assumed to be $15 per hour, or $30 total. The average aircraft variable operating cost has been estimated by calulating the weighted average of the standard variable operating costs presented in *Economic Values* for single engine and light twin aircraft, after adjusting for inflation in accordance with the methods prescribed by that publication. The average variable operating cost determined in this manner is $49 per hour, and when added to the instructor's fee, the average total cost for each pilot to comply with the recurrent training requirement is $79. The total cost of all private pilots complying with this requirement in 1990 would be $29.74 million. However, because this requirement is expected to be met simultaneously with the existing biennial flight review requirement by half of the private pilot population in any given year, the actual compliance cost in 1990 is expected to be half of the above estimate, or $14.87 million.

4. *Comparison of Benefits and Costs.* Using the total cost figure of $2.0 million per occurence of a fatal accident, 7.4 fatal accidents would have to be prevented for the benefits of casualties avoided to equal the $14.87 million compliance costs forecast for the mid-year of the eight-year period following expected implementation. To express the absolute number of fatal accidents which must be prevented as a percentage reduction, an estimate must be made of the number of accidents which could be expected if the proposal were not to be implemented. General aviation accident statistics for the 1972–

[1] Recreational pilots have been excluded from the present analysis because the recreational pilot proposal will create an entirely new type of activity and therefore will be treated separately. The present analysis concerns the effect of the recurrent training requirement on existing operations only.

1981 period are presented in the *FAA Statistical Handbook of Aviation.*[2] The average fatal accident rate for general aviation operation (excluding air taxi and commuter operations) between 1974 and 1981, the eight-year period following implementation of the biennial flight review requirement, was 2.02 fatal accidents per 100,000 hours flown. Applying this accident rate to expected general aviation activity in 1990 will provide an estimate of the accidents which could be expected to occur without the recurrent training requirement. *The FAA Statistical Handbook* indicated that 36.3 million hours were flown in 1981 for those operations included in the accident rate measurement. *FAA Aviation Forecasts* estimates that general aviation activity will increase by 21.0 percent between 1981 and 1990.[3] Taken together, these factors yield an estimated general aviation activity level of 43.9 million hours in 1990. Applying the rate of 2.02 fatal accidents per 100,000 hours flown to the 43.9 million hours forecast for 1990 yields an estimated 887 fatal accidents in that year at the average accident rate which existed during the period following implementation of the biennial flight review.

The 7.4 fatal accidents which would have to be prevented for benefits to equal costs would be less than a one percent reduction in the 887 fatal accidents expected at the previous accident rate. Based upon the assumption that the accident rate in the middle of the period approximates the average accident rate for the entire eight-year period, the costs and benefits of the proposal will be equal if less than a one percent average reduction in private pilot accident rates is achieved following implementation of the recurrent training requirements.

The accident rate data found in the *FAA Statistical Handbook* indicates that the average general aviation accident rate during the 1974–1981 period following implementation of the biennial flight review was 22 percent lower than the accident rate which existed at the beginning of the period. Although this reduction reflects other safety initiatives in addition to the biennial flight review, such as the Pilot Proficiency Program, and includes the general aviation activity of all pilots, not just private pilots, attainment of less than a one percent reduction in the average private pilot accident rate necessary for the recurrent training requirement proposal to break even on a cost-benefit basis appears to be a reasonable expectation.

B. Proposed Amendment to FAR 61.57—Recent Flight Experience: Pilot in Command

Private and recreational pilots with less than 400 flight-hours (except private pilots holding an instrument rating) will be required to accomplish a flight review annually instead of biennially as now required for all pilots in command.

The FAA proposes to require that private and recreational pilots with less than 400 flight hours (except private pilots holding an instrument rating) accomplish a flight review annually instead of biennially as now required for all pilots in command.

1. *Overview of Analysis.* The analysis of this proposal is similar in principle to the previous analysis of the recurrent training requirement of proposed FAR 61.56. An estimate has been made of the reduction in accidents necessary for the benefits resulting from avoided casualties to equal the costs for pilots to comply with the requirement. An assessment has then been made of the feasibility of achieving the required reduction in accident rates in light of improvements in safety observed following previous FAA actions.

2. Benefits. The benefits associated with avoided casualty costs resulting from accidents prevented because of the annual flight review requirement have been estimated using the same method discussed in the evaluation of proposed FAR 61.56. However, because noninstrument-rated private pilots with less than 400 hours of flight time do not conduct a significant portion of multi-engine operations, the $1.67 million in total casualty costs resulting from all accidents per occurrence of a fatal accident, estimated previously for single-engine operations, has been used without adjustment.

3. *Costs.* The break-even analysis is based upon a comparison of the reduction in accidents which would need to be achieved by the middle of the eight-year period following implementation of the proposal to justify its adoption, and the average accident rate observed for the eight year period beginning in 1972, most of which followed the adoption of the biennial flight review requirement in 1973. Again, the assumption has been made that the trend in the reduction of accident rates following adoption of the new proposal will be somewhat linear, and therefore an accident rate measured during the middle of the period will approximate the average rate for the entire period.

An estimate has been developed of the cost of compliance incurred by the private pilots subject to the rule during 1990, the mid-year of the 1986–1993 period following anticipated adoption of the proposal.[4] In developing this estimate, the private pilot population of 376,500 forecast in *FAA Aviation Forecasts* for 1990 was reduced by 12 percent to account for instrument-rated private pilots who will not be subject to the proposal.[5] This value has then been halved because of the assumption that fifty percent of the non-instrument rated private pilots will have less than 400 hours of total flight time, resulting in an estimated population of 165,660 private pilots subject to the proposal. This latter assumption results from findings presented in the 1981 Questek *Study of General Aviation Safety-Part II.*[6] In that study, estimates were made of the distribution of pilots by total flying experience for various categories of operations. The research indicated that approximately fifty percent of noninstrument-rated pilots engaging in singel-engine operations during day-time visual meteorological conditions had 400 or fewer hours of total time. This group compares most closely with the pilots affected by the proposal, and therefore the fifty percent value has been adopted.

The FAA has assumed that completion of the flight review will require an average of one hour of dual flight instruction and one hour of ground instruction. A $15 per hour instructor's fee has again been used. However, the average aircraft variable operating cost used for this analysis has been estimated by calculating the weighted average of the FAA's standard values for single-engine aircraft only. Twin-engine aircraft have not been included because low time, noninstrument-rated private pilots do not conduct a significant portion of multi-engine operations. The average variable

[2] *FAA Statistical Handbook of Aviation—Calendar Year 1981.* FAA Office of Management Systems, December, 1981, Table 9.10.

[3] The absolute general aviation activity level estimated for 1990 in *FAA Aviation Forecasts* cannot be used for estimating accidents in that year because it includes air taxi operations. These operations were excluded from the accident rates presented in the Statistical Handbook. However, the growth indicated in *FAA Aviation Forecasts* can be applied to the activity base used in the accident rate computations to provide an estimate of the relevant activity base for computing accident levels in future years.

[4] For the reasons discussed in footnote 1, recreational pilots have not been included in the present evaluation.

[5] Pilot certification data presented in *U.S. Civil Airmen Statistics-1981,* Tables 11 and 12, indicate that in 1980, 11.0 percent of active private pilots held instrument ratings, and in 1981, 12.1 percent held them.

[6] Graham, W., "A Study of General Aviation Safety—Part I," February 7, 1980; and "A Study of General Aviation Safety—Part II," November 10, 1981; reports prepared for the Office of Aviation Policy and Plans, FAA.

operating cost determined in this manner is $37 per hour, and when added to the instructor's fee, the total cost for each pilot to comply with the annual flight review is $67. However, because in any given year half of the pilots subject to the proposal would be required to receive a biennial flight review, only one half of the pilot population has been used to estimate the total cost of compliance. The total cost for all affected pilots to comply with this requirement in 1990, with a 10 percent upward adjustment to provide for pilots who require more than one attempt to satisfactorily meet the flight review requirement, has been estimated to be $6.10 million.

4. *Comparison of Benefits and Costs.* Under the assumed total cost of $1.54 million resulting from all accidents per occurrence of a fatal accident, 4.0 fatal accidents would have to be prevented for the benefits of casualties avoided to equal the $6.10 million compliance cost forecast for the middle year of the eight-year period following expected implementation. To express the absolute number of fatal accidents which must be prevented as a percentage reduction, an estimate must be made of the number of accidents which could be expected if the proposal were not to be implemented.

In a general aviation accident study completed for the FAA by Questek, Inc., accident records for noninstrument-rated private pilots between 1964 and 1971 and between 1972 and 1979 were examined. The total exposure (hours flown) during each eight-year period for the subgroup of these pilots with less than 400 hours total time was also estimated.[7] The average accident rate for this subgroup of pilots dropped by 21 percent, from 2.36 fatal accidents to 1.86 fatal accidents per 100,000 hours flown, between the two time periods. This reduction in accident rates reflects implementation of the biennial flight review in 1973, which was in effect during most of the latter period.

The Questek study did not calculate accident rates in terms of hours flown for each individual year of the two time periods. However, during the 1972-79 period, this subgroup of pilots experienced an average of 103.2 fatal accidents per year. A conservative estimate of the expected increase in activity for these private pilots between the middle of the 1972–79 base period and the middle of the 1986–93 period following anticipated adoption of the proposal is 15 percent. This estimate is based upon the forecast 23 percent increase in the private pilot population between 1976 and 1990 presented in *FAA Aviation Forecasts.*[8] Application of this 15 percent increase in activity to the average of 103.2 fatal accidents per year experienced during the base period yields an estimated average of 118.7 fatal accidents per year during the 1986–93 period, at the average accident rate which existed during the base period. The 4.0 fatal accidents which would have to be prevented for the benefits of the proposal to equal the costs would be a 3.4 percent reduction in the average of 118.7 fatal accidents per year expected at the previous accident rate. Therefore, on the basis of the assumption that the accident rate in the middle of the period approximates the average accident rate for the entire eight-year period, the costs and benefits of the proposal will be equal if approximately a 3.4 percent average reduction in accident rates is achieved following implementation of the annual flight review requirement.

The accident record indicates that a 21 percent reduction in accident rates was achieved by noninstrument-rated private pilots following implementation of the biennial flight review requirement in 1973, even after allowance is made for the fact that during the first two years of the 1972–79 period examined in the Questek study the requirement had not yet gone into effect. In light of this improvement in safety following the biennial flight review requirement, attainment of the 3.4 percent reduction in the average accident rate which will be necessary for the annual flight review proposal to break even on a cost-benefit basis appears to be a reasonable expectation.

II. Discussion of Proposals and Request for Additional Information to Assess the Social Costs and Benefits Which May Result.

A. Proposed Subpart C—Student Recreational Pilot Certificate, and Proposed Subpart D—Recreational Pilot Certificate

1. *Benefit Issues.* The new certificate categories of student recreational pilot and recreational pilot will primarily provide the benefit of choice to persons interested in obtaining initial pilot certification. Recreational pilot applicants will have the option of obtaining a simpler pilot certificate, with the privileges of that certificate limited because of the areas of instruction which will be eliminated from the current private pilot curriculum (night flying, attitude instrument flight, radio navigation, and radio communications).

Some savings in basic training costs may be realized by recreational pilot candidates in comparison to private pilot condidates. However, the expenses of recreational pilots in pursuing flying as a continuing hobby will be no different than those of private pilots flying the same small general aviation aircraft for recreational purposes.

The *Training and Testing to a Standard* section of this preamble states that "recreational pilots in particular may achieve certification in less than 40 hours." The original NAFI petition estimated that it would require at least 40 hours for an average student to become a recreational pilot. However, the average recent private pilot applicant required 71.4 flight hours to obtain certification. The differences in the training requirements specified in this proposal for recreational and private pilots will not account for a reduction in flight training time of approximately 30 hours. Much of the time consuming part of initial flight training occurs in the development of basic flying skills (take offs, landings, stalls, etc.). Both recreational pilots and private pilots will be trained to the same standards in these areas, and therefore, no reduction in training costs will be realized from these areas of instruction.

An estimate of the reduction of training time and costs can be obtained based upon a comparison of the minimum number of flight experiences proposed for recreational and private pilots. Recreational pilot applicants will be required to have five fewer dual instruction flights in maneuvers and procedures, and one less solo cross-country flight. Using an average of 1.5 hours per dual instruction flight and 2.5 hours per cross-country flight yields an estimated reduction of approximately 10 hours of training time for recreational pilots. Applying typical training aircraft rental and instruction rates of $30 per hour solo and $45 per hour dual to these time differences yields a savings of approximately $338. This represents a 12.2 percent reduction in the average private pilot training costs of $2774, based upon the above hourly rates and an average of 42.1 hours of dual instruction and 29.3 hours of solo flight (totalling 71.4 hours) experienced by recent private pilot applicants.

Information provided in a previous rulemaking provides another estimate of the extent of savings in training time, and consequently training costs, which may be realized by recreational pilots. In 1960, Part 20 of the Civil Air Regulations, "Pilot and Instructor

[7] The methodology utilized to develop these exposure estimates is fully explained in the references cited in footnote 6.

[8] The 1976 private pilot population figure was obtained from the September, 1977 edition of *FAA Aviation Forecasts.*

Certificates," (predecessor of FAR Part 61) was amended to require private pilot candidates to receive instruction in the basic control of the airplane by reference to instruments, including a demonstration of emergency capability in attitude control simulating loss of visual references during flight operations, and to become familiar with the use of radio for communications and navigation in the cross-country requirements. The preamble to that amendment (Amendment 20–12) discussed research conducted in primary flight training at West Virginia University. That research demonstrated that students who learn to observe and use flight instruments from the beginning of their flight training are much more proficient in holding attitude, altitude, headings, and airspeeds in normal VFR flight, skills which recreational pilots will have to learn. The research also indicated that early instrument training develops a keener appreciation of the conditions which must be avoided to prevent involvement with IFR situations. Further, the research showed that flight training which included the early and integrated use of instruments throughout the course did not appreciably increase the total hours required for private pilot certification and consistently produced more competent applicants than those without benefit of such integrated instrument training.

The preamble to Amendment 20–12 also indicated that the average flight time required by the private pilot applicant without the requirement for instrument and radio training exceeded 60 hours. The *Training and Testing to a Standard* section of this preamble indicates that currently it takes approximately 71.4 hours for a student to earn a private pilot certificate. This suggests that the potential reduction in training time for recreational pilots will be more on the order of 10 hours than 30 hours. However, there have been other changes in training requirements for private pilots since the 1960 rulemaking and an exact comparison is not possible. Therefore, the 10 hour estimate of reduced training time should be regarded as an estimate of the minimum savings which may be realized.

Recreational pilots are not expected to realize any appreciable cost savings from flying as a continuing hobby in comparison to the costs they would incur as private pilots. Recreational pilots will be allowed to fly aircraft of up to four places and 180 horsepower. Such aircraft are typically used today in primary training, and by private pilots for recreational flying. Homebuilts may be flown by both categories of pilots as well. Therefore, no appreciable savings will be realized as a result of lower operating costs for recreational pilots in comparison to the current recreational flying of private pilots. The development of a basic aircraft category, which is currently under consideration by the FAA, may at some future time result in the availability of aircraft with slightly lower operating costs than the current generation of small general aviation aircraft. However, any operating costs savings could easily be offset by the relatively high capital costs of a new aircraft design developed for a small market.

For these reasons, the benefits of the recreational pilot category will essentially be limited to the nonquantifiable benefit of providing an alternative type of flying activity. The public would have this additional option to choose from in selecting recreational activities of all types, including becoming a private pilot. For those individuals who now must become private pilots but who would prefer the simpler recreational certificate if it were available, an average reduction in training costs of approximately 12 percent can be expected.

It is difficult to assess, at this time, how much interest exists for the recreational pilot category as proposed in this rulemaking notice. The original NAFI petition did not contemplate the 50 mile distance restriction on the recreational pilot. The addition of this restriction to the proposal will affect the desirability, and consequently the public benefit, of the new recreational pilot category. Therefore, the FAA requests that respondents comment on the effect of the 50 mile restriction on the benefits which will result from the recreational pilot category.

2. *Cost Issues.* The recreational pilot proposal is not expected to result in any appreciable implementation costs to the public or administrative costs to the FAA. The FAA anticipates that safety would be maintained by providing reduced privileges for recreational pilots consistent with their reduced training level. However, if this does not prove to be the case, the potential exists for higher accident rates which could result in significant social costs.

The recreational pilot category is not expected to result in any significant implementation costs because, to the extent the public responds to the new category, there will be a decrease in resources utilized in other recreational activities and an increase in resources used in recreational flying. The extent of recreational activity of all types is determined by the level of disposable income available to the public. Should some individuals choose to become recreational pilots instead of pursuing alternative recreational activities, there will be a shifting of the resources utilized, but no net costs.

Similarly, flight schools are not expected to incur any appreciable costs in developing a training curricula for recreational pilots because it will be the same as the existing curricula for private pilots, only with certain items deleted. Further, the decision of a flight school to offer a recreational pilot program is voluntary, and this decision will be based upon the belief that there is sufficient interest in the category to warrant offering a recreational pilot program. If the flight school does not believe it can recover the costs of offering a recreational program, or if it is located at a controlled field where recreational pilots will be prohibited, then it will not offer a program.

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. The FAA's Program Engineering and Maintenance Service has indicated that more than adequate excess capacity will be available in the automated Flight Service Station system to handle the weather briefings and flight plan filings of the limited number of recreational pilots, which are not expected to increase the system workload by more than 5 to 10 percent. The automated system is scheduled to become operational in 1986, about when student recreational and recreational pilots would begin using the system. Further, because recreational pilots would operate outside of the air traffic control 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 intent is that recreational pilots will be safe pilots in the types of flying for which they will be trained and authorized to conduct and, therefore, will not have higher accident rates than pilots trained to existing standards currently experience.

The 50 mile distance restriction is primarily intended to keep recreational pilots from accidental encounters with instrument meteorological conditions (IMC), which have historically accounted for a large proportion of accidents experienced by VFR pilots, even though exposure to those conditions is usually unintentional and therefore relatively limited. 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. Therefore, they will be unable to obtain updated weather information in flight, receive assistance from the ground when IMC is accidentally encountered, or maintain aircraft control by reference to flight instruments while executing 180° turn to fly out of deteriorating weather. Restricting recreational pilots to 50 miles from the departure airport is intended to avoid circumstances where weather related accidents may occur.

Because the distance restriction was not contemplated in the original petition, respondents who object to the 50 mile tether in their comments and contend that is will make the recreational pilot certificate undesirable are requested to discuss how safety can be maintained without the distance restriction. In the absence of the distance restriction, recreational pilots will primarily rely on a pre-flight weather briefing and their ability to recognize critical weather situations from the ground and in flight to protect themselves from accidental encounters with instrument meteorological conditions. However, a study of weather related incidents in general aviation collected by the Aviation Safety Reporting System, which is operated by the National Aeronautics and Space Administration, indicated that the lack of timely weather information, especially in deteriorating weather, and encounters with weather worse than that forecast were among the major problems experienced by general aviation pilots. The report emphasized that pilots need to better understand both the value and the limitations of weather dissemination systems.[9] Nevertheless, the existence of approximately 28,000 pilots who currently operate aircraft without communications equipment indicates that many pilots utilize good judgement and operate safely in spite of the limitations of their aircraft. The comments of these pilots with respect to the distance restriction and weather issue are especially encouraged. The effectiveness of a 50 mile restriction from the departure airport, which would allow a recreational pilot to fly much longer distances in 50 mile increments, in protecting recreational pilots from adverse weather should also be addressed.

Respondents are further requested to comment on the appropriateness of the other proposed restrictions which will be imposed on recreational pilots to provide safeguards against the areas where training will be reduced and other current standards lowered (e.g., elimination of the medical certificate requirement). Should there not be an accurate relationship between reduced areas of training and reduced privileges for recreational pilots, higher accident rates and significant social costs will inevitably result from the proposal.

B. Proposed 61.135(d), Amendment to Current 61.118—Private Pilot Privileges and Limitations: Pilot in Command

A private pilot who has logged less than 400 hours would not be permitted to act 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, except that a private pilot who holds an instrument rating and who is conducting a flight under an instrument flight plan need not comply with the rule.

The FAA expects this proposal to result in benefits to society because of the accidents which will be avoided.

However, the FAA is unable to determine from available information the extent to which existing general aviation operations will be impaired by the new regulation. The western part of the continential United States, as well as the state of Alaska, have extensive areas of uncontrolled airspace. Under the terms of the proposal, low-time private pliots operating in those areas would be required to comply with a minimum visibility standard which is equivalent to the current standard for controlled airspace during daylight hours, and which is two miles greater at night. Further, pilots operating in regions which have extensive areas of overlying controlled airspace rely upon the one mile visibility minimum standard applicable below 700 feet or 1200 feet above ground level in conjunction with transition areas to climb through poor surface visibility conditions such as fog or haze to better visibility conditions at higher altitudes. These operations would be impaired by the proposed regulation. Private pilots with less than 400 hours total experience would also be prohibited from operating under Special VFR under the terms of the proposed amendment.

FAA requests that respondents address these issues in their comments so that an estimate can be made of the costs which are associated with the proposal.

C. Proposed 61.119, Amendment to Current 61.93, Student Pilots—Crosscountry Flight Requirements; and Proposed 61.131(a), Private Pilots—Operational Experience for Airplanes, Amendment to Current 61.109, Private Pilots—Airplane Rating: Aeronautical Experience

All reference to minimum flight distance in the cross-country training of student pilots in airplanes and the operational experience requirements for private pilot-airplane rating applicants has been eliminated. Similar proposals have been made for rotorcraft.

The FAA anticipates that there may be some safety trade-off involved in the implementation of this proposal. Pilots may experience fewer accidents in the vicinity of destination airports, but experience an increase in en-route accidents. The Questek general aviation accident study indicated that for noninstrument-rated private pilots engaging in normal, single-engine piston operations, sixty percent of the accidents experienced by these pilots occurred during the en-route phases of flight, including climb to cruise, cruise, and descent from cruise to traffic pattern altitude.

FAA requests that respondents comment on the relevance of the distance aspect of cross-country training to safe cross-country operations, particularly with respect to its relative importance in comparison with greater training in operations at unfamiliar airports. This additional information will facilitate the estimation of the safety related costs and benefits which might result from the proposal.

III. Proposals Not Expected To Impose Any Economic Impact

Numerous proposals of this rulemaking are not expected to impose any significant economic impact because they generally reflect current practices and will therefore not impose any major changes in the activities which they address.

A. The proposed change in § 61.50(c)(1) (current § 61.57 (a) and (b)) requires that the biennial flight review must have been received "since the beginning of the 24th calendar month before the month in which he or she acts as pilot in command," as opposed to the preceding "24 months." This would allow the flight review to remain valid until the last day of the month, instead of the anniversary date, 24 months after the review has been successfully completed. This revision is editorial in

[9] See *A Study of ASRS Reports Involving General Aviation and Weather Encounters*, Battelle Columbus Laboratories, Report No. NASA CR 166212, June 26, 1981, pp. 24 and 49–52.

nature, and will standardize the language describing the period of validity of the biennial flight review with other language in the FAR's based upon "calendar months," such as the duration of medical certificates.

B. Proposed § 61.117(b) would require a pre-solo written exam for student pilots. Many flight schools currently include such an exam in their training programs and, therefore, the proposal simply reflects current practice.

C. Proposed §§ 61.117 and 61.119 would specify in more detail the maneuvers and procedures in which a student pilot must be instructed, and would require the student to demonstrate proficiency to an acceptable performance level. This proposal can only help to improve the safety of student pilots. However, it is essentially a reemphasis and consolidation of existing training standards and practices, currently detailed in Advisory Circulars, and in the recently published *Private Pilot-Practical Test Standards*. The proposal will not result in the addition of new requirements and, therefore is not expected to have an appreciable impact.

D. Proposed § 61.121(a) (5) and (8) would not allow student pilots to act as pilot in command of an aircraft when the flight or surface visibility is less than 3 statute miles during the day and 5 statute miles at night, or without visual reference to the surface. However, prudent flight instructors would rarely allow students to fly when visibility conditions are less than this proposal would require. Therefore, the proposal reflects current practice and is not expected to impose any economic impact.

E. Proposed § 61.127(e) would require private pilot applicants to be tested on *all* of the required maneuvers and procedures indicated in the *Practical Test Standards*. Current § 61.103(e) allows the flight examiner to select those maneuvers and procedures which the applicant is tested on during the check ride. The Office of Flight Operations states that during the verification of the *Practical Test Standards* it determined that the rule change would not increase the time, and consequently the cost, of administering flight tests.

F. Proposed § 61.131 would measure the operational experience of private pilot candidates in terms of the number of flight experiences, rather than hours. Students would be trained and tested to a prescribed standard before being granted a private certificate. Again, this proposal reflects current practice. The average time for a typical student to complete the requirements is 71.4 hours, far greater than the 40 hour minimum prescribed in Part 61 and the 35 hour minimum prescribed for a certificated flight school in Part 141. Student pilots are in fact currently being trained to a standard, and the units used to measure experience should not alter this practice. Students do not receive their private certificates until they meet the standards, even though the actual average time required is almost twice as much as the minimum prescribed. Therefore, this proposal merely reflects current practice and is not expected to impose any significant economic impacts.

G. Proposed § 61.135(a) would require pilots to obtain instruction from an authorized flight instructor in each make and model of aircraft having more than 200 horsepower, retractable landing gear, and a controllable pitch propeller. Currently, private pilots are only required to receive training in an aircraft meeting the above requirements, not in each make and model. No appreciable economic impact is expected to result from this proposal because checkouts in such aircraft generally are required by aircraft insurers and fixed based operators which rent aircraft. Therefore, the proposal reflects current business practice.

H. Proposed § 61.135(c) would require private pilots with less than 400 hours total time to receive flight instruction before acting as pilot-in-command if they have not acted as pilot-in-command within the preceding 180 days. Again, this proposal is not expected to result in any appreciable economic impact. Pilots who rent aircraft would be required in most instances to receive a checkout because of insurance requirements if they had not flown within the past 6 months. Pilots who have made a substantial investment to own their aircraft generally fly them more than once every six months, otherwise they would not have purchased an aircraft. Therefore, relatively few pilots are expected to be impacted by this proposal.

I. Proposed § 61.135(i) would not allow private pilots with less than 400 hours total time to demonstrate an aircraft for sale, and proposed § 61.135(j) would not allow a private pilot with less than 400 hours to act as pilot in command of an aircraft carrying passengers in a charitable airlift. Both proposals reflect the higher accident rates experienced by low-time private pilots discussed in the preamble. Because the affected activities constitute a very small proportion of private pilot activity, any economic impact which may result is expected to be insignificant.

IV. International Trade Impact Analysis

The various regulations proposed in this NPRM will have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S. The proposals primarily affect the dometic operations of individual private and recreational pilots, not of businesses involved in the sale of aviation products or services. Even in those instances in which a private pilot certificate holder exercises the privileges of that certificate in operations which are incidental to the business activities of a firm which engages in foreign trade, the cost impact of the proposed regulations on the overall activities of such a firm will be negligible.

V. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) 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, the proposed regulations will not have a significant economic impact on a substantial number of small entities.

The various regulations proposed in the NPRM will primarily affect the operations of individual 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 which are incidental to that business, the individual costs of compliance with the proposed regulations will fall far short of the annual threshold cost level of $3,390 (1984 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.

Conclusion

Based on the economic analysis appearing earlier in this document, the costs and benefits of an annual recurrent training program and an annual flight review program are expected to be equal within a reasonable period of time. The new certificate categories of student recreational pilot and recreational pilot will primarily provide the benefits of choice to persons interested in flying with the costs being outweighed by savings in instructional costs and aircraft operating expenses. Other proposals of this rulemaking are not expected to impose any significant economic impact because they generally reflect current practices and will therefore not impose any major changes in the activities which they address. Therefore, the FAA has determined that this proposed amendment involves a regulation which is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The various regulations proposed in the NPRM will primarily affect the operations of individual 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 which are incidental to that business, the individual costs of compliance with the proposed regulations will fall far short of significant, and would not result in any significant economic benefit to the business. Therefore, it is certified that this proposed amendment would not have a significant economic impact on a substantial number of small entities. The regulatory evaluation is printed in the preamble to this notice and a copy may also be obtained by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 61

Aviation safety, Student private pilots, Private pilots, Eligibility requirements, Aeronautical knowledge, Operational experience, Cross country flight privileges, Limitations.

The Proposed Amendment

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

In consideration of the foregoing, it is proposed to amend Part 61 of the Federal Aviation Regulations (14 CFR Part 61) by:

1. The authority citation for Part 61 is revised 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. Adding a new § 61.50 to read as follows:

§ 61.50 Flight review.

(a) *Meaning of flight review.* As used in this section, a flight review consists of—

(1) A review of the current general operating and flight rules of Part 91 of this chapter; and

(2) A review of those maneuvers and procedures which in the discretion of the person giving the review are necessary for the pilot to demonstrate that he or she can safely exercise the privileges of his or her pilot certificate.

(b) No person may act as pilot in command of an aircraft unless, within the period specified in paragraph (c) of this section, that person—

(1) Accomplished a flight review given in an aircraft for which he or she is rated, by an appropriately rated instructor or other person designated by the Administrator, and

(2) Had his or her logbook endorsed by the person who gave the review certifying that he or she has satisfactorily accomplished the flight review.

(c)(1) Each pilot, other than a recreational and private pilot who has logged less than 400 hours flight time and does not hold an instrument rating, must have complied with the requirements of this section since the beginning of the 24th calendar month before the month in which he or she acts as pilot in command.

(2) Each private pilot or recreational pilot who has logged less than 400 hours flight time and who does not hold an instrument rating, must have complied with the requirements of this section since the beginning of the 12th calendar month before the month in which he or she acts as pilot in command.

(d) A person who has, within the period specified in paragraph (c) 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.

(e) The requirements of this section can be met in conjunction with the requirements of §§ 61.56 and 61.57 and other applicable recency requirements at the discretion of the instructor.

3. By adding a new § 61.56 to read as follows:

§ 61.56 Training program: Pilot in command.

(a) Except as provided in paragraph (c) of this section no recreational or private pilot may act as pilot in command of an aircraft for which he or she is rated unless, since the beginning of the 12th calendar month before the month in which he or she acts as pilot in command, that person has completed a training program consisting of at least 1 hour of ground and 1 hour of flight instruction from an appropriately rated instructor. This instruction shall consist of at least the following subject areas:

(1) Abnormal and emergency procedures for the aircraft to be flown;

(2) Aircraft performance, including the effects of loading, density altitude, and configuration, if appropriate; and

(3) Local and cross-country flight planning including the recognition of critical weather conditions and the procurement, analysis, and use of aeronautical weather reports and forecasts.

(b) The instruction required by paragraph (a) of this section must be completed within 60 days from the day the instruction began. The instruction may be completed in an aircraft, or an aircraft simulator or training device approved by the Administrator.

(c) Persons who have satisfactorily completed a pilot training program within the last 12 calendar months in accordance with an operating rule of this chapter need not comply with this section.

(d) The requirements of this section can be met in conjunction with the requirements of §§ 61.50 and 61.57 and other applicable recency requirements at the discretion of the instructor.

4. By revising § 61.57 to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

(a)-(b) [Reserved]

(c) *General experience.* No person may act as pilot in command of an aircraft carrying passengers, nor of an aircraft certificated for more than one required pilot flight crewmember, unless within the preceding 90 days, he or she has made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type. If the aircraft is a tailwheel airplane, the landings must have been made to a full stop in a tailwheel airplane. For the purpose of meeting the requirements of this paragraph, a person may act as pilot in command of a flight under day VFR or day IFR if no persons or property other than as necessary for his or her compliance thereunder, are carried. This paragraph does not apply to operations requiring an airline transport pilot certificate, or to operations conducted under Part 135 of this chapter.

(d) *Night experience.* No person may act as pilot in command of an aircraft carrying passengers during the period beginning 1 hour after sunset and ending 1 hour before sunrise (as published in the American Air Almanac) unless, within the preceding 90 days, he or she has made at least three takeoffs and three landings to a full stop during that period in the category and class of aircraft to be used. This paragraph does not apply to operations requiring an airline transport pilot certificate.

(e) *Instrument*—(1) *Recent IFR experience.* No pilot may act as pilot in command under IFR, nor in weather conditions less than the minimums prescribed for VFR, unless he/she has, within the past six months—

(i) In the case of an aircraft other than a glider, logged at least 6 hours of instrument time under actual or simulated IFR conditions, at least three of which were in flight in the category of aircraft involved, including at least six instrument approaches, or passed an instrument competency check in the category of aircraft involved.

(ii) In the case of a glider, logged at least three hours of instrument time, at least half of which were in a glider or an airplane. If a passenger is carried in the glider, at least three hours of instrument flight time must have been in gliders.

(2) *Instrument competency check.* A pilot who does not meet the recent instrument experience requirements of paragraph (e)(1) of this section during the prescribed time or six months thereafter may not serve as pilot in command under IFR, nor in weather conditions less than the minimums prescribed for VFR, until he or she passes an instrument competency check in the category of aircraft involved, given by an FAA inspector, a member of an armed force of the United States authorized to conduct flight tests, an FAA approved check pilot, or a certificated instrument flight instructor. The Administrator may authorize the conduct of art or all of this check in a pilot ground trainer equipped for instruments or an aircraft simulator.

5. By redesignating Subparts E, F, and G as Subparts G, H, and I respectively, and by redesignating the sections in Subparts G, H and I as shown in the redesignation table below. All internal references in Chapter I, Title 14 of the CFR, are changed to reflect these amendments to Part 61.

REDESIGNATION TABLE

NOTE.—The left hand column contains the former section designations; the right hand column contains the new section designations.

Old	New
SUBPART G	
61.121	61.151
61.123	61.153
61.125	61.155
61.127	61.157
61.129	61.159
61.131	61.161
61.133	61.163
61.135	61.165
61.137	61.167
61.139	61.169
61.141	61.171

REDESIGNATION TABLE—Continued

NOTE.—The left hand column contains the former section designations; the right hand column contains the new section designations.

Old	New
SUBPART H	
61.151	61.181
61.153	61.183
61.155	61.185
61.157	61.187
61.159	61.189
61.161	61.191
61.163	61.193
61.165	61.195
61.167	61.197
61.169	61.199
61.171	61.201
SUBPART I	
61.181	61.211
61.183	61.213
61.185	61.215
61.187	61.217
61.189	61.219
61.191	61.221
61.193	61.223
61.195	61.225
61.197	61.227
61.199	61.229
61.201	61.231

6. By revising the Table of Contents for Subparts C through I to read as follows:

Subpart C—Student Recreational Pilots

Subpart D—Recreational Pilots

Subpart E—Student Private Pilots

Subpart F—Private Pilots

Subpart G—Commercial Pilots

Subpart H—Airline Transport Pilots

Subpart I—Flight Instructors

7. By revising Subpart C to read as follows:

Subpart C—Student Recreational Pilots

§ 61.81 Applicability; General requirements.

(a) This subpart prescribes the requirements for the issuance of a student recreational pilot certificate, the conditions under which the certificate is necessary, and the operating rules and limitations for the holders of these certificates.

(b) As used in this subpart, the term solo flight means a flight during which a student pilot is the sole occupant of the aircraft.

(c) The required instruction of this subpart must be given and the logbook endorsed by a flight instructor who is authorized to give instruction in the particular category and class of aircraft used. When instruction is given in a simulator or training device, that training shall be given and the logbook endorsed by an appropriately rated flight or ground instructor. Instruction given in a simulator or training device cannot be applied to the flight requirements in § 61.107.

§ 61.83 Eligibility requirements.

To be eligible for a student recreational pilot certificate, a person must—

(a) Be at least 16 years of age; and

(b) [Hold at least a current third-class medical certificate issued under Part 67 of this chapter.] or [certify that he or she has no known medical defect that makes him or her unable to safely pilot an aircraft.]

§ 61.85 Application.

An application for a student recreational pilot certificate is made on a form and in a manner provided by the Administrator and is submitted to an FAA operations inspector or designated pilot examiner, accompanied by a current FAA medical certificate [or a certification by the applicant that he or she has no known medical defect that makes him or her unable to safely pilot an aircraft].

§ 61.87 Requirements for solo flight.

(a) *General.* A student recreational pilot may not operate an airplane, rotorcraft, or single-place gyroplane in solo flight unless he or she has complied with the requirements of this section.

(b) *Aeronautical knowledge.* The student must demonstrate satisfactory knowledge of the appropriate portions of Parts 61 and 91 that are applicable to student recreational pilots. This demonstration must include the satisfactory completion of a written examination to be administered and graded by the instructor who is to endorse 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 of the make and model aircraft to be flown.

(c) *Presolo flight training.* The student must have received and logged instruction in at least the following maneuvers and procedures and must have demonstrated proficiency to an acceptable performance level as judged by the instructor who endorses the student's pilot certificate. In addition, for nonpowered single-place gyroplanes only, the student must have made at least three successful flights in a gyroplane towed from the ground under the observation of the instructor who is to endorse the student recreational pilot certificate. These maneuvers and procedures must include the following:

(1) *For all aircraft* (as appropriate to the aircraft being flown)—

(i) Flight preparation procedures, including preflight inspections and powerplant operation;

(ii) Taxiing or surface operations, including runups;

(iii) Takeoffs including normal and crosswind;

(iv) Climbing turns;

(v) Level flight, including shallow, medium, and steep banked turns;

(vi) Descents in straight flight and in turns using high and low drag configurations, if appropriate;

(vii) Flight at various airspeeds from cruising to minimum controllable airspeed;

(viii) Emergency procedures and equipment malfunctions; and

(ix) Ground reference maneuvers.

(2) *For airplanes,* in addition to paragraph (c)(1) of this section—

(i) Airport traffic patterns including entry and departure procedures, collision avoidance, and wake turbulence precautions;

(ii) Approaches to the landing area with engine power at idle and with partial power;

(iii) Landings including normal, crosswind, and slips to a landing;

(iv) Go-arounds from final approach and from the landing flare in various flight configurations including turns;

(v) Forced landing procedures initiated on takeoff, during initial climb, cruise, descent, and in the landing pattern; and

(vi) 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.

(3) *For rotorcraft,* in addition to paragraph (c)(1) of this section and as allowed by the aircraft's performance and maneuvers limitations—

(i) Hovering and air taxiing;

(ii) Landing area traffic patterns, including collision avoidance and wake turbulence precautions;

(iii) Approaches to the landing area;

(iv) Normal and crosswind landings;

(v) Autorotational descents and recovery initiated from hover, takeoff, climb, cruise, and descent; and

(vi) Go arounds from landing hover and from final approach.

(4) *For single-place gyroplanes,* in addition to the appropriate items in paragraph (c)(1) of this section—

(i) Landing area traffic patterns including collision avoidance and wake turbulence percautions;

(ii) Approaches to the landing area; and

(iii) Normal and crosswind landings.

(d) *Flight instructor endorsements.* The student recreational pilot cretificate must be endorsed for the specific make and model aircraft to be flown. Additionally, his or her logbook must have been endorsed for solo flight within the preceding 90 days. These endorsements must be made by the flight instuctor who has flown with the student and the instructor's endorsement must certify that he or she—

(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 safe solo flights in that aircraft.

§ 61.89 Cross-country flight requirements.

(a) *General.* A student recreational pilot may not operate an airplane, rotorcraft, or single-place gyroplane in solo cross-country flight unless he or she has complied with the requirements of this section. By an endorsement in the student's logbook, an instructor may authorize a student to practice takeoffs and landings at another airport within 25 nautical miles of the airport from which instruction is given, if that instructor finds the student pilot is competent to make those takeoffs and landings.

(b) *Flight training.* In addition to the presolo flight training maneuvers and procedures required by § 61.87(c), a student recreational pilot must have received and logged instruction from an authorized instructor in at least the following items prior to being endorsed for solo cross-country flight. The student must demonstrate proficiency to an acceptable performance level as judged by the instructor who is to endorse the student pilot certificate. The maneuvers and procedures must include the following:

(1) *For all aircraft* (as appropriate to the aircraft being flown)—

(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 limitations;

(iii) The procurement and analysis of aeronautical weather reports and forecasts including recognition of critical weather situations and estimating visibility while in flight;

(iv) Cross-country emergency procedures including lost procedures, adverse weather encounters, and precautionary off airport approaches and landing procedures;

(v) Normal landing area arrival and departure traffic pattern procedures, including collision avoidance and wake turbulence precautions;

(vi) Recognition of operational problems associated with terrain features in the geographical area in which the cross-country trip is to be flown; and

(vii) Proper operation of equipment installed and operable in the aircraft to be flown.

(2) *For airplanes*, in addition to paragraph (b)(1) of this section—

(i) Short field and soft field takeoff, approach, and landing procedures; and

(ii) Takeoff climbs at best angle and best rate.

(3) *For rotorcraft and single-place gyroplanes*, as appropriate, in addition to paragraph (b)(1) of this section—

(i) High altitude takeoff and landing procedures;

(ii) Steep and shallow approaches to a landing hover; and

(iii) Rapid decelerations (helicopter only).

(c) *Flight instructor endorsements*. No student recreational pilot may conduct a solo cross-country flight nor may the student, except in an emergency, make a solo landing at any point other than the airport of takeoff, unless the following endorsements have been made:

(1) His or her student recreational pilot certificate must contain an endorsement stating that he or she has received instruction in the applicable training requirements of this section for solo cross-country flight and has been found competent to make solo cross-country flights in the make and model aircraft involved.

(2) His or her pilot logbook must be endorsed certifying that the instructor has reviewed the flight planning and preparation for the specific cross-country flight and the student is prepared to make the flight safely under the known circumstances. The endorsement may contain the circumstances and conditions that the instructor believes are necessary for the student to conduct the cross-country flight safely. An instructor may endorse the student's logbook authorizing repeated specific solo cross-country flights, over a course not more than 50 miles from the point of departure, and specifying minimum requirements that must be met by the student.

§ 61.91 Limitations.

(a) A student recreational pilot may not act as pilot in command of an aircraft—

(1) That is certificated—

(i) For more than four occupants, except in the case of a gyroplane which must be single-place;

(ii) For more than one powerplant;

(iii) For a power plant of more than 180 horsepower;

(iv) For retractable landing gear; or

(v) Classified as a glider, airship, or free balloon.

(2) That is carrying a passenger;

(3) That is carrying property for compensation or hire;

(4) For compensation or hire;

(5) In the furtherance of a business;

(6) Between sunset and sunrise;

(7) At an airport or landing area with an operating control tower;

(8) At an altitude of more than 10,000 ft MSL or 2,000 AGL, whichever is higher;

(9) In conditions of a flight or surface visibility of less than 3 statute miles;

(10) On an international flight;

(11) On flights in excess of 50 nautical miles from the departure airport;

(12) Without visual reference to the surface; or

(13) Contrary to any limitation placed in his or her logbook by his or her instructor.

(b) A student 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.

8. By revising Subpart D to read as follows:

Subpart D—Recreational Pilots

§ 61.101 Applicability.

This subpart prescribes the requirements for the issuance of a recreational pilot certificate, the conditions under which the certificate is necessary, and the operating rules and limitations for the holders of these certificates.

§ 61.103 Eligibility requirements.

To be eligible for a recreational pilot certificate, a person must—

(a) Be at least 17 years of age;

(b) [Hold at least a current third-class medical certificate issued under Part 67 of this chapter.] or [Certify that he or she has no known medical defect that makes him/her unable to safely pilot an aircraft].

(c) Pass a written test on the subject areas on which instruction or home study is required by § 61.105; and

(d) Pass a flight examination on maneuvers and procedures given by an FAA inspector or designated pilot examiner to determine the applicant's competency in the maneuvers and procedures of § 61.107(a).

§ 61.105 Aeronautical knowledge.

An applicant for a recreational pilot certificate must have received instruction from an authorized instructor or must present evidence showing that he or she has satisfactorily completed a course of instruction or home study, covering at least the following areas of aeronautical knowledge—

(a) The Federal Aviation Regulations applicable to recreational pilot privileges, limitations, and flight operations;

(b) The accident reporting requirements of the National Transportation Safety Board;

(c) The information contained in applicable advisory circulars;

(d) The use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(e) The recognition of critical weather situations from the ground and in flight, and the procurement and analysis of aeronautical weather reports and forecasts;

(f) The effects of density altitude on takeoff and climb performance;

(g) The safe and efficient operation of aircraft including collision avoidance and wake turbulence precautions;

(h) Use of the applicable portions of the Airman's Information Manual;

(i) Weight and balance computations; and

(j) Principles of aerodynamics.

§ 61.107 Operational experience.

For the purposes of this section "flight" means a takeoff and a landing during which an aircraft becomes airborne. An applicant for a recreational pilot certificate must have logged flight instruction and solo flights as follows:

(a) *Flight instruction*—(1) At least ten flights during the course of which the maneuvers and procedures, appropriate to the aircraft being flown and described in § 61.87, are performed at least once.

(2) At least two cross-country flights, each containing four legs with landings at three or more airports or landing areas, in addition to the departure and arrival airports or landing areas, and during the course of which the maneuvers and procedures, as appropriate to the aircraft being flown and described in § 61.89(b), are performed at least once.

(3) At least three flights following the first solo cross-country in preparation for the flight test.

(b) *As sole occupant*—(1) At least ten flights during the course of which the maneuvers and procedures authorized by the instructor and described in § 61.87(c), as appropriate, are performed at least once.

(2) At least three solo cross-country flights, each containing four legs with landings at three or more airports or landing areas, in addition to the departure and arrival airports or landing areas.

§ 61.109 Recreational pilot privileges and limitations.

(a) A recreational pilot may—

(1) Carry passengers; and

(2) Share the operating expenses of the flight with those passengers.

(b) A recreational pilot may not act as pilot in command of an aircraft—

(1) That is certificated—

(i) For more than four occupants, except in the case of a gyroplane which must be single-place;

(ii) For more than one powerplant;

(iii) For a powerplant of more than 180 horsepower;

(iv) For retractable landing gear; or

(v) Classified as a glider, airship, or balloon.

(2) That is carrying passengers or property for compensation or hire;

(3) For compensation of hire;

(4) In furtherance of a business;

(5) Between sunset and sunrise;

(6) At an airport of landing area with an operating control tower;

(7) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher;

(8) When the flight or surface visibility is less than 3 statue miles;

(9) On an international flight; or

(10) On a flight in excess of 50 nautical miles for the departure airport.

(c) A recreational pilot may not act as pilot in command of an aircraft carrying a passenger unless the pilot has made three takeoffs and landings as sole manipulator of the controls of an aircraft of that category and class within the preceding 90 days. If the aircraft is a conventional gear airplane, the landings must have been to a full stop.

(d) A recreational pilot, who has logged less than 400 flight hours and who has not flown as pilot in command of an aircraft within the preceding 180 days, may not act as pilot in command of an aircraft until he or she has received flight instruction from an authorized flight instructor who has certified in the pilot's logbook that he or she is competent to pilot the aircraft. This requirement can be met in conjunction with the requirements of §§ 61.50, 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."

9. By adding new Subpart E to read as follows:

Subpart E—Student Private Pilots

§ 61.111 Applicability; General requirements.

(a) This subpart prescribes the requirements for the issuance of a student private pilot certificate, the conditions under which the certificate is necessary, and the operating rules and limitations for the holders of these certificates.

(b) As used in this subpart, the term solo flight means a flight during which a student pilot is the sole occupant of the aircraft or during which a student pilot acts as pilot in command of an airship requiring more than one flight crewmember.

(c) The required instruction of this subpart must be given and the logbook endorsed by a flight instructor who is authorized to give instruction in the particular category and class of aircraft used. When instruction is given in a simulator or training device, that training shall be given and the logbook endorsed by a flight or ground instructor. Instruction given in a simulator or training device cannot be applied toward the flight requirements of § 61.131. In free balloons, the holder of a commercial pilot certificate with a lighter-than-air category and free balloon class rating may give the appropriate instruction.

§ 61.113 Eligibility requirements.

To be eligible for a student private pilot certificate, a person must—

(a) Be at least 16 years of age, or at least 14 years of age for a student pilot certificate limited to the operation of a glider or free balloon;

(b) Be able to read, speak, and understand the English language, or have such operating limitations placed on his or her pilot certificate as are necessary for the safe operation of the aircraft, to be removed when he or she shows that he or she can read, speak, and understand the English language; and,

(c) Hold at least a current third-class medical certificate issued under Part 67 of this chapter, or in the case of glider or free balloon operations, certify that he or she has no known medical defect that makes him or her unable to safely pilot a glider or free balloon.

§ 61.115 Application.

An application for a student private pilot certificate is made on a form and in a manner provided by the Administrator and is submitted to—

(a) A designated aviation medical examiner when applying for an FAA medical certificate in the United States; or;

(b) An FAA operations inspector or designated pilot examiner, accompanied by a current FAA medical certificate, or in the case of an application for a student certificate limited to gliders or free balloons, accompanied by a certification by the applicant that he or she has no known medical defect that makes him or her unable to safely pilot a glider or free balloon.

§ 61.117 Requirements for solo flight.

(a) *General.* A student pilot may not operate an aircraft in solo flight unless he or she has complied with the requirements of this section.

(b) *Aeronautical knowledge.* The student must demonstrate satisfactory knowledge of the appropriate portions of Parts 61 and 91 that are applicable to student private pilots. This demonstration must include the satisfactory completion of a written examination to be administered and graded by the instructor who is to endorse 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 of the make and model aircraft to be flown.

(c) *Presolo flight training.* The student must have received and logged instruction in at least the following maneuvers and procedures and must have demonstrated proficiency to an acceptable performance level as judged by the instructor who endorsed the student's pilot certificate. In addition, for nonpowered single-placed gyroplanes only, the student must have made at least three successful flights in a gyroplane towed from the ground under the observation of the instructor who is to endorse the student pilot certificate. These maneuvers and procedures must include the following:

(1) *For all aircraft* (as appropriate to the aircraft being flown)—

(i) Flight preparation procedures, including preflight inspections and powerplant operation;

(ii) Taxing or surface operations, including runups;

(iii) Takeoffs including normal and crosswind;

(iv) Climbing turns (except balloons);

(v) Level flight, including shallow, medium, and steep banked turns;

(vi) Descents in straight flight and in turns using high and low drag configurations, if appropriate;

(vii) Flight at various airspeeds from cruising to minimum controllable airspeed;

(viii) Emergency procedures and equipment malfunctions;

(ix) Proper use of the radio for two-way communication; and

(x) Stall entries from various flight attitudes and power combinations with recovery initiated at the first indication of a stall, and, for airplanes and gliders only, recovery from a full stall.

(2) *For airplanes*, in addition to paragraph (c)(1) of this section—

(i) Airport traffic patterns, including entry and departure procedures, collision avoidance, and wake turbulence precautions;

(ii) Approaches to the landing area with power at idle and with partial power;

(iii) Landings including normal, crosswind, and slips to a landing;

(iv) Go-arounds from final approach and from the landing flare in various flight configurations including turns;

(v) Forced landing procedures initiated on takeoff, during initial climb, cruise, descent, and in the landing pattern; and

(vi) Ground reference maneuvers.

(3) *For rotorcraft*, in addition to paragraph (c)(1) of this section and as allowed by the aircraft's performance and maneuvers limitations—

(i) For helicopters only, hovering and air taxiing;

(ii) Landing area traffic patterns, including collision avoidance and wake turbulence precautions;

(iii) Approaches to the landing area;

(iv) Normal and crosswind landings;

(v) Autorotational descents and recovery initiated from hover, takeoff, climb, cruise, and descent;

(vi) Go-arounds from landing hover and from final approach; and

(vii) Ground reference maneuvers.

(4) *For single-place gyroplanes*, in addition to the appropriate items in paragraph (c)(1) of this section that can be accomplished in a gyroplane—

(i) Landing area traffic patterns including collision avoidance and wake turbulence precautions;

(ii) Approaches to the landing area; and

(iii) Normal and crosswind landings.

(5) *For gliders*, in addition to paragraph (c)(1) of this section—

(i) Preflight inspection of the towline, principles of glider disassembly and assembly, review of signals, and release procedures to be used;

(ii) Aero or ground tow, or self launch;

(iii) Procedures and techniques for thermalling convergence lift, or ridge lift as appropriate to the training area;

(iv) Landings including normal, crosswind, and down-wind; and

(v) Emergency operations including towline break procedures.

(6) *For airships*, in addition to the appropriate items in paragraph (c)(1) of this section—

(i) Rigging ballasting, controlling pressure in ballonet and superheating;

(ii) Landings with positive and negative static balance;

(iii) Collision avoidance wake turbulence precautions;

(iv) Normal approaches to landing; and

(v) Emergency and abnormal procedures.

(7) *For free balloons*, in addition to the appropriate items of paragraph (c)(1) of this section—

(i) Operation of hot air or gas source, ballast, valves and rip panels as appropriate;

(ii) Liftoffs and ascents;

(iii) Descents and normal landing procedures;

(iv) The effects of wind on climb and approach angles;

(v) Obstruction detection and avoidance techniques;

(vi) Emergency use of rip panels.

(d) *Flight instructor endorsements*. The student private pilot certificate must be endorsed for the specific make and model aircraft to be flown. Additionally, his or her logbook must have been endorsed for solo flight within the preceding 90 days. These endorsements must be made by the flight instructor who has flown with the student and the instructor's endorsement must certify that he or she—

(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 safe solo flights in that aircraft.

§ 61.119 Cross-country flight requirements.

(a) *General*. A student private pilot may not operate an aircraft in solo cross-country flight unless he or she has complied with the requirements of this section. By an endorsement in the student's logbook, an instructor may authorize a student to practice takeoffs and landings at another airport within 25 nautical miles of the airport from which the instruction is given, if that instructor finds that the student pilot is competent to made those takeoffs and landings.

(b) *Flight training*. In addition to the presolo flight training maneuvers and procedures required by § 61.117(c), a student private pilot must have received and logged instruction from an authorized instructor in at least the following items prior to being endorsed for solo cross-country flight. The student must demonstrate proficiency to an acceptable performance level as judged by the instructor who is to endorse the student private pilot certificate. The maneuvers and procedures must include the following—

(1) *For all aircraft* (as appropriate to the aircraft being flown)—

(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 limitations;

(iii) The procurement and analysis of aeronautical weather reports and forecasts including recognition of critical weather situations and estimating visibility while in flight;

(iv) Cross-country emergency procedures including lost procedures, adverse weather encounters, and precautionary off airport approaches and landing procedures;

(v) Normal landing area arrival and departure traffic pattern procedures, including collision avoidance and wake turbulence precautions;

(vi) Recognition of opertional problems associated with terrain features in the geographical area in which the cross-country is to be flown; and

(vii) Proper operation of equipment installed and operable in the aircraft to be flown.

(2) *For airplanes*, in addition to paragraph(b)(1) of this section—

(i) Short and soft field takeoff, approach and landing procedures;

(ii) Takeoff climbs at best angle and best rate;

(iii) Control and maneuvering solely by reference to flight instruments including descent and climbs and the use of radio aids or radar directives;

(iv) Use of radio for VFR navigation and for two-way communication; and

(v) Night flying including takeoffs, landings, go-arounds and VFR navigation.

(3) *For rotorcraft*, in addition to paragraph (b)(1) of this section—

(i) High altitude takeoff and landing procedures;

(ii) Steep and shallow approaches to a landing hover;

(iii) Rapid decelerations (helicopter only); and

(iv) Use of radio for VFR navigation and two-way communication.

(4) *For gliders*, in addition to the appropriate items of paragraph (b)(1) of this section—

(i) At least one simulated off airport landing at a site away from the airport of takeoff;

(ii) Principles of the use of a radio for appropriate two-way communication;

(iii) Recognition of weather conditions for cross-country soaring; and

(iv) Landings accomplished without the use of the altimeter from at least 2,000 feet above the surface.

(5) *For airships*, in addition to the appropriate items of paragraph (b)(1) of this section—

(i) Control of the airship solely by reference to flight instruments; and

(ii) Control of gas pressure with regard to superheating and altitude changes.

(c) *Flight instructor endorsements*. No student private pilot may conduct a solo cross-country flight unless the following endorsements have been made:

(1) His or her student private pilot certificate must contain an endorsement stating that he or she has received instruction in the applicable training requirements of this section for solo cross-country flight and has been found competent to make solo cross-country flights in the category, and make and model aircraft involved.

(2) His or her pilot logbook must be endorsed certifying that the instructor has reviewed the flight planning and preparation for the specific cross-country flight and the student is prepared to make the flight safely under the known circumstances. The endorsement may contain the circumstances and conditions that the instructor believes are necessary for the student to conduct the cross-country safely. An instructor may endorse the student's logbook authorizing repeated specific solo cross-country flights, over a course not more than 50 miles from the point of departure, and specifying minimum requirements that must be met by the student.

§ 61.121 Limitations.

(a) A student private pilot may not act as pilot in command of an aircraft—

(1) That is carrying a passenger;

(2) That is carrying property for compensation or hire;

(3) For compensation or hire;

(4) In the furtherance of a business;

(5) With a flight or surface visibility of less than 3 statute miles during daylight hours or 5 statute miles at night;

(6) On an international flight, except that a student private pilot may make solo training flights from Haines, Gustavus, or Juneau, Alaska, to White Horse or Yukon, Canada and return, over the province of British Columbia;

(7) When the flight can not be made with visual reference to the surface; or

(8) That is contrary to any limitation placed in his or her logbook by his or her instructor.

(b) A student private 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 instructor on board an airship and no person other than a required flight crewmember is carried on the aircraft.

§ 61.123 Airship limitations: Pilot in command.

A student private pilot may not serve as pilot in command of any airship requiring more than one flight crewmember unless he has met the pertinent requirements prescribed in § 61.117(c)(1) and (c)(6).

10. By adding a new Subpart F to read as follows:

Subpart F—Private Pilots

§ 61.125 Applicability; general requirements.

This subpart prescribes the requirements for the issuance of a private pilot certificate and ratings, the conditions under which the certificate and ratings are necessary and the operating rules and limitations for the holders of the certificate and ratings.

§ 61.127 Eligibility requirements.

To be eligible for a private pilot certificate, a person must—

(a) Be at least 17 years of age, except that a private pilot certificate with a free balloon or a glider rating only may be issued to a qualified applicant who is at least 16 years of age;

(b) Be able to read, speak, and understand the English language, or have such operating limitations placed on his or her pilot certificate as are necessary for the safe operation of the aircraft, to be removed when he or she shows that he or she can read, speak, and understand the English language;

(c) Hold at least a current third-class medical certificate issued under Part 67 of this chapter, or in the case of a glider or free balloon, certify that he or she has no known medical defect that makes him or her unable to safely pilot a glider or free balloon, as appropriate;

(d) Pass a written test on the subject areas on which instruction or home study is required by § 61.129;

(e) Pass an oral and flight examination on maneuvers and procedures given by an FAA inspector or designated pilot examiner to determine the applicant's competency in the maneuvers and procedures of § 61.117 and § 61.119; and

(f) Comply with the sections of this part that apply to the rating he or she seeks.

§ 61.129 Aeronautical knowledge.

An applicant for a private pilot certificate must have received instruction from an authorized instructor or must present evidence showing that he or she has satisfactorily completed a course of instruction or home study covering at least the following areas of aeronautical knowledge appropriate to the category and class for the rating sought:

(a) *For all aircraft*—(1) The Federal Aviation Regulations applicable to private pilot privileges, limitations and flight operations;

(2) The accident reporting requirements of the National Transportation Safety Board;

(3) The information contained in applicable advisory circulars;

(4) The use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(5) The recognition of critical weather situations from the ground and in flight and the procurement and analysis of aeronautical weather reports and forecasts;

(6) The effects of density altitude on takeoff and climb performance;

(7) The safe and efficient operation of aircraft including high density airport operations and collision avoidance and wake turbulence precautions;

(8) Use of the applicable portions of the Airman's Information Manual;

(9) Weight and balance computations;

(10) Principles of aerodynamics; and

(11) The use of radio for VFR navigation and two-way communication.

(b) *For gliders*, in addition to § 61.129(a)—

(1) Principles of air mass lift generation;

(2) Glider performance in various air masses;

(3) Cross-country techniques and safety considerations;

(4) Ground handling techniques; and

(5) Glider instrumentation and their proper use.

(c) *For airships and balloons*, in addition to § 61.129(a)—

(1) The effects of superheating and positive and negative lift; and

(2) Operating principles and procedures of balloon operations, including gas and hot-air inflation systems.

§ 61.131 Operational experience.

For the purposes of this section "flight" means a takeoff and landing during the course of which an aircraft becomes airborne. An applicant for a private pilot certificate must have logged flight instruction and solo flights as applicable to the category and class of aircraft as follows:

(a) *For airplanes*—(1) *Flight instruction*—(i) At least fifteen flights during the course of which the maneuvers and procedures described in § 61.117 (c)(1) and (c)(2) are performed at least once;

(ii) At least two cross-country flights, each containing four legs with landings at three or more airports or landing areas, in addition to the departure and arrival airports or landing areas and during the course of which the maneuvers and procedures in § 61.119 (b)(1) and (b)(2) are performed at least once;

(iii) At least three flights following the first solo cross-country in preparation for the flight test.

(2) *As sole occupant*—(i) At least ten flights during the course of which the maneuvers and procedures authorized by the instructor and as described in § 61.117 (c)(1) and (c)(2) are performed at least once; and

(ii) At least four solo cross-country flights, each containing four legs with landings at three or more airports or landing areas, in addition to the departure and arrival airports or landing areas.

(b) *For rotocraft-helicopter*—(1) *Flight instruction*—(i) At least fifteen flights during the course of which the maneuvers and procedures described in § 61.117 (c)(1) and (c)(3) are performed at least once;

(ii) At lest two cross-country flights, each containing four legs with landings at three or more airports or heliports in addition to the departure and arrival airports or heliports, and during the course of which the maneuvers and procedures described in § 61.119 (b)(1) and (b)(3) are performed at least once;

(iii) At least three flights following the first solo cross-country in preparation for the flight test.

(2) *As sole occupant*—(i) At least ten flights during the course of which the maneuvers and procedures authorized by the instructor and as described in § 61.117 (c)(1) and (c)(3) are performed at least once; and

(ii) At least four solo cross-country flights, each containing four legs with landings at three or more airports or heliports in addition to the departure and arrival airports or heliports.

(c) *For rotocraft-gyroplane*—(1) *Flight instruction*—(i) At least ten flights during the course of which the maneuvers and procedures described in § 61.117 (c)(1), (c)(3) and (c)(4) are performed at least once;

(ii) At least two cross-country flights, each containing four legs with landings at three or more airports in addition to the departure/arrival airport and during the course of which the maneuvers and procedures described in § 61.119 (b)(1) and (b)(3) are performed at least once; and

(iii) At least three flights following the first solo cross-country in preparation for flight test.

(2) As sole occupant—

(i) At least ten flights during the course of which the maneuvers and procedures authorized by the instructor and as described in § 61.117 (c)(1) and (c)(4) are performed at least once; and

(ii) At least four solo cross-country flights, each containing four legs with landings at three or more airports other than the departure and arrival airports.

(d) *For gliders*—(1) *Flight instruction*—(i) At least 25 flights during the course of which the maneuvers and procedures described in §§61.117 (c)(1) and (c)(5) and 61.119 (b)(1) are performed at least once; and

(ii) At least three flights in preparation for the flight test.

(2) *As sole occupant*—(i) Either—

(A) At least 25 flights using an aero tow with 20 or more of those flights having a release point at least 2,000 feet AGL during the course of which the maneuvers and procedures authorized by the instructor and as described in § 61.117 (c)(1) and (c)(5) are performed at least once; or,

(B) At least 50 flights using a ground tow of which at least 25 flights are self-launch tow if these privileges are being sought, with 40 or more having a release point at least 500 feet AGL, during the course of which the maneuvers and procedures authorized by the instructor and described in § 61.117 (c)(1) and (c)(5) are performed at least once; and

(ii) At least one soaring flight conducted from 2,000 feet above the surface after release from the tow or launch without the use of auxiliary power services.

(e) *For airships*—(1) *Flight instruction*—(i) At least 25 flights during the course of which the maneuvers and procedures described in § 61.117 (c)(1) and (c)(6) are performed at least once; and

(ii) At least two cross-country flights during the course of which the maneuvers and procedures described in § 61.117 (b)(1) and (b)(5) are performed at least once.

(2) As sole occupant or performing the functions of the pilot is required—

(i) At least five flights during the course of which maneuvers and procedures authorized by the instructor and as described in § 61.117 (c)(1) and (c)(6) are performed at least once; and

(ii) At least two cross-country flights, each containing at least four legs.

(f) *For free balloons*-(1) *Flight instruction*

(i) At least six flights under the supervision of a person holding at least a commercial pilot certificate with a free balloon rating, and during the course of which the maneuvers and procedures described in § 61.117 (c)(1) and (c)(7) are performed at least once; and

(ii) At least one cross-country flight during the course of which the maneuvers and procedures described in § 61.119(b)(1) are performed at least once.

(2) As sole occupant, at least two flights with at least one flight to an altitude of at least 3,000 feet AGL.

(g) *Night flying for all aircraft.* Instruction flights must include at least three night flights with a total of 10 takeoffs and landings for applicants seeking night flight privileges. An applicant who does not meet this night flight requirement is issued a private pilot certificate bearing the limitation "night flying prohibited." This limitation may be removed if the holder of the certificate shows he or she has met the requirement.

§ 61.133 Cross-country flights: Pilots based on small islands.

(a) An applicant who shows that he or she is located on an island from which the required cross-country flights cannot be accomplished without flying over water more than 10 nautical miles from the nearest shoreline need not comply with the cross-country requirements of § 61.131. 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, he or she must show that he or she has completed two round trips in solo flights between those two airports that are farthest apart, including a landing at each airport on each flight.

(b) The pilot certificate issued to a person under paragraph (a) of this section contains an endorsement with the following limitation which may be subsequently amended to include another island if the applicant complies with paragraph (a) of this section with respect to that island: "Passenger carrying prohibited on flight more than 10 nautical miles from (appropriate island)".

(c) If an applicant for a private pilot certificate under paragraph (a) of this section does not have at least the solo cross-country requirements of § 61.131 appropriate to the category of aircraft being flown his or her pilot certificate is also endorsed as follows: "Holder does not meet the cross-country flight requirements of ICAO."

(d) The holder of a private pilot certificate with an endorsement described in paragraph (b) or (c) of this section is entitled to removal of the endorsement, if he or she presents satisfactory evidence to an FAA inspector or designated pilot examiner that he or she has complied with the applicable solo cross-country requirements and has passed a practical test on cross-country flying.

§ 61.135 Private pilot privileges and limitations: Pilot in command.

(a) A private pilot may not act as pilot in command of an airplane that has more than 200 horsepower or that has retractable landing gear or a controllable pitch propeller or both unless he or she has received flight instruction in that particular make and model of airplane from an authorized flight instructor and that instructor has certified in his or her logbook that he or she is competent to pilot that airplane.

(b) A private pilot may not act as pilot in command of an aircraft carrying passengers unless within the preceding 90 days he or she has made three takeoffs and landings as sole manipulator of the flight controls in an aircraft of the same category and class and if a type rating is required, in that type. If the pilot is to act as pilot in command of an aircraft in daylight hours, the takeoffs and landings must have been made during daylight hours. If he or she is to act as pilot in command during nighttime hours the takeoff and landing must have been made at night. If the flight is to be made in a tailwheel airplane, the takeoffs and landings must have been made to a full stop in a tailwheel airplane.

(c) A private pilot who has logged less than 400 flight hours and who has not flown as pilot in command of an aircraft within the preceding 180 days, may not act as pilot in command of an aircraft until he or she has received flight instruction in an aircraft for which he or she is rated. The instruction must have been given by an authorized instructor and that instructor must certify in the pilot's logbook that he or she is competent to pilot that aircraft. This requirement can be met in conjunction with the requirements of §§ 61.50, 61.56 and 61.57 at the discretion of the instructor.

(d) Except for a pilot who holds an instrument rating and who is conducting a flight under an instrument flight plan, a private pilot who has logged less than 400 flight hours may not act as pilot in command of an aircraft when the flight or surface visibility is less than 3 statute miles during daylight hours or 5 mile statute miles at night.

(e) A private pilot who has logged less than 40 flight hours may not be accorded the international privileges under ICAO and his or her certificate carries the notation "Holder Does Not Meet ICAO Requirements" until he or she has met the 40 flight hour requirement.

(f) Except as provided in paragraph (g) through (j) of this section, a private pilot may not act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may he or she for compensation or hire, act as pilot in command of an aircraft.

(g) A private pilot may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment if the flight is only incidental to that business or employment and the aircraft does not carry passengers or property for compensation or hire.

(h) A private pilot may share the operating expenses of a flight with his passengers.

(i) A private pilot who is an aircraft salesperson and who has more than 400 hours of logged flight time may demonstrate an aircraft in flight to a prospective buyer.

(j) A private pilot may act as pilot in command of an aircraft used in passenger carrying airlifts sponsored by a charitable organization and for which the passengers make a donation to the organization, if—

(1) The sponsor of the airlift notifies the FAA district office having jurisdiction over the area concerned, at least 7 days before the flight, and furnishes any essential information that the office requests;

(2) The flights are conducted from a public airport adequate for the aircraft used, or from another airport that has been approved for the operation by an FAA inspector;

(3) The pilot has logged at least 400 hours of flight time;

(4) No aerobatic or formation flights are conducted;

(5) Each aircraft used is certificated in the standard category and complies with the 100-hour inspection requirements of § 91.169 of this chapter; and

(6) The flights are made under VFR conditions during the day-light hours.

For the purpose of paragraph (j) of this section, a "charitable organization" means an organization listed in Publication No. 78 of the Department of the Treasury called the "Cumulative List of Organization described in section 170(c) of the Internal Revenue Code of 1954", as amended from time to time by published supplemental lists.

§ 61.137 Free balloon rating: Limitations.

(a) If the applicant for a free balloon rating takes the flight test in a hot air balloon with an airborne heater, his/her pilot certificate contains an endorsement restricting the exercise of the privileges of that rating to hot air ballons with airborne heaters. The restriction may be deleted when the holder of the certificate obtains the pilot experience required for the rating on a gas balloon.

(b) If the applicant for a free balloon rating takes the flight test in a hot air balloon without an airborne heater, his/her pilot certificate contains an endorsement restricting the exercise of the privileges of that rating to hot air balloons without airborne heaters. The restriction may be deleted when the holder of the certificate obtains the pilot experience and passes the tests required for a rating on a free balloon with an airborne heater or a gas balloon.

§ 61.139 Private pilot privileges and limitations: Second in command of aircraft requiring more than one required pilot.

Except as provided in § 61.135 (f) through (i), a private pilot may not act as second in command of an aircraft type certificated for more than one pilot—

(a) For compensation or hire; or

(b) Carrying passengers or property for compensation or hire.

Issued in Washington, D.C., on October 4, 1984.

Kenneth S. Hunt,

Director of Flight Operations, AFO-1.

[FR Doc. 85-15030 Filed 6-24-85; 8:45am]

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federal register

Tuesday
June 25, 1985

Part III

Environmental Protection Agency

40 CFR Part 6

Procedures and Requirements Implementing the National Environmental Policy Act for the Municipal Wastewater Treatment Construction Grants Program (Subpart E) and Related Sections; Interim Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 6

[FRL 2787-5]

Procedures and Requirements Implementing the National Environmental Policy Act for the Municipal Wastewater Treatment Construction Grants Program (Subpart E) and Related Sections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim rule.

SUMMARY: This document provides procedural and minor substantive amendments to EPA's Procedures Implementing the National Environmental Policy Act (NEPA) for the wastewater treatment construction grants program (40 CFR Part 6 Subpart E and related sections) which were last modified by changes published in the **Federal Register** on March 8, 1982 (47 FR 9827) and January 7, 1983 (48 FR 1012).

These amendments are based on a proposed revision to Subpart E published in the January 7, 1983 (48 FR 1014) issue of the **Federal Register** as well as comments received on the proposed rule from the public and within EPA. Because the revision contains several construction grants related changes to other Subparts of Part 6 that were not included in the proposed rule, the Agency is publishing the amendments as Interim-final to allow for public comment.

The procedural amendments accommodate recent changes in EPA's regulations for the construction grants program (40 CFR Part 35) which have been modified to incorporate the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97–117). The modifications in the grant program change the process that recipients of EPA grants follow in the planning and building of wastewater treatment facilities. Several amendments to Subpart E and related sections, though substantive, are minor in nature and streamline the process and criteria for undertaking an environmental review and preparing an EIS. The regulation also revises the reference to "Office of Federal Activities" as the program office in the existing regulation to "Office of External Affairs" to reflect the reorganization and establishment of the new Assistant Administratorship within EPA. More substantive changes were made to the environmental review process including the partitioning of the review process and public involvement requirements. These changes are described below under the heading "Description of Issues."

Because the changes made to the Proposed regulation published January 7, 1983, including the completely rewritten §§ 6.507 and 6.513 of Subpart E, and additional construction grants related changes made to Subparts A, B, C, D, G, H, I, J and Appendix A, are not expected to have a significant individual or cumulative impact on the environment, no EIS was performed.

DATES: This regulation is effective June 25, 1985. Comments on this interim-final rule must be received by August 26, 1985.

ADDRESS: Comments should be addressed to: Assistant Administrator, Office of External Affairs, A–104, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, attention: 40 CFR Part 6.

The public may inspect the comments received on the changes made Interim-final, as well as the proposed changes of January 7, 1983, at room 2119 at the above address.

FOR FURTHER INFORMATION CONTACT: John Gerba, Office of Federal Activities, [A–104–S], Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382–5910.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1981, President Reagan signed the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97–117) amending Title II to the Clean Water Act (CWA). The amendments reflect Congressional and Administration objectives to: (1) Reduce the federal cost and involvement in the building of municipal wastewater treatment facilities; (2) streamline the construction grants process; and (3) maintain the environmental integrity of the program. They also express the Administration's policy to delegate the operation of federal programs to the appropriate level of government and to provide both States and municipalities with more flexibility in carrying out this responsibility.

The 1981 CWA amendments significantly changed the administration of construction grants made to potential new grantees after December 29, 1981 by eliminating Step 1 (planning) and Step 2 (engineering design) federal grant assistance. The effect of these changes was to postpone official EPA involvement in projects, including NEPA determinations, until after the potential grantee completed its planning and engineering design work. Prior to the 1981 CWA amendments, the Agency's responsiblity to make NEPA decisions was undertaken early in the Step 1 planning process. The 1981 CWA amendments did not alter EPA's responsibility to make final NEPA determinations. However, since considerable work may be done by a potential grantee under these amended procedures before federal involvement becomes obligatory, the changes to this regulation encourage potential grantees to consult with the Agency on NEPA compliance matters early in their own facilities planning activities. Past experience with the construction grants process has proven the value of early consultation in fostering productive coordination in meeting federal as well as State environmental review requirements for identifying environmentally acceptable alternatives without prolonging the construction grants process.

The revision to Subpart E also required some changes to related subparts of Part 6 to provide consistency within the regulation as a whole and to clarify certain sections that experience has shown to be unclear. The most significant change was relocating and rewording general criteria for initiating EISs applicable to construction grants as well as other Part 6 programs from Subpart E to Subpart A, with necessary changes to Subparts G, H, and I to cross-reference this new location. In addition, a minor change was made to Subpart B providing for flexibility in formatting construction grants and other EISs that experience has shown to be desirable, citations were added to Subpart C on several additional environmental laws to make the Subpart more useful, and a 30 day public notice requirement consistent with similar requirements for FNSIs and EISs was added for categorical exclusion decision documents. Also a minor technical change was made to Subpart J (in conformance with the 1981 amendments to the CWA) and Appendix-A (to clarify the definition of "base floodplain").

In a Reorganization Memorandum dated June 20, 1983 signed by the EPA Administrator, a new Assistant Administratorship for External Affairs (OEA) was established in EPA to include the Office of Federal Activities (OFA). The rule is modified to reflect this organizational change by substituting the Assisant Administrator, OEA, for the Director, OFA.

In summary, EPA is amending its procedures for implementing the National Environmental Policy Act (NEPA) to: (1) Be consistent with the Municipal Wastewater Treatment

Construction Grant Amendments of 1981 (Pub. L. 97–117); (2) be consistent with changes in the wastewater treatment construction grants program's regulations (40 CFR Part 35); (3) reorder the sections of Subpart E to more closely reflect the sequence of the steps undertaken in the environmental review process; (4) make minor substantive changes to the criteria for deciding whether to prepare an EIS; (5) adjust other subparts as needed; and, (6) to reflect the new organizational structure with lead responsibilities for these regulations.

Description of Issues

In response to interim-final portions of the regulation published in the **Federal Register** on March 8, 1982 and on January 7, 1983, and proposed portions of the regulation published on January 7, 1983, we received a small number of comments from States, municipalities, firms whose consulting services include NEPA issues, individuals and most of EPA's Regional Offices. Although the preamble does not respond to every comment individually, all were considered and many served as the basis for revisions to this regulation.

Meeting NEPA Requirements

The Agency believes that NEPA reviews are most effective in fostering development of environmentally sound, costeffective projects when they are performed during the Step 1 process. With the elimination of Step 1 and Step 2 grants, official federal involvement may not occur until after the completion of engineering design steps. This could effectively postpone the "major federal action" which would trigger NEPA involvement until much of the planning and design work is completed. The application of NEPA at this point in the development process could cause unnecessary waste and delay if potential Step 3 grantees propose environmentally unsuitable alternatives for federal funding. The final amendments to 40 CFR Part 35 in the February 17, 1985 **Federal Register** address this issue by requiring that NEPA requirements (40 CFR Part 6) be met before submission of an application for a Step 3 (building) grant. More specifically, the regulations at § 35.2113 encourage potential applicants to work with the State and EPA as early as possible in the facilities planning process to "ascertain the appropriateness of a categorical exclusion, a finding of no significant impact, or an enviromental impact statement." They also allow a potential applicant to request a NEPA review early in the facilities planning or design stages. The amendments made to this rule reflect that approach.

Pre- and Post-December 29, 1981 Construction Grants

The Agency has established that there are approximately 3,600 wastewater treatment facilities planning projects at various stages of development that received Step 1 grants from EPA on or before December 29, 1981. Except as noted in the revised §6.504 (b) and (c), the requirements of these amendments apply equally to these projects and to projects of potential Step 3 applicants subject to the Municipal Wastewater Treatment Construction Grant Amendments of 1981 that did not receive a Step 1 grant on or before December 29, 1981. However, the amendments made to the regulation do not impose substantively different environmental review processes for either pre or post December 29, 1981 project categories. The only significant difference between the categories is in the permissible timing of compliance. Therefore the imposition of retroactive requirements on pre-December 29, 1981 projects is avoided.

Reordering and Clarifying of Subpart E Sections

When the regulatory action began on Subpart E, State and federal officials indicated the desirability for restructuring its content. The January 1983 Proposed Regulation changed the order of the sections and subsections of Subpart E to more closely reflect the steps of the environmental review process in order to make the regulation more understandable. This Interim-final rule utilizes this new sequence with one major difference: § 6.512 in the Proposed regulation of January 7, 1983 entitled "Segmenting projects" is now §6.507 and retitled "Partitioning the environmental review process." Sections 6.507 through 6.511 in the Proposed regulation of January 7, 1983 are now numbered §§ 6.508 through 6.512 respectively. The following tables compare the existing regulations (either final or interim-final as "Old") with the current amended and revised Interim-final Part 6 ("New") regulation.

DISTRIBUTION TABLE.—SECTIONS RELATED TO SUBPART E

Old section	New section
6.107 (a) and (b) Categorical exclusions.	6.107 (a) and (b).
6.107 (c) and (d)	Obsolete.
6.107(e)	6.107(c).
6.301 Historical and archeological sites.	6.301 Landmarks, historical and archeological sites.
6.301(a)	6.301(b).
6.301(b)	6.301(c).
6.302 (a) and (b)	6.302 (a) and (b).
6.302(c) Agricultural farmlands.	6.302(c) Important farmlands.
6.302 (d) and (e)	6.302 (d) and (e).
6.302(f) Fish and wildlife	6.302(g).
6.302(g) Endangered species protection.	6.302(h).
6.500 Purposes	6.500.
6.501 Definitions	6.501.
6.502 Applicability [interim final [1]].	Obsolete.
6.503 Consultation during the environmental review process. [revised interim final [2]].	6.507 Partitioning the environmental review process.
6.504 Public participation [interim final].	6.513.
6.505 Limitations [interim final].	Obsolete.
6.506(a) (1) thru (6) [interim-final].	6.108 Criteria for initiating EISs.
6.506(a)(7) [interim-final] and (b); Criteria for preparing EISs.	6.509 Criteria for initiating EISs.
6.506(c) Categorical exclusions [revised interim-final].	6.505.
6.507(a) [interim final] and (b); Award of a facilities grant (Step 1) and Mid-course review.	6.504 Consultation during the facility planning process.
6.507 (c) and (d) Review of completed facilities plan and Environmental review.	6.506 Environmental review process.
6.507(e) Finding of No Significant Impact.	6.508 . . . (FNSI) determination.
6.507 (f), (g) and (h) Notice of intent, Scoping and EIS method.	6.510 Environmental Impact Statement (EIS) preparation.
6.508 Limits on delegation to States [interim final].	6.514.
6.509 Identification of mitigation measures.	6.511 Record of decision and . . . .
6.510 Monitoring	6.512 Monitoring compliance.

[1] FR, March 8, 1982, pp. 9829–32.
[2] FR, January 7, 1983, pp. 1012–20.

DERIVATION TABLE.—SECTIONS RELATED TO SUBPART E

New section	Old section
6.107 Categorical exclusions.	6.107 [Revised Interim-final].
6.107 (a) and (b)	6.107 (a) and (b).
6.107(c)	6.107(e).
6.108	6.506(a) (1) thru (6) [interim-final].
6.301 Landmarks, historical and archeological sites.	6.301.
6.301(a) National natural landmarks.	New.
6.301(b)	6.301(a).
6.301(c)	6.301(b).
6.302 Wetlands, floodplains, important farmlands, coastal zones, wild and scenic rivers, and endangered species.	6.302.
6.302 (a)–(e)	6.302 (a)–(e).
6.302(f) Barrier islands	New.
6.302 (g) and (h)	6.302 (f) and (g).
6.501 Definitions (a)–(f)	6.501 (a)–(f).
6.501(g) "Responsible official".	New.
6.501(h) "Approval of the facilities plan.	New.
6.502 Applicability and limitations.	New.
6.503 Overview of the environmental review process.	New.
6.504(a) Consultation during the facility planning process.	6.507 Introductory paragraph.
6.504(b) (1) and (2)	6.507(a) [Interim final [1]] and (b) new title.

DERIVATION TABLE.—SECTIONS RELATED TO SUBPART E—Continued

New section	Old section
6.504(c) Projects not receiving grant assistance for step 1 facility planning on or before December 29, 1981.	New.
6.505 Categorical exclusions.	6.506.
6.505(a) General	6.506(c) Introductory paragraph [interim final].
6.505(b) Categories eligible for exclusion.	6.506(6)(1) [Revised interim final [2]].
6.505(c) Criteria for not granting a categorical exclusion.	6.506(c)(2) [Revised interim final].
6.505(d) Developing new categories of excluded actions.	6.506(c)(3) [Interim final].
6.505(e) Proceeding with grant awards.	New.
6.506 Environmental review process.	6.507.
6.506 (a) and (b)	6.507(c).
6.506(c)	6.507(d).
6.506(c) (1) and (2)	6.507(d)(1).
6.506(c) (3) and (4)	6.507(d) (2) and (3).
6.507 Partitioning the environmental review process.	6.503 Segmenting projects [revised interim-final].
6.507(a) Purpose	6.503(a) Criteria for segmenting.
6.507(b) Criteria for partioning.	6.503(b) EIS determination.
6.507(c) Requests for partioning.	6.503(c) Steps in segmenting.
6.507(d) Approval of requests for partitioning.	New.
6.508 Finding of No Significant Impact (FNSI) determination.	6.507.
6.508(a)	6.507(e).
6.508(b) Proceeding with grant awards.	New.
6.509 Criteria for initiating EISs.	6.506 (e) and (a)(7) [interim-final] and (b).
6.510 Environmental Impact Statement (EIS) preparation.	6.507.
6.510(a) Steps in preparing EISs.	New.
6.510(a)(1)	6.507(f).
6.510(a)(2)	6.507(g).
6.510(a)(3) identifying and evaluating alternatives.	New.
6.510(b) (1) and (2)	6.507(h) (1) and (2).
6.510(b)(3) (Third party method).	New.
6.510(b)(4) (joint EPA EIS process).	6.507(h)(3) and 6.604(g)(3).
6.511 Record of decision and identification of mitigation measures.	6.509.
6.511 (a) and (b)	6.509 (a) and (b).
6.511(c) Proceeding with grant award.	New.
6.512 Monitoring compliance.	6.510.
6.513 Public participation	6.504 [Interim final].
6.513(a)	6.504(a) [Interim final].
6.513(a) (1) and (2) (Public meetings/hearings).	New.
6.513 (b) and (c)	6.504 (b) and (c).
6.514 Delegation to States	6.508 [Interim final].
6.514	6.514(a).
6.514(a) (1) and (2)	6.514(a)(2).
6.514(a)(3) (Environmental assessment).	New.
6.514(a)(4)	6.508(a)(2).
6.514(a)(5)	6.508(a)(3).
6.514(a)(6)	6.508(a)(1).
6.514(a) (7)–(9) RODs; Subpart C; 6.510(b)(3)).	New.
6.514(b)	6.508(b).

Delegation of NEPA Compliance Requirements

Numerous comments were received on the proposed rule requesting EPA to clarify which requirements of Subpart E implementing NEPA were delegable to States under the construction grants program. The concerns were that the set of non-delegable actions specified in § 6.514 was not complete and that it was difficult to determine a comprehensive set of delegable actions to States by reading all of Subpart E. OEA agreed with these concerns, and in response to those comments, § 6.514 has been modified to specify in greater detail the non-delegable decisions and actions whenever the responsibilities for complying with NEPA (involving a categorical exclusion, environmental review, FNSI or EIS) are divided among both federal and State officials.

Timing of Compliance With NEPA in the Construction Grants Program

Numerous commentors indicated that the Proposed regulation did not adequately explain the timing of NEPA compliance, or any difference in timing, by grantees operating under procedures in place prior to the 1981 CWA amendments and potential grantees subject to the amendments. In response to these comments a definition of "Approval of a Facilities Plan" was added to § 6.501 and the requirements in § 6.502 were revised to clarify that all grantees are required to comply with NEPA prior to the responsible official approving a facilities plan needed before a Step 3 (building) grant could be awarded. These modifications clarify that Grantees awarded Step 1 assistance prior to the effective date of the 1981 CWA amendments must still comply with all NEPA requirements prior to the facilities plan approval step incorporated in their federally assisted Step 1 facilities planning process. Applicants following the effective date of the 1981 CWA amendments, who have not received a Step 1 grant award, must indicate compliance with NEPA in their Step 3 grant application. However these latter applicants are encouraged to undertake their NEPA review, and voluntarily consult with their State and EPA about the review, early in their own facilities planning process.

Step 3 Grant Awards on "Components" of Facilities Plan

One of the areas of Subpart E which received much attention throughout development, including the comment process, was the situation when, for reasons of impaired program effectiveness, the responsible official approved a Step 3 construction grant award for an operational "segment" of a proposed wastewater treatment works. During internal agency review, the Office of Water and other commentors recommended that the term "segment" be changed to avoid the confusion that had been prevalent between its use in this regulation in the past and its use in the construction grants regulation (40 CFR Part 35). The OEA agreed with this recommendation.

Because of the different definition given the term by the two programs, this regulation now replaces the term "segment" used in the January 7, 1983 and earlier versions of the rule, with the term "component/portion" (or simply "component") when referring to a part of a wastewater treatment system(s) having to comply with NEPA before a Step 3 grant may be awarded. See also the discussion under the heading "Partitioning the Environmental Review Process."

Updating NEPA Actions 5 or More Years Old

Though there were few comments directed toward this issue, NEPA guidance issued by the Council on Environmental Quality (CEQ) urged agencies to adopt a process for reassessing EISs prepared five or more years prior to actual implementation of the federal action (building wastewater facilities in the case of the construction grants program) for adequacy of information, description of existing environments and anticipated impacts. During internal Agency review of comments, it was determined that the regulation should be made consistent with the CEQ guidance for EISs and that the concept should be expanded to include environmental assessments and categorical exclusions as well. Therefore, a requirement for updating environmental assessments, categorical exclusions and EISs prior to the award of a Step 3 building grant has been inserted into § 6.506, 6.508 and 6.511.

Environmental Impact Statement Preparation

No comments were received from the public on the provisions in § 6.509 in the proposed rule regarding EIS preparation for the construction grants program (redesignated as § 6.510 in this Interim-final rule). However, in response to comments made during internal Agency review, additional minor substantive amendments have been made to § 6.510 including: (1) A specific mention of the requirement for identifying and evaluating alternatives; (2) adopting language on utilizing a third party method of contracting for EIS services consistent with that used in Subpart F of Part 6, in place of that formerly used in § 6.510(b)(3); and adding a fourth method of EIS preparation permitted by

CEQ regulations utilizing a joint EPA/State process. Furthermore, internal Agency review uncovered the fact that many of the criteria for initiating EISs enumerated in § 6.508 of the Proposed Subpart E regulation were cross-referenced by several other Part 6 program areas (in Subparts G, H, and I) but that these criteria were not appropriately worded for general application to those program areas. It was therefore suggested by several Agency commentors that all criteria in § 6.508 applicable to other Part 6 programs should be reworded and that a separate section should be established for them in Subpart A. The OEA agreed with this approach. Criteria applicable to construction grants as well as to other Part 6 programs have been reworded and transferred out of Subpart E, which is concerned only with construction grants, to a new § 6.108 in Subpart A. In addition to clarifying the applicability of the transferred criteria, the citations in Subparts E, G, H and I were revised to cross-reference this new section.

Partitioning the Environmental Review Process

Section 6.512 of the Proposed regulation, like § 6.503 of the Interim-final regulation published in the March 8, 1982 issue of the **Federal Register**, refers to a process of "segmenting" a wastewater treatment system facilities plan. During internal Agency review, several commentors stated that this reference to "segmenting" was misleading and inappropriate, since requirements for segmenting facilities plans are more properly a function of the construction grants regulation. (See earlier discussion on Step 3 Grant Awards on Components). In actuality, except for requiring adherence to NEPA, 40 CFR Part 6 has little to do with the programmatic practices of the construction grants program under the Clean Water Act, or any other program, within EPA. The intent of § 6.512 of the proposed (and the existing) rule was to specify how NEPA requirements were to be satisfied when a part of a proposed wastewater treatment system facilities plan was to be considered for building, and a Step 3 grant awarded, before the environmental review on the entire facilities plan had been completed. The NEPA concern, therefore, is not to "segment" the facilities plan for funding purposes; it is how to conduct the environmental review process on any component/portion of the plan under these circumstances.

When a facilities plan is "segmented" the NEPA interest is to ensure that the component would not involve significant environmental impacts in and of itself, nor result in a facility that would have unacceptable environmental consequences when completed. Furthermore, the NEPA interest is to ensure that the environmental review conducted on the component part of the facilities plan includes consideration of the environmental consequences on the remaining system components of the treatment works alternatives under consideration. Therefore the NEPA objective is to ensure that the segmentation action will not eliminate any of the more environmentally acceptable alternatives from among all feasible alternatives identified in the process.

A decision was made to rewrite the section focusing on the NEPA activity when a portion of a wastewater treatment system(s) is proposed for early building before the entire environmental review has been completed. The term "partitioning" gained general acceptance to describe the NEPA activity. The concept was then expressed as "partitioning the environmental review process", signifying that a thorough environmental review process had been undertaken on a discrete component of a proposed wastewater treatment system which would immediately remedy an existing impairment to the effectiveness of a Region's program for improving water quality within a project area without prejudicing the outcome of the complete environmental review of alternatives. This rewritten and renamed section was then redesignated § 6.507 in this Interim-final rule in keeping with the objective of reflecting the actual sequence of steps undertaken in the environmental review process.

Environmental reviews under existing NEPA "segmentation" requirements have on occasion resulted in decisions early in the review process to issue FNSIs on "segments" of wastewater system even though decisions made during later stages of the review process prompted the preparation of an EIS on the remaining "segments" of the proposed system(s). The "partitioning" process, as used in this regulation, emphasizes the need to determine the environmental risk involved in approving the early building of "components" of wastewater treatment systems before a "preferred alternative" is identified and/or selected. A partitioned environmental review must include the assessment of impacts that could be anticipated for all reasonable system alternatives under study. Furthermore most internal Agency commentors agreed with the Proposed regulation's elimination of the consultation provision with OEA (OFA) in this section. (The Interim-final rule published in the March 8, 1982 issue of the **Federal Register** had already eliminated the companion consultation and approval provision with CEQ.)

Public Participation

In 1981–82, representatives of separate Workgroups on the regulation implementing NEPA (40 CFR Part 6), the Agency's Public Participation regulation (40 CFR Part 25), and the construction grants regulation (40 CFR Part 35) met and agreed that detailed Public Participation requirements specifying the number and timing of meetings and hearings for major Agency programs would be inserted into the Part 25 regulation. Thereupon, the Part 6 and Part 35 Workgroups eliminated specific mention of these requirements from their respective rules and thereafter published them as proposed and final rules respectively. Subsequently, the Agency made a decision not to include program specifics on the number and timing of meetings and hearings within Part 25 and the regulatory action was cancelled. In order to accommodate the final decisions on Part 25 and Part 35 requirements, the Part 6 Workgroup reinstated simplified specific requirements into this rule describing the most effective timing of public participation activities. In addition, in response to internal Agency review comments, a thirty (30) day review period has been included in § 6.400(f) on decision documents issued as categorical exclusion determinations. This time period makes it consistent with the requirement imposed on environmental review documents involving FNSIs and EISs, and conforms to a practice favored by several Regional EPA Administrators.

Important Farmlands and Categorical Exclusions

Several commentors suggested during internal review that a more general term should be employed for characterizing all categories of farmland subject to NEPA review than the terms "prime" and "unique" as employed in the Proposed regulation conveyed. They noted that the requirements of the Farmland Protection Policy Act (FPPA) and the Agency's own Policy to Protect Significant Agricultural Lands, which are both cited in this Interim-final version (see additional discussion located on Subpart C changes in this Preamble), required NEPA attention to be given to a total of seven categories of farmland. Furthermore, the commentors suggested that the regulation should be modified to make clear that the requirement for determining project impact on the conversion of farmland applies to projects otherwise categorically excluded from NEPA review, in accordance with the FPPA regulations promulgated by the Soil Conservation Service (SCS).

In response to these comments, the term "important farmlands" was used in place of "prime and unique agricultural lands" in appropriate locations in Subpart A (Initiating EISs), Subpart C (Coordination with Other Environmental Review Requirements), and Subpart E (Categorical Exclusions) where the intent was to refer to all seven categories. In response to the comment on the SCS requirement imposed on categorically excluded projects, it was determined that EPA's own requirement for not approving a categorical exclusion, contained in § 6.505(c) of this Part, specifically prevents projects impacting important farmlands from receiving a categorical exclusion. This EPA restriction also applies to all other important environmental and cultural resources cited in Subpart C. Therefore it was determined that it was unnecessary to reference the SCS restriction on categorically excluded projects in this regulation. However to clarify this issue, EPA's own restrictions located at §6.505(c)(1)(v) were cross-referenced to Subpart C coordination requirements.

Action Being Taken to Other Subparts of Part 6

The majority of amendments to Subparts A, B, C, D, F, G, I, J and Appendix-A of the regulation relate directly to updating the rule to conform with the 1981 amendments to the CWA, providing references to new or previously omitted environmental legislation applicable to construction grants and other Agency programs, and making technical corrections to misleading or otherwise inaccurate requirements. These changes were reviewed by EPA's Regional Offices and other Headquarter's offices including the Office of Water's construction grants program.

Subpart A—General

On March 8, 1982, an interim final regulation was printed in the **Federal Register** establishing the process for granting categorical exclusions from NEPA procedures for certain categories of wastewater treatment construction grant projects. This process will likely exclude approximately ten per cent of the EPA funded projects from substantive environmental review. Minor revisions made in this action include: language revisions clarifying exclusion procedures; eliminating duplicate consultation requirements appearing at § 6.400; and relocating the requirement entitled "extraordinary circumstances" to more appropriate locations in individual program areas such as § 6.509(b) for the construction grants program.

In addition, as was mentioned earlier in this preamble, a new § 6.108 was established to list the general criteria for initiating EISs that were previously listed in § 6.506 of the "old" rule, but were intended to be applicable to other Part 6 programs in addition to construction grants projects.

Subpart B—Content of EISs

During internal Agency review, one commentor experienced in the preparation of EISs for construction grants projects recommended that Subpart B be modified to provide more flexibility in organizing an EIS. In response, we have revised the requirement in § 6.203(c) that the discussion of environmental impacts be structured in a particular format. The responsible official will now be able to use the most suitable organizing structure for the discussion of environmental impacts which is best suited to explain the level of complexity of the project and to convey this information to the public.

Subpart C—Coordination With Other Environmental Review and Consultation Requirements

Several commentors suggested that Subpart C could be made more useful if it contained citations to several additional environmental laws that must be complied with the Agency in conjunction with environmental reviews for construction grants and other programs. In response, we have included specific references to laws pertaining to national natural landmarks (Historic Sites Act of 1935, 16 U.S.C. 461 *et seq.*), important farmlands (Farmland Policy Protection Act, 7 U.S.C. 4201 *et seq.*), barrier islands (Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*) and air pollution control requirements (section 316(b) requirements of the Clean Air Act, 42 U.S.C. 7616(b)).

Furthermore, as discussed earlier in the Preamble, it was further suggested that the term "important farmlands" should be used for the title in § 6.302(c) in place of "agricultural lands" to denote a specific set of farmlands, namely the categories contained in both the Farmland Protection Policy Act (FPPA) and the EPA Policy to Protect Environmentally Significant Agricultural Lands. This substitution was accepted.

Subpart D—Public and Other Federal Agency Involvement

A number of commentors indicated the need for a public notice on projects receiving a categorical exclusion, especially when the project might involve a partitioning of the environmental review process. OEA agreed with this position and has included a public notice requirement at §6.400(f). In addition a minor corrective change was made to § 6.400(d).

Subpart J—Assessing The Environmental Effects Abroad of EPA Actions

Non-substantive changes were made to make the timing of Subpart J requirements applicable to construction grants projects consistent with legislative requirements contained in the CWA amendments of 1981.

Appendix—A: Statement of Procedures on Floodplain Management and Wetlands Protection

During internal review several commentors requested to have the definition of "base floodplain" in Appendix-A clarified by insertion of a specific reference to the land area covered by a potential 100-year flood. Consequently a technical change has been made to the definition of base floodplain in section 4(b) of the Appendix.

Regulation Development Process

These amendments were developed by a workgroup with representatives from EPA headquarters and regional offices. Their efforts followed the extensive public and regional comment process carried out by the construction grants program in developing amendments to 40 CFR Part 35 during which NEPA implementation was considered.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0016.

The Office of External Affairs has determined that this revision is not a "major" rule within the meaning of Executive Order (E.O.) 12291. This is because the revision will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or federal, State, or local government agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The purpose and effect of this revision to the environmental review process for the construction grants program is to accommodate recent changes in the grant program and to make minor substantive changes. No increased paperwork burdens overall are imposed on potential grantees by the amendments.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

E.O. 12291 requires that major rules must undergo a Regulatory Impact Analysis. Since EPA has determined that these amendments and revisions are not a "major" rule under the requirements of E.O. 12291, it is not subject to such an analysis.

List of Subjects in 40 CFR Part 6

Environmental impact statements, Administrative practice and procedure, Grants programs, Permits programs, Waste treatment and disposal.

Dated: May 13, 1985.

Lee M. Thomas,

Administrator.

PART 6—[AMENDED]

For reasons set out in the preamble, 40 CFR Part 6 is amended as follows:

1. The authority citation for Part 6 continues to read as follows:

Authority: Secs. 101, 102, and 103 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); also, the Council on Environmental Quality Regulations dated November 29, 1978 (40 CFR Part 1500).

2. The heading to 40 CFR Part 6 is revised to read as follows:

PART 6—PROCEDURES FOR IMPLEMENTING THE REQUIREMENTS OF THE COUNCIL ON ENVIRONMENTAL QUALITY ON THE NATIONAL ENVIRONMENTAL POLICY ACT

3. This part is amended by removing the words "Director, Office of Federal Activities", and the acronym "OFA" wherever they appear and inserting in their place the words "Assistant Administrator, Office of External Affairs", and "OEA".

4a. Subpart A is amended by revising paragraph § 6.103(a)(1)(iv) to read as follows:

Subpart A—General

* * * * *

§ 6.103 Responsibilities.

(a) * * *

(1) * * *

(iv) Consulting with appropriate officials responsible for other environmental laws set forth in Subpart C.

* * * * *

4b. Section 6.105 is amended by revising paragraph (b) to read as follows:

§ 6.105 Synopsis of Environmental Review procedures.

* * * * *

(b) *Environmental information documents (EID).* Environmental information documents (EIDs) must be prepared by applicants, grantees, or permittees and submitted to EPA as required in Subparts E, F, G, H, and I. EIDs will be of sufficient scope to enable the responsible official to prepare an environmental assessment as described under § 6.105(d) of this part and Subparts E through I. EIDs will not have to be prepared for actions where a categorical exclusion has been granted.

* * * * *

4c. Section 6.107 is revised to read as follows:

§ 6.107 Categorical exclusions.

(a) *General.* Categories of actions which do not individually, cumulatively over time, or in conjunction with other federal, State, local, or private actions have a significant effect on the quality of the human environment and which have been identified as having no such effect based on the requirements in § 6.505, may be exempted from the substantive environmental review requirements of this part. Environmental information documents and environmental assessments or environmental impact statements will not be required for excluded actions.

(b) *Determination.* The responsible official shall determine whether an action is eligible for a categorical exclusion as established in Subpart E. The determination shall be made as early as possible following the receipt of an application or notification that an application will be filed. The responsible official shall document the decision to issue or deny an exclusion. The documentation shall include the application, a brief description of the proposed action, and a brief statement of how the action meets the criteria for a categorical exclusion without violating criteria for not granting an exclusion.

(c) *Revocation.* The responsible official shall revoke a categorical exclusion and shall require a full environmental review if, subsequent to the granting of an exclusion, the responsible official determines that: (1) The proposed action no longer meets the requirements for a categorical exclusion due to changes in the proposed action; or (2) determines from new evidence that serious local or environmental issues exist; or (3) that Federal, State, local, or tribal laws are being or may be violated.

4d. Section 6.108 is revised to read as follows:

§ 6.108 Criteria for initiating Environmental Impact Statements (EIS).

The responsible official shall assure that an EIS will be prepared and issued for actions under Subparts E, G, H, and I when it is determined that any of the following conditions exist:

(a) The federal action may significantly affect the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population;

(b) The effects resulting from any structure or facility constructed or operated under the proposed action may conflict with local, regional or State land use plans or policies;

(c) The proposed action may have significant adverse effects on wetlands, including indirect and cumulative effects, or any major part of a structure or facility constructed or operated under the proposed action may be located in wetlands;

(d) The proposed action may significantly affect a habitat identified on the Department of the Interior's or a State's threatened and endangered species lists, or a structure or facility constructed or operated under the proposed action may be located in the habitat;

(e) Implementation of the proposed action or plan may directly cause or induce changes that significantly:

(1) Displace population;

(2) Alter the character of existing residential areas;

(3) Adversely affect a floodplain; or

(4) Adversely affect significant amounts of important farmlands as defined in requirements in § 6.302(c), or agricultural operations on this land.

(f) The proposed action may, directly, indirectly or cumulatively have significant adverse effect on parklands, preserves, other public lands or areas of recognized scenic, recreational, archaeological, or historic value; or

(g) The federal action may directly or through induced development have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife, and their natural habitats.

5. Subpart B is amended by correcting the heading to § 6.203; and revising paragraph 6.203(c), to read as follows:

Subpart B—Content of EISs

* * * * *

§ 6.203 Body of EISs.

* * * * *

(c) *Affected environment and environmental consequences of the alternatives.* The affected environment on which the evaluation of each alternative shall be based includes, for example, hydrology, geology, air quality, noise, biology, socioeconomics, energy, land use, and archeology and historic subjects. The discussion shall be structured so as to present the total impacts of each alternative for easy comparison among all alternatives by the reader. The effects of a "no action" alternative should be included to facilitate reader comparison of the beneficial and adverse impacts of other alternatives to the applicant doing nothing. A description of the environmental setting shall be included in the "no action" alternative for the purpose of providing needed background information. The amount of detail in describing the affected environment shall be commensurate with the complexity of the situation and the importance of the anticipated impacts.

* * * * *

6a. Subpart C is amended by revising the heading and introductory paragraph to § 6.301; redesignating paragraphs § 6.301 (a) and (b) as (b) and (c) respectively; and revising the paragraph heading to new (b) and the heading and text of new (c); and adding a new § 6.301(a) as set forth below:

Subpart C—Coordination With Other Environmental Review and Consultation Requirements

* * * * *

§ 6.301 Landmarks, historical, and archeological sites.

EPA is subject to the requirements of the Historic Sites Act of 1935 16 U.S.C. 461 *et seq.*, the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and Executive Order 11593, entitled "Protection and Enhancement of the Cultural Environment." These statutes, regulations and executive orders establish review procedures independent of NEPA requirements.

(a) *National natural landmarks.* Under the Historic Sites Act of 1935, the Secretary of the Interior is authorized to designate areas as national natural landmarks for listing on the National Registry of Natural Landmarks. In conducting an environmental review of a proposed EPA action, the responsible official shall consider the existence and location of natural landmarks using information provided by the National Park Service pursuant to 36 CFR 62.6(d) to avoid undesirable impacts upon such landmarks.

(b) *Historic, architectural, archeological, and cultural sites.* * * *

(c) *Historic, prehistoric and archeological data.* Under the Archeological and Historic Preservation Act, if an EPA activity may cause irreparable loss or destruction of significant scientific, prehistoric, historic or archeological data, the responsible official or the Secretary of the Interior is authorized to undertake data recovery and preservation activities. Data recovery and preservation activities shall be conducted in accordance with implementing procedures promulgated by the Secretary of the Interior. The National Park Service has published technical standards and guidelines regarding archeological preservation activities and methods at 48 FR 44716 (September 29, 1983).

6b. Section 6.302 is amended by revising paragraphs (c) and (e); redesignating paragraphs (f) and (g) as (g) and (h) respectively; and adding new paragraph (f) as set forth below:

§ 6.302 Wetlands, floodplains, important farmlands, coastal zones, wild and scenic rivers, fish and wildlife, and endangered species.

* * * * *

(c) *Important farmlands.* It is EPA's policy as stated in the EPA Policy To Protect Environmentally Significant Agricultural Lands, dated September 8, 1978, to consider the protection of the Nation's significant/important agricultural lands from irreversible conversion to uses which result in its loss as an environmental or essential food production resource. In addition the Farmland Protection Policy Act, (FPPA) 7 U.S.C. 4201 *et seq.*, requires federal agencies to use criteria developed by the Soil Conservation Service, U.S. Department of Agriculture, to: (1) Identify and take into account the adverse effects of their programs on the preservation of farmlands from conversion to other uses; (2) consider alternative actions, as appropriate, that could lessen such adverse impacts; and (3) assure that their programs, to the extent possible, are compatible with State and local government and private programs and policies to protect farmlands. If an EPA action may adversely impact farmlands which are classified prime, unique or of State and local importance as defined in the Act, the responsible official shall in all cases apply the evaluative criteria promulgated by the U.S. Department of Agriculture at 7 CFR Part 658. If categories of important farmlands, which include those defined in both the FPPA and the EPA policy, are identified in the project study area, both direct and indirect effects of the undertaking on the remaining farms and farm support services within the project area and immediate environs shall be evaluated. Adverse effects shall be avoided or mitigated to the extent possible.

* * * * *

(e) *Wild and scenic rivers.* (1) The Wild and Scenic Rivers Act, 16 U.S.C. 1274 *et seq.*, establishes requirements applicable to water resource projects affecting wild, scenic or recreational rivers within the National Wild and Scenic Rivers system as well as rivers designated on the National Rivers Inventory to be studied for inclusion in the national system. Under the Act, a federal agency may not assist, through grant, loan, license or otherwise, the construction of a water resources project that would have a direct and adverse effect on the values for which a river in the National System or study river on the National Rivers Inventory was established, as determined by the Secretary of the Interior for rivers under the jurisdiction of the Department of the Interior and by the Secretary of Agriculture for rivers under the jurisdiction of the Department of Agriculture. Nothing contained in the foregoing sentence, however, shall:

(i) Preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on October 2, 1968; or

(ii) Preclude licensing of, or assistance to, developments below or above a study river or any stream tributary thereto which will not invade the area or diminish the scenic, recreational and fish and wildlife values present in the area on October 2, 1968.

(2) The responsible official shall:

(i) Determine whether there are any wild, scenic or study rivers on the

National Rivers Inventory or in the planning area, and

(ii) Not recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the administering Secretary in request of appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the administering Secretary, in writing of this intention at least sixty days in advance, and without specifically reporting to the Congress in writing at the time the recommendation or request is made in what respect construction of such project would be in conflict with the purposes of the Wild and Scenic Rivers Act and would affect the component and the values to be protected by the Responsible Official under the Act.

(3) Applicable consultation requirements are found in section 7 of the Act. The Department of Agriculture has promulgated implementing procedures, under section 7 at 36 CFR Part 297, which apply to water resource projects located within, above, below or outside a wild and scenic river or study river under the Department's jurisdiction.

(f) *Barrier islands.* The Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, generally prohibits new federal expenditures or financial assistance for any purpose within the Coastal Barrier Resources System on or after October 18, 1982. Specified exceptions to this prohibition are allowed only after consultation with the Secretary of the Interior. The responsible official shall ensure that consultation is carried out with the Secretary of the Interior before making available new expenditures or financial assistance for activities within areas covered by the Coastal Barriers Resources Act in accord with the U.S. Fish and Wildlife Service published guidelines defining new expenditures and financial assistance, and describing procedures for consultation at 48 FR 45664 (October 6, 1983).

(g). *Fish and wildlife protection.* * * *

(h). *Endangered species protection.* * * *

6c. Section 6.303 is amended by adding paragraph (g) as set forth below:

§ 6.303 Air quality.

* * * * *

(g) With regard to wastewater treatment works subject to review under Subpart E of this Part, the responsible official shall consider the air pollution control requirements specified in section 316(b) of the Clean Air Act, 42 U.S.C. 7616, and Agency implementing procedures.

Subpart D—[Amended]

7. In Subpart D, § 6.400 is amended by revising paragraphs (d) and (f) as set forth below:

* * * * *

(d) *Findings of no significant impact (FNSI).* The responsible official shall allow for sufficient public review of a FNSI before it becomes effective. The FNSI and attendant publication must state that interested persons disagreeing with the decision may submit comments to EPA. The responsible official shall not take administrative action on the project for at least thirty (30) calendar days after release of the FNSI and may allow more time for response. The responsible official shall consider fully comments submitted before taking administrative action. The FNSI shall be made available to the public in accordance with the requirements of 40 CFR 1506.6. One copy shall be submitted to the OEA.

* * * * *

(f) *Categorical exclusions.* An applicant who receives a categorical exclusion shall publish a notice indicating the determination of eligibility in a local newspaper of community wide circulation and indicate the availability of the supporting documentation for public inspection. The responsible official shall, following the publication of the notice: Make the documentation as outlined in § 6.107(b) of this part available to the public; distribute the notice of the determination to all known interested parties; and shall send a copy of both the notice and documentation to the NEPA Compliance Staff, Office of External Affairs. The responsible official shall not take administrative action on the project for at least thirty (30) calendar days after release of the determination and may allow more time for response.

8. Subpart E is revised in its entirety to read as follows:

Subpart E—Environmental Review Procedures for Wastewater Treatment Construction Grants Program

Subpart E—Environmental Review Procedures for Wastewater Treatment Construction Grants Program

§ 6.500 Purpose.

This subpart amplifies the procedures described in Subparts A through D with detailed environmental review procedures for the Municipal Wastewater Treatment Works Construction Grants Program under Title II of the Clean Water Act.

§ 6.501 Definitions.

(a) *"Step 1 facilities planning"* means preparation of a plan for facilities as described in 40 CFR Part 35, Subpart E or I.

(b) *"Step 2"* means a project to prepare design drawings and specifications as described in 40 CFR Part 35, Subpart E or I.

(c) *"Step 3"* means a project to build a publicly owned treatment works as described in 40 CFR Part 35, Subpart E or I.

(d) *"Step 2+3"* means a project which combines preparation of design drawings and specifications as described in § 6.501(b) and building as described in § 6.501(c).

(e) *"Applicant"* means any individual, agency, or entity which has filed an application for grant assistance under 40 CFR Part 35, Subpart E or I.

(f) *"Grantee"* means any individual, agency, or entity which has been awarded wastewater treatment construction grant assistance under 40 CFR Part 35, Subpart E or I.

(g) *"Responsible Official"* means a federal or State official authorized to fulfill the requirements of this Subpart. The responsible federal official is the EPA Regional Administrator and the responsible State official is as defined in a delegation agreement under 205(g) of the Clean Water Act. The responsibilities of the State official are subject to the limitations in § 6.514 of this Subpart.

(h) *"Approval of the facilities plan"* means approval of the facilities plan for a proposed wastewater treatment works pursuant to 40 CFR Part 35, Subpart E or I.

§ 6.502 Applicability and limitations.

(a) *Applicability.* This Subpart applies to the following actions:

(1) Approval of a facilities plan or an amendment to the plan:

(2) Award of grant assistance for a project where signficant change has occurred in the project or its impact since prior compliance with this Part; and

(3) Approval of preliminary Step 3 work prior to the award of grant assistance pursuant to 40 CFR Part 35, Subpart E or I.

(b) *Limitations.* (1) Except as provided in § 6.504(c), all recipients of Step 1 grant assistance must comply with the requirements, steps, and procedures described in this Subpart.

(2) As specified in 40 CFR 35.2113, projects that have not received Step 1 grant assistance must comply with the requirements of this subpart prior to submission of an application for Step 3 or Step 2+3 grant assistance.

(3) Except as otherwise provided in § 6.507, no step 3 or 2+3 grant assistance may be awarded for the construction of any component/portion of a proposed wastewater treatment system(s) until the responsible official has:

(i) Completed the environmental review for all complete wastewater treatment system alternatives under consideration for the facilities planning area, or any larger study area identified for the purposes of conducting an adequate environmental review as required under this Subpart; and

(ii) Recorded the selection of the preferred alternative(s) in the appropriate decision document (ROD for EISs, FNSI for environmental assessments, or written determination for categorical exclusions).

§ 6.503 Overview of the environmental review process.

The process for conducting an environmental review of wastewater treatment construction grant projects includes the following steps:

(a) *Consultation.* The Step 1 grantee or the potential Step 3 or Step 2+3 applicant is encouraged to consult with the State and EPA early in project formulation or the facilities planning stage to determine whether a project is eligible for a categorical exclusion from the remaining substantive environmental review requirements of this part (§ 6.505), to determine alternatives to the proposed project for evaluation, to identify potential environmental issues and opportunities for public recreation and open space, and to determine the potential need for partitioning the environmental review process and/or the need for an Environmental Impact Statement (EIS).

(b) *Determining categorical exclusion eligibility.* At the request of a potential Step 3 or Step 2+3 grant applicant, a Step 1 facilities planning grantee, or a delegated State under § 6.514 of this subpart, EPA will determine if a project is eligible for a categorical exclusion in accordance with § 6.505. A Step 1 facilities planning grantee awarded a Step 1 grant on or before December 29, 1981 or a State may request a categorical exclusion at any time during Step 1 facilities planning. A potential Step 3 or Step 2+3 grant applicant or a State may request a categorical exclusion at any time before the submission of a Step 3 or Step 2+3 grant application.

(c) *Documenting environmental information.* If the project is determined to be ineligible for a categorical exclusion, or if no request for a categorical exclusion is made, the potential Step 3 or Step 2+3 applicant or the Step 1 grantee subsequently prepares an Environmental Information Document (EID) (§ 6.506) for the project.

(d) *Preparing environmental assessments.* Except as provided in § 6.506(c)(4) and following a review of the EID by EPA or by a State with delegated authority, EPA prepares an environmental assessment (§ 6.506), or a State with delegated authority (§ 6.514) prepares a preliminary environmental assessment. EPA reviews and finalizes any preliminary assessments. EPA subsequently:

(1) Prepares and issues a Finding of No Significant Impact (FNSI) (§ 6.508); or

(2) Prepares and issues a Notice of Intent to prepare an original or supplemental EIS (§ 6.510) and Record of Decision (ROD) (§ 6.511).

(e) *Monitoring.* The construction and post-construction operation and maintenance of the facilities are monitored (§6.512) to ensure implementation of mitigation measures (§ 6.511) identified in the FNSI or ROD.

§ 6.504 Consultation during the facilities planning process.

(a) *General.* Consistent with 40 CFR 1501.2 and 40 CFR 35.2030(c), the responsible official shall initiate the environmental review process early to identify environmental effects, avoid delays, and resolve conflicts. The environmental review process should be integrated throughout the facilities planning process. Two processes for consultation are described in this section to meet this objective. The first addresses projects awarded Step 1 grant assistance on or before December 29, 1981. The second applies to projects not receiving grant assistance for facilities planning on or before December 29, 1981 and, therefore, subject to the regulations implementing the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (40 CFR Part 35 Subpart I).

(b) *Projects receiving Step 1 grant assistance on or before December 29, 1981.* (1) During facilities planning, the grantee shall evaluate project alternatives and the existence of environmentally important resource areas including those identified in § 6.108 and § 6.509 of this Subpart, and potential for open space and recreation opportunities in the facilities planning area. This evaluation is intended to be brief and concise and should draw on existing information from EPA, State agencies, regional planning agencies, areawide water quality management agencies, and the Step 1 grantee. The Step 1 grantee should submit this information to EPA or a delegated State at the earliest possible time during facilities planning to allow EPA to determine if the action is eligible for a categorical exclusion. The evaluation and any additional analysis deemed necessary by the responsible official may be used by EPA to determine whether the action is eligible for a categorical exclusion from the substantive environmental review requirements of this part. If a categorical exclusion is granted, the grantee will not be required to prepare a formal EID nor will the responsible official be required to prepare an environmental assessment under NEPA. If an action is not granted a categorical exclusion, this evaluation may be used to determine the scope of the EID required of the grantee. This information can also be used to make an early determination of the need for partitioning the environmental review or for an EIS. Whenever possible, the Step 1 grantee should discuss this initial evaluation with both the delegated State and EPA.

(2) A review of environmental information developed by the grantee should be conducted by the responsible official whenever meetings are held to assess the progress of facilities plan development. These meetings should be held after completion of the majority of the EID document and before a preferred alternative is selected. Since any required EIS must be completed before the approval of a facilities plan, a decision whether to prepare an EIS is encouraged early during the facilities planning process. These meetings may assist in this early determination. EPA

should inform interested parties of the following:

(i) The preliminary nature of the Agency's position on preparing an EIS;

(ii) The relationship between the facilities planning and environmental review processes;

(iii) The desirability of public input; and

(iv) A contact person for further information.

(c) *Projects not receiving grant assistance for Step 1 facilities planning on or before December 29, 1981.* Potential Step 3 or Step 2+3 grant applicants should, in accordance with § 35.2030(c), consult with EPA and the State early in the facilities planning process to determine the appropriateness of a categorical exclusion, the scope of an EID, or the appropriateness of the early preparation of an environmental assessment or an EIS. The consultation would be most useful during the evaluation of project alternatives prior to the selection of a preferred alternative to assist in resolving any identified environmental problems.

§ 6.505 Categorical exclusions.

(a) *General.* At the request of an existing Step 1 facilities planning grantee or of a potential Step 3 or Step 2+3 grant applicant, the responsible official, as provided for in § 6.107(b), § 6.400(f) and § 6.504(a), shall determine from existing information and document whether an action is consistent with the categories eligible for exclusion from NEPA review identified in § 6.505(b) and not inconsistent with the criteria in § 6.505(c).

(b) *Categories of actions eligible for exclusion.* For this subpart, actions consistent with any of the following categories are eligible for a categorical exclusion:

(1) Actions for which the facilities planning is solely directed toward minor rehabilitation of existing facilities, functional replacement of equipment, or towards the construction of new ancillary facilities adjacent or appurtenant to existing facilities which do not affect the degree of treatment or capacity of the existing facility. Such actions include, but are not limited to, infiltration and inflow corrections, grant eligible replacement of existing mechanical equipment or structures, and the construction of small structures on existing sites.

(2) Actions in sewered communities of less than 10,000 persons which are for minor upgrading and minor expansion of existing treatment works. This category does not include actions that directly or indirectly involve the extension of new collection systems funded with federal or other sources of funds.

(3) Actions in unsewered communities of less than 10,000 persons where on-site technologies are proposed.

(4) Other actions developed in accordance with paragraph (d) of this section.

(c) *Criteria for not granting a categorical exclusion.* (1) The full environmental review procedures of this part must be followed if undertaking an action consistent with the categories described in § 6.505(b) may involve serious local or environmental issues, or meets any of the criteria listed below:

(i) The facilities to be provided will (1) create a new, or (2) relocate an existing, discharge to surface or ground waters;

(ii) The facilities will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters;

(iii) The facilities would provide capacity to serve a population 30% greater than the existing population;

(iv) The action is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, State, local, or private actions:

(v) The action is known or expected to directly or indirectly affect (A) cultural resource areas such as archaeological and historic sites (§ 6.301), (B) habitats of endangered or threatened species in accordance with § 6.302, (C) environmentally important natural resource area such as floodplains, wetlands, important farmlands, aquifer recharge zones in accordance with § 6.302, or (D) other resource areas identified in supplemental guidance issued by the OEA; or

(vi) The action is known or expected not to be cost-effective or to cause significant public controversy.

(2) Notwithstanding the provisions of § 6.505(b), if any of the above conditions exist, the responsible official shall ensure:

(i) That a categorical exclusion is not granted or, if previously granted, that it is revoked according to § 6.107(c) of this part;

(ii) That an adequate EID is prepared; and

(iii) That either an environmental assessment and FNSI or an EIS and ROD are prepared and issued.

(d) *Developing new categories of excluded actions.* The responsible official or other interested parties may request that a new category of excluded actions be created, or that an existing category be amended or deleted. The request shall be made in writing to the Assistant Administrator, OEA, and shall contain adequate information to support the request. Proposed new categories shall be developed by OEA and published as a proposed rule in the **Federal Register** including a thirty (30) day public comment period. The following shall be considered in evaluating proposals for new categories:

(1) Actions in the proposed category should seldom result in the effects identified in § 6.505(c)(1);

(2) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EIS; and

(3) Whether information adequate to determine if a potential action is consistent with the proposed category will normally be available when needed.

(e) *Proceeding with grant awards.* (1) After a categorical exclusion on a proposed treatment works has been granted, and notices published in accordance with § 6.400(f), grant awards may proceed without being subject to any further environmental review requirements under this Part, unless the responsible official determines that the project, or the conditions at the time of the categorical determination was made, have changed significantly since the independent EPA review of information submitted by the grantee in support of the exclusion.

(2) For categorical exclusion determinations five or more years old on projects awaiting Step 3 grant funding, the responsible official shall re-evaluate the project, environmental conditions and public views and, prior to grant award, either:

(i) Reaffirm—issue a public notice reaffirming EPA's decision to proceed with the project without need for any further environmental review,

(ii) Supplement—update the information in the decision document on the categorically excluded project and prepare, issue, and distribute a revised notice in accordance with § 6.400(f), or

(iii) Reassess—revoke the categorical exclusion in accordance with § 6.107(c) and require a complete environmental review to determine the need for an EIS in accordance with § 6.506, followed by preparation, issuance and distribution of an environmental assessment and FNSI, or EIS and ROD.

§ 6.506 Environmental review process.

(a) *Review of completed facilities plans.* EPA, or the State where the program is delegated, shall review the completed facilities plan with particular attention to the EID and its utilization in the development of alternatives and the selection of a preferred alternative. An adequate EID shall be an integral part of any facilities plan submitted to EPA or to a State. The EID shall be of sufficient scope to enable the responsible official to make determinations on requests for partitioning the environmental review process in accordance with §6.507 and for preparing environmental assessments in accordance with § 6.506(b).

(b) *Environmental assessment.* The environmental assessment process shall cover all potentially significant environmental impacts. For those States where the review of facilities plans has been delegated, State personnel shall prepare a preliminary environmental assessment in sufficient detail to serve as an adequate basis for EPA's independent NEPA review and decision to prepare and issue a FNSI or an EIS. The EPA also may require submission of supplementary information before the facilities plan approval if needed for compliance with environmental review requirements. Substantial requests for supplementary information by EPA shall be made in writing. Each of the following subjects, and requirements of Subpart C, shall be reviewed to identify potentially significant environmental concerns and the potential impacts shall be addressed in the environmental assessment.

(1) *Description of the existing environment.* For the delineated facilities planning area, the existing environmental conditions relevant to the analysis of alternatives, or to determining the environmental impacts of the proposed action, shall be considered.

(2) *Description of the future environment without the project.* The relevant future environmental conditions shall be described. The no action alternative should be discussed.

(3) *Purpose and need.* This should include a summary discussion and demonstration of the need, or absence of need, for wastewater treatment in the facilities planning area, with particular emphasis on existing public health or water quality problems and their severity and extent.

(4) *Documentation.* Sources of information used to describe the existing environment and to assess future environmental impacts should be clearly referenced. These sources should include regional, State, and federal agencies with responsibility or interest in the types of conditions listed in § 6.509 and in Subpart C.

(5) *Analysis of Alternatives.* This discussion shall include a comparative analysis of feasible alternatives, including the no action alternative, throughout the study area. The alternatives shall be screened with respect to capital and operating costs; direct, indirect, and cumulative environmental effects; physical, legal, or institutional constraints; and compliance with regulatory requirements. Special attention should given to: the environmental consequences of long-term, irreversible, and induced impacts; and for projects initiated after September 30, 1978, that grant applicants have satisfactorily demonstrated analysis of potential recreation and open-space opportunities in the planning of the proposed treatment works. The reasons for rejecting any alternatives shall be presented in addition to any significant environmental benefits precluded by rejection of an alternative. The analysis should consider when relevant to the project:

(i) Flow and waste reduction measures, including infiltration/inflow reduction and pretreatment requirements;

(ii) Appropriate water conservation measures;

(iii) Alternative locations, capacities, and construction phasing of facilities;

(iv) Alternative waste management techniques, including pretreatment, treatment and discharge, wasterwater reuse, land application, and individual systems;

(v) Alternative methods for management of sludge, other residual materials, including utilization options such as land application, composting, and conversion of sludge for marketing as a soil conditioner or fertilizer;

(vi) Improving effluent quality through more efficient operation and maintenance;

(vii) Appropriate energy reduction measures; and

(viii) Multiple use including recreation, other open space, and environmental education.

(6) *Evaluating environmental consequences of proposed action.* A full range of relevant impacts of the proposed action shall be discussed, including measures to mitigate adverse impacts, any irreversible or irretrievable commitments of resources to the project and the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity. Any specific requirements, including grant conditions and areawide waste treatment management plan requirements, should be identified and referenced. In addition to these items, the responsible official may require that other analyses and data in accordance with Subpart C which are needed to satisfy environmental review requirements be included with the facilities plan. Such requirements should be discussed whenever meetings are held with Step 1 grantees or potential Step 3 or Step 2 + 3 applicants.

(7) *Minimizing adverse effects of the proposed action.* (i) Structural and nonstructural measures, directly or indirectly related to the facilities plan, to mitigate or eliminate adverse effects on the human and natural environments, shall be identified during the environmental review. Among other measures, structual provisions include changes in facility design, size, and location; non-structural provisions include staging facilities, monitoring and enforcement of environmental regulations, and local commitments to develop and enforce land use regulations.

(ii) The EPA shall not accept a facilities plan, nor award grant assistance for its implementation, if the applicant/grantee has not made, or agreed to make, changes in the project, in accordance with determinations made in a FNSI based on its supporting environmental assessment or the ROD for a EIS. The EPA shall condition a grant, or seek other ways, to ensure that the grantee will comply with such environmental review determinations.

(c) *FNSI/EIS determination.* The responsible official shall apply the criteria under § 6.509 to the following:

(1) A complete facilities plan;

(2) The EID;

(3) The preliminary environmental assessment; and

(4) Other documentation, deemed necessary by the responsible official adequate to make an EIS determination by EPA. Where EPA determines that an EIS is to be prepared, there is no need to prepare a formal environmental assessment. If EPA or the State identifies deficiencies in the EID, preliminary environmental assessment, or other supporting documentation, necessary corrections shall be made to this documentation before the conditions of the Step 1 grant are considered satisfied or before the Step 3 or Step 2+3 application is considered complete. The responsible official's determination to issue a FNSI or to prepare an EIS shall constitute final Agency action, and shall not be subject to administrative review under 40 CFR Part 30 Subpart L.

§ 6.507 Partitioning the environmental review process.

(a) *Purpose.* Under certain circumstances the building of a component/portion of a wastewater treatment system may be justified in advance of completing all NEPA requirements for the remainder of the system(s). When there are overriding considerations of cost or impaired program effectiveness, the responsible official may award a Step 3 or Step 2+3 grant for a discrete component of a complete wastewater treatment system(s). The process of partitioning the environmental review for the discrete component shall comply with the criteria and procedures described in section (b) below. In addition, all reasonable alternatives for the overall wastewater treatment works system(s) of which the component is a part shall have been previously identified, and each part of the environmental review for the remainder of the overall facilities plan shall comply with all requirements under § 6.506.

(b) *Criteria for partitioning*. The project component must:

(1) Immediately remedy a severe public health, water quality or other environmental problem;

(2) Not foreclose any reasonable alternatives identified for the overall wastewater treatment works system(s);

(3) Not cause significant adverse direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire wastewater treatment system of which the component is a part; and

(4) Not be highly controversial.

(c) *Requests for partitioning*. The applicant's or State's request for partitioning must contain the following:

(1) A description of the discrete component proposed for construction before completing the environmental review of the entire facilities plan;

(2) How the component meets the above criteria;

(3) The environmental information required by § 6.506 of this Subpart for the component; and

(4) Any preliminary information that may be important to EPA in an EIS determination for the entire facilities plan (§ 6.509).

(d) *Approval of requests for partitioning*. The responsible official shall:

(1) Review the request for partitioning against all requirements of this subpart;

(2) If approvable, prepare and issue a FNSI in accordance with § 6.508;

(3) Include a grant condition prohibiting the building of additional or different components of the entire facilities plan for which the environmental review is not complete.

§ 6.508 Finding of No Significant Impact (FNSI) determination.

(a) *Criteria for producing and distributing FNSIs*. If, after completion of the environmental review, EPA determines that an EIS will not be required, the responsible official shall issue a FNSI in accordance with § 6.105(f) and § 6.400(d) of this part. The FNSI will be based on EPA's independent review of the preliminary environmental assessment and any other environmental information deemed necessary by the responsible official consistent with the requirements of § 6.506(c). Following the Agency's independent review, the environmental assessment will be finalized and either be incorporated into, or attached to, the FNSI. The FNSI shall list mitigation measures, as defined in 40 CFR 1508.20, necessary to make the recommended alternative environmentally acceptable.

(b) *Proceeding with grant awards*. (1) Once an environmental assessment has been prepared and the issued FNSI becomes effective for the facilities plan for the study area, grant awards may proceed without preparation of additional FNSIs, unless the responsible official determines that the project or environmental conditions has changed significantly from that which underwent environmental review.

(2) For environmental assessments five or more years old on projects awaiting Step 3 grant funding, the responsible official shall re-evaluate the project, environmental conditions, and public views and, prior to grant award, either:

(i) Reaffirm—issue a public notice reaffirming EPA's decision to proceed with the project without revising the environmental assessment;

(ii) Supplement—update information and prepare, issue and distribute a revised environmental assessment and FNSI in accordance with § 6.105(f) and § 6.400(d); or

(iii) Reassess—withdraw the FNSI and publish a notice of intent to produce an EIS, followed by the preparation, issuance and distribution of the EIS and ROD.

§ 6.509 Criteria for initiating environmental impact statements (EIS).

(a) *Conditions requiring EISs*. (1) The responsible official shall assure that an EIS will be prepared and issued when it is determined that the treatment works or collector system will cause any of the conditions under § 6.108 to exist, or when

(2) The treated effluent is being discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality or quantity to meet the requirements of these uses.

(b) *Other conditions*. The responsible official shall also consider preparing an EIS if: The project is highly controversial; the project in conjunction with related federal, State, local or tribal resource projects produces significant cumulative impacts; or if it is determined that the treatment works may violate federal, State, local or tribal laws or requirements imposed for the protection of the environment.

§ 6.510 Environmental impact statement (EIS) Preparation.

(a) *Steps in preparing EISs*. In addition to the requirements specified in Subparts A, B, C, and D of this part, the responsible official will conduct the following activities:

(1) *Notice of intent*. If a determination is made that an EIS will be required, the responsible official shall prepare and distribute a notice of intent as required in § 6.105(e) of this part.

(2) *Scoping*. As soon as possible, after the publication of the notice of intent, the responsible official will convene a meeting of affected federal, State and local agencies, or affected Indian tribes, the grantee and other interested parties to determine the scope of the EIS. A notice of this scoping meeting must be made in accordance with § 6.400(a) and 40 CFR 1506.6(b). As part of the scoping meeting EPA, in cooperation with any delegated State, will as a minimum:

(i) Determine the significance of issues for and the scope of those significant issues to be analyzed in depth, in the EIS;

(ii) Identify the preliminary range of alternatives to be considered;

(iii) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(iv) Discuss the method for EIS preparation and the public participation strategy;

(v) Identify consultation requirements of other environmental laws, in accordance with Subpart C; and

(vi) Determine the relationship between the EIS and the completion of the facilities plan and any necessary coordination arrangements between the preparers of both documents.

(3) *Identifying and evaluating alternatives*. Immediately following the scoping process, the responsible official shall commence the identification and evaluation of all potentially viable alternatives to adequately address the range of issues identified in the scoping

process. Additional issues may be addressed, or others eliminated, during this process and the reasons documented as part of the EIS.

(b) *Methods for preparing EISs.* After EPA determines the need for an EIS, it shall select one of the following methods for its preparation:

(1) Directly by EPA's own staff;

(2) By EPA contracting directly with a qualified consulting firm;

(3) By utilizing a third party method, whereby the responsible official enters into "third party agreements" for the applicant to engage and pay for the services of a third party contractor to prepare the EIS. Such agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's EID and eliminate the need for that document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(i) In consultation with the applicant, choose the third party contractor and manage that contract;

(ii) Select the consultant based on ability and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project; and

(iii) Specify the information to be developed and supervise the gathering, analysis and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the third party EIS; or

(4) By utilizing a joint EPA/State process on projects within States which have requirements and procedures comparable to NEPA, whereby the EPA and the State agree to prepare a single EIS document to fulfill both federal and State requirements. Both EPA and the State shall sign a Memorandum of Agreement which includes the responsibilities and procedures to be used by both parties for the preparation of the EIS as provided for in 40 CFR 1506.2(c).

§ 6.511 Record of decision (ROD) for EISs and identification of mitigation measures.

(a) *Record of Decision.* After a final EIS has been issued, the responsible official shall prepare and issue a ROD in accordance with 40 CFR 1505.2 prior to, or in conjunction with, the approval of the facilities plan. The ROD shall include identification of mitigation measures derived from the EIS process including grant conditions which are necessary to minimize the adverse impacts of the selected alternative.

(b) *Specific mitigation measures.* Prior to the approval of a facilities plan, the responsible official must ensure that effective mitigation measures identified in the ROD will be implemented by the grantee. This should be done by revising the facilities plan, initiating other steps to mitigate adverse effects, or including conditions in grants requiring actions to minimize effects. Care should be exercised if a condition is to be imposed in a grant document to assure that the applicant possesses the authority to fulfill the conditions.

(c) *Proceeding with grant awards.* (1) Once the ROD has been prepared on the selected, or preferred, alternative(s) for the facilities plan described within the EIS, grant awards may proceed without preparation of supplemental EISs unless the responsible official determines that the project or the environmental conditions described within the current EIS have changed significantly from the previous environmental review in accordance with 40 CFR 1502.9(c).

(2) For EISs five or more years old on projects awaiting Step 3 grant funding, the responsible official shall re-evaluate the project, environmental conditions and public views, and compare them to the information contained within the EIS and, prior to grant award, make a determination to either:

(i) Reaffirm—prepare, issue and distribute a FNSI affirming EPA's decision to proceed with the project, and documenting that no additional significant impacts were identified during the re-evaluation which would require supplementing the EIS; or

(ii) Supplement—conduct additional studies and prepare, issue and distribute a supplemental EIS in accordance with § 6.404 and document the original, or any revised, decision in an addendum to the ROD.

§ 6.512 Monitoring for compliance.

(a) *General.* The responsible official shall ensure adequate monitoring of mitigation measures and other grant conditions identified in the FNSI, or ROD.

(b) *Enforcement.* If the grantee fails to comply with grant conditions, the responsible official may consider applying any of the sanctions specified in 40 CFR 30.900.

§ 6.513 Public participation.

(a) *General.* Consistent with public participation regulations, 40 CFR Part 25, and Subpart D of this part, it is EPA policy that certain public participation steps be achieved before the State and EPA complete the environmental review process. As a minimum, potential applicants shall conduct in accordance with procedures specified in 40 CFR Part 25:

(1) One public meeting when alternatives have been developed, but before an alternative has been selected, to discuss all alternatives under consideration and the reasons for rejection of others; and

(2) One public hearing prior to formal adoption of a facilities plan to discuss the proposed facilities plan and any needed mitigation measures.

(b) *Coordination.* Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible.

(c) *Scope.* The requirements of 40 CFR 6.400 shall be fulfilled, and consistent with 40 CFR 1506.6, the responsible official may institute such additional NEPA-related public participation procedures as are deemed necessary during the environmental review process.

§ 6.514 Delegation to States.

(a) *General.* Authority delegated to the State under section 205(g) of the Clean Water Act to review a facilities plan may include all EPA activities under this part except for the following:

(1) Determinations of whether or not a project qualifies for a categorical exclusion;

(2) Determinations to partition the environmental review process;

(3) Finalizing the scope of an EID;

(4) Finalizing the scope of an environmental assessement, and finalization, approval and issuance of a final environmental assessment;

(5) Determination to issue, and issuance of, a FNSI based on a completed (§ 6.508) or partitioned (§ 6.507(d)(2)) environmental review;

(6) Determination to issue, and issuance of, a notice of intent for preparing an EIS;

(7) Preparation of EISs under § 6.510(b) (1) and (2), final decisions required for preparing an EIS under § 6.510(b)(3), finalizing the agreement to prepare an EIS under § 6.510(b)(4), finalizing the scope of an EIS, and issuance of draft, final and supplemental EISs;

(8) Preparation and issuance of the ROD based on an EIS;

(9) Final decisions under other applicable laws described in Subpart C of this part; and

(10) Determination following re-evaluations of projects awaiting grant

funding whose existing evaluations and/or decision documents are five or more years old in accordance with § 6.505(e)(2), § 6.508(b)(2) or § 6.511(c)(2).

(b) *Elimination of duplication.* The responsible official shall assure that maximum efforts are undertaken to minimize duplication within the limits described under paragraph (a) of this section. In carrying out requirements under this subpart, maximum consideration shall be given to eliminating duplication in accordance with 40 CFR 1506.2. Where there are State or local procedures comparable to NEPA, EPA should enter into memoranda of understanding with these States concerning workload distribution and responsibilities for implementing the environmental review and facilities planning process.

9. Amend Subparts G, H, and I of this part by removing "§ 6.506(a) (1) through (6) and (8)" and inserting in its place "§ 6.108" in the following places:

(a) 40 CFR 6.703(a);

(b) 40 CFR 6.802; and

(c) 40 CFR 6.903(b).

10. Subpart J of Part 6 is amended by revising paragraph (d) of § 6.1004 as set forth below:

§ 6.1004 Environmental review and assessment requirements.

(d) *Wastewater treatment facility planning.* 40 CFR 6.506 details the environmental review process for the facilities planning process under the wastewater treatment works construction grants program. For the purpose of these regulations, the facility plan shall also include a concise environmental review of those activities that would have environmental effects abroad. This shall apply only to the Step 1 grants awarded after January 14, 1981, but on or before December 29, 1981, and facilities plans developed after December 29, 1981. Where water quality impacts identified in a facility plan are the subject or water quality agreements with Canada or Mexico, nothing in these regulations shall impose on the facility planning process coordination and consultation requirements in addition to those required by such agreements.

* * * * *

11. Appendix A of Part 6 is amended by revising paragraph (b) of section 4; and by revising paragraph (a)(1) of section 6 to read as follows:

Appendix A—Statement of Procedures on Floodplain Management and Wetland Protection

* * * * *

Section 4 Definitions

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(b) "Base Floodplain" means the land area covered by a 100-year flood (one percent chance floodplain). Also see definition of floodplain.

* * * * *

Section 6 Requirements

(a) * * *

(1) *Floodplain/Wetlands Determination*—Before undertaking an Agency action, each program office must determine whether or not the action will be located in or affect a floodplain or wetlands. The Agency shall utilize maps prepared by the Federal Insurance Administration of the Federal Emergency Management Agency (Flood Insurance Rate Maps or Flood Hazard Boundary Maps), Fish and Wildlife Service (National Wetlands Inventory Maps), and other appropriate agencies to determine whether a proposed action is located in or will likely affect a floodplain or wetlands. If there is no floodplain/wetlands impact identified, the action may proceed without further consideration of the remaining procedures set forth below.

* * * * *

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Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 301
Citrus Canker; Proposed Rule and Notice of Public Hearings

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-339]

Citrus Canker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearings.

SUMMARY: This document proposes to amend "Subpart—Citrus Canker" by changing provisions concerning the movement from Florida pursuant to limited permits of fruit designated as regulated articles; by adding provisions for the movement pursuant to certificates of fruit and seed designated as regulated articles; by adding provisions to allow fruit designated as regulated articles and originating outside of Florida to be moved through Florida (including provisions to allow such fruit to be packed in Florida); and by making related miscellaneous changes. The proposed provisions would lessen restrictions with respect to certain interstate movements of such fruit and seed. It appears that the proposed changes can be made without increasing the risk of spread of citrus canker.

This document also gives notice of public hearings concerning this proposal.

DATES: Written comments on this proposed rule must be received on or before July 25, 1985. Public hearings will be held on July 8, 1985, in Lake Alfred, Florida; on July 10, 1985, in McAllen Texas; and on July 12, 1985, in Los Angeles, California.

ADDRESSES: Written comments concerning this proposed rule must be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The public hearings will be held at the following locations: (1) On July 8, 1985, at Ben Hill Griffin Auditorium, Agricultural Research and Education Center, 700 Experiment Station Road, Lake Alfred, Florida; (2) on July 10, 1985, at the La Quinta Motor Inn, Room 242, 1100 South 10th Street, McAllen, Texas; and (3) on July 12, 1985, at the Los Angeles Airport Marriott Hotel, 5855 West Century Boulevard, Los Angeles, California.

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

SUPPLEMENTARY INFORMATION:

Public Hearings

A representative of the Animal and Plant Health Inspection Service will preside at each of the public hearings described under "**ADDRESSES.**" Any interested person may appear and be heard in person, by attorney, or by other representative.

Each hearing will begin at 10 a.m. and is scheduled to end at 5 p.m. local time. However, a hearing may be terminated at any time after it begins if all of those persons at the hearing who desire an opportunity to speak have been heard. Persons who wish to speak are requested to register with the presiding officer prior to the hearing. The prehearing registration will be conducted at the location of the hearing from 9 a.m. to 10 a.m. Those registered persons will be heard in the order of their registration. However, any other person who wishes to speak at the hearing will be afforded such opportunity after the registered persons have been heard. It is requested that two copies of any written statements that are presented be provided to the presiding officer at the hearing. If the number of preregistered persons and other participants in attendance at the hearing warrants it, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

Background

Citrus canker, a disease caused by the bacterial pathogen, *Xanthomonas campestris* pv. *citri* (Hasse) Dowson, is a devastating disease which is known to affect plants and plant parts (including fruits) of citrus and citrus relatives (Family Rutaceae). Infection by the pathogen causing citrus canker can result in defoliation and other serious damage to the leaves and twigs of susceptible plants. Infected fruit becomes unmarketable and often drops from a tree prematurely. Citrus canker is a very aggressive disease which can rapidly infect susceptible plants and can lead to extensive economic losses throughout entire citrus growing areas. Citrus canker presents a severe threat to citrus producing and packing industries and poses a burden to interstate and international commerce.

Because of the finding of citrus canker in Florida, the Department established regulations captioned "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.* and referred to below as the regulations; 49 FR 36623-36626, 41268, 43448-43449; 50 FR 9261-9263, 9785-9786, 25903, 25905).

The current regulations contain provisions to regulate certain interstate movements of regulated articles to help prevent the artificial spread of citrus canker. The regulations also contain extraordinary emergency provisions to help in the citrus canker eradication effort in Florida.

The regulations define "State" as:

> Each of the several States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virginia Islands of the United States, and all other Territories and Possessions of the United States.

Under the regulations, the entire State of Florida is designated as a quarantined area. The regulations allow the interstate movement from Florida of regulated articles if moved by the United States Department of Agriculture for experimental or scientific purposes under certain conditions. The regulations also allow fruit designated as regulated articles to be moved interstate from Florida by any person to other than listed jurisdictions determined to have commercial citrus producing areas (American Samoa, Arizona, California, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, or the Virgin Islands of the United States), if moved pursuant to a limited permit under certain conditions. Further, with respect to the fruit moved out of Florida under a limited permit, the regulations prohibit the subsequent interstate movement of such fruit back to Florida or to other listed jurisdictions that have commercial citrus producing areas.

The regulations designate the following articles as regulated articles:

> (a) Plants or plant parts, including fruit and seeds, of any of the following:
>
> All species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Poncirus trifoliata* (this includes large numbers of such articles; some of the most common are lemon, pummelo, grapefruit, key lime, persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, and trifoliate orange).

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) of this section, when it is determined by an inspector that it presents a risk of spread of the citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this subpart.

This document proposes to amend the regulations by changing provisions concerning the movement from Florida pursuant to limited permits of fruit designated as regulated articles; by adding provisions for the movement pursuant to certificates of fruit and seed designated as regulated articles; by adding provisions to allow fruit designated as regulated articles and originating outside of Florida to be moved through Florida (including provisions to allow such fruit to be packed in Florida); and by making related miscellaneous changes.

Certificates and Limited Permits

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles based upon a determination that, because of certain conditions (e.g., the article is free of pests), there is no significant pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions. Limited permits are issued for regulated articles based upon a determination that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, for example, movement to limited areas or movement for limited purposes.

Issuance of Limited Permits for Fruit

The current regulations do not contain provisions for the movement of any regulated articles pursuant to certificates. However, the current regulations do contain provisions for the movement under limited permits of fruit designated as regulated articles. In this connection, § 301.75–5(a) provides that:

(a) Fruit designated as a regulated article may be moved interstate from a quarantined area to any State [the term State is defined in the regulations to include all States, Territories, and Possessions of the United States] other than American Samoa, Arizona, California, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, or the Virgin Islands of the United States, if moved pursuant to a limited permit issued pursuant to paragraph (b) of this section and attached in accordance with §301.75–7, and if not unloaded in any of the States or Territories listed in this paragraph without permission from an inspector.

The provisions of current § 301.75–5(b) set forth the criteria for the issuance of a limited permit for the movement of such fruit as follows:

(b) A limited permit shall be issued by an inspector for the movement of a regulated article if such inspector:

(1) Determines that the fruit originated in an area found to be free of citrus canker based on surveys conducted by inspectors appointed by the Deputy Administrator,

(2) Determines that the fruit is free of leaves, litter, and stems other than stems less than one inch in length attached to the fruit, and

(3) Determines that the fruit has been treated by a thorough wetting with a solution containing 200 parts per million active chlorine for a period of at least two minutes.

It is proposed to amend the criteria for the issuance of limited permits for the movement of fruit designated as regulated articles to read as follows:

A limited permit shall be issued by an inspector for the movement of fruit designated as a regulated article if such inspector:

(1) Determines that the fruit originated from a grove that has not received a regulated article from an infested nursery or grove on or after August 25, 1983;

(2) Determines that there is no infestation in the grove from which the fruit originated based on two surveys conducted by an inspector within the previous 12 month period at times determined by the Deputy Administrator to coincide with biological and climatic conditions for detecting any presence of citrus canker and with one of the surveys conducted within 90 days of the beginning of harvest for such fruit;

(3) Determines that no infestation has been found on or after August 25, 1983, in a buffer zone of 0.5 mile all around the grove from which the fruit originated;

(4) Determines that the fruit is free of leaves, litter, and stems other than stems less than one inch in length attached to the fruit;

(5) Determines that the fruit has been treated in accordance with [proposed] § 301.75–12(a) of this subpart;

(6) Determines that the fruit is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of citrus canker pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(7) Determines that the fruit is eligible for movement under all other Federal domestic plant quarantines and regulations applicable to such fruit.

The treatment referred to in item (5) above is proposed to be either:

(1) Thorough wetting with a solution containing 200 parts per million active chlorine for a period of at least 2 minutes, or (2) thorough wetting with a solution containing Sodium O-Phenyl Phenate (SOPP) at a concentration of 1.86 to 2 percent of the total solution for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain such concentration of soap or detergent.

Also, it should be noted that the terms "infestation" and "infested", which are used in items (1), (2), and (3) above, are defined in the proposed regulations to mean:

The presence of citrus canker or the existence of circumstances that make it reasonable to believe that citrus canker is present.

As noted above, the current regulations relating to the issuance of a limited permit for fruit state, among other things, that the fruit must have originated in an area free of citrus canker. If applied literally, it appears that this is a more stringent standard than is necessary to allow the movement of fruit pursuant to a limited permit. It appears that the proposed provisions concerning receipt of regulated articles from infested nurseries or groves, the proposed survey provisions, and the proposed buffer zone provisions could be used instead and still be adequate for the intended purpose. These provisions would be adequate to ensure the absence of other than very low undetectable levels of infestation; and it is extremely unlikely that fruit eligible for a limited permit under such criteria would be infected with citrus canker. Further, the proposed provisions for obtaining a limited permit for fruit coupled with the restrictions and prohibitions designed to ensure that fruit moved pursuant to a limited permit is not moved to commercial citrus producing areas, appear to be adequate to allow the interstate movement of such fruit without presenting a significant risk of causing the spread of citrus canker.

The provisions concerning leaves, litter, and stems are included as an added precautionary measure against the spread of citrus canker because there is no need for such leaves, litter, or stems to accompany the fruit. The treatment provisions are also included as an added precautionary measure to ensure that any surface bacteria that might be present on the fruit as a result of contamination would be destroyed.

Currently, the regulations only provide for the chlorine treatment (specified above) for fruit. It is proposed to add the SOPP treatment as an alternative treatment because research [1] has demonstrated that the SOPP treatment is also effective to destroy any bacteria that might be present on fruit without damage to the fruit.

[1] The results of the research can be obtained from the Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Reduced time is provided for wetting when soap or detergent sufficient to cause a visible foaming action is used in the solution because the soap or detergent hastens the thorough wetting of the fruit. In addition, a note would be added to state that SOPP must be applied in accordance with all label directions. Further, a footnote would be added to state that all treatments shall be monitored by inspectors to assure compliance with the treatment provisions.

The proposed criteria for limited permits and certificates contain provisions which relate to activities on or after August 25, 1983. The date is used for various determinations based on the conclusion by the Department that this represents the earliest date that citrus canker would have been present in Florida.

The provisions to require any additional emergency conditions reflect the statutory authority for imposing such conditions. These provisions would also be applicable with respect to the issuance of certificates. It is anticipated that in most cases the imposition of emergency conditions would not be necessary for the movement of fruit pursuant to certificates or limited permits. However, the imposition of any additional emergency conditions would have to be made on a case-by-case basis, since it appears that it cannot be anticipated what additional emergency conditions might be necessary, if any. If the proposed regulations are adopted and additional conditions of general applicability are developed, action would be taken to add them to the criteria in the regulations for the issuance of certificates or limited permits, as appropriate.

It also appears that it would be helpful for informational purposes to include in the criteria for the issuance of a limited permit or a certificate that, as a condition of issuance of a limited permit or certificate, the article for which the certificate or limited permit is requested must be eligible for movement under all other Federal domestic plant quarantines and regulations applicable to such article.

Issuance of Certificates for Fruit

It is also proposed to allow fruit designated as regulated articles to be moved interstate from Florida pursuant to certificates and thereby allow such articles to be moved interstate without further restrictions under the regulations. It is proposed that the criteria for issuing a certificate for fruit would be the same as set forth above for a limited permit, except that a certificate would be issued only if an inspector also:

(1) Determines that the fruit originated from a grove that has not received a regulated article from an exposed nursery or grove on or after August 25, 1983;

(2) Determines that the fruit originated from a grove with a 0.5 mile buffer zone all around the grove in which no regulated article which originated in an infested or exposed nursery or grove has been planted or promulgated on or after August 25, 1983;

(3) Determines that there is no infestation in a five mile buffer zone all around the grove from which the fruit originated based on a survey conducted by an inspector within the previous 12 month period at a time determined by the Deputy Administrator to coincide with biological and climatic conditions for detecting any presence of citrus canker; and

(4) Determines that the fruit originated from a grove surrounded by a five mile buffer zone all around the grove in which all regulated articles which originated in an infested or exposed nursery or grove on or after August 25, 1983, and which were planted or propagated, have been destroyed.

It should be noted that the term "exposed", which is used in items (1) and (2) above, is proposed to be defined as:

Having contained regulated articles originating from an infested grove, nursery, or other premises.

The additional criteria are designed to ensure that fruit eligible for a certificate would come from a grove that does not present a significant risk of having undetected low levels of citrus canker. The criteria for determining the possibility of having undetected low levels of citrus canker are most stringent for the grove. The criteria are slightly less stringent in the 0.5 mile buffer zone around the grove, and even less stringent in the buffer zone that is between 0.5 and 5 miles around the grove. These criteria appear to be adequate to ensure that there are no low level undetected infestations caused by the movement of regulated articles to the grove. Further, it appears that these criteria are adequate to ensure the absence of sufficiently established infestations of citrus canker around the grove from which natural spread to the grove could occur.

Issuance of Certificates for Seed

In addition, it is proposed to allow seed designated as regulated articles to be moved interstate from Florida pursuant to certificates and thereby allow such articles to be moved interstate without further restrictions under the regulations. It is proposed that such seed be eligible for movement pursuant to a certificate only if an inspector:

(1) Determines that no infestation has been found in the grove or nursery from which the seed originated;

(2) Determines that the seed has been treated in accordance with [proposed] § 301.75-12(b) of this subpart;

(3) Determines that the seed is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the citrus canker pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(4) Determines that the seed is eligible for movement under all other Federal domestic plant quarantines and regulations applicable to such seed.

Seed would meet the proposed treatment referred to in item (2) if the seed was:

Extracted from fruit that has been treated in accordance with paragraph (a) of this section [treated with the chlorine treatment or the SOPP treatment referred to above in accordance with proposed § 301.75-12(b)], then cleaned free of pulp, then immersed in water at 125° F. (51.6° C.) or higher for 10 minutes, then immersed in a solution containing 200 parts per million active chlorine for a period of at least 2 minutes.

In order to protect against the risk of spread of citrus canker by seek, it is necessary to ensure that the seed has not become contaminated with surface bacteria. Research has demonstrated that the proposed treatment procedures are adequate to keep seed from becoming contaminated with citrus canker bacteria, and to destroy any bacteria that might be on the seed without damage to the seed.

Commerical Citrus Producing Areas

As explained above, the regulations include provisions designed to prevent fruit moved from Florida pursuant to limited permits from being moved to jurisdictions that have commercial citrus producing areas. The State of Louisiana has requested that fruit moving from Florida pursuant to limited permits be allowed to be moved into that portion of the State north of a line described by the following Interstate Highways:

Beginning on Interstate 10 at the western boundary of the State, extending to the junction of Interstate 10 and Interstate 12 in Baton Rouge Parish, extending on Interstate 12 to the junction of Interstate 10 and Interstate 12 in St. Tammary Parish, and extending on Interstate 10 to the Mississippi State line.

This request is based on the assertion that the portion of the State north of the described line does not have commercial citrus producing areas and that Louisiana has in place adequate measures to ensure that the fruit moved to Louisiana would not be diverted to places in Louisiana south of the described line.

After a review of this situation, it is proposed to amend the regulations to provide that:

. . . Less than an entire State may be designated as a commercial citrus producing area only if the Deputy Administrator determines that the area not included as a commercial citrus producing area does not contain commercial citrus plantings; that the State has adopted and is enforcing requirements on the intrastate movement from areas not designated as commercial citrus producing areas to commercial citrus producing areas of fruit which are designated as regulated articles and which were moved interstate from a quarantined State pursuant to a limited permit; and that the designation of less than the entire State as a commercial citrus producing area will otherwise be adequate to prevent the interstate spread of citrus canker.

It appears that fruit moved from Florida pursuant to limited permits could be allowed to move into portions of listed jurisdictions that meet such criteria without increasing the risk of causing the spread of citrus canker. Further, it appears that the portion of Louisiana north of the described line would meet the proposed criteria, and, therefore, it is proposed to exclude such portion of Louisiana from designation as a commercial citrus producing area.

Movement of Regulated Articles Without Certificates or Limited Permits

It is proposed to allow a regulated article to move interstate through Florida without a certificate or limited permit, if:

(1) The article originated outside of any quarantined area,

(2) The article is moved directly through the quarantined area, and

(3) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

It is also proposed to allow fruit designated as a regulated article to move interstate through Florida without a certificate or limited permit, if:

(1) The fruit originated outside of any quarantined area;

(2) The fruit is moved directly through the quarantined area except for stopping for packing;

(3) The packing, and any related activities are subject to monitoring by inspectors;

(4) The packing is conducted only under conditions found by an inspector as adequate to assure that the fruit is not commingled with any regulated article originating in a quarantined area and that the fruit remains identifiable during such activities;

(5) The fruit is treated in Florida in accordance with [proposed] § 301.75-12(a) immediately prior to being put into shipping containers that are new and bear a statement indicating the origin of the fruit;

(6) The point of origin of the fruit is clearly indicated by shipping documents and its identity has been maintained; and

(7) The packing is conducted only by a person who has entered into a valid compliance agreement with Plant Protection and Quarantine whereby it is agreed that any packing and related activities will be conducted only in accordance with the conditions specified in this section.

There does not appear to be a significant risk that a regulated article that originated outside of Florida would become contaminated with citrus canker bacteria while in Florida under either set of conditions set forth above. Further, it is proposed to require that such fruit packed in Florida be treated as a precautionary measure to ensure that if it become contaminated with citrus canker bacteria, the bacteria would be destroyed.

Miscellaneous

It is proposed to add provisions (set forth in proposed § 301.75-7(d)) to allow any person who has entered into and is operating under a compliance agreement to execute and issue a certificate or limited permit for the interstate movement of a regulated article if such person has treated such regulated article in accordance with proposed § 301.75-12 and if an inspector has made an initial determination that such article is otherwise eligible for a certificate or limited permit in accordance with proposed § 301.75-7. These initial determinations concerning the eligibility for issuance of a certificate or limited permit would be limited to inspectors because of their nature and complexity.

Also, proposed § 301.75-7(e) sets forth provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination that the holder thereof has not complied with conditions for the use of the document. This section also contains proposed provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Proposed § 301.75-8 sets forth provisions for the issuance and cancellation of compliance agreements. Specifically, it is proposed that compliance agreements be allowed to be entered into by any person who is engaged in the business of growing, handling, or moving regulated articles and who agrees in writing to comply with the regulations and any conditions imposed pursuant thereto. Compliance agreements would be provided for the convenience of persons who, because of their business, are involved in frequent shipments of regulated articles from quarantined areas, and are designed to ensure that persons issuing certificates and limited permits are knowledgeable with respect to the requirements of the regulations and have agreed to comply with them.

Proposed § 301.75-8 also provides that a compliance agreement may be cancelled by an inspector supervising its enforcement whenever the inspector finds that a person who has entered into such an agreement has failed to comply with any of the provisions of the regulations. The holder of the compliance agreement would be given an opportunity for a hearing to resolve a conflict as to any material fact. A footnote would also be added to explain where compliance agreement forms can be obtained.

For informational purposes, in addition to the definitions of "exposed" and "infested" referred to above, it is proposed to add definitions of the terms "certificate," "compliance agreement," and "Plant Protection and Quarantine." Also, for informational purposes various footnotes would be added. In addition, nonsubstantive miscellaneous changes would be made for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

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

As explained above, the regulations regulate certain interstate movements of articles from Florida that are designated as regulated articles.

With regard to fruit designated as regulated articles (primarily citrus fruit), it also appears that the proposed regulations would not have a significant effect on a substantial number of small entities. Specifically, the proposed regulations affect only fresh fruit and less than 20 percent of Florida citrus fruit is sold fresh. Further, the proposed regulations permit fresh fruit designated as a regulated article to be shipped interstate if certain conditions are met.

including the requirement that the fresh fruit not be shipped directly or indirectly to other commercial citrus producing areas. Shipment of fresh fruit from Florida to other commercial citrus producing areas has historically only involved about 1 percent of the total Florida citrus production. Therefore, it appears that, althought many of the entities that produce or sell citrus fruit may be small entities, the proposed regulations would not have a significant economic impact on these entities or any other small entities.

Further, with regard to seed designated as regulated articles, it appears that prior to the establishment of the current regulations, there was an insignificant amount of such seed shipped interstate from Florida.

In addition, it is anticipated that the amount of regulated articles that would be shipped through Florida without a certificate or limited permit (including such fruit packed in Florida) would represent an insignificant amount or regulated articles moved in interstate commerce.

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

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in "Subpart—Citrus Canker" (7 CFR 301.75 *et seq.*) have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0579–0093.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant disease, Plant pests, Plants (Agriculture), Quarantine, Transportation, and Citrus canker.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances described above, it is proposed to amend 7 CFR Part 301 as follows:

1. The authority citation for Part 301 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Subpart—Citrus Canker (contained in 7 CFR 301.75 *et seq.*) would be revised to read as follows:

Subpart—Citrus Canker

Sec.

Subpart—Citrus Canker

§ 301.75 Prohibitions.

(a) No common carrier or other person shall move interstate from any quarantined area any regulated article except in accordance with the conditions prescribed in this subpart.

(b) No common carrier or other person shall move interstate from an area not designated as a quarantined area to a commercial citrus producing area any regulated article which originated in a quarantined area and which was moved from the quarantined area pursuant to a limited permit.

§ 301.75–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed respectively to mean:

Certificate. A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.75–7.

Citrus canker. The plant disease caused by the bacteria, *Xanthomonas campestris* pv. *citri* (Hasse) Downson, in any stage of development.

Compliance agreement. A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

Container plant. Any plant in a container propagated for replanting or ornamental purposes.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his or her stead has been or may hereafter be delegated.

Exposed. Having contained regulated articles originating from an infested grove, nursery, or other premises.

Grove. Any permanent stand of plants maintained for the purpose of producing fruit.

Infestation or infested. The presence of citrus canker or the existence of circumstances that make it reasonable to believe that citrus canker is present.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document which is issued for a regulated article by an inspector or a person operating under a compliance agreement and which represents that such regulated article is eligible for interstate movement in accordance with § 301.75–7.

Moved. Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

Movement or move. The act of shipping, offering for shipment to a common carrier, receiving for transportation or transporting by a common carrier or carrying, transporting, moving, or allowing to be moved by any means.

Nursery. Any premises at which plants are grown or maintained for the purpose of propagating or replanting or for ornamental purposes but not including any grove on such premises.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.

Quarantined area. Any State, or any portion thereof, listed in § 301.75-3(a) or otherwise designated as a quarantined area in accordance with § 301.75-3(b).

Regulated article. Any article listed in § 301.75-2(a) or otherwise designated as a regulated article in accordance with § 301.75-2(b).

State. Each of the several States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

§ 301.75-2 Regulated articles.

(a) Plants or plant parts, including fruit and seeds, of any of the following:

All species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Poncirus trifoliata* (this includes large numbers of such articles; the most common are lemon, pummelo, grapefruit, key lime, persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, and trifoliate orange).

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) of this section, when it is determined by an inspector that it presents a risk of spread of citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this subpart.

§ 301.75-3 Quarantined areas.

(a) The entire State of Florida.

(b) The Deputy Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area upon a determination that an infestation exists. Written notice of such designation shall be given to the owner or person in possession of such nonquarantined area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (a) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

§ 301.75-4 Commercial citrus producing areas.

(a) The following are designated as commercial citrus producing areas:

American Samoa
Arizona
California
Florida
Guam
Hawaii

That portion of Louisiana south of a line described by the following Interstate Highways: Beginning on Interstate 10 at the western boundary of the State, extending to the junction of Interstate 10 and Interstate 12 in Baton Rouge Parish, extending on Interstate 12 to the junction of Interstate 10 and Interstate 12 in St. Tammary Parish, and extending on Interstate 10 to the Mississippi State line.

Northern Mariana Islands
Puerto Rico
Texas
Virgin Islands of the United States

(b) The list in paragraph (a) of this section is intended to include jurisdictions which have commercial citrus producing areas. Less than an entire State may be designated as a commercial citrus producing area only if the Deputy Administrator determines that the area not included as a commercial citrus producing area does not contain commercial citrus plantings; that the State has adopted and is enforcing a prohibition on the intrastate movement from areas not designated as commercial citrus producing areas to commercial citrus producing areas of fruit which are designated as regulated articles and which were moved interstate from a quarantined State pursuant to a limited permit; and that the designation of less than the entire State as a commercial citrus producing area will otherwise be adequate to prevent the interstate spread of citrus canker.

§ 301.75-5 Movement of regulated articles for experimental or scientific purposes.

A regulated article may be moved interstate from a quarantined area if:

(a) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(b) Moved pursuant to a Departmental permit issued for such article by the Deputy Administrator;

(c) Moved in accordance with conditions specified on the Departmental permit and determined by the Deputy Administrator to be adequate to prevent the spread of citrus canker, i.e., conditions of treatment, processing, growing, shipment, disposal; and

(d) Moved with a Departmental tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, with such tag or label bearing a Departmental permit number corresponding to the number of the Departmental permit issued for such article.

§ 301.75-6 Conditions governing the interstate movement of regulated articles from quarantined areas.[1]

(a) Any regulated article may be moved interstate from a quarantined area if moved with a certificate issued and attached in accordance with §§ 301.75-7 and 301.75-10.

(b) Fruit designated as a regulated article may be moved interstate from a quarantined area other than to a commercial citrus producing area if moved with a limited permit issued and attached in accordance with §§ 301.75-7 and 301.75-10, and if not unloaded in any commercial citrus producing area without permission from an inspector.

(c) Any regulated article may be moved interstate through a quarantined area without a certificate or limited permit, if:

(1) The article originated outside of any quarantined area,

(2) The article is moved directly through the quarantined area, and

(3) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

(d) In addition to being eligible for movement pursuant to paragraph (c) of this section, fruit designated as a regulated article may be moved interstate through a quarantined area without a certificate or limited permit, if:

(1) The fruit originated outside of any quarantined area,

(2) The fruit is moved directly through the quarantined area except for stopping for packing;

(3) The packing, and any related activities are subject to monitoring by inspectors;

(4) The packing is conducted only under conditions found by an inspector as adequate to assure that the fruit is not commingled with any regulated article originating in a quarantined area and that the fruit remains identifiable during such activities;

(5) The fruit is treated in Florida in accordance with § 301.75-12(a) immediately prior to being put into shipping containers that are new and bear a statement indicating the origin of the fruit;

(6) The point of origin of the fruit is clearly indicated by shipping documents and its identity has been maintained; and

(7) The packing is conducted only by a person who has entered into a valid compliance agreement with Plant Protection and Quarantine whereby it is agreed that any packing and related

[1] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

activities will be conducted only in accordance with the conditions specified in this section.

§ 301.75-7 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector for the movement of fruit designated as a regulated article if such inspector:

(1) Determines that the fruit originated from a grove that has not received a regulated article from an infested or exposed nursery or grove on or after August 25, 1983;

(2) Determines that there is no infestation in the grove from which the fruit originated based on two surveys conducted by an inspector within the previous 12 month period at times determined by the Deputy Administrator to coincide with biological and climatic conditions for detecting any presence of citrus canker and with one of the surveys conducted within 90 days of the beginning of harvest for such fruit;

(3) Determines that no infestation has been found on or after August 25, 1983, in a buffer zone of 0.5 mile all around the grove from which the fruit originated;

(4) Determines that the fruit originated from a grove with a 0.5 mile buffer zone all around the grove in which no regulated article which originated in an infested or exposed nursery or grove has been planted or propagated on or after August 25, 1983;

(5) Determines that there is no infestation in a five mile buffer zone all around the grove from which the fruit originated based on a survey conducted by an inspector within the previous 12 month period at a time determined by the Deputy Administrator to coincide with biological and climatic conditions for detecting any presence of citrus canker;

(6) Determines that the fruit originated from a grove surrounded by a five mile buffer zone all around the grove in which all regulated articles which originated in an infested or exposed nursery or grove on or after August 25, 1983, and which were planted or propagated, have been destroyed;

(7) Determines that the fruit is free of leaves, litter, and stems other than stems less than one inch in length attached to the fruit;

(8) Determines that the fruit has been treated in accordance with § 301.75-12(a) of this subpart;

(9) Determines that the fruit is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of citrus canker pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) [2]; and

(10) Determines that the fruit is eligible for movement under all other Federal domestic plant quarantines and regulations applicable to such fruit.

(b) A certificate shall be issued by an inspector for the movement of seed designated as a regulated article if such inspector:

(1) Determines that no infestation has been found in the grove or nursery from which the seed originated;

(2) Determines that the seed has been treated in accordance with § 301.75-12(b) of this subpart;

(3) Determines that the seed is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of citrus canker pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) [2]; and

(4) Determines that the seed is eligible for movement under all other Federal domestic plant quarantines and regulations applicable to such seed.

(c) A limited permit shall be issued by an inspector for the movement of fruit designated as a regulated article if such inspector:

(1) Determines that the fruit originated from a grove that has not received a regulated article from an infested nursery or grove on of after August 25, 1983;

(2) Determines that there is no infestation in the grove from which the fruit originated based on two surveys conducted by an inspector within the previous 12 month period at times determined by the Deputy Administrator to coincide with biological and climatic conditions for detecting any presence of citrus canker and with one of the surveys conducted within 90 days of the beginning of harvest for such fruit;

(3) Determines that no infestation has been found on or after August 25, 1983, in a buffer zone of 0.5 mile all around the grove from which the fruit originated;

(4) Determines that the fruit is free of leaves, litter, and stems other than stems less than one inch in length attached to the fruit;

(5) Determines that the fruit has been treated in accordance with paragraph § 301.75-12(a) of this subpart;

(6) Determines that the fruit is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of citrus canker pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) [2]; and

(7) Determines that the fruit is eligible for movement under all other Federal domestic plant quarantines and regulations applicable to such fruit.

(d) Certificates and limited permits for use for movement of regulated articles may be issued by an inspector to any person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate or limited permit for the interstate movement of a regulated article if such person has treated such regulated article in accordance with the provisions in § 301.75-12 and the inspector has made the determination that such article is otherwise eligible for a certificate or limited permit in accordance with the provisions of this section.

(e) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with any conditions under the regulations for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.75-8 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under

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[2] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest.

this subpart [3]. The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.75–9 Assembly and inspection of regulated articles.

(a) Any person who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector [4] to take any necessary action under this subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

[3] Compliance agreements may be arranged by contacting a local office of Plant Protection and Quarantine (local offices are listed in telephone directories), or by contacting the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

[4] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

§ 301.75–10 Attachment and disposition of a certificate or limited permit.

(a) A certificate or limited permit required for the interstate movement of a regulated article, during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document: *Provided, however*, that the requirements of this section may be met by attaching the limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.75–11 Costs and charges.

The services of the inspector shall be furnished without cost. The United States Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions in this subpart, other than for the services of the inspector.

§ 301.75–12 Treatments.[5]

Treatments for regulated articles shall be as follows:

(a) *Fruit.* Thorough wetting with a solution containing 200 parts per million active chlorine for a period of at least 2 minutes; or thorough wetting with a solution containing Sodium O-Phenyl Phenate (SOPP) at a concentration of 1.86 to 2 percent of the total solution for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain such concentration of soap or detergent.

Note: SOPP must be applied in accordance with all label directions.

(b) *Seed.* Extracted from fruit that has been treated in accordance with paragraph (a) of this section, then cleaned free of pulp, then immersed in water at 125° F. (51.6° C.) or higher for 10 minutes, and then immersed in a solution containing 200 parts per million active chlorine for a period of at least 2 minutes.

[5] Treatments shall be monitored by inspectors in order to assure compliance with the treatment provisions.

§ 301.75–13 Determination of extraordinary emergency.

An extraordinary emergency was declared on October 17, 1984, because of an outbreak of citrus canker in Florida (49 FR 41268). The regulations in §§ 301.75–14 through 301.75–16 of this subject establish provisions relating to the extraordinary emergency.

§ 301.75–14 Inspection, seizure, quarantine, and other actions.

Any employee of the United States Department of Agriculture designated by the Deputy Administrator and identified by an official identification card, shall have authority to inspect, seize, quarantine, and take other actions authorized under 7 U.S.C. 150dd and 150ff, including entering with a warrant any premises in Florida to make necessary inspections and seizures. Any such employee shall be allowed to collect samples of plants or plant products found on such premises. Any such employee may enter upon any premises without a warrant if the person in possession of the premises voluntarily consents to such employee's entry.

§ 301.75–15 Compensation for destroyed plants.

Compensation by the United States Department of Agriculture shall be paid for plants destroyed in Florida because of citrus canker on or after October 17, 1984, pursuant to an order issued by an inspector. Compensation shall be as follows:

Class of plant	Compensation to be paid by USDA [1]
Field Grown Nursery Plants	
Seedling	$0.0135
Liner	0.1385
Budded tree	0.8450
Greenhouse Grown Nursery Plants	
Seedling	0.0315
Liner	0.2660
Budded tree	0.9825
Container Plants	
One (1) gallon	1.315
Two (2) gallons	1.710
Three (3) or more gallons	2.100
Grove Plants	
Reset or new planting	3.740

[1] The amounts of compensation to be paid by USDA for plants represent fifty percent (50%) of the replacement values of the plants as determined by the Deputy Administrator. The replacement values for plants were determined based on information provided by the Citrus Canker Indemnity Work Group (a group composed of representatives of USDA–ERS, USDA–APHIS, the University of Florida, and the Florida Department of Agriculture and Consumer Services) and representatives from the citrus industry.

§ 301.75-16 Claim for compensation.

A claim for compensation to be paid by the United States Department of Agriculture for economic losses resulting from the destruction of plants must be presented to an inspector before compensation will be made. The claim must be made on PPQ Form 751. The claimant must state whether the items for which compensation is requested are, or are not, subject to a mortgage, lien, or other security or beneficial interest held by any person other than the claimant. If the claimant is the owner and states that there is no mortgage, lien, or other such interest on the items, payment will be made to the owner. If the claimant states that there is a mortgage, lien, or other such interest, PPQ Form 751 shall be signed by the claimant and by each person holding a mortgage, lien, or other such interest on the items, consenting to the payment of any compensation allowed to the person specified thereon, and payment will be made to such person.

Done at Washington, D.C., this 21st day of June 1985.

H.L. Ford,

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

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H.J. Res. 211/Pub. L. 99-54

To recognize the pause for the Pledge of Allegiance as part of National Flag Day activities. (June 20, 1985; 99 Stat. 97) Price: $1.00