7–10–95
Vol. 60 No. 131
Pages 35461–34690

# federal register

Monday
July 10, 1995

**Briefings on How To Use the Federal Register**
For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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## WHAT IT IS AND HOW TO USE IT

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

**WHO:** The Office of the Federal Register.

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

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

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

### WASHINGTON, DC

**WHEN:** July 27 at 9:00 am

**WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538

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### Separate Parts In This Issue



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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.

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## 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**

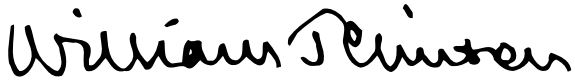
**Presidential Determination No. 95–27 of June 23, 1995**

## Certification of Jordan Under Section 130(c) of the International Security and Development Cooperation Act of 1985

**Memorandum for the Secretary of State**

Pursuant to section 130(c) of the International Security and Development Cooperation Act of 1985 (Public Law 99–83), I hereby certify that Jordan is publicly committed to the recognition of Israel and to negotiate promptly and directly with Israel under basic tenets of United Nations Security Council Resolutions 242 and 338.

You are authorized and directed to report this certification, together with the attached justification, to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee. You are further authorized and directed to publish this determination, together with the attached justification, in the **Federal Register**.



THE WHITE HOUSE,
*Washington, June 23, 1995.*

**Memorandum of Justification**

The Government of Jordan has requested the purchase of six UH–60L BLACKHAWK utility helicopters and related supplies and support at a total value of $87 million. These helicopters will be transferred to the Jordanian military for intracountry military transportation requirements including transportation for its National Command Authority.

By signing a peace treaty with Israel October 26, 1994, Jordan has taken a historic step to promote peace in the Middle East. However, the process of creating a lasting peace in the region did not end with the signing of the October 26 treaty. Rather, the Jordanians must continue negotiations with Israel and other parties in the region to continue the peace process. These negotiations cannot take place absent the movement of King Hussein and other officials. These helicopters will be primarily used for VIP transport, for the King and other high-level officials, and for accompanying security details. These BLACKHAWKs will replace comparable, older BLACKHAWKs currently used for the King.

The International Security and Development Cooperation Act of 1985, PL 99–83, Section 130(c) states: ''Any notification made pursuant to section 36(b) of the Arms Export Control Act with respect to a proposed sale to Jordan of United States advanced aircraft, new air defense systems, or other new advanced military weapons shall be accompanied by a Presidential certification of Jordan's public commitment to the recognition of Israel and to negotiate promptly and directly with Israel under the basic tenets of United Nations Security Council Resolutions 242 and 338.''

This requirement has been fulfilled by the October 26, 1994, Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, which explicitly mentions the two United Nations resolutions in its preamble as the basis upon which the treaty has been negotiated: ''Aiming at the achievement of a just, lasting and comprehensive peace in the Middle East based on Security Council Resolutions 242 and 338 in all their aspects.'' Nonetheless this Section of Law remains in force. We intend to seek its repeal at the earliest opportunity.

[FR Doc 95–16921
Filed 7–6–95; 12:32 pm]
Billing code 4710–10–M

# Presidential Documents

**Presidential Determination No. 95–28 of June 23, 1995**

## Drawdown of the Commodities and Services from the Inventory and Resources of the Departments of Defense, Justice, Treasury and State To Support Accelerated Training and Equipping of Haitian Police Forces

**Memorandum for the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, [and] the Attorney General**

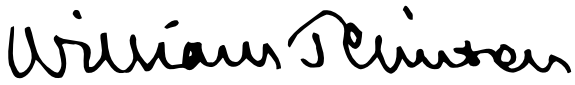
Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a(c)(2) (the ''Act''), I hereby determine that:

(1) as a result of an unseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of commodities and services from the inventory and resources of the Departments of Defense, Justice, Treasury and State of an aggregate value not to exceed $7.0 million to support accelerated training, equipping and deployment of Haitian police forces.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
*Washington, June 23, 1995.*

[FR Doc. 95–16922
Filed 7–6–95; 12:33 pm]
Billing code 4710–10–M

# Presidential Documents

**Presidential Determination No. 95–29 of June 28, 1995**

## Determination To Authorize the Furnishing of Emergency Military Assistance in Support of the Rapid Reaction Force in Bosnia Under Section 506(a)(1) of the Foreign Assistance Act

**Memorandum for the Secretary of State [and] the Secretary of Defense**

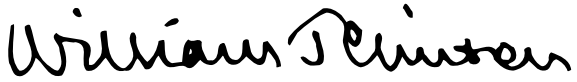
Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the ''Act''), I hereby determine that:

(1) an unforeseen emergency exists which requires immediate military assistance to a foreign country or international organization; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $12,000,000 in defense services from the Department of Defense to provide immediate transportation support necessary to move the Rapid Reaction Force personnel and equipment to Bosnia.

The Secretary of State is authorized and directed to report this determination to Congress and arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
*Washington, June 28, 1995.*

[FR Doc. 95–16923
Filed 7–6–95; 12:34 pm]
Billing code 4710–10–M

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AG82**

### Prevailing Rate Systems; Abolishment of Marquette, MI, Nonappropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management is issuing interim regulations to abolish the Marquette, MI, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and add Dickinson County, MI, and Marquette County, MI, as areas of application to the Lake, IL, NAF wage area for pay-setting purposes. No employee's wage rate will be reduced as a result of this change.

**DATES:** This interim rule becomes effective on July 10, 1995. Comments must be received by August 9, 1995. Employees paid rates from the Marquette, MI, NAF wage schedule will continue to be paid from that schedule until their conversion to the Lake, IL, NAF wage schedule on October 21, 1995, the normal effective date for new Marquette area wage schedules.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Paul Shields, (202) 606–2848.

**SUPPLEMENTARY INFORMATION:** The Department of Defense recommended to the Office of Personnel Management that the Marquette, MI, NAF wage area be abolished and that Dickinson County, MI, and Marquette County, MI, be added as areas of application to the Lake, IL, NAF wage area. With the scheduled 1995 closing of the host installation, K.I. Sawyer Air Force Base (AFB), there will no longer be a local activity with the capability to do the Marquette, MI, survey. There will, however, still be about five NAF employees in Dickinson County and possibly a few NAF employees in Marquette County. The remaining three Marquette wage area application counties, Chippewa and Houghton Counties, MI, and Langlade County, WI, have no NAF FWS employees.

The provisions of 5 CFR 532.219 list the following criteria for consideration when two or more counties are to be combined to constitute a single wage area:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

These criteria are discussed in turn below.

Of the largest nearby activities with NAF employees, K.I. Sawyer AFB, Marquette County, MI, is closest to Great Lakes Naval Training Center, Lake County, IL. More distant are the 934th TAG MN/St. Paul International Airport and Selfridge Air National Guard Base. Distances from K.I. Sawyer AFB to the host activities of the surrounding wage areas are as follows: Great Lakes Naval Training Center, Lake County, IL, 561 km (349 miles); 934th TAG MN/St. Paul International Airport, Hennepin County, MN, 697 km (433 miles); and Selfridge Air National Guard Base, Macomb County, MI, 786 km (488 miles). The duty station of the NAF employees in Dickinson County, MI—the Iron Mountain VA Medical Center—is also closer to Lake County, IL, than the other nearby NAF wage areas.

Considering transportation facilities from Marquette and Dickinson Counties, MI, the largest installations in the three surrounding survey areas can all be reached by primary undivided roads and Interstate highways. An analysis of 1990 census commuting patterns data indicates that no workers commute between either Marquette County, MI, or Dickinson County, MI, and any of the three survey counties under consideration.

In terms of similarities of the counties in overall population, private employment, and kinds and sizes of private industrial establishments, Marquette and Dickinson Counties are most similar to Lake County.

In summary, consideration of the three criteria (proximity, transportation facilities and commuting patterns, and similarities of the counties) favors the definition of Dickinson and Marquette Counties, MI, as areas of application to the Lake, IL, NAF wage area.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the August 1995 Marquette, MI, NAF wage area survey must otherwise begin immediately.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

Accordingly, OPM is amending 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

**Appendix B to Subpart B of Part 532 [Amended]**

2. In Appendix B to subpart B, the listing for the State of Michigan is amended by removing the entry for Marquette.

3. Appendix D to subpart B is amended by removing the wage area list for Marquette, Michigan, and by revising the list for Lake, Illinois, to read as follows:

**Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas**

* * * * *

Illinois

* * * * *

Lake

Survey area

Illinois:
Lake

Area of application. Survey area plus:
Illinois:
Cook
Michigan:
Dickinson (Effective date October 21, 1995)
Marquette (Effective date October 21, 1995)
Wisconsin:
Dane
Milwaukee

* * * * *

[FR Doc. 95–16815 Filed 7–7–95; 8:45 am]

BILLING CODE 6325–01–M

## 5 CFR Part 581

**RIN 3206–AG84**

## Processing Garnishment Orders for Child Support and/or Alimony

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** This document publishes the list of designated officials responsible for facilitating the service of legal process on members of the Uniformed Services and other Federal employees in the Executive Branch.

**EFFECTIVE DATE:** This amendment is effective August 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

**SUPPLEMENTARY INFORMATION:** On February 27, 1995, the President signed Executive Order No. 12953 entitled ''Actions Required of All Executive Agencies to Facilitate Payment of Child Support.'' In accordance with section 302 of the Executive order, OPM is required to publish a list of officials designated to assist in the service of legal process in civil actions pursuant to orders of State courts to establish paternity and to establish or to enforce support obligations by making Federal employees and members of the Uniformed Services available for service of process, regardless of the location of the employee's workplace or of the member's duty station.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because their effects are limited to Federal employees.

**E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

**List of Subjects in 5 CFR Part 581**

Alimony, Child support, Government employees, Wages.

U.S. Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, OPM is amending 5 CFR part 581 as follows:

## PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

1. The authority citation for part 581 is revised to read as follows:

**Authority:** 15 U.S.C. 1673; 42 U.S.C. 659, 661–662; E.O. 12105, 43 FR 59465, 3 CFR, 1979 Comp., p. 262; E.O. 12953, 60 FR 11013.

2. Appendix B is added to part 581 as follows:

**Appendix B to Part 581—List of Agents Designated To Facilitate the Service of Legal Process on Federal Employees**

[The agents designated to accept legal process for the garnishment of the remuneration for employment due from the United States are listed in appendix A to part 581. Appendix B to part 581 lists the agents designated to assist in the service of legal process in civil actions pursuant to orders of State courts to establish paternity and to establish or to enforce support obligations by making Federal employees and members of the Uniformed Services available for service of process, regardless of the location of the employee's workplace or of the member's duty station. Agents are listed in Appendix B only for those executive agencies where the designations differ from those found in appendix A to part 581.]

**I. Departments**

*Department of Agriculture*

Office of the Secretary
Office of the Deputy Secretary
Office of the Under Secretaries
Office of the Assistant Secretaries

Director, Executive Resources and Services Division
Office of Personnel
Room 334 W—Administration Bldg.
14th St. and Independence Ave., SW.
Washington, DC 20250
(202) 720–6047

Office of Inspector General

Chief Counsel to the Inspector General
Office of Inspector General
Room 27 E—Administration Bldg.
14th St. and Independence Ave., SW.
Washington, DC 20250
(202) 720–9110

Administration

Board of Contract Appeals
Chief Financial Officer
Judicial Officer
Office of Administrative Law Judges
Office of Budget and Program Analysis
Office of Civil Rights Enforcement
Office of Communications
Office of Congressional and Intergovernmental Relations
Office of the General Counsel
Office of Information and Resources Management
Office of Operations
Office of Personnel
Office of Small and Disadvantaged Business Utilization

Chief, Employment and Compensation Branch
Office of Personnel—POD
Room 31 W—Administration Bldg.
14th St. and Independence Ave., SW
Washington, DC 20250–9630
(202) 720–7797

Chief Economist

Office of Risk Assessment and Cost-Benefit Analysis
World Agricultural Outlook Board

Chief, Economics and Statistics Operations Branch
Human Resources Division
Agricultural Research Service
Room 1424—South Bldg.
14th St. and Independence Ave., SW
Washington, DC 20250
(202) 720–7657

Farm and Foreign Agricultural Services

Consolidated Farm Service Agency
Foreign Agricultural Service

Chief, Employee and Labor Relations Branch
Human Resources Division
Consolidated Farm Service Agency
Room 6732—South Bldg.
PO Box 2415
Washington, DC 20013
(202) 720–5964

Federal Crop Insurance Corporation

Acting Chief, Labor Relations Branch
Federal Crop Insurance Corporation
Consolidated Farm Service Agency
Room 6732—South Bldg.
14th St. and Independence Ave., SW.
Washington, DC 20250

(202) 720–5964

Food, Nutrition, and Consumer Services

Food and Consumer Service

Senior Employee Relations Specialist
Employee Relations Division
Food and Consumer Service
3101 Park Center Drive, Room 623
Alexandria, VA 22302
(703) 305–2374

Marketing and Regulatory Programs

Agricultural Marketing Service (Except for employees of the Milk Marketing Administration)
Chief, Employee Relations Branch
Agricultural Marketing Service, PED, ERB
Room 1745—South Bldg.
PO Box 96456
Washington, DC 20090–6456
(202) 720–5721

Agricultural Marketing Service

Milk Marketing Employees

Personnel Management Specialist
Agricultural Marketing Service, DA
Room 2754—South Bldg.
PO Box 96456
Washington, DC 20090–6456
(202) 720–7258

Animal and Plant Health Inspection Service

Grain Inspection, Packers and Stockyards Administration

Chief, Personnel Branch
Animal and Plant Health Inspection Service, HRD, HRO
Butler Square West, 5th Floor
100 N. 6th St.
Minneapolis, MN 55403
(612) 370–2107

Food Safety

Food Safety and Inspection Service

Chief, Classification and Organization Branch
Personnel Division
Food Safety and Inspection Service
Room 3821—South Bldg.
14th St. and Independence Ave., SW.
Washington, DC 20250–3700
(202) 720–6287

Rural Economic and Community Development

Rural Housing and Community Development Service
Rural Business and Cooperative Development Service

Chief, Employee Information Systems Branch
Human Relations Division
Rural Housing and Community Development Service
501 School St., SW.
Washington, DC 20250
(202) 245–5573

Rural Utilities Service

Chief, Rural Utilities Service
Personnel Operations Branch
Human Relations Division
Rural Housing and Community Development Service
Room 4031—South Bldg.
14th St. and Independence Ave., SW.
Washington, DC 20250–1382
(202) 720–1382

Natural Resources and Environment

Forest Service

(agents are listed below by subordinate units)

Natural Resources Conservation Service

Director, Employee Relations Branch
Human Resources Management Division
Natural Resources Conservation Service
Room 6205—South Bldg.
PO Box 2890
Washington, DC 20250
(202) 720–4137

Research, Education, and Economics

Agricultural Research Service Cooperative State Research, Education, and Extension Service
National Agricultural Statistics Service
Economic Research Service

Chief, Personnel Operations Branch
Agricultural Research Service
Personnel Division—POB
6305 Ivy Lane, Room 301
Greenbelt, MD 20770
(301) 344–3151

National Appeals Division

Administrative Officer
National Appeals Division
3101 Park Center Drive, Room 1020
Alexandria, VA 22302
(703) 305–2566

Forest Service

Washington Office
Director, Personnel Management
900 RP–E
PO Box 96090
Washington, DC 20090–6090
(703) 235–8102

International Institute of Tropical Forestry
Director
Call Box 25000
UPR Experimental Station Grounds
Rio Piedras, PR 00928–2500
(809) 766–5335

Region 1

Regional Forester, Regional Office
Federal Bldg.
PO Box 7669
Missoula, MT 59807
(406) 329–3003

Idaho

Clearwater—Forest Supervisor
12730 Highway 12
Orofino, ID 83544
(208) 476–4541

Idaho Panhandle National Forests—Forest Supervisor
1201 Ironwood Dr.
Couer d'Alene, ID 83814
(208) 765–7223

Nez Perce—Forest Supervisor
Rt. 2, Box 475
Grangeville, ID 83530
(208) 983–1950

Montana

Beaverhead—Forest Supervisor
420 Barrett St.
Dillon, MT 59725–3572
(406) 683–3900

Bitterroot—Forest Supervisor
1801 N. 1st St.
Hamilton, MT 59840
(406) 363–7121

Custer—Forest Supervisor
Box 2556
Billings, MT 59103
(406) 657–6361

Deerlodge—Forest Supervisor
Federal Bldg.
Box 400
Butte, MT 59701
(406) 496–3400

Flathead—Forest Supervisor
1935 3rd Ave., E.
Kalispell, MT 59901
(406) 755–5401

Gallatin—Forest Supervisor
Federal Bldg.
10 E. Babcock Ave.
Box 130
Bozeman, MT 59771
(406) 587–6701

Helena—Forest Supervisor
2880 Skyway Dr.
Helena, MT 59601
(406) 449–5201

Kootenai—Forest Supervisor
506 Highway 2 W.
Libby, MT 59923
(406) 293–6211

Lewis and Clark—Forest Supervisor
PO Box 869
1101 15th St. N.
Great Falls, MT 59403
(406) 791–7700

Lolo—Forest Supervisor
Bldg. 24
Ft. Missoula
Missoula, MT 59801
(406) 329–3750

Region 2

Regional Forester, Regional Office
740 Simms St.
Lakewood, CO 80255
(303) 275–5306

Colorado

Arapaho and Roosevelt—Forest Supervisor
240 W. Prospect
Fort Collins, CO 80526
(303) 498–1100

Grand Mesa, Uncompahgre, and Gunnison—Forest Supervisor
2250 Highway 50
Delta, CO 81416
(303) 874–7691

Pike and San Isabel—Forest Supervisor
1920 Valley Dr.
Pueblo, CO 81008
(719) 545–8737

Rio Grande—Forest Supervisor
1803 West Highway 160
Monte Vista, CO 81144
(719) 852–5941

Routt—Forest Supervisor
29587 W. US 40, Suite 20
Steamboat Springs, CO 80487–9550
(303) 879–1722

San Juan—Forest Supervisor
701 Camino Del Rico, Room 301
Durango, CO 81301
(303) 247–4874

White River—Forest Supervisor
Old Federal Bldg.
Boxc 948

Glenwood Springs, CO 81602
(303) 945–2521

Nebraska

Nebraska—Forest Supervisor
125 N. Main St.
Chadron, NE 69337
(308) 432–0300

South Dakota

Black Hills—Forest Supervisor
R.R. 2
Box 200
Custer, SD 57730–9504
(605) 673–2251

Wyoming

Bighorn—Forest Supervisor
1969 So. Sheridan Ave.
Sheridan, WY 82801
(307) 672–0751

Medicine Bow—Forest Supervisor
2468 Jackson St.
Laramie, WY 82070–6535
(307) 745–8971

Shoshone—Forest Supervisor
808 Meadow Lane
Cody, WY 82414
(307) 527–6241

Region 3

Regional Forester, Regional Office
Federal Bldg.
517 Gold Ave., SW.
Albuquerque, NM 87102
(505) 842–3380

Arizona

Apache—Sitgreaves—Forest Supervisor
Federal Bldg.
Box 640
Springerville, AZ 85938
(602) 333–4301

Coconino—Forest Supervisor
2323 E. Greenlawn Lane
Flagstaff, AZ 86004
(602) 527–3600

Coronado—Forest Supervisor
300 W. Congress
Tucson, AZ 85701
(692) 670–4552

Kaibab—Forest Supervisor
800 S. 6th St.
Williams, AZ 86046
(602) 635–2681

Prescott—Forest Supervisor
344 South Cortez
Prescott, AZ 86303
(602) 771–4700

Tonto—Forest Supervisor
2324 E. McDowell Rd.
Phoenix, AZ 85006
(602) 225–5200

New Mexico

Carson—Forest Supervisor
208 Cruz Alta Rd.
PO Box 558
Taos, NM 87571
(505) 758–6200

Cibola—Forest Supervisor
2113 Osuna Rd., NE., Suite A
Albuquerque, NM 87113–1001
(505) 761–4650

Gila—Forest Supervisor
3005 E. Camino del Bosque
Silver City, NM 88061
(505) 388–8201

Lincoln—Forest Supervisor
Federal Bldg.
1101 New York Ave.
Alamogordo, NM 88310–6992
(505) 434–7200

Santa Fe—Forest Supervisor
1220 St. Francis Dr.
Santa Fe, NM 87504
(505) 988–6940

Region 4

Regional Forester, Regional Office
Federal Bldg.
324 25th St.
Ogden, UT 84401
(801) 625–5298

Idaho

Boise—Forest Supervisor
1750 Front Street
Boise, ID 83702
(208) 364–4100

Caribou—Forest Supervisor
250 S. 4th Ave., Suite 282
Federal Bldg.
Pocatello, ID 83201
(208) 236–7500

Challis—Forest Supervisor
HC 63 Box 1671
F.S. Bldg.
Challis, ID 83226
(208) 879–2285

Payette—Forest Supervisor
Box 1026 or
106 W. Park
McCall, ID 83638
(208) 634–0700

Salmon—Forest Supervisor
PO Box 729
Salmon, ID 83467–0729
(208) 765–2215

Sawtooth—Forest Supervisor
2647 Kimberly Rd. East
Twin Falls, ID 83301–7976
(208) 737–3200

Targhee—Forest Supervisor
420 N. Bridge St.
PO Box 208
St. Anthony, ID 83445
(208) 624–3151

Nevada

Humboldt—Forest Supervisor
976 Mountain City Highway
Elko, NV 89801
(702) 738–5171

Toiyabe—Forest Supervisor
1200 Franklin Way
Sparks, NV 89431
(702) 355–5300

Utah

Ashley—Forest Supervisor
355 North Vernal Ave.
Vernal, UT 84078
(801) 789–1181

Dixie—Forest Supervisor
82 No. 100 E. St.
PO Box 580
Cedar City, UT 84721–0580
(801) 865–3700

Fishlake—Forest Supervisor
115 E. 900 N.
Richfield, UT 84701
(801) 896–9233

Manti—La Sal—Forest Supervisor
599 W. Price River Drive
Price, UT 84501
(801) 637–2817

Uinta—Forest Supervisor
88 W. 100 N.
Provo, UT 84601
(801) 342–5100

Wasatch—Cache—Forest Supervisor
8236 Federal Bldg.
125 S. State St.
Salt Lake City, UT 84138
(801) 524–5030

Wyoming

Bridger—Teton—Forest Supervisor
F.S. Bldg.
340 N. Cache
Box 1888
Jackson, WY 83001
(307) 739–5500

Region 5

Regional Forester, Regional Office
630 Sansome St.
San Francisco, CA 94111
(415) 705–2856

California

Angeles—Forest Supervisor
701 N. Santa Anita Ave.
Arcadia, CA 91006
(818) 574–1613

Cleveland—Forest Supervisor
10845 Rancho Bernardo Rd., Suite 200
San Diego, CA 92127–2107
(619) 673–6180

Eldorado—Forest Supervisor
100 Forni Rd.
Placerville, CA 95667
(916) 622–5062

Inyo—Forest Supervisor
873 North Main St.
Bishop, CA 93514
(619) 873–2400

Klamath—Forest Supervisor
1312 Fairlane Rd.
Yreka, CA 96097
(916) 842–6131

Lassen—Forest Supervisor
55 So. Sacramento St.
Susanville, CA 96130
(916) 257–2151

Los Padres—Forest Supervisor
6144 Calle Real
Goleta, CA 93114
(805) 683–6711

Mendocino—Forest Supervisor
420 E. Laurel St.
Willows, CA 95988
(916) 934–3316

Modoc—Forest Supervisor
800 W. 12th St.
Alturas, CA 96101
(916) 233–5811

Plumas—Forest Supervisor
159 Lawrence St.
Box 11500
Quincy, CA 95971–6025
(916) 283–2050

San Bernardino—Forest Supervisor
1824 S. Commercenter Cir.

San Bernardino, CA 92408–3440
(909) 383–5588

Sequoia—Forest Supervisor
900 W. Grand Ave.
Porterville, CA 93257–2035
(209) 784–1500

Shasta—Trinity—Forest Supervisor
2400 Washington Ave.
Redding, CA 96001
(916) 246–5222

Sierra—Forest Supervisor
1600 Tollhouse Rd.
Clovis, CA 93611
(209) 297–0706

Six Rivers—Forest Supervisor
1330 Bayshore Way
Eureka, CA 95501–3834
(707) 441–3517

Stanislaus—Forest Supervisor
19777 Greenley Rd.
Sonora, CA 95370
(209) 532–3671

Tahoe—Forest Supervisor
631 Coyote St.
PO Box 6003
Nevada City, CA 95959–6003
(916) 265–4531

Region 6

Regional Forester, Regional Office
333 SW. 1st Ave.
PO Box 3623
Portland, OR 97208
(503) 326–3630

Oregon

Deschutes—Forest Supervisor
1645 Highway 20 E.
Bend, OR 97701
(503) 388–2715

Fremont—Forest Supervisor
524 North G St.
Lakeview, OR 97630
(503) 947–2151

Malheur—Forest Supervisor
139 NE. Dayton St.
John Day, OR 97845
(503) 575–1731

Mt. Hood—Forest Supervisor
2955 NW. Division St.
Gresham, OR 97030
(503) 666–0700

Ochoco—Forest Supervisor
Box 490
Prineville, OR 97754
(503) 447–6247

Rogue River—Forest Supervisor
Federal Bldg.
333 W. 8th St.
Box 520
Medford, OR 97501
(503) 776–3600

Siskiyou—Forest Supervisor
Box 440
Grants Pass, OR 97526
(503) 471–6500

Siuslaw—Forest Supervisor
Box 1148
Corvallis, OR 97339
(503) 750–7000

Umatilla—Forest Supervisor
2517 SW. Hailey Ave.
Pendleton, OR 97801
(503) 278–3721

Umpqua—Forest Supervisor
Box 1008
Roseburg, OR 97470
(503) 672–6601

Wallowa—Whitman—Forest Supervisor
Box 907
Baker City, OR 97814
(503) 523–6391

Willamette—Forest Supervisor
Box 10607
Eugene, OR 97440
(503) 465–6521

Winema—Forest Supervisor
2819 Dahlia
Klamath Falls, OR 97601
(503) 883–6714

Washington

Colville—Forest Supervisor
765 S. Main
Colville, WA 99114
(509) 684–7000

Gifford Pinchot—Forest Supervisor
6926 E. 4th Plain Blvd.
Vancouver, WA 98668–8944
(206) 750–5000

Mt. Baker—Snoqualmie—Forest Supervisor
21905 64th Avenue West
Mountlake Terrace, WA 98043
(206) 744–3200

Okanogan—Forest Supervisor
1240 South Second Ave.
Okanogan, WA 98840
(509) 826–3275

Olympia—Forest Supervisor
1835 Black Lake Blvd., SW.
Olympia, WA 98512
(206) 956–2300

Wenatchee—Forest Supervisor
301 Yakima St.
PO Box 811
Wenatchee, WA 98807
(509) 662–4335

Region 8

Regional Forester, Regional Office
1720 Peachtree Rd., NW.
Atlanta, GA 30367
(404) 347–3841

Alabama

National Forests in Alabama—Forest Supervisor
2946 Chestnut St.
Montgomery, AL 36107–3010
(205) 832–4470

Arkansas

Ouachita—Forest Supervisor
Box 1270
Federal Bldg.
Hot Springs National Park, AR 71902
(501) 321–5200

Ozark—St. Francis—Forest Supervisor
605 West Main
Box 1008
Russellville, AR 72801
(501) 968–2354

Florida

National Forests in Florida—Forest Supervisor
Woodcrest Office Park
325 John Knox Rd., Suite F–100
Tallahassee, FL 32303
(904) 681–7265

Georgia

Chattahoochee and Oconee—Forest Supervisor
508 Oak St., NW.
Gainesville, GA 30501
(404) 536–0541

Kentucky

Daniel Boone—Forest Supervisor
100 Vaught Rd.
Winchester, KY 40391
(606) 745–3100

Louisiana

Kisatchie—Forst Supervisor
2500 Shreveport Hwy.
PO Box 5500
Pineville, LA 71361–5500
(318) 473–7160

Mississippi

National Forests in Mississippi—Forest Supervisor
100 W. Capital St., Suite 1141
Jackson, MS 39269
(601) 965–4391

North Carolina

National Forests in North Carolina—Forest Supervisor
Post and Otis Streets
PO Box 2750
Asheville, NC 28802
(704) 257–4200

Puerto Rico and the Virgin Islands

Caribbean N.F.—Forest Supervisor
Call Box 25000
Rio Piedras, PR 00928–2500
(809) 766–5335

South Carolina

Francis Marion and Sumter National Forests—Forest Supervisor
4923 Broad River Rd.
Columbia, SC 29212
(803) 765–5222

Tennessee

Cherokee—Forest Supervisor
2800 N. Ocoee St., NE.
PO Box 2010
Cleveland, TN 37320
(615) 476–9700

Texas

National Forests in Texas—Forest Supervisor
Homer Garrison Federal Bldg.
701 N. First St.
Lufkin, TX 75901
(409) 639–8501

Virginia

George Washington—Forest Supervisor
PO Box 233, Harrison Plaza
Harrisonburg, VA 22801
(703) 433–2491

Region 9

Regional Forester, Regional Office
310 W. Wisconsin Ave., Room 500
Milwaukee, WI 53203
(414) 297–3674

Illinois

Shawnee—Forest Supervisor
901 S. Commercial St.
Harrisburg, IL 62946
(618) 253–7114

Indiana

Hoosier—Forest Supervisor
811 Constitution Ave.
Bedford, IN 47421
(812) 275–5987

Michigan

Hiawatha—Forest Supervisor
2727 N. Lincoln Rd.
Escanaba, MI 49829
(906) 786–4062

Huron—Manistee—Forest Supervisor
421 S. Mitchell St.
Cadillac, MI 49601
(616) 775–2421

Ottawa—Forest Supervisor
2100 E. Cloverland Dr.
Ironwood, MI 49938
(906) 932–1330

Minnesota

Chippewa—Forest Supervisor
Rt. 3 Box 244
Cass Lake, MN 56633
(218) 335–8600

Superior—Forest Supervisor
Box 338, Federal Bldg.
515 W. First St.
Duluth, MN 55802
(218) 720–5324

Missouri

Mark Twain—Forest Supervisor
401 Fairgrounds Rd.
Rolla, MO 65401
(314) 364–4621

New Hampshire and Maine

White Mountain—Forest Supervisor
Federal Bldg.
719 Main St.
PO Box 638
Laconia, NH 03247
(603) 528–8721

Ohio

Wayne—Forest Supervisor
219 Columbus Rd.
Athens, OH 45701–1399
(614) 592–6644

Pennsylvania

Allegheny—Forest Supervisor
222 Liberty St.
Box 847
Warren, PA 16365
(814) 723–5150

Vermont

Green Mountain and Finger Lakes—Forest Supervisor
231 N. Main St.
Rutland, NY 05701
(802) 747–6700

West Virginia

Monongahela—Forest Supervisor
USDA Bldg.
200 Sycamore St.
Elkins, WV 26241–3962
(304) 636–1800

Wisconsin

Chequamegon—Forest Supervisor
1170 4th Ave. South
Park Falls, WI 54552
(715) 762–2461

Nicolet—Forest Supervisor
Federal Bldg.
68 S. Stevens
Rhinelander, WI 54501
(715) 362–1300

Region 10

Regional Forester, Regional Office
Federal Office Bldg.
Box 21628
Juneau, AK 99802–1628
(907) 586–8719

Alaska

Chugach—Forest Supervisor
3301 C St., Suite 300
Anchorage, AK 99503–3998
(907) 271–2500

Tongass—Chatham Area—Forest Supervisor
204 Siginaka Way
Sitka, AK 99835
(907) 747–6671

Tongass—Ketchikan Area—Forest Supervisor
Federal Bldg.
Ketchikan, AK 99901
(907) 225–3101

Tongass—Stikine Area—Forest Supervisor
Box 309
Petersburg, AK 99833
(907) 772–3841

Forest and Range Experiment Stations

Intermountain Research Station, Director
324 25th St.
Ogden, UT 84401
(801) 625–5412

North Central Forest Experiment Station, Director
1992 Folwell Ave.
St. Paul, MN 55108
(612) 649–5249

Northeastern Forest Experiment Station, Director
5 Radnor Corporate Center, Suite 200
PO Box 6775
Radnor, PA 19087–8775
(610) 975–4017

Pacific Northwest Research Station, Director
PO Box 3890
Portland, OR 97208–3890
(503) 326–5640

Pacific Southwest Forest and Range Experiment Station, Director
800 Buchanan St.
West Bldg.
Albany, CA 94710–0011
(510) 559–6310

Rocky Mountain Forest and Range Experiment Station, Director
240 W. Prospect Rd.
Fort Collins, CO 80526–2098
(303) 498–1126

Southeastern Forest Experiment Station, Director
200 Weaver Blvd.
PO Box 2680
Ashville, NC 28802
(704) 257–4300

Southern Forest Experiment Station, Director
T–10210
U.S. Postal Service Bldg.
701 Loyola Ave.
New Orleans, LA 70113
(504) 589–3921

Forest Products Laboratory
Director
One Gifford Pinchot Dr.
Madison, WI 53705–2398
(608) 231–9318

Northeastern Area State and Private Forestry
Director
5 Radnor Corporate Center, Suite 200
PO Box 6775
Radnor, PA 19087–8775
(610) 975–4103

*Department of Commerce*

In addition to the agents listed for the Department of Commerce in Appendix A, the Department of Commerce designates the following agent for purposes of orders affecting Commissioned personnel of the NOAA CORPS:

Chief, Officer Services Division
Commissioned Personnel Center
1315 East West Highway, Room 12100
Silver Spring, MD
(301) 713–3453

*Department of Defense*

The Department of Defense officials identified pursuant to Executive Order 12953, section 302, shall facilitate an employee's or member's availability for service of process. Additionally, these officials shall be responsible for answering inquiries about their respective organization's service of process rules. Such officials are not responsible for actual service of process and will not accept requests to make such service.

Office of the Secretary of Defense

Personnel Management Specialist
DoD Civilian Personnel Management Service
1400 Key Blvd., Level A
Arlington, VA 22209

Department of the Army

Members of the uniformed service, active, reserve, and retired

Office of the Judge Advocate General
ATTN: DAJA–LA
2200 Army Pentagon
Washington, DC 20310–2200
(703) 697–3170

Federal civilian employees of the Army, both appropriated fund and nonappropriated fund

Deputy Assistant Secretary
(Civilian Personnel Policy/Director of Civilian Personnel)
111 Army Pentagon
Washington, DC 20310–0111
(703) 695–4237

Active duty, reserve, and appropriated fund and nonappropriated fund employees of the Department of the Army employed within the United States

Defense Finance and Accounting Service
ATTN: DFAS–IN/GG
Mailstop #22
8899 East 56th Street
Indianapolis, IN 46249–0160
(317) 542–2155

Retired members

Defense Finance and Accounting Service
ATTN: DFAS–CL/L
PO Box 98002
Cleveland, OH 44199–8002
(216) 522–5301

Appropriated fund and nonappropriated fund Federal civilian employees employed in Panama

(Until 1 Oct 95) Deputy Chief of Staff for Resource Management
U.S. Army Southern Command
Finance & Accounting Office,
Civilian Personnel Section
ATTN: Unit 7153, SORM–FA–C
APO AA 34004

(On or after 1 Oct 95) Defense Finance and Accounting Service
ATTN: DFAS—Charleston
1545 2nd Street West
Charleston, SC 29408–1968

Appropriated fund and nonappropriated fund Federal civilian employees employed in the Pacific (Hawaii, Japan)

Defense Finance and Accounting Service
ATTN: DFAS–CL/LG
PO Box 98002
Cleveland, OH 44199–8002
(216) 522–5301

Appropriated fund and nonappropriated fund Federal civilian employees employed in Korea

175th Theater Finance Command
ATTN: KAFC–CPA–DAC
APO AP 96205–0073
1–011–822–1914–3806

Department of the Navy

In order to locate, or determine the cognizant command and mailing address of a Navy Member:

Bureau of Naval Personnel
Worldwide Locator
(Pers 324D)
2 Navy Annex
Washington, DC 20370–3000
(703) 614–3155/5011

In order to obtain assistance in the service of legal process in civil actions pursuant to orders of the courts of States for members outside the United States:

Bureau of Naval Personnel
Office of Legal Counsel
(Pers 06)
2 Navy Annex
Washington, DC 20370–5006
(703) 614–4110

Members of the Marine Corps

Paralegal Specialist
Headquarters, U.S. Marine Corps (JAR)
2 Navy Annex
Washington, DC 20380–1775
(703) 614–2510

To receive service of withholding notices for members of the Marine Corps:

a. Active and Reserve Marines (until 31 Jul 95)

Director, Defense Finance and Accounting Service—Kansas City Center
Attention: Code DG
Kansas City, MO 6417–0001
(816) 926–7103

b. Active and Reserve Marines (after 1 Aug 95) and Retired Marines

Director, Defense Finance and Accounting Service—Cleveland Center
Attention: Office of Counsel/Code DG
1240 East Ninth Street
Cleveland, OH 44199–2087
(216) 522–5301

For service of process on Department of the Navy civilian employees:

Department of the Navy
Office of the General Counsel
Administrative Officer—Room 5D830
The Pentagon
Washington, DC 20350–1000
(703) 614–4473

For assistance in service of process on Department of the Navy civilian employees:

Department of the Navy
Office of Civilian Personnel Mgmt.
Office of Counsel (Code OL)
000 N. Quincy Street
Arlington, Va 22203
(703) 696–4717

Department of the Air Force

For all personnel, military and civilian:

AFLSA/JACA
1420 Air Force Pentagon
Washington, DC 20330–1420
(703) 695–2450

Defense Intelligence Agency

Defense Intelligence Agency
ATTN: Office of the General Counsel
The Pentagon—Room 2E–238
Washington, DC 20301–7400

Defense Mapping Agency

Defense Mapping Agency
Office of Legal Services
3200 South Second Street
St. Louis, MO 63118

Defense Nuclear Agency

Associate General Counsel
Defense Nuclear Agency
6801 Telegraph Road
Alexandria, VA 22310–3398
(703) 325–7681

On-Site Inspection Agency

General Counsel
Defense Nuclear Agency
6801 Telegraph Road
Alexandria, VA 22310–3398
(703) 325–7681

*Department of Housing and Urban Development*

Headquarters

Chief, Systems Support Branch
Technology Support Division
451 7th Street, SW., Room 2256
Washington, DC 20410
(202) 708–0241

New England (Massachusetts, Maine, Vermont, New Hampshire, Rhode Island, and Connecticut)

Human Resources Officer
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Room 375
Boston, MA 02222
(617) 565–5435

New York, New Jersey

Human Resources Officer
26 Federal Plaza
New York, NY 10278
(212) 264–0782

Mid-Atlantic (Pennsylvania, Maryland, Washington, DC, West Virginia, Virginia, and Delaware)

Human Resources Officer
The Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107
(215) 656–0593

Southeast (Georgia, North Carolina, Kentucky, Tennessee, South Carolina, Alabama, Mississippi, Puerto Rico, and Florida)

Human Resources Officer
Richard B. Russell Federal Building
75 Spring Street, SW.
Atlanta, GA 30303
(404) 331–4078

Midwest (Illinois, Minnesota, Wisconsin, Michigan, Ohio, and Indiana)

Human Resources Officer
Ralph H. Metcalfe Federal Building
77 West Jackson Boulevard
Chicago, IL 60604
(312) 353–5960

Southwest (Texas, Oklahoma, Arkansas, Louisiana, and New Mexico)

Human Resources Officer
1600 Throckmorton
Post Office Box 2905
Fort Worth, TX 76113
(817) 885–5471

Great Plains (Kansas, Missouri, Iowa, and Nebraska)

Human Resources Officer
Gateway Tower II
400 State Avenue
Kansas City, KS 66101
(913) 551–5419

Rocky Mountain (Colorado, Montana, North Dakota, South Dakota, Wyoming, and Utah)

Human Resources Officer
First Interstate Tower North
633 17th Street
Denver, CO 80202
(303) 672–5259

Pacific/Hawaii (California, Nevada, Arizona, and Hawaii)

Human Resources Officer
Phillip Burton Federal Building and U.S. Courthouse
450 Golden Gate Avenue
Post Office Box 36003
San Francisco, CA 94102
(415) 556–7142

Northwest/Alaska (Washington, Oregon, Idaho, and Alaska)

Human Resources Officer
Federal Office Building
909 First Avenue, Suite 200
Seattle, VA 98104
(206) 220–5125

*Department of Justice*

Federal Bureau of Investigation

Chief, Payroll Administration and Processing Unit
Room 1885
10th Street & Pennsylvania Avenue, NW.
Washington, DC 20535
(202) 324–5881

*Department of Transportation*

HPT–1 (FHWA)
Room 4317
Department of Transportation
Washington, DC 20590

G–PC (USCG)
Room 4100E, CGHQ
Department of Transportation
Washington, DC 20590

RAD–10 (FRA)
Room 8232
Department of Transportation
Washington, DC 20590

NAD–20 (NHTSA)
Room 5306
Department of Transportation
Washington, DC 20590

TAD–30 (FTA)
Room 7101
Department of Transportation
Washington, DC 20590

DMA–12 (RSPA)
Room 8401
Department of Transportation
Washington, DC 20590

JM–20 (OIG)
Room 7418
Department of Transportation
Washington, DC 20590

MAR–360 (MARAD)
Room 8101
Department of Transportation
Washington, DC 20590

Personnel Officer (SLSDC)
180 Andrews Street
Masena, NY 13662–1763

AHR–1 (FAA)
FOB–10A, Room 500E
Department of Transportation
Washington, DC 20590

Chief Counsel
Saint Lawrence Seaway Development Corporation
400 Seventh St., SW., Room 5424
Washington, DC 20590

*Department of Veterans Affairs*

Alabama

Human Resources Management Officer
Birmingham Medical Center
700 South 19th Street
Birmingham, AL 35233
(205) 933–4478

Montgomery Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Human Resources Management Officer
Montgomery Medical Center
215 Perry Hill Road
Montgomery, AL 36109–3798
(334) 272–4670

Human Resources Management Officer
Tuskegee Medical Center
2400 Hospital Road
Tuskegee, AL 36083–5001
(334) 727–0550

Human Resources Management Officer
Tuscaloosa Medical Center
3701 Loop Road
Tuscaloosa, AL 35404
(205) 554–2000, ext. 2542

Fort Mitchell National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
2400 Hospital Road
Tuskegee, AL 36083–5001
(334) 727–0550

Mobile Outpatient Clinic Substation
Send to: Human Resources Management Officer
VA Medical Center
400 Veterans Blvd.
Biloxi, MS 39531
(601) 388–5541, ext. 5780

Alaska

Fort Richardson (Sitka) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center & Regional Office
2925 DeBarr Road
Anchorage, AK 99508–2989
(907) 257–4750

Human Resources Management Officer
Anchorage Medical Center & Regional Office
2925 DeBarr Road
Anchorage, AK 99508–2989
(907) 257–4750

Arizona

Human Resources Management Officer
Prescott Medical Center
500 N. Highway 89
Prescott, AZ 86313–5000
(520) 776–6015

Prescott National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
500 N. Highway 89
Prescott, AZ 86313–5000
(520) 776–6015

Human Resources Management Officer
Phoenix Medical Center
650 E. Indian School Road
Phoenix, AZ 85012
(602) 277–5551, ext. 7594

Human Resources Management Officer
Tucson Medical Center
3601 South Sixth Avenue
Tuscon, AZ 85723–0001
(520) 629–1803

Phoenix Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Arizona (Cave Creek) Memorial National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
650 E. Indian School Road
Phoenix, AZ 85012
(602) 277–5551, ext. 7594

Arkansas

Fayetteville National Cemetery
Send to: Human Resources Management Officer
Va Medical Center
1100 N. College Avenue
Fayetteville, AR 72703
(501) 444–5020

Fort Smith National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1100 N. College Avenue
Fayetteville, AR 72703
(501) 444–5020

Little Rock National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
4300 West 7th Street
Little Rock, AR 72114
(501) 370–6677

Little Rock Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Human Resources Management Officer
Little Rock Medical Center
4300 West 7th Street
Little Rock, AR 72114
(501) 370–6677

Human Resources Management Officer
Fayetteville Medical Center
1100 N. College Avenue
Fayetteville, AR 72703
(501) 444–5020

California

Human Resources Management Officer
Palo Alto Medical Center
3801 Miranda Avenue
Palo Alto, CA 94304–1207
(415) 493–5000, ext. 5515

Human Resources Management Officer
Loma Linda Medical Center
11201 Benton Street
Loma Linda, CA 92357–0002
(909) 825–7084, ext. 3058

San Diego Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Sepulveda VCS Western Region
Send to: Human Resources Management Officer
VA Medical Center
16111 Plummer Street
Sepulveda, CA 91343–2099
(818) 895–9377

Human Resources Management Officer
San Francisco Medical Center
4150 Clement Street
San Francisco, CA 94121–1598
(415) 750–2107

Human Resources Management Officer
Fresno Medical Center
2615 E. Clinton Avenue
Fresno, CA 93703–2223
(209) 225–6100, ext. 5005

Human Resources Management Officer
San Diego Medical Center
3350 La Jolla Village Drive
San Diego, CA 92161–0001

(619) 552–8585

Oakland Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Human Resources Management Officer
Sepulveda Medical Center
16111 Plummer Street
Sepulveda, CA 91343–2099
(818) 895–9377

Human Resources Management Officer
Los Angeles Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles, CA 90073
(310) 824–3153

Los Angeles Field Office of Audit
Send to: Human Resources Management Officer
VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles, CA 90073
(310) 824–3153

Los Angeles Regional Office of Audit
Send to: Human Resources Management Officer
VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles, CA 90073
(310) 824–3153

Human Resources Management Officer
Los Angeles Outpatient Clinic
351 E. Temple St.
Los Angeles, CA 90012–3328
(213) 253–2677

Pleasant Hill Northern California System of Clinics
Human Resources Management Officer
2300 Contra Costa Blvd., Suite 440
Pleasant Hill, CA 94523–3961
(510) 372–2008

Human Resources Management Officer
Long Beach Medical Center
5901 E. Seventh Street
Long Beach, CA 90882–5201
(310) 494–5642

Los Angeles Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

San Bruno (Golden Gate) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
4150 Clement Street
San Francisco, CA 94121–1598
(415) 750–2107

Fort Rosecrans National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
3350 La Jolla Village Drive
San Diego, CA 92161–0001
(619) 552–8585

Los Angeles National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles, CA 90073
(310) 824–3153

San Joaquin Valley National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
2615 E. Clinton Avenue
Fresno, CA 93703–2223
(209) 225–6100, ext. 5005

Riverside National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
11201 Benton Street
Loma Linda, CA 92357–0002
(909) 825–7084, ext. 3058

San Francisco National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
4150 Clement Street
San Francisco, CA 94121–1598
(415) 750–2107

San Diego Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
3350 La Jolla Village Drive
San Diego, CA 92161–0001
(619) 552–8585

Colorado

Human Resources Management Officer
Grand Junction Medical Center
2121 North Avenue
Grand Junction, CO 81501
(970) 252–0731, ext. 2062

Human Resources Management Officer
Denver Medical Center
1055 Clermont Street
Denver, CO 80220–0166
(303) 393–2815

Denver Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Human Resources Management Officer
Fort Lyon Medical Center
Fort Lyon, CO 81038–5000
(719) 384–3190

Fort Logan National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1055 Clermont Street
Denver, CO 80220–0166
(303) 393–2815

Denver National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
1055 Clermont Street
Denver, CO 80220–0166
(303) 393–2815

VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Denver Civilian Health and Medical Program (CHAMPVA)
Human Resources Management Officer
300 S. Jackson St.
Denver, CO 80206
(303) 331–7514

Denver Distribution Center
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Connecticut

Hartford Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Human Resources Management Officer
Newington Medical Center
555 Willard Avenue
Newington, CT 06111
(212) 686–7500, ext. 7635

Human Resources Management Officer
West Haven Medical Center
950 Cambell Avenue
West Haven, CT 06516
(203) 932–5711

District of Columbia

Human Resources Management Officer
Washington DC Medical Center
Irving Street, NW.
Washington, DC 20422
(202) 745–8200

Director, Central Office Human Resources Management Service
VA Central Office
810 Vermont Ave., NW.
Washington, DC 20420
(202) 273–4950

Washington DC Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Delaware

Human Resources Management Officer
Wilmington Medical and Regional Office Center
1601 Kirkwood Highway
Wilmington, DE 19805
(302) 633–5340

Florida

Pensacola (Barrancas) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
400 Veterans Blvd.
Biloxi, MS 39531
(601) 388–5541, ext. 5780

Human Resources Management Officer
Bay Pines Medical Center
10000 Bay Pines Blvd.
Bay Pines, FL 33504
(813) 398–6661, ext. 4116

Florida National Cemetery
Send to: Human Resources Management Officer
VA Medical Center

13000 Bruce B. Downs Blvd.
Tampa, FL 33612
(813) 972–7524

Riviera Beach Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
1201 Northwest 16th Street
Miami, FL 33125
(305) 324–4455, ext. 3343

Orlando Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
13000 Bruce B. Downs Blvd.
Tampa, FL 33612
(813) 972–7524

Miami VA Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Jacksonville VA Office
Send to : VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Jacksonville Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
1601 SW Archer Road
Gainesville, FL 32608–1197
(904) 374–6045

Daytona Beach Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
1601 SW Archer Road
Gainesville, FL 32608–1197
(904) 374–6045

Jacksonville Vet Center
Send to: Human Resources Management Officer
VA Medical Center
1601 SW Archer Road
Gainesville, FL 32608–1197
(904) 374–6045

Human Resources Management Officer
Tampa Medical Center
13000 Bruce B. Downs Blvd.
Tampa, FL 33612
(813) 972–7524

Bay Pines National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
10000 Bay Pines Blvd.
Bay Pines, FL 33504
(813) 398–6661, ext. 4116

Human Resources Management Officer
Gainesville Medical Center
1601 SW Archer Road
Gainesville, FL 32608–1197
(904) 374–6045

St. Petersburg Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Human Resources Management Officer
Palm Beach Gardens Medical Center
PO Box 33207
Palm Beach Gardens, FL 33420
(407) 691–8251

Human Resources Management Officer
Miami Medical Center
1201 Northwest 16th Street
Miami, FL 33125
(305) 324–4455, ext. 3343

Human Resources Management Officer
Lake City Medical Center
801 S. Marion Street
Lake City, FL 32025–5898
(904) 755–3016

Georgia

Marietta National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1670 Clairmont Road
Decatur, GA 30033
(404) 728–7636

Atlanta Veterans Canteen Service Field Office
Send to: Human Resources Management Officer
VA Medical Center
1670 Clairmont Road
Decatur, GA 30033
(404) 728–7636

Human Resources Management Officer
Augusta Medical Center
1 Freedom Way
Augusta, GA 30904–6285
(706) 823–3955

Human Resources Management Officer
Dublin Medical Center
1826 Veterans Blvd.
Dublin, GA 31021
(912) 277–2753

Atlanta Field Office of Audit
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Atlanta National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
1670 Clairmont Road
Decatur, GA 30033
(404) 728–7636

Human Resources Management Officer
Atlanta Medical Center
1670 Clairmont Road
Decatur, GA 30033
(404) 728–7636

Income Verification Match Center
Send to: Human Resources Management Officer
VA Medical Center
1670 Clairmont Road
Decatur, GA 30033
(404) 728–7636

Atlanta Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Hawaii

Human Resources Management Officer
Honolulu Medical and Regional Office Center
300 Ala Moana Blvd.
PO Box 50188
Honolulu, HI 96850
(808) 566–1470

Pacific Memorial National Cemetery
Send to: Human Resources Management Officer
VA Medical and Regional Office Center
300 Ala Moana Blvd.
PO Box 50188
Honolulu, HI 96850
(808) 566–1470

Idaho

Human Resources Management Officer
Boise Medical Center
500 W. Fort Street
Boise, ID 83702–4598
(208) 338–7218

Boise Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Illinois

Human Resources Management Officer
North Chicago Medical Center
3001 Green Bay Road
North Chicago, IL 60064
(708) 578–3763

Human Resources Management Officer
Hines Medical Center
Edward Hines Jr. Hospital
5th Avenue & Roosevelt Road
Hines, IL 60141
(708) 216–2601

Rock Island National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
Highway 6 West
Iowa City, IA 52246
(319) 338–0581, ext. 7720

Danville National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1900 E. Main Street
Danville, IL 61832
(217) 431–6548

Human Resources Management Officer
Chicago Lakeside Medical Center
333 E. Huron Street
Chicago, IL 60611
(312) 943–6600

Camp Butler National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1900 E. Main Street
Danville, IL 61832
(217) 431–6548

Hines Systems Delivery Center
Send to: Human Resources Management Officer

Hines Benefits Delivery Center
PO Box 27 (901A1)
Hines, IL 60141
(708) 681–6680

Human Resources Management Officer
Chicago Medical Center
820 South Damen Avenue
PO Box 8195
Chicago, IL 60680
(312) 633–2174

Chicago Regional Office
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Human Resources Management Officer
Marion Medical Center
2401 W. Main Street
Marion, IL 62959
(618) 997–5311, ext. 4116

Hines Finance Center
Send to: Human Resources Management Officer
Hines Benefits Delivery Center
PO Box 27 (901A1)
Hines, IL 60141
(708) 681–6680

Human Resources Management Officer
Danville Medical Center
1900 E. Main Street
Danville, IL 61832
(217) 431–6548

Hines National Acquisition Center
Send to: Human Resources Management Officer
Hines Benefits Delivery Center
PO Box 27 (901A1)
Hines, IL 60141
(708) 681–6680

Hines Benefits Delivery Center
Human Resources Management Officer
PO Box 27 (901A1)
Hines, IL 60141
(708) 681–6680

Alton National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
Jefferson Barracks
St. Louis, MO 63106
(314) 894–6620

Mound City National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
2401 W. Main Street
Marion, IL 62959
(618) 997–5311, ext. 4116

Quincy National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
Highway 6 West
Iowa City, IA 52246
(319) 338–0581, ext. 7720

Indiana

Marion National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1700 East 38th
Marion, IN 46953–4589
(317) 677–3101

Human Resources Management Officer
Marion Medical Center
1700 East 38th
Marion, IN 46953–4589
(317) 677–3101

Human Resources Management Officer
Indianapolis Medical Center
1481 West 10th Street
Indianapolis, IN 46202
(317) 267–8758

Human Resources Management Officer
Fort Wayne Medical Center
2121 Lake Avenue
Fort Wayne, IN 46805–5100
(219) 460–1342

Indianapolis Regional Office
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

New Albany National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
800 Zorn Avenue
Louisville, KY 40206
(502) 895–3401, ext. 5866

Evansville Outpatient Clinic Substation
Send to: Human Resources Management Officer
VA Medical Center
2401 W. Main Street
Marion, IL 62959
(618) 997–5311, ext. 4116

Indianapolis National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
1481 West 10th Street
Indianapolis, IN 46202
(317) 267–8758

Iowa

Des Moines Regional Office
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Koekuk National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
Highway 6 West
Iowa City, IA 52246
(319) 338–0581, ext. 7720

Human Resources Management Officer
Knoxville Medical Center
1515 W. Pleasant Street
Knoxville, IA 50138
(515) 842–3101, ext. 6219

Human Resources Management Officer
Des Moines Medical Center
3600 30th Street
Des Moines, IA 50310
(515) 271–5812

Human Resources Management Officer
Iowa City Medical Center
Highway 6 West
Iowa City, IA 52246
(319) 338–0581, ext. 7720

Kansas

Human Resources Management Officer
Topeka Medical Center
2200 Gage Blvd.
Topeka, KS 66622
(913) 271–4310

Human Resources Management Officer
Leavenworth Medical Center
4101 S. 4th St. Trafficway
Leavenworth, KS 66048
(913) 682–2000, ext. 2500

Leavenworth National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
4101 S. 4th St. Trafficway
Leavenworth, KS 66048
(913) 682–2000, ext. 2500

Human Resources Management Officer
Wichita Medical and Regional Office Center
901 George Washington Blvd.
Wichita, KS 67211
(316) 651–3625

Fort Scott National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
4101 S. 4th St. Trafficway
Leavenworth, KS 66048
(913) 682–2000, ext. 2500

Ft. Leavenworth National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
4101 S. 4th St. Trafficway
Leavenworth, KS 66048
(913) 682–2000, ext. 2500

Kentucky

Nicholasville (Camp Nelson) National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
2250 Leestown Road
Lexington, KY 40511–1093
(606) 281–3924

Zachary Taylor National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
800 Zorn Avenue
Louisville, KY 40206
(502) 895–3401, ext. 5866

Human Resources Management Officer
Louisville Medical Center
800 Zorn Avenue
Louisville, KY 40206
(502) 895–3401, ext. 5866

Lebanon National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
800 Zorn Avenue
Louisville, KY 40206
(502) 895–3401, ext. 5866

Louisville Regional Office
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director

38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Cave Hill National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
800 Zorn Avenue
Louisville, KY 40206
(502) 895–3401, ext. 5866

Human Resources Management Officer
Lexington Medical Center
2250 Leestown Road
Lexington, KY 40511–1093
(606) 281–3924

Danville National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
2250 Leestown Road
Lexington, KY 40511–1093
(606) 281–3924

Lexington National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
2250 Leestown Road
Lexington, KY 40511–1093
(606) 281–3924

Nancy National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
2250 Leestown Road
Lexington, KY 40511–1093
(606) 281–3924

Perryville National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
2250 Leestown Road
Lexington, KY 40511–1093
(606) 281–3924

Louisiana

Human Resources Management Officer
New Orleans Medical Center
1601 Perdido Street
New Orleans, LA 70146
(504) 568–0811

Port Hudson (Zachary) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1601 Perdido Street
New Orleans, LA 70146
(504) 568–0811

Human Resources Management Officer
Alexandria Medical Center
Highway 171
Alexandria, LA 71301
(318) 473–0010, ext. 2262

Human Resources Management Officer
Shreveport Medical Center
510 E. Stoner Avenue
Shreveport, LA 71101–4295
(318) 424–6028

Alexandria (Pinesville) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
Highway 171
Alexandria, LA 71301
(318) 473–0010, ext. 2262

New Orleans Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Baton Rouge National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
1601 Perdido Street
New Orleans, LA 70146
(504) 568–0811

Shreveport VA Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Maine

Human Resources Management Officer
Togus Medical and Regional Office Center
Togus, ME 04330
(207) 623–5713

Portland VA (Vet Center) Office
Send to: Human Resources Management Officer
VA Medical and Regional Office Center
Togus, ME 04330
(207) 623–5713

Togus National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical and Regional Office Center
Togus, ME 04330
(207) 623–5713

Maryland

Human Resources Management Officer
Ft. Howard Medical Center
9600 N. Point Road
Ft. Howard, MD 21052
(410) 687–8343

Ft. Howard VCS Eastern Region
Send to: Human Resources Management Officer
VA Medical Center
9600 N. Point Road
Ft. Howard, MD 21052
(410) 687–8343

Baltimore Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Human Resources Management Officer
Baltimore Medical Center
10 N. Greene Street
Baltimore, MD 21201
(410) 605–7200

Baltimore National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
10 N. Greene Street
Baltimore, MD 21201
(410) 605–7200

Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Human Resources Management Officer
Perry Point Medical Center
Building 101
Perry Point, MD 21902
(410) 642–2411, ext. 5193

Baltimore Rehabilitation, Research and Development Center
Send to: Human Resources Management Officer
VA Medical Center
10 N. Greene Street
Baltimore, MD 21201
(410) 605–7200

Annapolis National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
10 N. Greene Street
Baltimore, MD 21201
(410) 605–7200

Baltimore Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
10 N. Greene Street
Baltimore, MD 21201
(410) 605–7200

Hyattsville Field Office of Audit
Send to: Director, CO Human Resources Management Service
VA Central Office
810 Vermont Ave., NW.
Washington, DC 20420
(202) 273–4950

Massachusetts

Human Resources Management Officer
Boston Medical Center
150 S. Huntington Ave.
Boston, MA 02130
(617) 232–9500, ext. 5561

Human Resources Management Officer
Northampton Medical Center
Northampton, MA 01060–1288
(413) 582–3027

Boston Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Officer
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Human Resources Management Officer
Bedford Medical Center
200 Springs Road
Bedford, MA 01730
(617) 275–7500, ext. 2367

Bourne National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
940 Belmont Street
Brockton, MA 02401
(508) 583–4500, ext. 3260

Human Resources Management Officer
Brockton Medical Center
940 Belmont Street
Brockton, MA 02401
(508) 583–4500, ext. 3260

Boston Outpatient Clinic
Send to: Human Resources Management Officer

VA Medical Center
150 S. Huntington Ave.
Boston, MA 02130
(617) 232–9500, ext. 5561

Lowell Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
150 S. Huntington Ave.
Boston, MA 02130
(617) 232–9500, ext. 5561

New Bedford Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
830 Chalkstone Avenue
Providence, RI 02908–4799
(401) 457–3072

Springfield Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
Northampton, MA 01060–1288
(413) 582–3027

Springfield VA Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

West Roxbury Medical Center
Send to: Human Resources Management Officer
VA Medical Center
940 Belmont Street
Brockton, MA 02401
(508) 583–4500, ext. 3260

Worchester Outpatient Clinic Substation
Send to: Human Resources Management Officer
VA Medical Center
940 Belmont Street
Brockton, MA 02401
(508) 583–4500, ext. 3260

Michigan

Fort Custer National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
5500 Armstrong Rd.
Battle Creek, MI 49016
(616) 966–5600, ext. 3600

Grand Rapids Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
5500 Armstrong Rd.
Battle Creek, MI 49016
(616) 966–5600, ext. 3600

Detroit Regional Office
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Human Resources Management Officer
Battle Creek Medical Center
5500 Armstrong Rd.
Battle Creek, MI 49016
(616) 966–5600, ext. 3600

Human Resources Management Officer
Saginaw Medical Center
1500 Weiss Street
Saginaw, MI 48602
(517) 793–2340, ext. 3070

VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Human Resources Management Officer
Iron Mountain Medical Center
H Street
Iron Mountain, MI 49801
(906) 774–3300, ext. 2280

Human Resources Management Officer
Ann Arbor Medical Center
2215 Fuller Rd.
Ann Arbor, MI 48105
(313) 761–7938

Human Resources Management Officer
Allen Park Medical Center
Southfield & Outer Drive
Allen Park, MI 48101
(313) 562–6000, ext. 3323

Minnesota

St. Paul Regional Office and Insurance Center
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Fort Snelling National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
One Veterans Drive
Minneapolis, MN 55417
(612) 725–2061

Fort Snelling Debt Management Center
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Human Resources Management Officer
Minneapolis Medical Center
One Veterans Drive
Minneapolis, MN 55417
(612) 725–2061

Human Resources Management Officer
St. Cloud Medical Center
4801 8th Street North
St. Cloud, MN 56303
(612) 255–6301

St. Paul Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
One Veterans Drive
Minneapolis, MN 55417
(612) 725–2061

Mississippi

Corinth National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1030 Jefferson Avenue
Memphis, TN 38104
(901) 523–8990, ext. 5928

VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Human Resources Management Officer
Biloxi Medical Center
400 Veterans Blvd.
Biloxi, MS 39531
(601) 388–5541, ext. 5780

Biloxi National Cemetery
Human Resources Management Officer
VA Medical Center
400 Veterans Blvd.
Biloxi, MS 39531
(601) 388–5541, ext. 5780

Jackson Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Human Resources Management Officer
Jackson Medical Center
1500 W. Woodrow Wilson Blvd.
Jackson, MS 39216
(601) 364–1239

Natchez National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1500 E. Woodrow Wilson Blvd.
Jackson, MS 39216
(601) 364–1239

Missouri

Human Resources Management Officer
St. Louis Medical Center
Jefferson Bks.
St. Louis, MO 63106
(314) 894–6620

Human Resources Management Officer
Poplar Bluff Medical Center
1500 N. Westwood Blvd.
Poplar Bluff, MO 63901
(314) 686–4151, ext. 328

St. Louis Records Processing Center
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Human Resources Management Officer
Kansas City Medical Center
4801 Linwood Blvd.
Kansas City, MO 64128
(816) 861–4700, ext. 6926

Jefferson Barracks National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
800 Hospital Drive
Columbia, MO 65201
(314) 443–2511, ext. 6261

Human Resources Management Officer
Columbia Medical Center
800 Hospital Drive
Columbia, MO 65201
(314) 443–2511, ext. 6261

St. Louis Regional Office
Send to: VBA Central Area Human Resources Management Officer

Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Veterans Canteen Service Field Office
Send to: Human Resources Management Officer
VA Medical Center
Jefferson Barracks
St. Louis, MO 63106
(314) 894–6620

Springfield National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1100 N. College Avenue
Fayetteville, AR 72703
(501) 444–5020

Montana

Human Resources Management Officer
Fort Harrison Medical Center and Regional Office
Fort Harrison, MT 59636
(406) 447–7933

Human Resources Management Officer
Miles City Medical Center
210 South Winchester
Miles City, MT 59301–4798
(406) 232–8287

Nebraska

Lincoln Regional Office
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Human Resources Management Officer
Lincoln Medical Center
600 South 70th Street
Lincoln, NE 68510
(402) 489–3802, ext. 7819

Human Resources Management Officer
Grand Island Medical Center
2201 N. Broadwell Ave.
Grand Island, NE 68803
(308) 389–5177

Maxwell (Fort McPherson) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
2201 N. Broadwell Ave.
Grand Island, NE 68803
(308) 389–5177

Human Resources Management Officer
Omaha Medical Center
4101 Woolworth Avenue
Omaha, NE 68105
(402) 449–0614

Nevada

Human Resources Management Officer
Reno Medical Center
1000 Locust Street
Reno, NV 89520–0111
(702) 328–1260

Reno Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Las Vegas Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
1000 Locust Street
Reno, NV 89520–0111
(702) 328–1260

Henderson Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
1000 Locust Street
Reno, NV 89520–0111
(702) 328–1260

New Hampshire

Manchester Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Human Resources Management Officer
Manchester Medical Center
718 Smyth Road
Manchester, NH 03104
(603) 624–4366, ext. 6608

New Jersey

Beverly National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
University & Woodland Avenues
Philadelphia, PA 19104
(215) 823–4088

Newark Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Human Resources Management Officer
East Orange Medical Center
385 Tremont Avenue
East Orange, NJ 07018–0195
(201) 676–1000, ext. 1366

James J. Howard Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
385 Tremont Avenue
East Orange, NJ 07018–0195
(201) 676–1000, ext. 1366

Newark Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
385 Tremont Avenue
East Orange, NJ 07018–0195
(201) 676–1000, ext. 1366

Human Resources Management Officer
Lyons Medical Center
Knollcroft Road
Lyons, NJ 07939
(908) 647–0180, ext. 4002

New Mexico

Albuquerque Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Santa Fe National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
2100 Ridgecrest Dr., SE.
Albuquerque, NM 87108–5138
(505) 256–5702

Human Resources Management Officer
Albuquerque Medical Center
2100 Ridgecrest Dr., SE.
Albuquerque, NM 87108–5138
(505) 256–5702

New York

Human Resources Management Officer
Bath Medical Center
Bath, NY 14810
(607) 776–2111, ext. 1239

Human Resources Management Officer
Brooklyn Medical Center
800 Poly Place
Brooklyn, NY 11209
(718) 630–3660

Human Resources Management Officer
Montrose Medical Center
PO Box 100
Montrose, NY 10548–0100
(914) 737–4400, ext. 2553

Human Resources Management Officer
Syracuse Medical Center
800 Irving Avenue
Syracuse, NY 13210–2799
(315) 477–4531

Human Resources Management Officer
Bronx Medical Center
130 W. Kingsbridge Road
Bronx, NY 10468
(718) 584–9000, ext. 6590

Human Resources Management Officer
New York Medical Center
423 East 23rd Street
New York, NY 10010
(212) 686–7500, ext. 7635

Human Resources Management Officer
Castle Point Medical Center, Route 9D
Castle Point, NY 12511
(914) 831–2000, ext. 5405

Human Resources Management Officer
Northport Medical Center
79 Middleville Road
Northport, NY 11768
(516) 261–4400, ext. 2715

Human Resources Management Officer
Albany Medical Center
113 Holland Avenue
Albany, NY 12208
(518) 462–3311, ext. 2231

Calverton National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
79 Middleville Road
Northport, NY 11768
(516) 261–4400, ext. 2715

Human Resources Management Officer
Buffalo Medical Center
3495 Bailey Avenue
Buffalo, NY 14215
(716) 862–3605

New York Regional Office

Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Human Resources Management Officer
Batavia Medical Center
222 Richmond Ave.
Batavia, NY 14020
(716) 343–7500, ext. 7272

Bath (Elmira) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
Bath, NY 14810
(607) 776–2111, ext. 1239

Long Island National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
79 Middleville Road
Northport, NY 11768
(516) 261–4400, ext. 2715

Albany VA (Vet Center) Office
Send to: Human Resources Management Officer
VA Medical Center
113 Holland Avenue
Albany, NY 12208
(518) 462–3311, ext. 2231

Brooklyn National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
800 Poly Place
Brooklyn, NY 11209
(718) 630–3660

Brooklyn Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
800 Poly Place
Brooklyn, NY 11209
(718) 630–3660

New York Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
423 East 23rd Street
New York, NY 10010
(212) 686–7500, ext. 7635

New York Prosthetics Center
Send to: Human Resources Management Officer
VA Medical Center
423 East 23rd Street
New York, NY 10010
(212) 686–7500, ext. 7635

New York Veterans Canteen Service Field Office
Send to: Human Resources Management Officer
VA Medical Center
423 East 23rd Street
New York, NY 10010
(212) 686–7500, ext. 7635

Rochester VA (Vet Center) Office
Send to: Human Resources Management Officer
VA Medical Center
222 Richmond Ave.
Batavia, NY 14020
(716) 343–7500, ext. 7272

Buffalo Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Rochester Outpatient Clinic Substation
Send to: Human Resources Management Officer
VA Medical Center
222 Richmond Ave.
Batavia, NY 14020
(716) 343–7500, ext. 7272

Human Resources Management Officer
Canandaigua Medical Center
Canandaigua, NY 14424
(716) 394–2000, ext. 3700

Syracuse VA Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

North Carolina

Human Resources Management Officer
Fayetteville Medical Center
2300 Ramsey Street
Fayetteville, NC 28301
(919) 822–7055

Raleigh National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
508 Fulton Street
Durham, NC 27705
(919) 286–6901

Human Resources Management Officer
Durham Medical Center
508 Fulton Street
Durham, NC 27705
(910) 286–6901

Human Resources Management Officer
Asheville Medical Center
1100 Tunnell Road
Asheville, NC 28805
(704) 299–2535

New Bern National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
2300 Ramsey Street
Fayetteville, NC 28301
(919) 822–7055

Salisbury National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1601 Brenner Avenue
Salisbury, NC 28144
(704) 638–3432

Winston-Salem Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Human Resources Management Officer
Salisbury Medical Center
1601 Brenner Avenue
Salisbury, NC 28144
(704) 638–3432

Wilmington National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
2300 Ramsey Street
Fayetteville, NC 28301
(919) 822–7055

Winston-Salem Outpatient Regional Office
Send to: Human Resources Management Officer
VA Medical Center
1601 Brenner Avenue
Salisbury, NC 28144
(704) 638–3432

North Dakota

Human Resources Management Officer
Fargo Medical and Regional Office Center
655 First Avenue
Fargo, ND 58102
(701) 232–3241

Ohio

Human Resources Management Officer
Columbus Outpatient Clinic
2090 Kenny Road
Columbus, OH 43221
(614) 257–5501

Cleveland Regional Office
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Dayton National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
4100 W. Third Street
Dayton, OH 45428
(513) 262–2107

Human Resources Management Officer
Cincinnati Medical Center
3200 Vine Street
Cincinnati, OH 45220
(513) 559–5051

Cincinnati VA Office
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Columbus VA Office
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Human Resources Management Officer
Dayton Medical Center
4100 W. Third Street
Dayton, OH 45428
(513) 262–2107

Human Resources Management Officer
Cleveland Medical Center
10000 Brecksville Rd.
Brecksville, OH 44141
(216) 526–3030, ext. 7900

Human Resources Management Officer
Chillicothe Medical Center

17273 State Route 104
Chillicothe, OH 45601
(614) 773–1141, ext. 7538

Oklahoma

Fort Gibson National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
Honor Heights Drive
Muskogee, OK 74401
(918) 683–3261, ext. 404

Human Resources Management Officer
Oklahoma City Medical Center
921 NE 13th Street
Oklahoma City, OK 73104
(405) 270–5157

Muskogee Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Human Resources Management Officer
Muskogee Medical Center
Honor Heights Drive
Muskogee, OK 74401
(918) 683–3261, ext. 404

Oklahoma City VA Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Oregon

Portland Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Human Resources Management Officer
White City Medical Center
8495 Craterlake Highway
White City, OR 97503–1088
(503) 826–2111, ext. 3204

Human Resources Management Officer
Roseburg Medical Center
913 NW Garden Valley Blvd.
Roseburg, OR 97470–6153
(503) 440–1260

Human Resources Management Officer
Portland Medical Center
3710 SW US Veterans Hospital Rd.
Portland, OR 97207–1034
(503) 220–3403

Eagle Point National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
8495 Craterlake Highway
White City, OR 97503–1088
(503) 826–2111, ext. 3204

Willamette National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
3710 SW US Veterans Hospital Rd.
Portland, OR 97207–1034
(503) 220–3403

Pennsylvania

Human Resources Management Officer
Pittsburgh Medical Center
University Drive C
Pittsburgh, PA 15240
(412) 692–3240

Philadelphia Benefits Delivery Center
Send to: Human Resources Management Liaison
VA Regional Office
5000 Wissahickon Avenue
PO Box 13399
Philadelphia, PA 19101
(215) 951–5534

Human Resources Management Officer
Wilkes-Barre Medical Center
1111 East End Boulevard
Wilkes-Barre, PA 18711
(717) 821–7209

Philadelphia Systems Development Center
Send to: Human Resources Management Liaison
VA Regional Office
5000 Wissahickon Avenue
PO Box 13399
Philadelphia, PA 19101
(215) 951–5534

Philadelphia National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
University & Woodland Avenues
Philadelphia, PA 19104
(215) 823–4088

Annville (Indiantown Gap) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1700 S. Lincoln Avenue
Lebanon, PA 17042
(717) 272–6621, ext. 4055

Human Resources Management Officer
Philadelphia Medical Center
University & Woodland Avenues
Philadelphia, PA 19104
(215) 823–4088

Human Resources Management Officer
Altoona Medical Center
2907 Pleasant Valley Blvd.
Altoona, PA 16602–4377
(814) 943–8164, ext. 7039

Human Resources Management Officer
Lebanon Medical Center
1700 S. Lincoln Avenue
Lebanon, PA 17042
(717) 272–6621, ext. 4055

Harrisburg Outpatient Clinic Substation
Send to: Human Resources Management Officer
VA Medical Center
1700 S. Lincoln Avenue
Lebanon, PA 17042
(717) 272–6621, ext. 4055

Human Resources Management Officer
Coatesville Medical Center
1400 BlackHorse Hill Rd.
Coatesville, PA 19320–2096
(610) 383–0234

Human Resources Management Officer
Pittsburgh (HD) Medical Center
7180 Highland Drive
Pittsburgh, PA 15206–1297
(412) 365–4755

Human Resources Management Officer
Butler Medical Center
325 New Castle Road
Butler, PA 16001–2480
(412) 477–5051

Pittsburgh Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Philadelphia Regional Office
Human Resources Management Liaison
5000 Wissahickon Avenue
PO Box 13399
Philadelphia, PA 19101
(215) 951–5534

Human Resources Management Officer
Erie Medical Center
135 East 38th Street
Erie, PA 16504
(814) 868–6205

Philippines

Manila Regional Office Outpatient Clinic
Manila Regional Office Center
Send to: Director, Department of Veterans Affairs
APO, San Francisco, CA 96528
011–632–521–7116

Puerto Rico

Puerto Rico National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
One Veterans Plaza
San Juan, PR 00927–5800
(809) 766–5485

Human Resources Management Officer
San Juan Medical Center
One Veterans Plaza
San Juan, PR 00927–5800
(809) 766–5485

Mayaguez Outpatient Clinic Substation
Send to: Human Resources Management Officer
VA Medical Center
One Veterans Plaza
San Juan, PR 00927–5800
(809) 766–5485

San Juan Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Rhode Island

Human Resources Management Officer
Providence Medical Center
830 Chalkstone Avenue
Providence, RI 02908–4799
(401) 457–3072

Providence Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

South Carolina

Florence National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
6439 Garners Ferry Rd.
Columbia, SC 29201–1639
(803) 695–6835

Human Resources Management Officer
Columbia Medical Center
6439 Garners Ferry Rd.
Columbia, SC 29201–1639
(803) 695–6835

Greenville Outpatient Clinic Substation
Send to: Human Resources Management Officer
VA Medical Center
6439 Garners Ferry Rd.
Columbia, SC 29201–1639
(803) 695–6835

Human Resources Management Officer
Charleston Medical Center
109 Bee Street
Charleston, SC 29401–5799
(803) 577–5011, ext. 7610

Beaufort National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
109 Bee Street
Charleston, SC 29401–5799
(803) 577–5011, ext. 7610

Columbia Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

South Dakota

Human Resources Management Officer
Hot Springs Medical Center
500 North 5th Street
Hot Springs, SD 57747
(605) 745–2018

Hot Springs National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
500 North 5th Street
Hot Springs, SD 57747
(605) 745–2018

Human Resources Management Officer
Fort Meade Medical Center
113 Comanche Road
Fort Meade, SD 57741
(605) 347–7090

Fort Meade (Black Hills) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
113 Comanche Road
Fort Meade, SD 57741
(605) 347–7090

Human Resources Management Officer
Sioux Falls Medical and Regional Office Center
PO Box 5046
2501 W. 22nd St.
Sioux Falls, SD 57117
(605) 333–6852

Tennessee

Mountain Home National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
Johnston City
Mountain Home, TN 37684
(615) 926–1171, ext. 7181

Nashville (Madison) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1310 24th Avenue South
Nashville, TN 37212–2637
(615) 327–5381

Chattanooga National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
3400 Lebanon Road
Murfreesboro, TN 37129–1236
(615) 893–1360, ext. 3317

Knoxville National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
Johnston City
Mountain Home, TN 37684
(615) 926–1171, ext. 7181

Memphis National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1030 Jefferson Avenue
Memphis, TN 38104
(901) 523–8990, ext. 5928

Human Resources Management Officer
Memphis Medical Center
1030 Jefferson Avenue
Memphis, TN 38104
(901) 523–8990, ext. 5928

Human Resources Management Officer
Mountain Home Medical Center
Johnston City
Mountain Home, TN 37684
(615) 926–1171, ext. 7181

Human Resources Management Officer
Nashville Medical Center
1310 24th Avenue South
Nashville, TN 37212–2637
(615) 327–5381

Knoxville Outpatient Clinic Substation
Send to: Human Resources Management Officer
VA Medical Center
1310 24th Avenue South
Nashville, TN 37212–2637
(615) 327–5381

Nashville Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Texas

Human Resources Management Officer
San Antonio Medical Center
7400 Merton Minter Blvd.
San Antonio, TX 78284
(210) 617–5300, ext. 6732

Corpus Christi Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
7400 Merton Minter Blvd.
San Antonio, TX 78284
(210) 617–5300, ext. 6732

McAllen Outpatient Clinic Substation
Send to: Human Resources Management Officer
VA Medical Center
7400 Merton Minter Blvd.
San Antonio, TX 78284
(210) 617–5300, ext. 6732

Human Resources Management Officer
Temple Medical Center
1901 S. 1st Street
Temple, TX 76504
(817) 778–4811, ext. 4429

Human Resources Management Officer
Austin Automation Center
1615 E. Woodard Street
Austin, TX 78772
(512) 326–6054

Human Resources Management Officer
Waco Medical Center
4800 Memorial Drive
Waco, TX 76711
(817) 752–6581, ext. 6346

Waco Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
4800 Memorial Drive
Waco, TX 76711
(817) 752–6581, ext. 6346

Human Resources Management Officer
Dallas Medical Center
4500 S. Lancaster Road
Dallas, TX 75216
(214) 372–7032

Human Resources Management Officer
Houston Medical Center
2002 Holcombe Blvd.
Houston, TX 77030
(713) 794–7458

Beaumont Outpatient Clinic Substation
Send to: Human Resources Management Officer
VA Medical Center
2002 Holcombe Blvd.
Houston, TX 77030
(713) 794–7458

Lufkin Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
2002 Holcombe Blvd.
Houston, TX 77030
(713) 794–7458

Human Resources Management Officer
Waco Medical Center
4800 Memorial Drive
Waco, TX 76711
(817) 752–6581, ext. 6346

Human Resources Management Officer
El Paso Outpatient Clinic
5919 Brook Hollow Drive
El Paso, TX 79925
(915) 540–7878

Fort Bliss National Cemetery
Send to: Human Resources Management Officer
El Paso Outpatient Clinic
5919 Brook Hollow Drive
El Paso, TX 79925
(915) 540–7878

Houston Regional Office

Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

San Antonio VA Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Human Resources Management Officer
Big Spring Medical Center
2400 Gregg St.
Big Spring, TX 79720
(915) 264–4820

Austin Systems Development Center
Send to: Human Resources Management Officer
Austin Automation Center
1615 E. Woodard Street
Austin, TX 78772
(512) 326–6054

Human Resources Management Officer
Amarillo Medical Center
6010 Amarillo Blvd. West
Amarillo, TX 79106
(806) 354–7827

Houston National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
2002 Holcombe Blvd.
Houston, TX 77030
(713) 794–7458

San Antonio National Cemetery Area Officer
Send to: Human Resources Management Officer
VA Medical Center
7400 Merton Minter Blvd.
San Antonio, TX 78284
(210) 617–5300, ext. 6732

Fort Sam Houston National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
7400 Merton Minter Blvd.
San Antonio, TX 78284
(210) 617–5300, ext. 6732

Human Resources Management Officer
Kerrville Medical Center
3600 Memorial Blvd.
Kerrville, TX 78028
(210) 792–2518

Kerrville National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
3600 Memorial Blvd.
Kerrville, TX 78028
(210) 792–2518

Human Resources Management Officer
Marlin Medical Center
1016 Ward Street
Marlin, TX 76661
(817) 883–3511, ext. 4702

Human Resources Management Officer
Bonham Medical Center
East Ninth & Lipscomb Street
Bonham, TX 75418–4091
(903) 583–2111, ext. 6331

Waco Regional Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Managment Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Dallas VA Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Lubbock VA Office
Send to: VBA Southern Area Human Resources Management Office
Human Resources Management Director
6508 Dogwood Parkway, Suite E
Jackson, MS 39213
(601) 965–4140

Lubbock Outpatient Clinic
Send to: Human Resources Management Officer
VA Medical Center
6010 Armarillo Blvd. West
Amarillo, TX 79106
(806) 354–7827

Austin Finance Center
Send to: Human Resources Management Officer
Austin Automation Center
1615 E. Woodward Street
Austin, TX 78772
(512) 326–6054

Utah

Salt Lake City Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 80215
(303) 231–5855

Human Resources Management Officer
Salt Lake City Medical Center
500 Foothill Blvd.
Salt Lake City, UT 84148–0001
(801) 584–1284

Vermont

Human Resources Management Officer
White River Junction Medical and Regional Office Center
White River Junction, VT 05009
(802) 295–9363, ext. 5350

Virginia

Human Resources Management Officer
Richmond Medical Center
1201 Broad Rock Blvd.
Richmond, VA 23249
(804) 230–1305

Human Resources Management Officer
Hampton Medical Center
100 Emancipation Road
Hampton, VA 23667
(804) 722–9961, ext. 3160

Richmond National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1201 Broad Rock Blvd.
Richmond, VA 23249
(804) 230–1305

Quantico National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
50 Irving Street, NW.
Washington, DC 20422
(202) 745–8200

Hampton National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
100 Emancipation Road
Hampton, VA 23667
(804) 722–9961, ext. 3160

Culpeper National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
Route 9
Martinsburg, WV 25401
(304) 263–0811, ext. 3237

Roanoke Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Human Resources Management Officer
Salem Medical Center
1970 Roanoke Blvd.
Salem, VA 24153
(703) 982–2463, ext. 2812

Danville National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
1970 Roanoke Blvd.
Salem, VA 24153
(703) 982–2463, ext. 2812

Alexandria National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
50 Irving Street, NW.
Washington, DC 20422
(202) 745–8200

Leesburg National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
50 Irving Street, NW.
Washington, DC 20422
(202) 745–8200

Mechanicsville National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
1201 Broad Rock Blvd.
Richmond, VA 23249
(804) 230–1305

Sandston National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
1201 Broad Rock Blvd.
Richmond, VA 23249
(804) 230–1305

Hopewell National Cemetery Area Office
Send to: Human Resources Management Officer
Va Medical Center
1201 Broad Rock Blvd.
Richmond, VA 23249

(804) 230–1305

Staunton National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
1970 Roanoke Blvd.
Salem, VA 24153
(703) 982–2463, ext. 2812

Winchester National Cemetery Area Office
Send to: Human Resources Management Officer
VA Medical Center
Route 9
Martinsburg, WV 25401
(304) 263–0811, ext. 3237

Washington

Seattle Regional Office
Send to: VBA Western Area Human Resources Management Office
Human Resources Management Director
126000 W. Colfax Ave., Suite C–300
Lakewood, CO 82015
(303) 231–5855

Human Resources Management Officer
Walla Walla Medical Center
77 Wainwright Drive
Walla Walla, WA 99362–3975
(509) 527–3453

Human Resources Management Officer
Seattle Medical Center
1660 S. Columbian Way
Seattle, WA 98108–1597
(206) 764–2135

Seattle Outpatient Clinic (Vet Center)
Send to: Human Resources Management Officer
VA Medical Center
1660. S. Columbian Way
Seattle, WA 98108–1597
(206) 764–2135

Human Resources Management Officer
Tacoma Medical Center
American Lake
Tacoma, WA 98493
(206) 582–8440, ext. 6054

Human Resources Management Officer
Spokane Medical Center
4815 North Assembly Street
Spokane, WA 99205–6197
(509) 327–0242

West Virginia

Human Resources Management Officer
Huntington Medical Center
1540 Spring Valley Road
Huntington, WV 25704
(304) 429–6755, ext. 2343

Human Resources Management Officer
Beckley Medical Center
200 Veterans Avenue
Beckley, WV 25801
(304) 255–2121, ext. 4461

Human Resources Management Officer
Clarksburg Medical Center
1 Medical Center Dr.
Clarksburg, WV 26301
(304) 623–7697

Human Resources Management Officer
Martinsburg Medical Center
Route 9
Martinsburg, WV 25401
(304) 263–0811, ext. 3237

West Virginia (Grafton) National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
1 Medical Center Dr.
Clarksburg, WV 26301
(304) 623–7697

Huntington Regional Office
Send to: Eastern Area Servicing Assistance Center
Human Resources Management Director
31 Hopkins Plaza
Baltimore, MD 21202–2004
(410) 962–4090

Wisconsin

Wood National Cemetery
Send to: Human Resources Management Officer
VA Medical Center
5000 W. National Avenue
Milwaukee, WI 53295
(414) 384–2000

Milwaukee Regional Office
Send to: VBA Central Area Human Resources Management Office
Human Resources Management Director
38701 Seven Mile Road, Suite 345
Livonia, MI 48152
(313) 953–8830

Human Resources Management Officer
Milwaukee Medical Center
5000 W. National Avenue
Milwaukee, WI 53295
(414) 384–2000, ext. 2930

Human Resources Management Officer
Tomah Medical Center
500 E. Veterans Street
Tomah, WI 54660
(608) 372–1636

Human Resources Management Officer
Madison Medical Center
2500 Overlook Terrace
Madison, WI 53705
(608) 262–7026

Wyoming

Human Resources Management Officer
Sheridan Medical Center
1898 Fort Road
Sheridan, WY 82801–8320
(307) 672–1673

Human Resources Management Officer
Cheyenne Medical and Regional Office Center
360 East Pershing Blvd.
Cheyenne, WY 82001
(307) 778–7331

*Social Security Administration*

Office of General Counsel
Room 611, Altmeyer Blvd.
6401 Security Blvd.
Baltimore, MD 21235
(410) 965–3169

**II. Agencies**

*American Battle Monuments Commission*

Chief, Administration
Room 5127, Pulaski Building
20 Massachusetts Avenue, NW.
Washington, DC 20314–0001
(202) 761–0533

*Architectural and Transportation Barriers Compliance Board*

General Counsel
1331 F Street, NW., #1000
Washington, DC 20004–1111
(202) 272–5434, ext. 16

*Arms Control and Disarmament Agency*

General Counsel
320 21st Street, NW.
Washington, DC 20451
(202) 647–3596

*Equal Employment Opportunity*

Management Director
Office of Management
1801 L Street, NW.
Washington, DC 20507
(202) 663–4411

*Export-Import Bank of the United States*

Associate General Counsel
811 Vermont Avenue, NW., Room 955
Washington, DC 20571
(202) 565–3432

*Farm Credit Administration*

Chief, Human Resources Division
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102–5090
(703) 883–4122

*Federal Communications Commission (FCC)*

Chief, Payroll/Personnel Support Branch
1919 M Street, NW., Room 212
Washington, DC 20554
(202) 481–0136

*Federal Deposit Insurance Corporation*

Chief, Operations Section
Office of Personnel Management
550 17th Street, NW., PA–1730–5018
Washington, DC 20429
(202) 942–3401

*Federal Election Commission*

Assistant General Counsel—Administrative Law
999 E Street, NW.
Washington, DC 20463
(202) 219–3690

*Federal Energy Regulatory Commission*

Chief, Payroll Branch
Department of Energy
GTN Building, Room E–259
Washington, DC 20585
(301) 903–4012

*Federal Housing Finance Board*

Federal Housing Finance Board
1777 F Street, NW.
Washington, DC 20006
(202) 408–2685 or (202) 408–2686

*Federal Retirement Thrift Investment Board*

Director of Personnel
1250 H Street, NW., Suite 400
Washington, DC 20005
(202) 942–1680

*Federal Trade Commission*

Director, Division of Personnel
6th & Pennsylvania Avenue, NW., Room H–148
Washington, DC 20580
(202) 326–2022

*General Accounting Office*

Comptroller General

Attn: Chief, Payroll/Personnel Systems Branch
Personnel, Room 1180
441 G Street, NW.
Washington, DC 20415
(202) 512–5811

*General Services Administration*

Office of Personnel
Personnel Operations Division
Office of General Counsel
18th & F Streets, NW., Room 1100
Washington, DC 20405
(202) 501–0610

New England Region (ME, VT, NH, MA, RI, CT)

Office of Personnel
10 Causeway Street, Room 1095
Boston, MA 02222
(617) 565–5860

Northeast and Caribbean Region (NY, NJ, PR, VI)

Office of Personnel
26 Federal Place, Room 18–110
New York, NY 10278
(212) 264–8302 or (212) 264–8303

Mid-Atlantic Region (PA, WV, VA, MD, DE)

Office of Personnel
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107–3396
(215) 656–5642

Southeast Region—Atlanta (KY, TN, MS, AL, GA, NC, SC, FL)

Office of Personnel
401 West Peachtree Street, NW., Room 2802
Atlanta, GA 30365–2550
(404) 331–5171

Great Lakes Region (MN, WI, IL, MI, IN, OH)

Office of Personnel
230 S. Dearborn Street, Room 3730
Mail Stop 37–7
Chicago, IL 60604
(312) 353–0992

The Heartland Region (KS, NE, IA, MO)

Office of Personnel
1500 E. Bannister Road
Kansas City, MO 64131
(816) 926–7208

Greater Southwest Region (TX, NM, OK, AR, LA) and Rocky Mountain Region (MT, ND, SD, WY, UT, CO)

Office of Personnel
819 Taylor Street, Room 9A00
(817) 334–2361 or
(817) 334–3442 or
(817) 334–2741

Pacific Rim Region (CA, NV, AZ, HI, GU, CM) and Northwest/Arctic Region (WA, ID, OR, AK)

Office of Personnel
525 Market Street
San Francisco, CA 94105
(415) 744–5189

National Capital Region (DC, surrounding VA & MD counties)
Office of Personnel
7th & D Streets, SW., Room 1030
Wahington, DC 20407
(202) 708–5319

If initial contact is not made with one of the above agent offices, GSA employees (or designees) on site who are contacted by process servers have been instructed to contact the appropriate office listed above for guidance in fulfilling GSA's responsibilities for facilitation of service of process to establish paternity and establish a support obligation.

*Inter-American Foundation*

General Counsel
901 N. Stuart Street, 10th Floor
Arlington, VA 22203
(703) 841–3894

*Interstate Commerce Commission*

Budget Officer
Payroll—Room 1330
12th & Constitution Avenue, NW.
Washington, DC 20423
(202) 927–5827

*JFK Assassination Records Review Board*

General Counsel
600 E Street, NW.
Washington, DC 20530

*Merit Systems Protection Board*

Director, Human Resources Management Division
Office of Planning and Resource Management
1120 Vermont Avenue, NW.
Washington, DC 20419
(202) 653–5916

*National Archives & Records Administration*

Supervisory Personnel Staffing Specialist
Personnel Operations Branch
9700 Page Avenue, Room 2002
St. Louis, MO 63132
(314) 538–4953

*National Capital Planning Commission*

General Counsel
801 Pennsylvania Avenue, NW., Suite 301
Washington, DC 20576
(202) 724–0174

*National Credit Union Administration*

General Counsel
Office of General Counsel
1775 Duke Street
Alexandria, VA 22314–3428
(703) 518–6540

*National Endowment for the Humanities*

Deputy General Counsel
1100 Pennsylvania Avenue, NW.
Washington, DC 20506
(202) 606–8322

*National Science Foundation*

General Counsel
4201 Wilson Boulevard
Arlington, VA 22230
(703) 306–1060

*Nuclear Regulatory Commission*

Chief, Policy and Labor Relations
Office of Personnel
Washington, DC 20555
(301) 415–7526

*Nuclear Waste Technical Review Board*

Administrative Officer
1100 Wilson Blvd., Suite 910
Arlington, VA 22209
(703) 235–4473

*Office of Special Counsel*

Director for Management and
Associate Special Counsel for Planning and Advice
1730 M Street, NW., Suite 201
Washington, DC 20036–4505
(202) 653–9485

*Overseas Private Investment Corporation*

Director
Human Resources Management
1100 New York Avenue, NW.
Washington, DC 20527
(202) 336–8524

*Panama Canal Commission*

Secretary
Office of the Secretary
International Square
1825 I Street, NW., Suite 1050
Washington, DC 20006–5402
(202) 634–6441

*Peace Corps*

Associate General Counsel
1990 K Street, NW., Room 8300
Washington, DC 20526
(202) 606–3114

*Pennsylvania Avenue Development Corporation*

Director, Finance & Administration
Pennsylvania Avenue Development Corp.
1331 Pennsylvania Avenue, NW., Suite 1220 North
Washington, DC 20004–1703
(202) 724–9067

*Pension Benefit Guaranty Corporation*

General Counsel
1200 K Street, NW.
Washington, DC 20005–4026
(202) 326–4020

*Railroad Retirement Board*

Deputy General Counsel
Bureau of Law
844 N. Rush Street
Chicago, IL 60611
(312) 751–4935

*Resolution Trust Corporation*

Payroll Specialist/Paralegal Specialist
1717 H Street, NW.
Washington, DC 20434
(202) 736–0798
(202) 736–3095

*Securities & Exchange Commission*

Personnel Management Specialist
Office of Administrative & Personnel Management
450 5th Street, NW., (Stop 2–3)
Washington, DC 20549

*Selective Service System*

General Counsel
1515 Wilson Boulevard
Arlington, VA 22209–2425
(703) 235–2050

*Small Business Administration*

Chief, Personnel/Payroll Systems Branch or Payroll Analyst

409 3rd Street, SW., Suite 4200
Washington, DC 20416
(202) 205–6148 or (202) 205–6213

**III. United States Postal Service**

*United States Postal Service*

The United States Postal Service will cooperate with process servers in the service of process regarding private civil or criminal matters only when service is attempted in person on the subject employee at the employee's place of employment, in accordance with the provisions of 39 CFR 243.2(g). Service of summonses and complaints, in private matters, by mail to either the agent or employees at their workstations is not permitted. The Postal Service agent will attempt to facilitate and assist personnel of child support enforcement agencies within the limitations imposed by the Privacy Act, 5 U.S.C. 552a and relevant Postal regulations. The requester must furnish the name and social security number of the person who is the subject of the inquiry.

Manager
Payroll Processing Branch
1 Federal Drive
Ft. Snelling, MN 55111–9650
(612) 293–6300

**IV. Executive Office of the President**

*Executive Office of the President*

General Counsel
Office of Administration
Old Executive Office Building
Washington, DC 20503
(202) 395–2273

[FR Doc. 95–16814 Filed 7–7–95; 8:45 am]

BILLING CODE 6325–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 360

**RIN 3064–AB25**

### Receivership Rules

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The final rule interprets a provision of an amendment, enacted on August 10, 1993, to section 11(d)(11) of the Federal Deposit Insurance Act (FDI Act) providing for a national depositor preference for amounts realized from the liquidation or other resolution of any depository institution insured by the Federal Deposit Insurance Corporation (FDIC). The regulation describes the expenses that are includable under the priority in the new statutory amendment for administrative expenses of the receiver. The intended effect of the final rule is to clarify that post-closing and certain pre-closing expenses may be paid as administrative expenses of the receiver in connection with the liquidation or other resolution of FDIC-insured institutions. The final rule replaces an interim rule that has been in effect since August 13, 1993, and is essentially unchanged from the interim provisions.

**EFFECTIVE DATE:** The final rule is effective July 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Stephen N. Graham, Associate Director, Division of Depositor and Asset Services (202/898–7377), Rodney D. Ray, Senior Counsel, Legal Division (202/736–0348), Joseph A. DiNuzzo, Acting Senior Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, DC, 20429.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in this final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

### Regulatory Flexibility Act

The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It will not impose burdens on depository institutions of any size and will not have the type of economic impact addressed by the Act. Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis (Id. at 603 & 604) are not applicable here.

### Background

*A. National Depositor Preference Legislation*

On August 10, 1993, the President signed into law a bill that amended section 11(d)(11) of the FDI Act (12 U.S.C. 1821(d)(11)) to provide for a national depositor preference for amounts realized from the liquidation or other resolution of FDIC-insured depository institutions. Pub. L. 103–66, 107 Stat. 312 (1993).

Generally, the amendment provides that distributions shall be made from all future receivership estates in the following order:

1. Administrative expenses of the receiver;
2. Deposit liability claims;
3. Other general or senior liabilities of the institution, other than subordinated obligations or shareholder claims;
4. Subordinated obligations; and
5. Shareholder claims.

The legislation applies to all receiverships of insured institutions established after its enactment date and supersedes any inconsistent state or other federal distribution provisions. As noted, the first priority encompasses ''administrative expenses of the receiver''. The language of the statute explicitly covers post-appointment obligations incurred by a receiver as part of the liquidation of an institution. The FDIC Board of Directors (Board of Directors) has determined that this priority also covers certain expenses incurred prior to the appointment of the receiver. Such expenses include obligations which may have been incurred prior to the closing of the institution but which the receiver determines should be paid by the receiver to facilitate the smooth and orderly transfer of banking operations to a purchasing institution or to obtain an accounting and orderly disposition of the assets of the institution. These expenses may include, but are not limited to, for example, the payment of the institution's last payroll, guard services, data processing services, utilities and expenses related to leased facilities. Generally, they do not include expenses such as severance pay claims, golden parachute claims and claims arising from contract repudiations. The final rule limits the inclusion of expenses within the scope of ''administrative expenses'' to those that the receiver determines are necessary and appropriate for the orderly liquidation or resolution of the institution. This general language is necessitated by the variety of such expenses ordinarily incurred by a receiver for a particular failed depository institution.

The legislative history of the statute is explicit on the coverage of certain pre-receivership obligations within the scope of the ''administrative expenses'' priority of the receivership. The House/Senate Conference Report on the legislation notes that: ''it is the conferees' intent that the FDIC interpret the depositor preference provision for the payment of administrative expenses of the receiver as including ordinary and necessary expenses of the institution that are unpaid at the time of failure, but only those that the receiver determines are necessary to maintain services and facilities to effect an orderly resolution of the institution''. H.R. Rep. No. 213, § 3001, Omnibus Budget Reconciliation Act of 1993, 103rd Cong., 1st Sess. (1993). The conferees noted that such coverage of expenses is the FDIC's current practice (in its role as receiver of failed insured

institutions): ''the conferees intend that the FDIC continue its current practice of paying these expenses prior to paying deposits or other expenses if it determines such payment is required for an orderly resolution of the institution''. *Id*.

*B. The Interim Rule*

To prevent any ambiguity on the coverage of administrative expenses of the institution/receiver that were incurred by the institution prior to the appointment of a receiver, the FDIC issued an interim rule published in the **Federal Register** on August 13, 1993 (58 *FR* 43069). The interim rule clarified that receivers have the authority to pay certain pre-closing obligations of the failed institution as an ''administrative expense'' under the statute.

The Board of Directors had determined that, in order to ensure an orderly continuation of the handling of closed institutions, it was necessary to clarify the requirements of the statutory amendment relative to the definition and treatment of administrative expenses of the receiver of such institutions. In the preamble to the interim rule the Board of Directors explained the necessity to apply the interim rule to all receiverships subject to the new statutory amendment. The interim rule was amended by a final rule which redesignated §§ 360.1 through 360.3 as §§ 360.2 through 360.4, respectively (58 *FR* 67662 (Dec. 22, 1993)).

**The Final Rule**

The final rule retains the section added by the interim rule to Part 360 of the FDIC's regulations (12 CFR Part 360) to clarify the priority for administrative expenses contained in the depositor preference statute.

As provided for in the statute, all FDIC-insured institutions for which a receiver is appointed after the date of enactment of the statute will be subject to the priorities provided therein. Pre-appointment expenses that the receiver determines are within the scope of the ''administrative expenses'' priority will be included within that priority after the enactment date of the statute. As the conferees noted in House/Senate Conference Report, ''[p]rior to the implementation of such regulations [to clarify the meaning of the term administrative expenses], it is the conferees' intent that the FDIC continue its current practice of paying these expenses before paying depositors''. *Id*.

The current § 360.3 of the FDIC's regulations (12 CFR 360.3) specifies receivership priorities for failed savings associations. These provisions will continue to apply to such savings associations for which a receiver was appointed on or prior to the effective date of the statutory amendment, August 10, 1993. Liquidations or other resolutions of all insured depository institutions (including savings associations) for which a receiver is appointed after that date are subject to the statutory amendments and interim rule and will be subject to the final rule.

The FDIC received one public comment on the interim rule. The comment was from a national banking and thrift industry trade group who expressed full support for the interim rule.

Because the final rule is unchanged from the interim rule, which became effective on its issuance date of August 13, 1993, the Board of Directors has determined that good cause exists for waiving the 30-day delayed effective date ordinarily required by the Administrative Procedure Act (5 U.S.C. 553). The Board of Directors also has determined that section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (1994) (RCDRIA) does not apply to the issuance of the final rule.[1] Thus, the final rule will become effective upon its publication date in the **Federal Register**. On that same date, the interim rule will be replaced.

**List of Subjects in 12 CFR Part 360**

Banks, banking, Savings associations.

For the reasons set out in the preamble, part 360 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

## PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for Part 360 is revised to read as follows:

**Authority:** 12 U.S.C. 1821(d)(11), 1823(c)(4); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

2. Section 360.3 is amended by revising paragraph (f) to read as follows:

**§ 360.3 Priorities.**

* * * * *

(f) Under the provisions of section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), the provisions of this § 360.3 do not apply to any receivership established and liquidation or other resolution occurring after August 10, 1993.

[1] Section 302 of RCDRIA provides that any new regulations and amendments to existing regulations which impose reporting, disclosure or other requirements on insured depository institutions may only take effect on the first day of a calendar quarter unless certain exceptions are satisfied.

3. Section 360.4 is revised to read as follows:

**§ 360.4 Administrative expenses.**

The priority for ''administrative expenses of the receiver'', as that term is used in section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11), shall include those necessary expenses incurred by the receiver in liquidating or otherwise resolving the affairs of a failed insured depository institution. Such expenses shall include pre-failure and post-failure obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the institution.

Dated at Washington, D.C., this 27th day of June, 1995.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Jerry L. Langley,**

*Executive Secretary*.

[FR Doc. 95–16671 Filed 7–7–95; 8:45 am]

BILLING CODE 6714–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

**[FRL–5255–8]**

### Extension of Stay of the Reformulated Gasoline Program: Nine Counties in New York, Twenty-Eight Counties in Pennsylvania, and Two Counties in Maine

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In today's action, EPA is extending the previous temporary stay of the reformulated gasoline program requirements in nine opt-in counties in New York, in twenty-eight opt-in counties in Pennsylvania and in two opt-in counties in Maine. In a separate action published June 14, 1995, EPA proposed to approve the requests for opt-out for these specified counties from the States of New York, Pennsylvania, and Maine. Today's action stays the applicability of the RFG requirements for these areas effective from July 1, 1995, until the agency has completed rulemaking on the proposed opt-out for these areas. Although EPA believes that the RFG program provides a highly cost-effective means of reducing ground-level ozone and toxic vehicle emissions, the Agency believes that states should be given the flexibility to choose which programs best meet each state's needs for emissions reductions.

**EFFECTIVE DATE:** June 30, 1995.

**ADDRESSES:** Materials relevant to this notice have been placed in Docket A–94–68. The docket is located at the Air Docket Section (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected from 8 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Coryell, U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street SW. (6406J), Washington, DC 20460, (202) 233–9014.

**SUPPLEMENTARY INFORMATION:** A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH#919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS

(K) Rulemaking and Reporting

(3) Fuels

(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following titles: XTNDSTAY.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D *filename.zip*

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

## I. Background

### *A. General Background on Reformulated Gasoline Program and Opt-In Process*

The reformulated gasoline program is designed to reduce ozone levels in the largest metropolitan areas of the U.S. with the worst ground-level ozone problems by reducing vehicle emissions of the ozone precursors, specifically volatile organic compounds (VOC), through fuel reformulation. Reformulated gasoline also achieves a significant reduction in air toxics. In Phase II of the program, oxides of nitrogen ($NO_X$), another precursor of ozone, are reduced. The 1990 amendments of the Clean Air Act require reformulated gasoline in the nine cities with the highest levels of ozone. Congress also provided the opportunity for states to choose to opt into the RFG program for their other nonattainment areas. EPA issued final rules establishing requirements for RFG on December 15, 1993 (59 FR 7716, February 16, 1994).

The regulation issued in December of 1993 did not include procedures for opting out of the RFG program, because EPA had not proposed and was not ready to adopt such procedures at that time. However, the Agency did indicate that it intended to propose such procedures in a separate rule.

### *B. Jefferson County, New York*

Jefferson County was included as a covered area in EPA's reformulated gasoline program based on Governor Mario Cuomo's request of October 28, 1991, that this county be included under the Act's opt-in provision for ozone nonattainment areas (57 FR 7926, March 5, 1992). See 40 CFR 80.70(j)(10)(vi). On November 29, 1994, EPA received a petition from the Commissioner of New York's Department of Environmental Conservation, Mr. Langdon Marsh, to remove Jefferson County, New York, from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Marsh is acting for Governor Cuomo on this matter. The Administrator responded to the State's request in a letter to Commissioner Marsh dated December 12, 1994, stating EPA's intention to grant New York's request as of January 1, 1995, and to conduct rulemaking to implement the opt-out. On December 29, 1994, EPA issued a final rule staying the application of the reformulated gasoline program requirements in Jefferson County from January 1, 1995 until July 1, 1995 (60 FR 2696, January 11, 1995). This decision was based on the particular circumstances that apply in Jefferson County. On June 14, 1995, EPA published a notice of proposed rulemaking proposing to remove Jefferson County from the areas covered by the reformulated gasoline program (60 FR 31269, June 14, 1995). In the same notice, EPA also proposed to extend the stay of the reformulated gasoline program for this area until the agency completes rulemaking on the proposed opt-out.

### *C. The Buffalo and Albany Areas of New York*

The Buffalo and Albany ozone nonattainment areas were included as covered areas in EPA's reformulated gasoline program based on Governor Mario Cuomo's request of October 28, 1991, that this county be included under the Act's opt-in provision for ozone nonattainment areas (57 FR 7926, March 5, 1992). See 40 CFR 80.70(j)(10)(i), (iii), (v), and (vii) through (xi). On December 23, 1994, Commissioner Marsh of New York's Department of Environmental Conservation wrote to request opt-out of the Albany and Buffalo ozone nonattainment areas which include the counties of Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Erie and Niagara. The Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Marsh dated December 28, 1994, stating EPA's intention to grant New York's request as of January 1, 1995, and to conduct rulemaking to implement the opt-out. On December 29, 1995, EPA issued a final rule staying the application of the reformulated gasoline program requirements in these New York counties from January 1, 1995 until July 1, 1995 (60 FR 2696, January 11, 1995). This decision was based on the particular circumstances that apply in these counties. On June 14, 1995, EPA published a notice of proposed rulemaking proposing to remove these New York counties from the areas covered by the reformulated gasoline program (60 FR 31269, June 14, 1995). In the same notice, EPA also proposed to extend the stay of the reformulated gasoline program in these counties until the agency completes rulemaking on the proposed opt-out.

### *D. Pennsylvania Counties*

Twenty-eight counties in Pennsylvania were included as covered areas in EPA's reformulated gasoline program based on Governor Robert P. Casey's request dated September 25, 1991 (56 FR 57986, November 15, 1991).

See 40 CFR 80.70(j)(11) (i) through (xxviii). The counties referred to are the following: Adams, Allegheny, Armstrong, Beaver, Berks, Blair, Butler, Cambria, Carbon, Columbia, Cumberland, Dauphin, Erie, Fayette, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mercer, Monroe, Somerset, Northhampton, Perry, Washington, Westmoreland, Wyoming and York. On December 1, 1994, EPA received a petition from Governor Casey to remove these twenty-eight counties from the reformulated gasoline program. The Administrator responded to the State's request in a letter to Governor Casey dated December 12, 1994. In this letter, the Administrator indicated that effective January 1, 1995, and until the formal rulemaking to remove the twenty-eight counties from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in these twenty-eight counties. On December 29, 1994, EPA issued a final rule staying the application of the reformulated gasoline program requirements in these Pennsylvania counties from January 1, 1995 until July 1, 1995 (60 FR 2696, January 11, 1995). This decision was based on the particular circumstances that apply in these twenty-eight counties. On June 14, 1995, EPA published a notice of proposed rulemaking proposing to remove these twenty-eight counties from the areas covered by the reformulated gasoline program (60 FR 31269, June 14, 1995). In the same notice, EPA also proposed to extend the stay of the reformulated gasoline program in these counties until the agency completes rulemaking on the proposed opt-out.

*E. Hancock and Waldo Counties in Maine*

Hancock and Waldo Counties were included as a covered areas in EPA's reformulated gasoline program based on Governor John R. McKernan's request of June 26, 1991, that these counties be included under the Act's opt-in provision for ozone nonattainment areas (56 FR 46119, September 10, 1991). See 40 CFR 80.70(j)(5) (viii) and (ix). On December 27, 1994, EPA received a petition from the Acting Commissioner of Maine's Department of Environmental Protection, Ms. Deborah Garrett, to remove Hancock and Waldo Counties in Maine from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Garrett is acting for Governor McKernan in this matter. The Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Garrett, dated December 27, 1994, stating EPA's intention to grant Maine's request, and conduct rulemaking to implement the opt-out. On December 29, 1994, EPA issued a final rule staying the application of the reformulated gasoline program requirements in these Maine counties from January 1, 1995 until July 1, 1995 (60 FR 2696, January 11, 1995). This decision was based on the particular circumstances that apply in these two counties. On June 14, 1995, EPA published a notice of proposed rulemaking proposing to remove Hancock and Waldo Counties from the areas covered by the reformulated gasoline program (60 FR 31269, June 14, 1995). In the same notice, EPA also proposed to extend the stay of the reformulated gasoline program in these counties until the agency completes rulemaking on the proposed opt-out.

## II. Extension of Stay Removing the Nine New York Counties, the Twenty-Eight Counties in Pennsylvania, and Two Counties in Maine From the List of Areas Covered by the Reformulated Gasoline Requirements as of July 1, 1995

On December 29, 1994, EPA issued a final rule staying the application of the reformulated gasoline regulations for certain areas that had opted in to the reformulated gasoline program. 60 FR 2696 (January 11, 1995). This stay applied to Jefferson County and the Albany and Buffalo nonattainment areas of New York, the twenty-eight opt-in counties in Pennsylvania, and Hancock and Waldo Counties in Maine. It stayed the regulations in these areas effective January 1, 1995 until July 1, 1995.

EPA believes that the Act authorizes states to opt out of the reformulated gasoline program. EPA has proposed and, absent new information indicating otherwise, believes it will be appropriate to grant the requests by the governors considering the lack of adverse air quality impacts,[1] the requests by the governors, the lack of reliance on reformulated gasoline in the states' State Implementation Plans, and the reasonable lead time provided to industry. In light of the current rulemaking on the opt-out requests for these areas and the lack of any adverse environmental effects, the likelihood the rulemaking will conclude in the opt-out of these areas, and the severe disruption in starting the reformulated gasoline program in these areas on short notice, EPA finds it would be inappropriate to impose the reformulated gasoline program requirements in these areas during the short time needed to complete opt-out rulemaking.

EPA is extending the stay to avoid the serious disruption to the gasoline distribution system, the regulated industry, and the public, which would be caused by a temporary imposition of the reformulated gasoline requirements in these areas. It is necessary that all parties involved have the certainty and stability needed for successful implementation. EPA believes that these circumstances warrant an extension of the previous stay of the reformulated gasoline requirements in these areas until EPA takes final action on the proposed opt-outs. That will provide adequate time to complete rulemaking and take final action on these opt-out requests.

## III. Response to Comments

A comment period was set for the period of June 14 through June 28, 1995. During that period two comments were received.

One commenter representing fuel oxygenate producers objects to EPA's proposed extension of the stay, arguing that EPA does not have authority under section 211(k) of the Act to stay the effective date of these opt-in areas. According to this commenter, section 211(k)(6)(A) provides only limited discretion in establishing the effective date for an opt-in, and any additional extension of this effective date must meet the requirements of section 211(k)(6)(B). That provision authorizes an extension of the effective date set under section 211(k)(6)(A) for up to two years, if after consultation with the Department of Energy, EPA determines that there is insufficient domestic capacity to produce reformulated gasoline. In addition, EPA must issue an extension for areas with lower ozone classifications before higher ones. Not having met these requirements, the commenter argues that the extension is not authorized under section 211(k)(6) (A) or (B). The commenter also believes that EPA's reliance on *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) is misplaced, and that section 211(k) does not otherwise authorize the proposed stay.

This commenter has misinterpreted EPA's view on statutory authority. The temporary stay issued in December 1994 and the stay proposed in June 1995 are not extensions of the effective date under section 211(k)(6) (A) or (B). Those provisions basically address when the program will first go into effect for an

[1] Several of the areas have requests pending before the agency for redesignation to attainment status. The other areas are expected to submit such requests.

opt-in area. They do not address whether and when an area may opt-out of the program.

As noted in the proposal, EPA believes that it has authority to allow an area to opt out after it has opted in, under reasonable conditions related to a state's air quality planning and the need for reasonable lead time for affected industries. This is a reasonable interpretation of EPA's authority, based on the delegation by Congress of rulemaking authority in sections 211(k)(1) and 301(a). This includes the authority to allow an area to permanently opt out of the reformulated gasoline program. The stay issued in this final rule is a much more limited exercise of this authority—it allows an area to be excluded from the reformulated gasoline program for a limited time period, pending the rulemaking needed to finally act on the opt-out request.

EPA proposed to allow these areas to opt-out, and explained the legal, factual, and policy reasons supporting its proposal. Given the clear possibility that EPA will exclude these areas from the reformulated gasoline program based on their opt-out requests, it would be a serious and needless disruption of the gasoline market and the reformulated gasoline program to now implement the prohibition of section 211(k)(5) and require the regulated parties to market reformulated gasoline for the short period of time needed to act on this proposal. Under these circumstances, temporarily excluding them from the program pending action on the proposal is a limited and proper exercise of EPA's authority to allow an area to opt-out of the program indefinitely.

One commenter representing the petroleum industry strongly supports the stay extension. This commenter believes that it would not be in the public's interest to introduce the reformulated gasoline program on short notice. Considering that EPA has proposed to approve the opt-out requests of New York, Pennsylvania, and Maine, the commenter believes a temporary reformulated gasoline program in these counties for a few months would not be warranted.

## IV. Effective Date

Based on the July 1, 1995, expiration of the prior stay, and the disruption that would be caused if the reformulated gasoline program was reinstituted in these areas for a short time, EPA finds there is good cause to make this rule effective upon signature. 5 U.S.C. 553(d). This rule is effective on June 30, 1995.

## V. Environmental Impact

The stay is not expected to have any adverse environmental effects. The reformulated gasoline program is currently not applicable to these areas and the stay continues the status quo in these areas during rulemaking.

## VI. Economic Impact

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. This stay is not expected to result in any additional compliance cost to regulated parties and, in fact, is expected to decrease compliance costs to the industry and decrease costs to consumers in the affected areas.

## VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must obtain Office of Management and Budget (OMB) clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This rule does not create any new information requirements or contain any new information collection activities.

## VIII. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the stay promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action extends a stay on the application of the reformulated gasoline program in certain areas, pending agency rulemaking on the opt-out requests for these areas. The stay imposes no new Federal requirements, and in fact relieves an otherwise applicable requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

## IX. Statutory Authority

The statutory authority for the action in this rule is granted to EPA by section 211 (c) and (k), and section 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 (c) and (k) and 7601(a).

## List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: June 30, 1995.

**Fred Hansen,**

*Acting Administrator.*

For the reasons set out in the preamble, 40 CFR part 80 is amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

**Authority:** Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.70 is amended by revising the introductory text of paragraph (j) to read as follows:

**§ 80.70 Covered areas.**

* * * * *

(j) The ozone nonattainment areas listed in this paragraph (j) are covered areas beginning on January 1, 1995, except that those areas listed in paragraphs (j)(5) (viii) and (ix), (j)(10) (i), (iii), and (v) through (xi) and (j)(11) of this section shall not be covered areas prior to EPA taking final action on the proposal to remove these areas as covered areas.

* * * * *

[FR Doc. 95–16825 Filed 7–7–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 302

**[FRL–5255–5]**

## Reportable Quantity Adjustments; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correction to final rule.

**SUMMARY:** This document corrects errors in the amendatory language of a final rule published on June 12, 1995 (60 FR 30926). The final rule made changes to reportable quantities for hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act.

**EFFECTIVE DATE:** July 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/UST, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/553–7672 (in the Washington, DC metropolitan area, contact 703/486–3323); or Mr. Jack Arthur, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or at 703/603–8760.

Dated: June 30, 1995.

**Timothy Fields, Jr.,**

*Acting Assistant Administrator.*

For the reasons set out in the preamble, FR Doc. 95–13787, published at 60 FR 30926 (June 12, 1995) is corrected as follows:

### § 302.4 [Corrected]

1. On page 30938, column 3, amendatory instruction 4 is corrected to read as follows:

4. Table 302.4 in § 302.4 is amended by adding the following new entries in alphabetical order; and by revising the entries for ''Benzene, dimethyl'', ''Phenol, methyl-'', and ''Xylene (mixed)'' and their subentries; and by revising under the heading ''Unlisted Hazardous Wastes Characteristics: Characteristic of Toxicity:'' the entries for ''o-Cresol (D023)'', ''m-Cresol (D024)'', ''p-Cresol (D025)'', and ''Cresol (D026)''; and by revising the entries for ''F004'', ''F025'', ''F037'', ''F038'', ''K088'', ''K090'', and ''K091''; and by adding footnote ''a'' to the entry for ''Benzene''; and by removing the entries for ''Cresol(s)'' and ''Cresylic acid'' and their subentries, as set forth below:

2. On page 30944, column 1, amendatory instruction 5 is corrected to read as follows:

5. Table 302.4 in § 302.4 is also amended by revising the following entries; and by adding new entries in alphabetical order for ''Antimony Compounds'', ''Aroclors'' and its subentries, ''Arsenic Compounds (inorganic including arsine)'', ''Beryllium Compounds'', ''Cadmium Compounds'', ''Chlorinated camphene'', ''1–Chloro-2, 3-epoxypropane'', ''Chloromethane'', ''Chromium Compounds'', ''Cyanide Compounds'', ''DEHP'', ''Dibromoethane'', ''Dichloromethane'', ''1,4–Diethyleneoxide'', ''Dimethyl aminoazobenzene'', ''Ethyl chloride'', ''Hexone'', ''Hydrogen phosphide'', ''Iodomethane'', ''Lead Compounds'', ''Lindane (all isomers)'', ''MEK'', ''Mercury Compounds'', ''2–Methyl aziridine'', ''Nickel Compounds'', ''PCBs'' and its subentries, ''PCNB'', ''Quinone'', ''Quintobenzene'', ''Radionuclides (including radon)'', ''Selenium Compounds'', ''TCDD'', ''2,4–Toluene diamine'', ''2,4–Toluene diisocyanate'', and ''Urethane'', as set forth below:

3. On page 30959, preceding Appendix A to § 302.4, add the following amendatory instruction to read as follows:

5a. Appendix A to § 302.4 is amended by revising the following entries, as set forth below:

[FR Doc. 95–16754 Filed 7–7–95; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Care Financing Administration

## 42 CFR Part 414

**[BPD–494–F]**

**RIN 0938–AD65**

## Medicare Program; Payment for Durable Medical Equipment and Orthotic and Prosthetic Devices

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule addresses comments received on an interim final rule with comment period published on December 7, 1992. The interim final rule implemented section 4062(b) of the Omnibus Budget Reconciliation Act of 1987. It specified that payment under the Medicare program for durable medical equipment (DME), prosthetics, and orthotics furnished on or after January 1, 1989 is limited to the lower of the actual charge for the equipment or the fee schedule amount established by the carrier. This final rule describes amendments to the methods for computing fee schedules covering the six classes of DME and how they are updated in subsequent years in accordance with sections 13542 through 13546 of the Omnibus Budget Reconciliation Act of 1993.

**DATES:** These final regulations are effective August 9, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Sharon Hippler—(410) 966–4633 (Coverage Issues)

William Long—(410) 966–5655 (Payment Issues)

**SUPPLEMENTARY INFORMATION:**

### I. Background

The provisions of sections 1833 and 1842 of the Social Security Act (the Act) set forth the general payment authority for most physician and other medical and health services furnished under Part B of the Medicare program. Section 1834 sets forth the 6 classes of DME and specifies that payment for these items is limited to 80 percent of the lesser of the actual charge or a fee schedule amount established by each Medicare carrier.

We published an interim final rule on December 7, 1992 (57 FR 57675) that set forth the methods for computing fee schedules for the six classes of DME effective for services furnished on or after January 6, 1993. The interim rule also described how the fee schedules are updated. The December 1992 rule explained in detail the various legislative changes that led to its publication (57 FR 57676).

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (OBRA 93, Public Law 103–66), revised the statutory provisions upon which the DME payment rules that appeared in the December 1992 final rule were based. We are including these provisions in this final rule since the revisions are not discretionary but follow the explicit language contained in sections 13542 through 13546.

A summary of the provisions of these sections of OBRA 93 follows :

- Section 13542 amends sections 1834(a)(2), (a)(3), (a)(8), and (a)(9) of the

Act by providing that for 1994 and subsequent years, the national limited payment amount for (1) inexpensive or routinely purchased DME, (2) items requiring frequent and substantial servicing, (3) oxygen, and (4) other DME (capped rental) is equal to one of the following amounts:

- If the local payment amount is not in excess of the median, nor less than 85 percent of the median, of all local payment amounts—100 percent of the local payment amount.
- If the local payment amount exceeds the median—100 percent of the median of all local payment amounts.
- If the local payment amount is less than 85 percent of the median—85 percent of the median of all local payment amounts.
- Section 13543(a) amends section 1834(a)(3)(A) of the Act by deleting nebulizers and aspirators from the statutory list of items that require frequent and substantial servicing. It also clarifies that ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices are excluded from the frequent and substantial servicing class.
- Section 13543(b) amends section 1834(a)(2)(A) of the Act by specifying that accessories used in conjunction with a nebulizer, aspirator, or ventilator excluded from the frequent and substantial servicing class are included in the inexpensive or routinely purchased equipment class.
- Section 13544(a) amends section 1834(h)(1) of the Act by providing that payment for ostomy supplies, tracheostomy supplies, and urologicals be made using the methodology for inexpensive or routinely purchased equipment.
- Section 13544(b) adds a new paragraph (i) to section 1834 of the Act to provide that payment for surgical dressings must be made using the methodology for inexpensive or routinely purchased equipment. It further specifies the national limited payment amount for surgical dressings must be based on local payment amounts using average reasonable charges for the 12-month period ending December 31, 1992 increased by the covered item updates for 1993 and 1994.
- Section 13545 amends section 1834(a)(1)(D) of the Act by providing that the reduced payment amount for transcutaneous electrical nerve stimulator (TENS) devices, furnished on or after January 1, 1994, be based on the payment amount effective April 1, 1990, reduced by 45 percent.
- Section 13546 amends section 1834(h)(4)(A) of the Act by specifying that the term ''applicable percentage increase'' used for computing the local purchase price for prosthetic and orthotic devices is ''0'' percent for 1994 and 1995. It also specifies that for subsequent years that term means the percentage increase in the consumer price index for all urban consumers for the 12-month period ending with June of the previous year.

## II. Summary of Public Comments and Responses for the December 1992 Final Rule

We received comments from seven groups representing the industry and one State agency. We have summarized the comments related to the fee schedule payment methodology and have presented them below along with our responses.

Several comments were received that concerned other issues related to medical equipment (for example, refining the coverage definitions of medical equipment and updating the HCFA Common Procedure Coding System (HCPCS)) but did not pertain to the subject matter of the interim final rule, which dealt only with the six classes of DME and the corresponding fee schedule methodologies. We are not responding in this final rule to any comments unrelated to the fee schedule payment methodologies.

*Inexpensive and Routinely Purchased DME (Section 414.220(a))*

*Comment:* One commenter suggested that we not change to a State-by-State methodology for classifying an item as inexpensive even if the local submitted purchase price is less than $150. The commenter stated that changing the status of an item from State to State would be hopelessly confusing to suppliers and would contribute to increased claims processing costs.

*Response:* We agree with the commenter. Classifying items by State would create inconsistencies among carrier jurisdictions and would be inconsistent with the thrust of the national limited payment amounts that went into effect in 1991. For example, a capped rental item in one jurisdiction could be considered inexpensive in an adjacent jurisdiction. Therefore, we intend to continue using the national weighted mean submitted charge for purchase of an item (whose price did not exceed $150 during the period from July 1, 1986 through June 30, 1987) for classifying the item as inexpensive.

*Frequently Serviced DME (Section 414.222(a))*

*Comment:* One commenter agreed that we should add or delete items in the frequently serviced class by making modifications to this class on a simplified basis. Another commenter suggested that we not change the methodology for adding or deleting items in the frequently serviced class. The commenter argued that, since some items in this class are mandated by the Act, any attempt by us to administratively restructure this class would violate congressional intent.

*Response:* We believe that the second commenter may have misunderstood our intent in this matter. Section 1834(a)(3) of the Act specifically mandates that certain DME be included in the class of items that require frequent and substantial servicing. In § 414.222(a) of the interim final rule, we announced our intention to specify other items requiring frequent and substantial servicing. It was, and continues to be, our intention to delete only those items that we previously added administratively. Section 414.222(a) permits us and the carriers to define those items needing frequent and substantial servicing.

We will not delete any of the statutorily mandated items from this class of items absent a change in the Act. However, we will add or delete items we previously added in this class by announcing additions and deletions in an administrative instruction rather than in the regulations.

*Comment:* One commenter suggested that the following items belong in the frequently serviced class: continuous passive motion machines, memory monitors, powered air flotation beds, air fluidized beds, and alternating pressure mattresses. Conversely, the commenter believed that nebulizers and aspirators do not belong in the frequently serviced class. Two commenters suggested that infusion pumps should be placed in the frequently and substantially serviced class. The commenters stated that few infusion pumps last 5 years without major servicing and that pumps more than a few years old may not be serviceable because of a lack of replacement parts. They also stated that infusion pump manufacturers often stop producing cassettes once the pumps are no longer in production and the Food and Drug Administration believes that infusion pumps should be tracked because the risk of failure presents the potential for serious adverse health consequences.

*Response:* Continuous passive motion machines currently appear in the class of items that require frequent and substantial servicing (§ 414.222(a)). We will consider whether memory monitors, powered air flotation beds, air fluidized beds, alternating pressure

mattresses, and infusion pumps should also be added. If after our review, we agree that these items belong in this class, we will add them through an administrative instruction.

Section 1834(a)(3) of the Act specifically mandated that aspirators, nebulizers and ventilators be included in the frequent and substantial servicing class. However, section 13543 of OBRA 93 deleted aspirators, nebulizers and some ventilators from this class effective January 1, 1994. Consequently, we have revised § 414.222(a) to remove aspirators, nebulizers, and certain ventilators from the frequent and substantial servicing class. (Depending on changes in the data, items may be moved into any of the other classes, for example, inexpensive or routinely purchased, or capped rental).

*Capped Rental DME (Section 414.229)*

*Comment:* Three commenters suggested that we provide a new 15-month rental period if a beneficiary moves outside the supplier's service area or changes suppliers, even though there would be additional cost and a potential for abuse. One commenter suggested giving the second supplier a 12-month rental period.

*Response:* We agree that these proposals would result in additional program cost and have the potential for abuse. We also believe that we are precluded by section 1834(a)(7)(A) of the Act from providing a new rental period beyond the original 15-month rental period. This section provides that ''* * * payments under this clause may not extend over a period of continuous use of longer than 15 months * * *.'' Therefore, if the beneficiary changes suppliers during or after the 15-month rental period, that change would not result in a new rental period.

In asking for comments regarding this provision, we specifically requested comments on which supplier would be responsible for furnishing the capped rental equipment to the beneficiary if the beneficiary changes suppliers during or after the 15-month rental period. In the December 1992 rule (57 FR 57683), we indicated our initial position that the supplier that provided the item in the fifteenth month of the rental period would be responsible for supplying the equipment and for maintenance and servicing after the 15-month period.

We mentioned that, as an alternative position, we considered requiring the supplier that had furnished the item for the longest portion of the rental period to be responsible for the period of continuous use of the equipment after the 15-month period expired. However, we were concerned about the possible inconveniences to the beneficiary and the initial supplier; for example, the longest term supplier may be located some distance from the beneficiary's residence at the end of the 15-month period. In addition, we did not believe it was appropriate to require a supplier to service equipment that it did not furnish and with which it may not be familiar.

We also mentioned that we considered requiring the last supplier of an item to be responsible for a period of continuous use after the 15-month period but only if the supplier furnished the item for 3 consecutive months. However, based on advice received from the DME industry, we rejected this option because of the possible inconveniences similar to those discussed in the option set forth above.

Other than the comments suggesting that we provide for an additional rental period if the beneficiary changes suppliers, which is precluded by the Act, we received no comments regarding this provision. Further, since this provision became effective on January 1, 1989, we received no significant correspondence from Medicare beneficiaries or the DME industry indicating that this rule presents a problem. This corroborates what representatives of the DME industry indicated to us after the passage of section 4062 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) (OBRA 1987). At that time, they indicated that suppliers would be able to accommodate beneficiaries who change suppliers (for example, because of a change of residence or dissatisfaction with a supplier). They further indicated that the DME industry preferred making the supplier that rents the item in the last (that is, fifteenth) month of the rental period responsible for supplying the equipment after the last month of rental payments and for continued maintenance and servicing of the equipment.

Therefore, the rules governing this class of equipment will remain the same. Responsibility for supplying equipment in the capped-rental class that has been rented for 15-consecutive months remains with the supplier that rented the item in the last month of the rental period. Responsibility for maintenance and service of the item also remains with that supplier. A move by the Medicare beneficiary does not relieve the supplier that rented the item in the last rental month of either responsibility.

Of course, we will not object to the responsible supplier establishing an arrangement with a supplier located nearer to the beneficiary's new residence to furnish the actual maintenance and service of the equipment.

*Reasonable Useful Life (Section 414.229(f))*

*Comment:* One commenter suggested that we should establish reasonable useful lifetime guidelines for equipment but did not offer specific suggestions for these guidelines. Other commenters suggested that a 5-year useful life was too long and that the useful life should be considered to end 12 months after the period identified in the manufacturer's warranty. Another commenter suggested that we meet with manufacturers of medical equipment, especially manufacturers of orthotic devices, to develop specific standards regarding the useful life of equipment.

*Response:* While we specifically solicited comments regarding the useful life of DME, prosthetics, orthotics, and supplies (DMEPOS), we received only one comment indicating what that useful life should be (which was 12 months after the date indicated in the manufacturer's warranty) for any item of medical equipment. We selected a 5-year useful life because that is the useful life of capped rental DME established in section 1834(a)(7)(C)(iii) of the Act. We continue to believe that a minimum useful life of 5 years is reasonable for payment purposes and should be applied to other items of DME, prosthetics, and orthotics.

We believe that establishing a useful life of 12 months beyond a manufacturer's warranty is unsupported and arbitrary. We would welcome meeting with manufacturers of medical equipment to discuss information that supports considering an alternative to the 5-year useful lifetime of equipment. We will maintain the minimum 5-year useful lifetime provision for payment purposes for all medical equipment unless we receive evidence that supports some other timeframe.

*Implementation of the Fee Schedule Methodology Through Program Instructions*

*Comment:* One commenter suggested that implementation of the fee schedule payment methodology has decreased payments and increased regulatory and paperwork burdens, significantly affecting small suppliers of medical equipment. The commenter asserted that since we have implemented the fee schedule methodology through Medicare Carrier Manual issuances, the industry's opportunity to present its case in the public forum of rulemaking has been denied.

*Response:* We disagree with the commenter. While the December 1992 interim final rule became effective 30 days after it was published, it provided an opportunity for public comment and potential reconsideration of the policies it set forth. We usually implement legislation by following the rulemaking process that affords all parties an opportunity to comment before we implement the legislation. The Congress, in mandating the OBRA 87 changes establishing the DME fee schedule methodology, expressly authorized the Secretary to issue the implementing regulations on an interim basis. However, because of the need to implement the fee schedule as soon as possible, it was necessary that we issue instructions in the Medicare Carriers Manual while developing the interim rule.

*Access to Common Working File*

*Comment:* Two commenters suggested that suppliers need access to our Common Working File to determine if a beneficiary has previously rented a piece of equipment and, if so, for what period of time.

*Response:* There are always privacy considerations concerning the release of beneficiary information contained in the Common Working File systems. However, we intend to investigate the effects of disclosing beneficiary information to DME suppliers. Nevertheless, the option to furnish equipment rests with the supplier. Since the supplier is able to communicate with the beneficiary before furnishing medical equipment, we believe that the supplier should be responsible for determining whether a beneficiary has ever rented equipment. We are responsible for ensuring that we do not pay for services furnished to a patient who is not entitled to Medicare benefits and that we do not pay for equipment after the appropriate rental period.

*Budget Savings Resulting From the DME Fee Schedule Methodology*

*Comment:* Two commenters noted that budget savings associated with the interim rule continue to remain elusive, noting that while the fee schedule methodology was estimated to save Medicare more than $2 billion, a study by the General Accounting Office (GAO) issued in July 1992 found that the fee schedule methodology actually cost more than the reasonable charge system it replaced.

*Response:* The GAO found that for the first 2 years after implementation of the fee schedule methodology, Medicare program expenditures increased by 16 percent compared to what the costs would have been under the reasonable charge system. The GAO also projected that when fully implemented in 1993, the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, enacted on November 5, 1990) (OBRA 90) would offset the program cost increases that occurred when the fee schedule methodology was implemented. The savings generated would save the Medicare program more than $2 billion over 5 years beginning in 1992.

*Uniform Payment, Coverage, and Utilization Criteria*

*Comment:* One commenter suggested that we adopt national uniform payment, coverage, and utilization criteria for prosthetic and orthotic devices. The commenter also suggested that the term ''region'' should encompass geographic areas as large as possible, preferably dividing the nation into four areas that comport with the four new regions of the DMEPOS regional carriers.

*Response:* The December 1992 interim rule defined ''region'' as those carrier service areas administered by the ten HCFA regional offices (57 FR 57689). This was the longstanding definition of ''region'' in use when legislation established a fee schedule methodology for prosthetic and orthotic devices that was to be calculated on a regional basis.

We believe it was the intent of the Congress that we recognize differences in the costs of supplying prosthetic and orthotic devices among the ten geographic regions then in use. Since this was the definition of region that we used when the Congress passed the fee schedule methodology, we will continue to group States together by the ten HCFA regions for pricing purposes.

Effective October 1, 1993, we contracted with four ''regional'' carriers that process all DMEPOS claims nationally. We expect that having the four carriers will result in more uniform payment, coverage, and utilization of Medicare services. However, we continue to believe that using a ten region structure for pricing of services is appropriate. We believe that a larger number of regions gives more recognition to local variations in the cost of providing equipment.

Reducing the number of regions to four rather than the current ten would give less emphasis to local variation. If we based the pricing of services on a four region system, each region would cover a greater number of suppliers, which could produce greater disparity in suppliers' costs throughout the region. Having a larger supplier pool could dilute the impact of outlying suppliers whose labor, material, and overhead costs are significantly higher than the median.

By retaining a pricing system based on ten regions, we expect that, for any item of DME, the costs of suppliers within each region would be more similar to each other and the resulting fee schedule more reflective of costs in the local supplier population.

*Comment:* One commenter asked if we intend that the regional purchase price be determined State-by-State.

*Response:* As described in the interim final rule (57 FR 57691), regional pricing is based on local prices within a carrier area, which usually is an entire State. Specifically, our methodology for computing the regional purchase price is to first calculate a local purchase price, then calculate a regional purchase price by averaging the local purchase prices for the region (weighted by the relative volume of all claims among the carriers in the region).

*Use of the Term ''Durable Medical Equipment''*

*Comment:* One commenter suggested using the term ''home'' to define medical equipment used in the home rather than the term ''durable.'' Another commenter suggested that we expand the definition of DME in § 414.202 to include coverage of equipment not used in the home and provide for coverage of additional items of disposable equipment.

*Response:* Section 1861(n) of the Act defines ''durable medical equipment.'' We are bound by the definition of DME contained in the law.

*Applicability to Medicaid*

*Comment:* One commenter suggested that the Medicare payment methodology should also be applicable to State Medicaid programs.

*Response:* The statute does not authorize us to impose the Medicare payment methodology on States, therefore, the Congress must pass legislation to authorize us to do so.

*Fraud and Abuse*

*Comment:* One commenter noted that the rules regarding TENS, seat lift mechanisms, and electric wheelchairs should help eliminate fraud and abuse.

*Response:* We agree.

## III. Provisions of This Final Rule

To implement the requirements of sections 13542 through 13546 of OBRA 93, we are revising part 414, subpart D.

We expand the list of inexpensive or routinely purchased items in § 414.220(a) to include, effective January 1, 1994—

• Accessories used in conjunction with a nebulizer, aspirator, or ventilator excluded from § 414.222.

• Ostomy supplies, tracheostomy supplies, urologicals, and surgical dressings not furnished as incident to a physician's professional service or furnished by a home health agency.

We add a new paragraph (f)(4) to § 414.220 to reflect that, for 1994 and subsequent years, the national limited payment amounts are calculated using the median rather than the weighted average. We make conforming changes to paragraph (f)(3).

We add a new paragraph (g) to § 414.220 to state that payment for surgical dressings effective January 1, 1994 is based on the national limited payment amount increased by the covered item updates for 1993 and 1994.

We revise § 414.222(a) to delete aspirators, nebulizers, and certain ventilators from the list of items requiring frequent and substantial servicing.

We add a new paragraph (e) to § 414.222 to set forth the following transition rules that apply to rental of DME that was paid for under the frequent and substantial servicing class but is no longer paid for under that payment class. For purposes of calculating the 15-month rental period, beginning January 1, 1994, if payment is subsequently made under the other DME (capped rental) payment class for an item that formerly required frequent and substantial servicing, the period begins with the first month of continuous rental, even if that rental period began before January 1, 1994.

For example, if the rental period began on July 1, 1993, the carrier must use this date as beginning the first month of rental. Section 1834(a)(7)(A)(i) limits total rental payments to 15 months (or 13 months if the beneficiary elects the purchase option). If we calculated the 15-month period beginning on January 1, 1994 instead of July 1, 1993 (the first month of rental), rental payments would be made for an additional 6 months beyond the 15-month limit. We do not believe that this would be consistent with the law. Thus, under this final rule, if the beneficiary reached the purchase price limitation on a rental claim before January 1, 1994, no further rental or purchase payments would be made.

Likewise, for purposes of calculating the 10-month purchase option, the rental period also begins with the first month of continuous rental without regard to when that period started. For example, if the rental period began in August of 1993, the 10-month purchase option must be offered to the beneficiary in May of 1994, the 10th month of continuous rental.

Likewise, for purposes of calculating the purchase ceiling, if an item that is paid under the frequent and substantial servicing class is subsequently paid under the inexpensive or routinely purchased payment class, the rental period begins with the first month of continuous rental under the frequent and substantial servicing class, even if that period began before January 1, 1994.

The transition rules for items previously in the frequent and substantial servicing class are the same as those (§ 414.229(f)) that were promulgated for use in computing the 10- and 15-month periods for capped rental DME. We believe that these transitional requirements are necessary to carry out the statutory intent, to limit capped rental equipment payments to 15 months, or 13 months if the beneficiary elects the purchase option, and to limit rental payments, for inexpensive and routinely purchased items to the purchase price. For example, if we were to begin calculating the 15-month period on January 1, 1994 instead of the first month of rental, payments would be incurred for up to 15 additional months beyond the 15-month limit. For inexpensive or routinely purchased DME, if we were to begin calculating the purchase price limitation on January 1, 1994 instead of the first month of rental, we could pay twice the purchase price. We believe that such a result would be contrary to the direction of the law.

We revise § 414.228(b)(2) to reflect that the applicable percentage increase in the purchase price for prosthetic and orthotic devices is 0 percent for 1994 and 1995.

We revise § 414.232(a) to reflect that the payment amount for TENS computed under § 414.220 was reduced by 15 percent by OBRA 87, effective April 1, 1990. The payment amount originally reduced by 15 percent was further reduced by an additional 15 percent, effective January 1, 1991, by OBRA 90. Effective January 1, 1994, OBRA 93 changed the percent of reduction mandated by OBRA 90 from 15 percent to 45 percent.

## IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

## V. Regulatory Impact Statement

### *A. Introduction*

This final rule implements changes required by sections 13542 through 13546 of OBRA 93. Section 13543 removed aspirators and nebulizers and certain ventilators from the class of DME items requiring frequent and substantial servicing. These aspirators, nebulizers, and ventilators are now considered to be either capped rental or inexpensive/routinely purchased items. Also, section 13545 provides that the payment amount for TENS devices furnished on or after January 1, 1994 be based on the payment amount effective April 1, 1990, reduced by 45 percent. The Medicare program had expenditures of approximately $5.6 million for an estimated 34,000 TENS units furnished in calendar year (CY) 1993.

Section 13546 provides that there will be no percentage increase in payment in CYs 1994 and 1995 for orthotics, prosthetics, and prosthetic devices. The percentage increase in the consumer price index is expected to resume for payment in subsequent years.

Listed below is a table showing the estimated savings as a result of the various OBRA 93 changes.

ESTIMATE OF MEDICARE SAVINGS OBRA 93 (IN MILLIONS)*

| FY 1995 | FY 1996 | FY 1997 | FY 1998 | FY 1999 |
|---|---|---|---|---|
| $45 | $75 | $85 | $90 | $100 |

*Rounded to the nearest $5 million.

### *B. Regulatory Flexibility Act*

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, most manufacturers and suppliers of DME and orthotic and prosthetic devices are considered to be small entities. Some manufacturers and suppliers, however, clearly have substantial regional or national sales, and do not, therefore, meet the definition of a small entity. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section

1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

*C. General Effects*

Since beneficiary copayments are linked to the level of allowed payments for DME, the reduction in fee schedule amounts will reduce costs to beneficiaries. The magnitude of savings to beneficiaries will coincide with the reduction in payment levels for DME. Section 13543 of OBRA '93 limited payment for aspirators, nebulizers, and certain ventilators by deleting them from the group for items requiring frequent and substantial servicing. Beneficiaries who had been renting these items for an unlimited period will in the future be required to pay copayment fees on payment up to only the allowed purchase price or rental cap amount of the device.

Section 13545 reduces the payment amount for TENS devices furnished on or after January 1, 1994 by 45 percent from the payment amount effective April 1, 1990. As the payment for the TENS device will be reduced, the beneficiaries copayment portion will also be reduced.

From the perspective of manufacturers and distributors, the reductions in Medicare payments for certain DME, nebulizers and aspirators, TENS devices, and orthotics, prosthetics, and prosthetic devices will result in some revenue losses. Manufacturers and suppliers that do not specialize in these items may see minimal reductions in their revenues. We do not have detailed data that will enable us to predict the economic impact on individual suppliers and manufacturers. Considering that the total DME sales in CY 1993 equaled an estimated $2.4 billion and the limited reductions we are making at this time, we do not believe the impact on DME manufacturers and suppliers will significantly affect the quantity or quality of DME available to Medicare beneficiaries.

The provisions of this rule conform the regulations to legislative provisions. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this rule was not reviewed by the Office of Management and Budget.

**List of Subjects in 42 CFR Part 414**

Durable medical equipment, Medicare, Prosthetic and orthotic devices.

42 CFR part 414, subpart D, is amended as set forth below:

## PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 is revised to read as follows:

**Authority:** Secs. 1102, 1833(a), 1834 (a) and (h), 1848, 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395l(a), 1395m (a) and (h), 1395w–4, 1395hh, and 1395rr).

2. In § 414.220, the introductory text for paragraph (f) is republished, paragraphs (a), (b), and (f)(3) introductory text, (f)(3)(i), and (f)(3)(ii) are revised, and new paragraphs (f)(4) and (g) are added, to read as follows:

### § 414.220 Inexpensive or routinely purchased items.

(a) *Definitions*—(1) *Inexpensive equipment* means equipment the average purchase price of which did not exceed $150 during the period July 1986 through June 1987.

(2) *Routinely purchased equipment* means equipment that was acquired by purchase on a national basis at least 75 percent of the time during the period July 1986 through June 1987.

(3) *Accessories.* Effective January 1, 1994, accessories used in conjunction with a nebulizer, aspirator, or ventilator excluded from § 414.222 meet the definitions of ''inexpensive equipment'' and ''routinely purchased equipment'' in paragraphs (a)(1) and (a)(2) of this section, respectively.

(b) *Payment rules.* (1) Subject to the limitation in paragraph (b)(3) of this section, payment for inexpensive and routinely purchased items is made on a rental basis or in a lump sum amount for purchase of the item based on the applicable fee schedule amount.

(2) Effective January 1, 1994, payment for ostomy supplies, tracheostomy supplies, urologicals, and surgical dressings not furnished as incident to a physician's professional service or furnished by an HHA is made using the methodology for the inexpensive and routinely purchased class.

(3) The total amount of payments made for an item may not exceed the fee schedule amount recognized for the purchase of that item.

* * * * *

(f) *Calculating the national limited payment amount.* The national limited payment amount is computed as follows:

* * * * *

(3) For 1993, the national limited payment amount is equal to one of the following:

(i) 100 percent of the local payment amount if the local payment amount is neither greater than the weighted average nor less than 85 percent of the weighted average of all local payment amounts.

(ii) 100 percent of the weighted average of all local payment amounts if the local payment amount exceeds the weighted average of all local payment amounts.

* * * * *

(4) For 1994 and subsequent years, the national limited payment amount is equal to one of the following:

(i) If the local payment amount is not in excess of the median, nor less than 85 percent of the median, of all local payment amounts—100 percent of the local payment amount.

(ii) If the local payment amount exceeds the median—100 percent of the median of all local payment amounts.

(iii) If the local payment amount is less than 85 percent of the median—85 percent of the median of all local payment amounts.

(g) *Payment for surgical dressings.* For surgical dressings furnished after December 31, 1993, the national limited payment amount is computed based on local payment amounts using average reasonable charges for the 12-month period ending December 31, 1992, increased by the covered item updates for 1993 and 1994.

3. In § 414.222, paragraph (a) is revised and paragraph (e) is added to read as follows:

### § 414.222 Items requiring frequent and substantial servicing.

(a) *Definition.* Items requiring frequent and substantial servicing in order to avoid risk to the beneficiary's health are the following:

(1) Ventilators (except those that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices).

(2) Continuous and intermittent positive pressure breathing machines.

(3) Continuous passive motion machines.

(4) Other items specified in HCFA program instructions.

(5) Other items identified by the carrier.

* * * * *

(e) *Transition to other payment classes.* For purposes of calculating the

15-month rental period, beginning January 1, 1994, if an item has been paid for under the frequent and substantial servicing class and is subsequently paid for under another payment class, the rental period begins with the first month of continuous rental, even if that period began before January 1, 1994. For example, if the rental period began on July 1, 1993, the carrier must use this date as beginning the first month of rental. Likewise, for purposes of calculating the 10-month purchase option, the rental period begins with the first month of continuous rental without regard to when that period started. For example, if the rental period began in August 1993, the 10-month purchase option must be offered to the beneficiary in May 1994, the tenth month of continuous rental.

4. In § 414.228, the introductory text for paragraphs (b) and (b)(2) are republished, paragraph (b)(2)(ii) is revised, and new paragraphs (b)(2)(iii) and (b)(2)(iv) are added, to read as follows:

**§ 414.228 Prosthetic and orthotic devices.**

* * * * *

(b) *Fee schedule amounts.* The fee schedule amount for prosthetic and orthotic devices is determined as follows:

* * * * *

(2) The carrier determines a local purchase price equal to the following:

* * * * *

(ii) For 1991 through 1993, the local purchase price for the preceding year is adjusted by the applicable percentage increase for the year. The applicable percentage increase is equal to 0 percent for 1991. For 1992 and 1993, the applicable percentage increase is equal to the percentage increase in the CPI–U for the 12-month period ending with June of the previous year.

(iii) For 1994 and 1995, the applicable percentage increase is 0 percent.

(iv) For all subsequent years the applicable percentage increase is equal to the percentage increase in the CPI–U for the 12-month period ending with June of the previous year.

* * * * *

5. In § 414.229, the section heading is revised, the introductory text for paragraph (c) is republished and paragraph (c)(3) is revised, to read as follows:

**§ 414.229 Other durable medical equipment—capped rental items.**

* * * * *

(c) *Determination of purchase price.* The purchase price of other covered durable medical equipment is determined as follows:

* * * * *

(3) *For years after 1991.* The purchase price is determined using the methodology contained in paragraphs (d) through (f) of § 414.220.

* * * * *

6. In § 414.232, paragraph (a) is revised to read as follows:

**§ 414.232 Special payment rules for transcutaneous electrical nerve stimulators (TENS).**

(a) *General payment rule.* Except as provided in paragraph (b) of this section, payment for TENS is made on a purchase basis with the purchase price determined using the methodology for purchase of inexpensive or routinely purchased items as described in § 414.220. The payment amount for TENS computed under § 414.220(c)(2) is reduced according to the following formula:

(1) Effective April 1, 1990—the original payment amount is reduced by 15 percent.

(2) Effective January 1, 1991—the reduced payment amount in paragraph (a)(1) is reduced by 15 percent.

(3) Effective January 1, 1994—the reduced payment amount in paragraph (a)(1) is reduced by 45 percent.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 28, 1995.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 95–16805 Filed 7–7–95; 8:45 am]

**BILLING CODE 4120–01–P**

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## 42 CFR Part 433

**[MB–39–F]**

**RIN: 0938–AF11**

## Medicaid Program; Third Party Liability (TPL) Cost-Effectiveness Waivers

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises regulations concerning Medicaid agencies' actions where third party liability (TPL) may exist for expenditures for medical assistance covered under the State plan. It allows the Medicaid agencies to request waivers from certain procedures in our regulations that are not expressly required by the Social Security Act. We will consider waiving nonstatutorily required procedures relating to identifying possible TPL where the agency finds that following a given required procedure is not cost-effective and is duplicative of another State activity. A nonstatutorily required activity is eligible for a waiver if the cost of the required activity exceeds the TPL recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity that is being performed by the States. This change gives States greater flexibility in managing their Medicaid programs.

**EFFECTIVE DATE:** This final rule is effective September 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mel Schmerler, (410) 966–5942.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 1902(a)(25) of the Social Security Act (the Act) requires that State or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services furnished to Medicaid recipients. A third party is any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan. Medicaid is intended to be the payer of last resort; that is, other available resources must be used before Medicaid pays for the care and services of a Medicaid-eligible individual. These other resources are known as third party liability, or TPL.

Further, provisions under section 1902(a)(25)(A)(i) of the Act specify that the Medicaid State plan must provide for the collection of sufficient information to enable the State to pursue claims against third parties. Examples of liable third parties include commercial insurance companies through employment-related or privately purchased health insurance; casualty coverage resulting from an accidental injury; payments received directly from an individual who has either voluntarily accepted or been assigned legal responsibility for the health care of one or more Medicaid recipients; and fraternal groups, union, or State workers' compensation commissions. TPL also includes medical support provided by a parent under a court or administrative order.

Statutory provisions (sections 1137 and 1902(a)(25) of the Act) require States to obtain health insurance information at eligibility intake and redetermination interviews, perform the State Wage Information Collection

Agency (SWICA) data match, safeguard recipient information, obtain recipient assignment of rights, and submit a TPL action plan for HCFA approval. These statutory requirements are not affected by the provisions of this final rule.

Nonstatutory requirements, specified in the Medicaid regulations at § 433.138 (and subject to proposed waiver), include obtaining information (via data matching) with the State Workers' Compensation or Industrial Accident Commission files and State Motor Vehicle Accident report files. Another nonstatutory requirement is the requirement for agencies to identify all paid claims with trauma/diagnosis codes found in the International Classification of Disease, 9th Revision, Clinical Modification, Volume 1 (ICD–9–CM) 800 through 999, except 994.6. In § 433.139 (and subject to proposed waiver), State agencies are required to bill the third party resource within 60 days after the last day of the month the State learns of the available resource.

Under our regulations at § 433.138, pertinent health insurance information must be obtained (1) from Medicaid applicants or recipients during the determination and redetermination process; (2) by securing data match agreements with specific Federal and State agencies; (3) by conducting diagnosis and trauma code edits; and (4) by following specified procedures regarding the frequency of these activities.

Regulations at § 433.139 govern State payment of claims where TPL is involved. There are two methods of paying claims for recipients with known TPL: the cost-avoidance method and the pay-and-chase method. Under the cost-avoidance method, the Medicaid agency does not initially pay the claim, but returns the claim to the provider with information necessary for the provider to bill the third party. Under the pay-and-chase method, an agency may pay the total amount allowed under its payment schedule and then seek recovery from the liable third parties. The agency must initiate recovery within 60 days after the end of the month in which payment is made or the Agency learns of the existence of the third party resource.

Most States that implement the requirements in our regulations at § 433.138 achieve significant Medicaid savings. Whenever third party resources can be utilized instead of Medicaid, both Federal and State taxpayers save money. In some instances, however, TPL requirements are not cost-effective.

Some States have reported very poor results in terms of identifying new TPL leads through trauma and diagnosis code edits. There are reports that some codes never yield TPL. Currently, States may obtain a partial waiver from HCFA of the requirement in § 433.138(e) to take action to identify those paid claims for Medicaid recipients that contain diagnosis codes 800 through 999 (except that no State has to pursue information concerning code 994.6, motion sickness). Under § 433.138(e), the State may obtain a waiver from complying with the requirements for specific codes.

In § 433.139(e), we also permit a State to request a waiver from HCFA of the cost-avoidance method of paying if the State could document that the pay-and-chase method is at least as cost-effective as the cost-avoidance method. The State is required to revalidate its cost-avoidance waiver request every 3 years and notify HCFA of any event that may change the cost-effectiveness of the waiver.

When these requirements were established by HCFA, the Medicaid TPL program was in its infancy. Many States were not pursuing TPL or only recovering TPL passively; that is, making recoveries when contacted by a provider or attorney who was making a third party settlement. We believed there were tremendous untapped TPL resources that were not identified by States. Therefore, the initial regulations were broad and did not allow States discretion to decide whether or not to perform required TPL activities based upon their cost-effectiveness. For this reason, we issued TPL regulations which we have determined are now too prescriptive and, at times, duplicative. On February 27, 1987, we published in the **Federal Register** (52 FR 5971) a response to State comments regarding cost-effectiveness of our discretionary regulations at §§ 433.138 and 433.139. We stated that we would reevaluate these requirements if we received substantial complaints. This rule is consistent with that statement.

Currently, the majority of the States have aggressive and comprehensive TPL programs and have reported substantial savings from TPL activities. However, program experience has identified situations where some activities required by our regulations duplicate some State agency requirements in identifying new TPL leads. Also, situations have been identified where some of our requirements in regulations are not cost-effective; that is, States can reasonably expect to spend more to perform a TPL activity than will be realized in savings. It is for these reasons that we are now offering States the opportunity to request waivers from the unproductive activities that are not mandated by statute, and for which States have superior methods for accomplishing the same objectives as our regulations.

## II. Issuance of Proposed Rule

On February 2, 1994, we published in the **Federal Register** (59 FR 4880) a proposed rule that would allow States to request a waiver from requirements in § 433.138(c), (d)(4), (d)(5), (e), (f), (g)(1), (g)(2), (g)(3), and (g)(4) or § 433.139(b), (d)(1), and (d)(2) that are not explicitly mandated by statute when it is found that performing the requirement is not cost-effective. We indicated that we would revise our rules to allow a State to request a waiver from the nonstatutorily required activities that concern specific types of third party information, exchange of data, diagnosis and trauma code edits, and follow-up activities for certain exchanges. A nonstatutorily required activity would be eligible for a waiver if the cost of the required activity exceeds the TPL recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity that is being performed by the State.

We made this proposal to allow States to perform TPL operations more efficiently and at a greater savings to the Federal Government. We believed that duplicative efforts (and higher costs) would be eliminated when States have already identified third party resources through another more cost-effective means. We note that HCFA's financial participation in State Medicaid Management Information Systems costs, including costs related to data matches we require States to perform, may be as much as 90 percent. Therefore, it is not in the interest of the Federal Government to have States perform activities which are either duplicative or nonproductive.

We proposed relief from regulatory requirements in the form of a waiver. The State would submit a formal request to the HCFA regional office (RO). The State would be required to provide documentation that demonstrates that the cost of the required activity exceeds the TPL recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity which is being performed by the State.

Documentation to support the waiver request could include past claims recovery data that demonstrate the administrative expenses involved in meeting that particular requirement, and a State analysis that documents a cost-effective alternative that accomplishes the same task. HCFA's ROs would

consider the individual merits of each waiver request and would grant or deny the waiver request based on cost-effectiveness and State alternatives presented.

We indicated that we would issue separate guidelines for developing and evaluating waiver requests for the new waivers. We currently have cost-effectiveness guidelines in place to govern our existing cost-avoidance waiver process. These guidelines were developed by a national work group comprised of HCFA Central Office (CO) and RO staff, whose purpose was to make the guidelines comprehensive and to ensure consistent application throughout the country. They are found in section 3904.2 of the State Medicaid Manual. We indicated that we would issue similar guidelines to review the new waivers. Sources of data would most likely include claims processing tabulations, State expenditure reports, and savings data from the TPL recovery units and the HCFA Form 64.9a report.

CO staff also would provide clarification to RO staff as needed through our regular teleconferences. Consultation on specific waiver requests would be provided routinely, as is currently done in the State plan amendment process, cost-avoidance waivers, trauma code edit waivers, and State TPL action plan submissions. As with our current waiver provisions, ROs would be required to report approvals and disapprovals to CO on an ongoing basis. When changes in waiver status occur, CO also would be notified.

**III. Summary of Public Comments and Responses**

We received four letters of comment on the February 1994 proposed rule. These comments and our responses are discussed below:

*Comment:* Several commenters expressed concern that the proposed rule did not go far enough to allow States the flexibility needed to achieve additional savings from TPL. One commenter cited section 1902(a)(25) of the Act which requires States to take all reasonable measures to ascertain the legal liability of third parties (including health insurers) to pay for care and services available under the plan. The commenter provided two examples of unique and innovative practices that enhance the State's TPL operations and should be permissible under Federal regulations. In the first example, the recipient receives a portion of the proceeds of settlements from tort actions taken against third parties. In the second example, the State has developed a program which pays county welfare departments incentive payments (''bounties'') of $50 for each new case certified for eligibility where other health insurance is identified.

*Response:* We agree that States should be allowed to implement unique and innovative practices that are reasonable measures and not prohibited by Federal statute. Medicaid services are provided using Federal matching funds. In the first example, the State has provided Medicaid services for recipients that were injured by liable third parties, and these recipients have subsequently taken legal action to receive compensation through the courts for their injuries. Section 1912(b) of the Act requires that when a State makes a recovery, the State reimburse itself (and the Federal government) before any remaining funds are given to the recipient. If the State is reimbursing the recipient from the amounts collected before fully refunding the Federal government its share, such practice violates section 1912(b) of the Act. The State is, however, free to pay State monies to the recipient as an incentive, without violating section 1912 of the Act.

In the second example, we take issue with the ''county bounty'' program where Federal matching funds were requested and denied for the bounty payments, because these expenditures are not authorized for Federal matching funds under title XIX of the Act. We agree, that in both examples, these practices could increase TPL identification and savings, and States may find it worthwhile to continue these programs with State-only funds. This rule will provide States with additional flexibility in their TPL programs within the confines of Federal law.

*Comment:* One commenter requested that we revise the regulations to define, interpret, and explain more positively the meaning of the statutory phrase ''all reasonable measures.''

*Response:* We have interpreted the language in section 1902(a)(25) of the Act that refers to ''all reasonable measures'' by specifying the requirements for TPL in regulations at §§ 433.138 and 433.139. These regulations include TPL activities specified by the statute, and other discretionary activities that we have deemed to be logical actions to take to identify and pursue TPL. We originally decided to offer TPL waivers of these regulatory requirements because several States expressed concern that our discretionary regulatory activities were not cost effective, and that other State activities were accomplishing the same objective. We believe waivers of discretionary TPL requirements can provide States with some flexibility in managing their TPL programs without compromising the integrity of the TPL program. We have always supported States' innovative and unique measures to achieve TPL savings that are not prohibited by Federal statute. These innovative and unique measures have been issued several times by us in a compilation entitled, *''Third Party Liability in the Medicaid Program . . . A Guide to Successful State Agency Practices.''* We are continuously supportive of approaches that do not violate the statute, and these regulations do not preclude States from developing such operations.

*Comment:* Two commenters suggested that in § 433.138(l) we provide considerable flexibility in our interpretation of ''adequate documentation'' for waiver consideration.

*Response:* We wish to stress that our ''examples of documentation'' in the proposed rule are strictly examples and not an inclusive list. It is our intention to employ flexibility when considering these waiver requests. While we will provide guidance to States for submissions of waiver requests through the State Medicaid Manual, we understand that the unique characteristics of each State Medicaid program will govern States' abilities to produce cost-effectiveness data.

*Comment:* One commenter questioned our intent regarding the requirements for ''adequate documentation'', as specified in proposed § 433.138(l)(ii), which states that ''Examples of documentation are claims recovery data and a State analysis documenting a cost-effective alternative that accomplished the same task.'' The commenter noted that this language means that even if a State TPL practice is not cost-effective, the State must also demonstrate that it performs an alternative practice. The commenter also points out that in section II of the preamble of the proposed rule, an example of ''adequate documentation'' was given as ''. . . claims recovery data *or* State analysis . . .'' (emphasis added), and asserts that HCFA intended that States either document that a practice is not cost-effective *or* that another alternative practice is performed, but that the intent is that States do not have to provide both. In addition, the commenter requested that we add after the words ''. . . claims recovery data . . .'' the language ''costs for the process(es) for which a waiver is being requested.''

*Response:* The commenter was correct in pointing out the inconsistency in the use of the word ''or'' in section II of the preamble of the proposed rule which

was not used in proposed § 433.138(l)(ii). The use of ''or'' in the preamble was inadvertent, and we have deleted the word ''or'' and replaced it with ''and'' in this final rule. The intent of the proposed rule is elucidated in the summary of the preamble of the proposed rule. The summary stated the following: ''We would consider waiving nonstatutorily required procedures relating to identifying possible TPL where the agency finds that following a given required procedure is not cost-effective and is duplicative of another State activity. A nonstatutorily required activity would be eligible for a waiver if the cost of the required activity exceeds the TPL recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity that is being performed by the States.'' (59 FR 4880). We added this waiver consideration because we found through the Federal oversight process that some States have not achieved a satisfactory level of compliance with TPL requirements, and for these States, where processes can be highly manual and labor intensive, an argument can be made that certain TPL requirements are not cost-effective. Nevertheless, the objective of the requirement in question has not been accomplished, and potential TPL resources are lost. Our concern is that these States could theoretically receive waivers and remain in technical compliance, and yet still not accomplish the TPL objective. Therefore, our position is that a State can receive approval of a waiver of a current requirement only if it has an alternate activity that will accomplish the same objective.

In terms of the language that the commenter has requested to be added to the ''examples of documentation'', our reponse is the same as the response to the previous comment requesting flexibility in our interpretation of ''adequate documentation.'' Our examples of documentation are not inclusive, and we will be flexible when considering these waiver requests. We therefore are not adding the requested language to our example in the final rule.

*Comment:* One commenter requested that States be allowed to request TPL waivers for certain family planning clients.

*Response:* The commenter appears to be requesting that this rule should provide relief from the general statutory requirement of section 1902(a)(25) of the Act to perform TPL activities for certain family planning clients. This request addresses a broader issue, the State's general responsibility to pursue and determine the existence of third parties, than what is addressed by this rule. There is no statutory authority or regulation that permits HCFA to waive third party identification for a class of claims or recipients. If a State believes that cost avoidance of family planning claims for recipients with TPL is not cost-effective, the regulations at § 433.139(e) provide a recourse for States to follow. If a State identifies TPL but finds that pursuing a recovery is no longer cost-effective, the regulations at § 433.139(f) may provide relief.

In situations where it is determined that the recipient has ''good cause'' for not cooperating in pursuing the third party, the Medicaid agency would not pursue the third party by employing either the cost avoidance or pay and chase method.

## IV. Provisions of the Final Regulations

We are adopting the February 2, 1994 proposed rule as final with a modification to the title of § 433.138 ''Determining liability of third parties'' to read ''Identifying liable third parties'' and a conforming change to § 433.137 to reflect this change. While section 1902(a)(25)(A) requires States to take reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the plan, States must first identify third party resources. Section 433.138 explains the requirements for identifying third parties through data exchanges. It does not explain the process of determining liability of third parties. We believe § 433.139 explains that determination of the liability of a third party takes place when the Medicaid agency receives confirmation from the provider or third party resource indicating the extent of TPL. Therefore, we are changing the title of § 433.138 to accurately reflect the section's content.

## V. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant impact on a substantial number of small entities.

Under the RFA, a small entity is a small business, a nonprofit enterprise, or a government jurisdiction (such as a county or township) with a population of less than 50,000. These final regulations will affect only States and individuals, which are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule requires States to submit a formal waiver request to be relieved of compliance with certain TPL requirements that are in our regulations when the cost of implementing the regulation's requirement is not cost-effective. It is extremely difficult to give an exact estimate of the cost savings that would accrue with the implementation of this regulation. This is largely because the cost of any single TPL data match or other procedure, as well as its relative effectiveness, varies from State to State.

In reviewing the need for this waiver, we recognized that some TPL claims reporting and payment regulations are expressly required by statute and that these and additional regulatory requirements are a valuable mechanism by which the Medicaid program has saved and recovered financial resources and that these regulations should be maintained. This waiver gives credence to valid concerns raised by States regarding the cost-effectiveness of certain portions of the TPL regulations in certain instances and allows States greater flexibility in managing their Medicaid programs.

An alternative to these regulatory enhancements would be to force States to comply with all regulations and not allow for any waiver provisions. In this scenario, States would either comply and lose money or discontinue the inefficient practice and risk HCFA sanctions through the system's performance review. Clearly, it was not the intent of the Congress for HCFA to promulgate regulations designed to save the taxpayers money, and then penalize States when the regulations are found by experience not to be cost-effective. This is consistent with our response to comments published in the **Federal Register** dated February 27, 1987 (52 FR 5971) stating that if HCFA received substantial complaints from State Medicaid agencies regarding the cost-effectiveness of State workers' compensation or Motor Vehicle Accident File data matches and diagnosis and trauma code edits, HCFA would reevaluate the data requirement.

We believe that implementation of the waiver procedures will work towards a realistic and cost-effective TPL program.

Allowing States to request waivers will also provide States with increased control over their individual TPL programs.

We have determined, and the Secretary certifies, that this final rule is not a significant regulatory action and will not have a significant economic impact on a substantial number of small entities. Also, this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory impact analysis, a small rural hospital analysis, or an initial regulatory flexibility analysis.

In accordance with the provisions of the Executive Order of 12866, this final regulation was not reviewed by the Office of Management and Budget.

## VI. Paperwork Reduction Act

Sections 433.138(l) and 433.139(e) of this final rule contain new information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C 3504, et seq.). Reporting burden for the collection of information in §§ 433.138(1) and 433.139(e) is estimated to be 8 hours per request for waiver.

### List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR part 433 is amended as follows:

## PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

**Authority:** Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1902(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act (42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396a(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396k, unless otherwise noted.

2. Section 433.137(a) is revised to read as follows:

### § 433.137 State plan requirements.

(a) A State plan must provide that the requirements of §§ 433.138 and 433.139 are met for identifying third parties liable for payment of services under the plan and for payment of claims involving third parties.

* * * * *

3. Section 433.138 is amended by revising the section title, paragraphs (a) and (c), the introductory text of paragraph (d), and paragraphs (e), (f), and (j); by adding undesignated introductory language to paragraph (g); and by adding a new paragraph (l) to read as follows:

### § 433.138 Identifying liable third parties.

(a) *Basic provisions.* The agency must take reasonable measures to determine the legal liability of the third parties who are liable to pay for services furnished under the plan. At a minimum, such measures must include the requirements specified in paragraphs (b) through (k) of this section, unless waived under paragraph (l) of this section.

* * * * *

(c) *Obtaining other information.* Except as provided in paragraph (l) of this section, the agency must, for the purpose of implementing the requirements in paragraphs (d)(1)(ii) and (d)(4)(i) of this section, incorporate into the eligibility case file the names and SSNs of absent or custodial parents of Medicaid recipients to the extent such information is available.

(d) *Exchange of data.* Except as provided in paragraph (l) of this section, to obtain and use information for the purpose of determining the legal liability of the third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139(b) through (f), the agency must take the following actions:

* * * * *

(e) *Diagnosis and trauma code edits.* (1) Except as specified under paragraph (e)(2) or (l) of this section, or both, the agency must take action to identify those paid claims for Medicaid recipients that contain diagnosis codes 800 through 999 International Classification of Disease, 9th Revision, Clinical Modification, Volume 1 (ICD–9–CM) inclusive, for the purpose of determining the legal liability of third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139(b) through (f).

(2) The agency may exclude code 994.6, Motion Sickness, from the edits required under paragraph (e)(1) of this section.

(f) *Data exchanges and trauma code edits: Frequency.* Except as provided in paragraph (l) of this section, the agency must conduct the data exchanges required in paragraphs (d)(1) and (d)(3) of this section in accordance with the intervals specified in § 435.948 of this chapter, and diagnosis and trauma edits required in paragraphs (d)(4) and (e) of this section on a routine and timely basis. The State plan must specify the frequency of these activities.

(g) *Follow-up procedures for identifying legally liable third party resources.* Except as provided in paragraph (l) of this section, the State must meet the requirements of this paragraph.

* * * * *

(j) *Reports.* The agency must provide such reports with respect to the data exchanges and trauma code edits set forth in paragraphs (d)(1) through (d)(4) and paragraph (e) of this section, respectively, as the Secretary prescribes for the purpose of determining compliance under § 433.138 and evaluating the effectiveness of the third party liability identification system. However, if the State is not meeting the provisions of paragraph (e) of this section because it has been granted a waiver of those provisions under paragraph (l) of this section, it is not required to provide the reports required in this paragraph.

* * * * *

(l) *Waiver of requirements.* (1) The agency may request initial and continuing waiver of the requirements to determine third party liability found in paragraphs (c), (d)(4), (d)(5), (e), (f), (g)(1), (g)(2), (g)(3), and (g)(4) of this section if the State determines the activity to be not cost-effective. An activity would not be cost-effective if the cost of the required activity exceeds the third party liability recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity that is being performed by the State.

(i) The agency must submit a request for waiver of the requirement in writing to the HCFA regional office.

(ii) The request must contain adequate documentation to establish that to meet a requirement specified by the agency is not cost-effective. Examples of documentation are claims recovery data and a State analysis documenting a cost-effective alternative that accomplished the same task.

(iii) The agency must agree, if a waiver is granted, to notify HCFA of any event that occurs that changes the conditions upon which the waiver was approved.

(2) HCFA will review a State's request to have a requirement specified under paragraph (l)(1) of this section waived and will request additional information from the State, if necessary. HCFA will notify the State of its approval or disapproval determination within 30 days of receipt of a properly documented request.

(3) HCFA may rescind a waiver at any time that it determines that the agency

no longer meets the criteria for approving the waiver. If the waiver is rescinded, the agency has 6 months from the date of the rescission notice to meet the requirement that had been waived.

4. Section 433.139 is amended by revising paragraphs (b), (d)(1), (d)(2), and (e) to read as follows:

**§ 433.139 Payment of claims.**

* * * * *

(b) *Probable liability is established at the time claim is filed.* Except as provided in paragraph (e) of this section—

(1) If the agency has established the probable existence of third party liability at the time the claim is filed, the agency must reject the claim and return it to the provider for a determination of the amount of liability. The establishment of third party liability takes place when the agency receives confirmation from the provider or a third party resource indicating the extent of third party liability. When the amount of liability is determined, the agency must then pay the claim to the extent that payment allowed under the agency's payment schedule exceeds the amount of the third party's payment.

(2) The agency may pay the full amount allowed under the agency's payment schedule for the claim and then seek reimbursement from any liable third party to the limit of legal liability if the claim is for labor and delivery and postpartum care. (Costs associated with the inpatient hospital stay for labor and delivery and postpartum care must be cost-avoided.)

* * * * *

(d) *Recovery of reimbursement.* (1) If the agency has an approved waiver under paragraph (e) of this section to pay a claim in which the probable existence of third party liability has been established and then seek reimbursement, the agency must seek recovery of reimbursement from the third party to the limit of legal liability within 60 days after the end of the month in which payment is made unless the agency has a waiver of the 60-day requirement under paragraph (e) of this section.

(2) Except as provided in paragraph (e) of this section, if the agency learns of the existence of a liable third party after a claim is paid, or benefits become available from a third party after a claim is paid, the agency must seek recovery of reimbursement within 60 days after the end of the month it learns of the existence of the liable third party or benefits become available.

* * * * *

(e) *Waiver of requirements.* (1) The agency may request initial and continuing waiver of the requirements in paragraphs (b)(1), (d)(1), and (d)(2) of this section, if it determines that the requirement is not cost-effective. An activity would not be cost-effective if the cost of the required activity exceeds the third party liability recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity that is being performed by the State.

(i) The agency must submit a request for waiver of the requirement in writing to the HCFA regional office.

(ii) The request must contain adequate documentation to establish that to meet a requirement specified by the agency is not cost-effective. Examples of documentation are costs associated with billing, claims recovery data, and a State analysis documenting a cost-effective alternative that accomplishes the same task.

(iii) The agency must agree, if a waiver is granted, to notify HCFA of any event that occurs that changes the conditions upon which the waiver was approved.

(2) HCFA will review a State's request to have a requirement specified under paragraph (e)(1) of this section waived and will request additional information from the State, if necessary. HCFA will notify the State of its approval or disapproval determination within 30 days of receipt of a properly documented request.

(3) HCFA may rescind the waiver at any time that it determines that the State no longer meets the criteria for approving the waiver. If the waiver is rescinded, the agency has 6 months from the date of the rescission notice to meet the requirement that had been waived.

(4) An agency requesting a waiver of the requirements specifically concerning either the 60-day limit in paragraph (d)(1) or (d)(2) of this section must submit documentation of written agreement between the agency and the third party, including Medicare fiscal intermediaries and carriers, that extension of the billing requirement is agreeable to all parties.

(Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Program)

Dated: June 28, 1995.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 95–16806 Filed 7–7–95; 8:45 am]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 0

**[FCC 95–213]**

### Changes in the Delegated Authority of Various Bureaus

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This Order amends Part 0 of the Commission's rules to reflect the establishment of the Wireless Telecommunications Bureau (WTB) and changes to the delegated authority of the various Bureaus. Changes to Part 0 include authority delegated to the WTB. Common Carrier Bureau (CCB) and International Bureau (IB) to resolve common carrier forfeiture proceedings involving $80,000 or less and authority delegated to the WTB, IB, Mass Media Bureau and Cable Services Bureau to issue subpoenas. A conforming edit is also made to the Compliance and Information Bureau's subpoena power. This Order is intended to create a more effective organization in which to consolidate and administer the Commission's policies.

**EFFECTIVE DATE:** July 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Kathleen O'Brien Ham, Wireless Telecommunications Bureau, (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Order adopted May 30, 1995 and released June 9, 1995. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

### Synopsis of the Order

1. In order to create an effective organization in which to consolidate and administer the Commission's policies, programs and rules governing domestic wireless telecommunications, the Commission recently established the new Wireless Telecommunications Bureau. Specifically, the Commission merged the Private Radio Bureau and a portion of the Common Carrier Bureau to create the Wireless Telecommunications Bureau. The rule amendments contained in this Order make changes to Part 0 of the

Commission's Rules to reflect the creation of the new Bureau, describe its functions, and explain the extent and nature of the authority delegated by the Commission to the Chief of the Wireless Telecommunications Bureau. In addition to any new functions or authority delegated below, the Wireless Telecommunications Bureau assumes the functions and delegated authority that had been granted to the Private Radio Bureau as set forth below. Also, certain functions and delegated authority provisions of the Common Carrier Bureau are transferred to the Wireless Telecommunications Bureau. Additionally, the Commission makes certain other revisions to the functions and authority of the Common Carrier Bureau, the International Bureau, the Mass Media Bureau, the Cable Services Bureau and the Compliance and Information Bureau (formerly the Field Operations Bureau) as set forth below. In particular, the Commission grant additional delegated authority regarding forfeitures and subpoenas.[1]

2. The amendments adopted herein pertain to agency organization, procedure and practice. Consequently, the requirement of notice and comment rule making contained in 5 U.S.C. 553(b) and the effective date provisions of 5 U.S.C. 553(d) of the Administrative Procedure Act do not apply. Authority for the amendments adopted herein is contained in section 4(i), 5(b), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), (c)(1) and 303(r).

3. *It is hereby ordered,* effective upon publication of this Order in the **Federal Register,** that Part 0 of the Commission's Rules, set forth in Title 47 of the Code of Federal Regulations, is amended as set forth in the ''Final Rules.''

4. *It is further ordered,* That the Chief, Wireless Telecommunications Bureau is granted delegated authority to make any additional conforming amendments to the Commission's Rules, in particular to Parts 0, 1, 13, 17, 19–25, 80, 87, 90, 94, 95 and 97 of Title 47 of the Code of Federal Regulations, that are not included herein and are necessary to reflect the establishment of the Wireless Telecommunications Bureau. As applicable, the conforming amendments will be coordinated with other Commission Bureaus and Offices.

5. *It is further ordered,* That authority delegated to the Chief of the Common Carrier Bureau in the Third Report and Order, GN Docket No. 93–252, PR Docket Nos. 93–144 and 89–553, 9 FCC Rcd 7988(1944) at ¶ 416, 59 FR 59945 (Nov. 21, 1994), concerning the development of forms for licenses to comply with the spectrum aggregation limit is hereby transferred to the Chief, Wireless Telecommunications Bureau.

6. *It is further ordered,* That authority delegated to the appropriate Bureau in the Fifth Report and Order, PP Docket No. 93–253, FCC 94–285, 10 FCC Rcd 403 (1994) at ¶ 142, 59 FR 63210 (Dec. 7, 1994), concerning the revision of FCC Forms 175, 401 (and any successor forms) to ensure that Personal Communications Service applicants are in compliance with the Commission's Rules, is hereby granted to the Chief, Wireless Telecommunications Bureau.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

### List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies)

### Amendatory Text

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

**Authority:** Secs. 5, 48 Stat. 1068, as amended: 47 U.S.C. 155, 223, unless otherwise noted.

2. Section 0.5 is amended by revising paragraph (a)(12) to read as follows:

#### § 0.5 General description of Commission organization and operations.

(a) * * *

(12) Wireless Telecommunications Bureau.

* * * * *

3. Section 0.51 is amended by revising paragraphs (p) and (q) and adding a new paragraph (r) to read as follows:

#### § 0.51 Functions of the Bureau.

* * * * *

(p) To advise the Chairman on priorities for international travel and develop, coordinate, and administer the international travel plan;

(q) To develop, recommend, and administer policies, rules, and regulations implementing the Commission's oversight responsibilities regarding COMSAT's participation in INTELSAT and INMARSAT;

(r) To exercise authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the International Bureau. Before issuing a subpoena, the International Bureau shall obtain the approval of the Office of General Counsel.

4. Section 0.61 is amended by revising paragraph (a) and adding a new paragraph (h) to read as follows:

#### § 0.61 Functions of the Bureau.

* * * * *

(a) Process applications for authorizations in radio and television services, including conventional and auxiliary broadcast services (other than international broadcast services) and multi-point and multi-channel multi-point distribution services.

* * * * *

(h) To exercise authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the Mass Media Bureau. Before issuing a subpoena, the Mass Media Bureau shall obtain the approval of the Office of General Counsel.

5. Section 0.91 is amended by revising the introductory text, paragraphs (a), (c), (i) and (j) to read as follows:

#### § 0.91 Functions of the Bureau.

The Common Carrier Bureau develops, recommends, and administers policies and programs for the regulation of services, facilities and practices of entities which furnish interstate communications service or interstate access service for hire—whether by wire, radio or cable—and of ancillary operations related to the provision of such services (excluding public coast stations in the maritime mobile services and multi-point and multi-channel multi-point distribution services and excluding matters pertaining exclusively to the regulation and licensing of wireless telecommunications services and facilities). The Bureau also regulates the rates, terms and conditions for cable television pole attachments, where such attachments are not regulated by a state and not provided by railroads or governmentally or cooperatively owned utilities. The Bureau also develops, recommends, and administers policies and programs for the regulation of rates, terms, and conditions under which communications entities furnish

[1] We also note that the Wireless Telecommunications Bureau, as well as other recently created Bureaus, have delegated authority to act on petitions for reconsideration of decisions of their predecessor Bureaus on matters within the scope of their relevant delegated authority.

interstate communications service, interstate access service, and (in cooperation with the International Bureau) foreign communications service for hire—whether by wire, cable or satellite. The Bureau also performs the following functions: (a) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in matters pertaining to the regulation and licensing of communication common carriers and ancillary operations (other than matters pertaining exclusively to the regulation and licensing of wireless telecommunications services and facilities). This includes: Policy development and coordination; adjudicatory and rule making proceedings, including rate and service investigations; determinations regarding lawfulness of carrier tariffs; action on applications for service and facility authorizations; review of carrier performance; economic research and analysis; administration of Commission accounting and reporting requirements; compliance and enforcement activities; and any matters concerning wireline carriers that also affect wireless carriers in cooperation with the Wireless Telecommunications Bureau.

* * * * *

(c) Advises and assists the public, other government agencies and industry groups on wireline common carrier regulation and related matters.

* * * * *

(i) Administers the Telecommunications Service Priority System with the concurrence of the Field Operations Bureau, and resolves matters involving assignment of priorities and other issues pursuant to part 64 of this chapter.

(j) Acts upon matters involving telecommunications relay services complaints and certification.

* * * * *

6. Section 0.131 and its preceding centered heading are revised to read as follows:

**Wireless Telecommunications Bureau**

**§ 0.131 Functions of the Bureau.**

The Wireless Telecommunications Bureau develops, recommends and administers the programs and policies for the regulation of the terms and conditions under which communications entities offer domestic wireless telecommunications services and of ancillary operations related to the provision of such services (satellite communications excluded). These functions include all wireless telecommunications service providers' and licensees' activities. The Bureau also performs the following specific functions:

(a) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in all matters pertaining to the licensing and regulation of wireless telecommunications, including ancillary operations related to the provision or use of such services; and any matters concerning wireless carriers that also affect wireline carriers in cooperation with the Common Carrier Bureau. These activities include: policy development and coordination; conducting rulemaking and adjudicatory proceedings, including licensing and complaint proceedings; acting on waivers of rules; acting on applications for service and facility authorizations; compliance and enforcement activities; determining resource impacts of existing, planned or recommended Commission activities concerning wireless telecommunications, and developing and recommending resource deployment priorities.

(b) Develops and recommends policy goals, objectives, programs and plans for the Commission on matters concerning wireless telecommunications, drawing upon relevant economic, technological, legislative, regulatory and judicial information and developments. Such matters include meeting the present and future wireless telecommunications needs of the Nation; fostering economic growth by promoting efficiency and innovation in the allocation, licensing and use of the electromagnetic spectrum; ensuring choice, opportunity and fairness in the development of wireless telecommunications services and markets; promoting economically efficient investment in wireless telecommunications infrastructure and the integration of wireless communications networks into the public telecommunications network; enabling access to national communications services; promoting the development and widespread availability of wireless telecommunications services. Reviews and coordinates orders, programs and actions initiated by other Bureaus and Offices in matters affecting wireless telecommunications to ensure consistency of overall Commission policy.

(c) Serves as the Commission's principal policy and administrative staff resource with regard to spectrum auctions. Administers all Commission spectrum auctions. Develops, recommends and administers policies, programs and rules concerning auctions of spectrum for wireless telecommunications. Advises the Commission on policy, engineering and technical matters relating to auctions of spectrum used for other purposes. Administers procurement of auction-related services from outside contractors. Provides policy, administrative and technical assistance to other Bureaus and Offices on auction issues.

(d) Regulates the charges, practices, classifications, terms and conditions for, and facilities used to provide, wireless telecommunications services. Develops and recommends consistent, integrated policies, programs and rules for the regulation of commercial mobile radio services and private mobile radio services.

(e) Develops and recommends policy, rules, standards, procedures and forms for the authorization and regulation of wireless telecommunications facilities and services, including all facility authorization applications involving domestic terrestrial transmission facilities. Coordinates with and assists the International Bureau regarding frequency assignment, coordination and interference matters.

(f) Develops and recommends responses to legislative, regulatory or judicial inquiries and proposals concerning or affecting wireless telecommunications.

(g) Develops and recommends policies regarding matters affecting the collaboration and coordination of relations among Federal agencies, and between the Federal government and the states, concerning wireless telecommunications issues. Maintains liaison with Federal and state government bodies concerning such issues.

(h) Develops and recommends policies, programs and rules to ensure interference-free operation of wireless telecommunications equipment and networks. Coordinates with and assists other Bureaus and Offices, as appropriate, concerning spectrum management, planning, and interference matters and issues, and in all compliance and enforcement activities. Studies technical requirements for equipment for wireless telecommunications services in accordance with standards established by the Chief, Office of Engineering and Technology.

(i) Advises and assists consumers, businesses and other government agencies on wireless telecommunications issues and matters relating thereto.

(j) Obtains from entities subject to the Commission's jurisdiction and from other available sources, the information

relating to wireless telecommunications services necessary to enable the Bureau to perform the duties and carry out the objectives for which it was created.

(k) Coordinates with and assists the International Bureau with respect to treaty activities and international conferences concerning wireless telecommunications.

(l) Exercises such authority as may be assigned, delegated or referred to it by the Commission.

(m) Certifies frequency coordinators; considers petitions seeking review of coordinator actions; and engages in oversight of coordinator actions and practices.

(n) Administers the Commission's commercial radio operator (part 13 of this chapter) and amateur radio programs (part 97 of this chapter) and the program for construction, marking and lighting of antenna structures (part 17 of this chapter).

(o) Exercises authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of wireless telecommunications operators for any alleged violation or violations of the Communications Act of 1934, as amended, or the Commission's rules and orders. Before issuing a subpoena, the Wireless Telecommunications Bureau shall obtain the approval of the Office of General Counsel.

7. Section 0.261 is amended by revising paragraphs (a)(4) and (a)(10) and paragraphs (b)(5) and (b)(6) to read as follows:

**§ 0.261 Authority delegated.**

(a) * * *

(4) To act upon applications for international and domestic satellite systems and earth stations pursuant to part 25 and part 100 of this chapter;

* * * * *

(10) To act upon applications for closure of public coast stations in the maritime service under part 63 of this chapter and to coordinate its efforts with the Wireless Telecommunications Bureau.

* * * * *

(b) * * *

(5) To designate for hearing any applications except:

(i) Mutually exclusive applications for radio facilities filed pursuant to parts 23, 25, 73, or 100 of this chapter; and

(ii) Applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines; or

(6) To impose, reduce, or cancel forfeitures pursuant to section 203 or section 503(b) of the Communications Act of 1934, as amended, in amounts of more than $80,000 for common carrier providers and $20,000 for non-common carrier providers.

8. Section 0.291 is amended by revising paragraphs (a)(1), (d) and (e), removing paragraph (h), and redesignating paragraph (j) as (h) to read as follows:

**§ 0.291 Authority delegated.**

* * * * *

(a) * * * (1) The Chief, Common Carrier Bureau shall not have authority to act on any formal or informal common carrier applications or section 214 applications for common carrier services which are in hearing status.

* * * * *

(d) *Authority to designate for hearing.* The Chief, Common Carrier Bureau, shall not have authority to designate for hearing any formal complaints which present novel questions of fact, law, or policy which cannot be resolved under outstanding precedents or guidelines. The Chief, Common Carrier Bureau, shall not have authority to designate for hearing any applications except applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines.

(e) *Authority concerning forfeitures.* The Chief, Common Carrier Bureau shall not have authority to impose, reduce or cancel forfeitures pursuant to Section 203 or Section 503(b) of the Communications Act of 1934, as amended, in amounts of more than $80,000.

* * * * *

**§ 0.301 [Removed]**

9. Section 0.301 is removed and reserved.

10. Section 0.302 is revised to read as follows:

**§ 0.302 Record of actions taken.**

The application and authorization files in the appropriate central files of the Common Carrier Bureau are designated as the Commission's official records of actions by the Chief, Common Carrier Bureau pursuant to authority delegated to the Chief.

11. Section 0.311 is amended by revising paragraph (f) to read as follows:

**§ 0.311 Authority delegated.**

* * * * *

(f) The Chief, Field Operations Bureau, is authorized to issue non-hearing related subpoenas for the production of books, papers, correspondence, memoranda, and other records deemed relevant in the investigation of an alleged violation or violations of Section 301 (unlicensed operation) or 302a (illegal marketing of radio frequency devices) of the Communications Act of 1934, as amended. Before issuing a subpoena, the Bureau shall obtain the approval of the Office of General Counsel.

* * * * *

12. Section 0.321 is amended by adding a new paragraph (a)(7) to read as follows:

**§ 0.321 Authority delegated.**

* * * * *

(a) * * *

(7) To issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedule of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the Cable Services Bureau. Before issuing a subpoena, the Cable Services Bureau shall obtain the approval of the Office of General Counsel.

* * * * *

13. Section 0.331 and its preceding centered heading are revised to read as follows:

**Wireless Telecommunications Bureau**

**§ 0.331 Authority delegated.**

The Chief, Wireless Telecommunications Bureau, is hereby delegated authority to perform all functions of the Bureau, described in § 0.131, subject to the following exceptions and limitations.

(a) *Authority concerning applications.* (1) The Chief, Wireless Telecommunications Bureau shall not have authority to act on any radio applications that are in hearing status.

(2) The Chief, Wireless Telecommunications Bureau shall not have authority to act on any complaints, petitions or requests, whether or not accompanied by an application, when such complaints, petitions or requests present new or novel questions of law or policy which cannot be resolved under outstanding Commission precedents and guidelines.

(b) *Authority concerning forfeitures and penalties.* The Chief, Wireless Telecommunications Bureau, shall not have authority to impose, reduce, or cancel forfeitures pursuant to the Communications Act of 1934, as amended, and imposed under

regulations in this Chapter in amounts of more than $80,000 for commercial radio providers and $20,000 for private radio providers. Payments for bid withdrawal, default or to prevent unjust enrichment that are imposed pursuant to Section 309(j) of the Communications Act of 1934, as amended, and regulations in this Chapter implementing Section 309(j) governing auction authority, are excluded from this restriction.

(c) *Authority concerning applications for review.* The Chief, Wireless Telecommunications Bureau shall not have authority to act upon any applications for review of actions taken by the Chief, Wireless Telecommunications Bureau pursuant to any delegated authority, except that the Chief may dismiss any such application that does not comply with the filing requirements of § 1.115 (d) and (f) of this chapter.

(d) *Authority concerning rulemaking proceedings.* The Chief, Wireless Telecommunications Bureau shall not have authority to act upon notices of proposed rulemaking and inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing except such orders involving non-substantive revisions to the rules, or orders making ministerial conforming amendments to rule parts, or orders conforming any of the applicable rules to formally adopted international convention or agreement where novel questions of fact, law or policy are not involved. Also, the addition of new Marine VHF frequency coordinating committee(s) to § 80.514 of this chapter need not be referred to the Commission if they do not involve novel questions of fact, policy or law.

14. Section 0.332 is amended by revising the introductory text, removing paragraph (g) and redesignating paragraph (h) as (g) to read as follows:

**§ 0.332 Actions taken under delegated authority.**

In discharging the authority conferred by § 0.331, the Chief, Wireless Telecommunications Bureau, shall establish working relationships with other bureaus and staff offices to assure the effective coordination of actions taken in the following areas of joint responsibility:

* * * * *

**§ 0.333 [Removed]**

15. Section 0.333 is removed and reserved.

**§ 0.335 [Removed]**

16. Section 0.335 is removed and reserved.

**§ 0.337 [Removed]**

17. Section 0.337 is removed and reserved.

18. Section 0.401 is amended by revising paragraph (a)(3)(i) and the fifth sentence in paragraph (b)(1) and its note to read as follows:

**§ 0.401 Location of Commission offices.**

* * * * *

(a) * * *

(3) * * *

(i) The address of the Wireless Telecommunications Bureau's licensing facilities are:

(A) Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325–7245; and

(B) Federal Communications Commission, Wireless Telecommunications Bureau, Washington, DC 20554.

* * * * *

(b) * * *

(1) * * * In all other cases, applications and filings submitted by mail should be sent to the addresses listed in the appropriate fee rules.

**Note:** Wireless Telecommunications Bureau applications that require frequency coordination by certified coordinators must be submitted to the appropriate certified frequency coordinator before filing with the Commission. After coordination, the applications are filed with the Commission as set forth herein. (See §§ 90.127 and 90.175 of this chapter.)

* * * * *

19. Section 0.406 is amended by revising the third and fourth sentences of paragraph (b) introductory text and the eighth sentence of paragraph (b)(2) to read as follows:

**§ 0.406 The rules and regulations.**

* * * * *

(b) * * * Parts 20–29 and 80–109 of this chapter have been reserved for provisions pertaining to the wireless telecommunications services. In the rules pertaining to common carriers, parts 20–25 and 80–99 of this chapter pertain to the use of radio; * * *

(2) * * * Part 1, subpart F, of this chapter contain rules applicable to applications for licenses in the Wireless Telecommunications Bureau services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. * * *

* * * * *

20. Section 0.453 is amended by removing paragraphs (a)(4), (a)(5), (a)(6) and (a)(7), by revising paragraph (m)(1) and by adding a new paragraph (n) to read as follows:

**§ 0.453 Public reference rooms.**

* * * * *

(m) * * *

(1) Satellite and earth station applications files and related materials under parts 25 and 100 of this chapter;

* * * * *

(n) *The Cable Services Bureau Reference Center.* The following documents, files and records are available for inspection at this location.

(1) All complaints regarding cable programming rates, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

(2) All cable operator requests for approval of existing or increased cable television rates for basic service and associated equipment over which the Commission has assumed jurisdiction, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

(3) Special relief petitions and files pertaining to cable television operations.

(4) Cable television system reports filed by operators pursuant to § 76.403 of this chapter.

[FR Doc. 95–16200 Filed 7–7–95; 8:45 am]

BILLING CODE 6712–01–M

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## 47 CFR Parts 2, 63, 80 and 90

**[FR Docket No. 92–257, FCC 95–178]**

## Maritime Communications

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted a *First Report and Order* which provides an economically competitive and spectrally efficient maritime regulatory environment. Specifically, the Commission adopts amendments to its rules to reclassify international public coast stations as non-dominant common carriers, and allow certain private land mobile services that meet interference protection criteria to operate on public correspondence channels within the marine VHF band. These amendments were necessary in order to subject international public coast stations to a less burdensome regulatory scheme concerning tariff and closure procedures and to provide relief from private land mobile congestion within the VHF band.

**EFFECTIVE DATE:** August 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Roger S. Noel of the Wireless Telecommunications Bureau at (202) 418–0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *First Report and Order,* adopted April 26, 1995, and released May 26, 1995. The full text of this action is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of First Report and Order**

1. In this action, the Commission makes two distinct changes to the rules. First, the Commission reclassifies international public coast stations as non-dominant common carriers. Public coast stations provide common carrier telecommunications service to ship stations, including telephony, telegraphy, data and facsimile services. Because there is significant competition in the marine radio public correspondence market and substitutability of service from cellular and satellite-based services, public coast stations do not possess market power. Therefore, the Commission reclassifies public coast stations as non-dominant in order to subject them to a less burdensome regulatory scheme concerning tariff and closure procedures.

2. Second, the Commission amends the maritime and private land mobile service rules to permit certain land mobile licensees, those eligible under the industrial and land transportation radio service rules, to share marine VHF public correspondence frequencies on a primary basis far from navigable waterways and existing public coast stations. Similarly, sharing will be permitted on a secondary, non-interference basis when the land mobile applicant is located near a navigable waterway, but is far from VHF public coast stations. The Commission currently permits sharing between the maritime and private land mobile service on a case-by-case basis. Based on this experience, the Commission adopts inter-service sharing to increase spectrum efficiency without causing harmful interference to VHF public coast stations. The rules below set forth the minimum distance required from navigable waterways and existing public coast stations.

3. The rules are set forth at the end of this document.

4. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

5. This *First Report and Order* is issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

**Final Regulatory Flexibility Analysis**

*Reason for Action*

The Commission (1) reclassifies VHF public coast stations as non-dominant common carriers, thereby subjecting them to a streamlined regulatory scheme, and (2) authorizes inter-service sharing of certain maritime frequencies in order to reduce private land mobile service frequency congestion in certain geographical areas.

*Objectives*

We seek to increase efficiency in these radio services and within the commission by (1) streamlining the tariff filing and closure reporting requirements for VHF public coast stations, and (2) authorizing sharing of frequencies between the land mobile and marine radio services. Such changes should reduce unnecessary burdens on the public and administrative costs to the Commission.

*Legal Basis*

This action is authorized under sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. 154(i) and 303(r).

*Reporting, Recordkeeping and Other Compliance Requirements*

VHF coast stations will be subject to the streamlined regulatory scheme for non-dominant common carriers.

*Federal Rules Which Overlap, Duplicate or Conflict With These Rules*

None.

*Description, Potential Impact, and Small Entities Involved*

The rule amendments pertaining to the inter-service sharing of land mobile and marine radio service frequencies will increase spectrum efficiency and reduce congestion in certain areas of the country. Because coast stations are not typically owned by small businesses, the reclassification of such carriers as non-dominant will not have a significant impact on a substantial number of small businesses. The reclassification, however, will eliminate for coast stations the regulatory burden of compliance with the tariff and closure requirements that currently apply to dominant common carriers.

*Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives*

None.

**List of Subjects**

*47 CFR Part 2*

Radio.

*47 CFR Part 63*

Communications common carriers.

*47 CFR Part 80*

Marine safety, Radio.

*47 CFR Part 90*

Communications equipment, Radio.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Final Rules**

Chapter I of Title 47 of the Code of Federal Regulations, parts 2, 63, 80, and 90 are amended as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** Secs. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 154(i), 302, 303, 303(r), and 307 unless otherwise noted.

2. Section 2.106 is amended by adding land mobile allocations to the United States table, non-government section (column 5) and FCC use designators section (column 6), in the 157.1875–157.45 MHz and 161.775–162.0125 MHz bands and adding one nongovernment footnote, to read as follows:

**§ 2.106 Table of frequency allocations.**

| International table | | | United States table | | | FCC use designators |
|---|---|---|---|---|---|---|
| Region 1-allocation MHz | Region 2-allocation MHz | Region 3-allocation MHz | Government Allocation MHz | Non-Government Allocation MHz | Rule Part(s) | Special-use frequencies |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| * | * | * | * | * | * | * |
| * * * | * * * | * * * | * * * | 157.1875–157.45 | MARITIME (80) | * * * |
| | MARITIME MOBILE | PRIVATE LAND MOBILE (90). | | | | |
| | LAND MOBILE | | | | | |
| 613 | | | | | | |
| | US223 US266 | | | | | |
| | NG111 NG154 | | | | | |
| * | * | * | * | * | * | * |
| * * * | * * * | * * * | * * * | 161.775–162.0125 | DOMESTIC PUBLIC LAND MOBILE (22). | |
| | MARITIME MOBILE | MARITIME (80) | | | | |
| | 613 US266 | PRIVATE LAND MOBILE (90). | | | | |
| | NG6 NG154 | | | | | |
| * | * | * | * | * | * | * |

NON-GOVERNMENT (NG) FOOTNOTES

* * * * *

NG154 The 157.1875–157.45 MHz and 161.775–162.0125 MHz bands are also allocated to the land mobile service for assignment to stations as described in Part 90 of this chapter.

* * * * *

## PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY

1. The authority citation for part 63 continues to read as follows:

**Authority:** Sec. 4, 48, Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended; 47 U.S.C. 214.

2. Section 63.62 is amended by revising the introductory paragraph, removing paragraph (e) and redesignating paragraphs (f) and (g) as (e) and (f) respectively to read as follows:

**§ 63.62 Type of discontinuance, reduction, or impairment of telephone or telegraph service requiring formal application.**

Authority for the following types of discontinuance, reduction, or impairment of service shall be requested by formal application containing the information required by the Commission in the appropriate sections to this part, except as provided in paragraph (c) of this section, or in emergency cases (as defined in § 63.60(b)) as provided in § 63.63:

* * * * *

**§§ 63.64, 63.69 and 63.70 [Removed]**

3. Sections 63.64, 63,69 and 63.70 are removed.

4. Section 63.90 is amended by revising paragraph (a) introductory text to read as follows:

**§ 63.90 Publication and posting of notices.**

(a) Immediately upon the filing of an application or informal request (except a request under § 63.71) for authority to close or otherwise discontinue the operation, or reduce the hours of service at a telephone exchange (except an exchange located at a military establishment), the applicant shall post a public notice at least 51 cm by 61 cm (20 inches by 24 inches), with letter of commensurate size, in a conspicuous place in the exchange affected, and also in the window of any such exchange having window space fronting on a public street at street level. Such notice shall be posted at least 14 days and shall contain the following information, as may be applicable:

* * * * *

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.5 is amended by adding the definition of ''navigable waters'' in alphabetical order to read as follows:

**§ 80.5 Definitions.**

* * * * *

*Navigable waters.* This term, as used in reference to waters of the United States, its territories and possessions, means the waters shoreward of the baseline of its territorial sea and internal waters as contained in 33 CFR 2.05–25.

* * * * *

3. Section 80.371 (c) is amended by adding Footnote 4 to the table heading to read as follows:

**§ 80.371 Public correspondence frequencies.**

* * * * *

(c) * * *

Working Carrier Frequency Pairs in the 156–162 MHz Band [1,4]

* * * * *

[4] Except for the frequency pair 157.425/162.025 MHz, these frequencies may be shared with stations in the private land mobile radio service, within the 48 contiguous states, under the terms of operation described in § 90.283 of this chapter.

* * * * *

4. In § 80.373(f), the table is amended by redesignating Footnotes 14 and 15 as Footnotes 15 and 16 respectively in the entries for channels 09 and 70, to read as follows:

**§ 80.373 Private communications frequencies.**

* * * * *

(f) * * *

Frequencies in the 156–162 MHz Band

| Channel designator | Carrier frequency (MHz) | | Points of communication (between coast and ship unless otherwise indicated) |
|---|---|---|---|
| | Ship transmit | Coast transmit | |
| * * * * * * * | | | |
| Digital Selective Calling | | | |
| 70 [15] | 156.525 | 156.525 | |
| Noncommercial | | | |
| * * * * * * * | | | |
| 09 [16] | 156.450 | 156.450 | |
| * * * * * * * | | | |

* * * * *

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 90.7 is amended by adding the definition for ''navigable waters'' in alphabetical order to read as follows:

**§ 90.7 Definitions.**

* * * * *

*Navigable waters.* This term, as used in reference to waters of the United States, its territories and possessions, means the waters shoreward of the baseline of its territorial sea and internal waters as contained in 33 CFR 2.05–25.

3. A new § 90.283 is added to subpart K to read as follows:

**§ 90.283 Inter-service sharing of maritime frequencies in the 156–162 MHz band.**

(a) The following frequency pairs may be assigned to any station eligible for licensing in the Industrial and Land Transportation Radio Services (subparts D and E of this part excluding § 90.75) for duplex operation within the 48 contiguous states in accordance with the rules of their individual services, the conditions set forth in this section, and the CANADA/U.S.A. channeling agreement for VHF maritime public correspondence found in § 80.57 of this chapter.

| Frequency (MHz) | |
|---|---|
| Mobile station transmit | Base station transmit |
| 157.200 | 161.800 |
| 157.225 | 161.825 |
| 157.250 | 161.850 |
| 157.275 | 161.875 |
| 157.300 | 161.900 |
| 157.325 | 161.925 |
| 157.350 | 161.950 |
| 157.375 | 161.975 |
| 157.400 | 162.000 |

(b) Assignment will be made only when VHF frequencies available for assignment under this Part are unavailable due to congestion, as determined by a certified private land mobile frequency coordinator. Applicants must provide evidence of frequency coordination in accordance with § 90.175.

(c) Station power, as measured at the output terminals of the transmitter, must not exceed 50 watts for base stations and 20 watts for mobile stations. Antenna height (HAAT) must not exceed 122 meters (400 feet) for base stations and 4.5 meters (15 feet) for mobile stations. Such base and mobile stations must not be operated on board aircraft in flight.

(d) The following table, along with the antenna height (HAAT) and power (ERP), must be used to determine the minimum separation required between proposed base stations and each of the following:

(1) Co-channel public coast stations licensed under part 80 of this chapter,

(2) The coastline of any navigable waterway,

(3) Grandfathered public safety licensees operating on 157.35 MHz or 161.85 MHz. Applicants whose exact ERP or HAAT are not reflected in the table must use the next highest figure shown.

REQUIRED SEPARATION IN KILOMETERS (MILES) OF BASE STATION FROM COASTLINES/PUBLIC COAST STATIONS

| Base Station Characteristics | | | | | |
|---|---|---|---|---|---|
| HAAT | ERP (watts) | | | | |
| Meters (feet) | 400 | 300 | 200 | 100 | 50 |
| 15 (50) | 138 (86) | 135 (84) | 129 (80) | 121 (75) | 116 (72) |
| 30 (100) | 154 (96) | 151 (94) | 145 (90) | 137 (85) | 130 (81) |
| 61 (200) | 166 (103) | 167 (104) | 161 (100) | 153 (95) | 145 (90) |
| 122 (400) | 187 (116) | 177 (110) | 183 (114) | 169 (105) | 159 (99) |

(e) In the event of interference, the Commission may require, without a hearing, licensees of base stations authorized under this section that are located within 241 kilometers (150 miles) of an existing, co-channel public coast station, grandfathered co-channel public safety station or an international border to reduce radiated power, decrease antenna height, and/or install directional antennas. Mobile stations must operate only within radio range of their associated base station.

(f) Individual waiver requests to operate on a secondary, non-interference, basis will be considered in cases where the applicant's base station satisfies the requirements of paragraphs (d) (1) and (3) of this section but does not satisfy the requirements of paragraph (d)(2) of this section. All waiver requests must be submitted in accordance with § 1.931 of the chapter. Such secondary operations must cease immediately upon notification by the Commission that the station is causing interference to maritime operations.

4. Section 90.555 is amended by revising two of the service titles in paragraph (a) and by adding eighteen new frequencies entries in numerical order in paragraph (b) to read as follows:

**§ 90.555 Combined frequency listing.**

(a) * * *

Industrial Services (I)

* * * * *

Land Transportation Services (LT)

* * * * *

(b) * * *

| Frequency | Services | Special Limitations |
|---|---|---|
| 157.200 | I,LT | See § 90.283 |
| 157.225 | .....do | Do. |
| 157.250 | .....do | Do. |
| 157.275 | .....do | Do. |
| 157.300 | .....do | Do. |
| 157.325 | .....do | Do. |
| 157.350 | .....do | Do. |
| 157.375 | .....do | Do. |
| 157.400 | .....do | Do. |
| | * * * * * | |
| 161.800 | I,LT | See § 90.283 |
| 161.825 | .....do | Do. |
| 161.850 | .....do | Do. |
| 161.875 | .....do | Do. |
| 161.900 | .....do | Do. |
| 161.925 | .....do | Do. |
| 161.950 | .....do | Do. |
| 161.975 | .....do | Do. |
| 162.000 | .....do | Do. |
| | * * * * * | |

[FR Doc. 95–16639 Filed 7–7–95; 8:45 am]
BILLING CODE 6712–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 92–194; RM–8052; RM–8121]**

### Radio Broadcasting Services; Essex and Needles, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 280B to Essex, California, as that community's second local FM service, in response to a petition for rule making filed on behalf of Dunes Broadcasting (RM–8052). *See* 57 FR 42536, September 15, 1992. Additionally, Channel 296B is allotted to Needles, California, as that community's second local FM service, in response to a counterproposal filed on behalf of David A. Petrick (RM–8121). Coordinates used for Channel 280B at Essex are 34–44–12 and 115–14–48. Coordinates used for Channel 296B at Needles, California, are 34–50–36 and 114–36–54. As Essex and Needles are located within 320 kilometers (199 miles) of the United States-Mexico border, concurrence of the Mexican government in the respective allotments was obtained. With this action, the proceeding is terminated.

**DATES:** Effective August 21, 1995. The window period for filing applications will open on August 21, 1995, and close on September 21, 1995.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 280B at Essex, California, and for Channel 296B at Needles, California, should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92–194, adopted June 23, 1995, and released July 5, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

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

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 280B at Essex, and by adding Channel 296B at Needles.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–16840 Filed 7–7–95; 8:45 am]
BILLING CODE 6712–01–F

### 47 CFR Part 73

**[MM Docket No. 95–30; RM–8599]**

### Radio Broadcasting Services; Harwood, ND

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Conway Broadcasting, allots Channel 264C3 to Harwood, North Dakota, as the community's first local aural service. *See* 60 FR 12724, March 8, 1995. Channel 264C3 can be allotted to Harwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 kilometers (9.1 miles) southwest, at coordinates 47–05–00 North Latitude; 97–00–00 West Longitude, to avoid a short-spacing to Station KIKV-FM, Channel 264C1, Alexandria, MN. Canadian concurrence has been received since Harwood is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

**DATES:** Effective August 21, 1995. The window period for filing applications will open on August 21, 1995, and close on September 21, 1995.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–30, adopted June 26, 1995, and released July 5, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

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

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Harwood, Channel 264C3.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–16841 Filed 7–7–95; 8:45 am]
BILLING CODE 6712–01–F

### 47 CFR Part 73

**[MM Docket No. 91–58]**

### Radio Broadcasting Services; Caldwell, College Station and Gause, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 236C2 for Channel 297C3 at College Station, Texas, and modifies the license of Station KTSR, College Station, Texas, to specify operation on Channel 237C2. In order to accommodate this upgrade, this document also modifies the construction permit of Station KHEN, Caldwell, Texas, to specify operation on Channel 297A. In doing so, it denies a competing request for a Channel 236C2 upgrade at Caldwell, Texas. *See* 59 FR 44120, published August 26, 1994. The reference coordinates for Channel 236C2 at College Station, Texas, are 30–49–00

and 96–25–00. The reference coordinates for the Channel 297A allotment at Caldwell, Texas, are 30–33–31 and 96–34–50. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** August 21, 1995.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 776–1654.

**SUPPLEMENTAL INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91–58, adopted June 23, 1995, and released July 5, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

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

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

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

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by deleting Channel 297C3 and adding Channel 236C2 at College Station.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by deleting Channel 236A and adding Channel 297A at Caldwell.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–16843 Filed 7–7–95; 8:45 am]

**BILLING CODE 6712–01–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 650 and 651

**[Docket No. 950622165–5165–01; I.D. 060595D]**

**RIN 0648–AI03**

## Atlantic Sea Scallop Fishery; Framework Adjustment 6 and Northeast Multispecies Fishery; Framework Adjustment 11; Modifies Demarcation Line To Monitor Vessel Activity

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Framework Adjustment 11 to the Northeast Multispecies Fishery Management Plan (Multispecies FMP) and Framework Adjustment 6 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP). This action modifies a demarcation line in the current regulations that is used to monitor vessel activity. The intent of this action is to enhance enforcement capability.

**EFFECTIVE DATE:** August 9, 1995.

**ADDRESSES:** Copies of Framework Adjustments 6 to the Scallop FMP and 11 to the Multispecies FMP and copies of Amendment 4 to the Scallop FMP and Amendment 5 to the Multispecies FMP, their regulatory impact reviews, initial regulatory flexibility analyses (IRFA), and final and supplemental environmental impact statements are available from Douglas Marshall, Executive Director, New England Fishery Management Council (Council), Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097; telephone: 617–231–0422.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Resource Policy Analyst, 508–281–9104.

**SUPPLEMENTARY INFORMATION:** Final regulations implementing Amendment 5 to the Multispecies FMP and Amendment 4 to the Scallop FMP were published on March 1, 1994 (59 FR 9872), and January 19, 1994 (59 FR 2757), respectively. These amendments established effort control programs that allocated a certain number of days during which a vessel may fish for regulated multispecies or scallops. These programs are referred to as days-at-sea (DAS) programs. The DAS programs require a demarcation line to determine when a vessel leaves port to initiate a fishing trip so that the vessel's DAS can be traced electronically using a vessel tracking device. The framework adjustments implemented by this rule modify the existing vessel tracking system (VTS) demarcation line which is based on the International Regulations for Preventing Collisions at Sea (COLREGS) line. The modified line, referred to as the Vessel Tracking System Demarcation Line (VTSDL), is a continuous line formed by connecting 50 specified coordinates that parallel the east coast of the United States from the Canadian border to South Carolina.

NMFS' Office of Enforcement in the Northeast Region has the responsibility for implementing, monitoring, and enforcing the DAS program. During the development of this monitoring program, NMFS enforcement discovered that the COLREGS demarcation line specified in the regulations for multispecies and scallops would not be functional in the electronic system because the line is discontinuous and often described only in narrative terms.

The Council and NMFS initially believed that the COLREGS demarcation line would be an optimal boundary for this purpose because it was preexisting and appeared to be a reasonable distance from shore. This line is used to delineate the waters upon which mariners must comply with the International Regulations for Preventing Collisions at Sea (33 CFR part 80), and those waters upon which mariners shall comply with the Inland Navigation Rules. Since the COLREGS demarcation line is actually a series of disjointed lines, a vessel could breach the COLREGS line undetected.

NMFS determined that in order to be functional for the computerized VTS, the line would have to be defined in terms of latitude/longitude coordinates. The VTSDL forms a continuous line allowing NMFS enforcement to monitor the entire coastline from Maine to South Carolina. Therefore, a vessel embarking on or returning from a fishing trip must cross the VTSDL, thus, triggering or ceasing a DAS. Accordingly, NMFS requested that the Council modify the regulations to define the line in terms of latitude/longitude coordinates.

**Justification for Final Rule**

The Council developed Framework Adjustment 11 to the Multispecies FMP and Framework Adjustment 6 to the Scallop FMP to amend the regulations. These adjustments comply with all procedural requirements set forth in 50 CFR 650.40 and 651.40, which are the provisions of the implementing regulations for the Scallop FMP and

Multispecies FMP governing framework modifications to management measures. The Council requested publication of the management measures as a final rule after considering the required factors set forth at §§ 650.40(d) and 651.40(d).

**Public Comment**

The framework adjustments were developed and analyzed at Council meetings on March 29 and May 18, 1995. The Council provided the public with advance notice of both the proposed change to the line and the reasons for the change, and the opportunity to comment on them prior to and at the Council meetings.

One comment was received at the March 29, 1995, meeting regarding two coordinates off the coast of Maine. The commenter believed the coordinates would allow excessive groundfishing inside the demarcation line in down-east Maine. The Council concurred and revised the two coordinates and added a third, so that the line is drawn closer to shore. No comments were received at the May 18, 1995, meeting.

NMFS concurs with the framework adjustments because the replacement of the COLREGS line with the VTSDL will enhance the ability to monitor and enforce the DAS programs, thus providing immediate and increased protection for the scallop and multispecies resources.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comments under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures of Framework Adjustment 6 to the Scallop FMP and Framework Adjustment 11 to the Multispecies FMP provided adequate prior notice and opportunity for public comment to be made and considered, making additional prior notice and opportunity for public comment unnecessary.

Because no proposed rule is required, this action is exempt from the requirements to prepare an IRFA under the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

**List of Subjects**

*50 CFR Part 650*

Fisheries, Reporting and recordkeeping requirements.

*50 CFR Part 651*

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 29, 1995.

**Gary Matlock,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 650 and 651 are amended as follows:

## PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

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

**§ 650.2 [Amended]**

2. In § 650.2, the definition of ''COLREGS Demarcation Lines'' is removed.

3. In § 650.24, existing paragraph (c)(2)(ii) is redesignated as paragraph (c)(2)(iii); a new paragraph (c)(2)(ii) is added; and paragraph (c)(2)(i) is revised to read as follows:

**§ 650.24 Days-at-sea (DAS) allocations.**

* * * * *

(c) * * *

(2) * * *

(i) DAS for vessels that are under the VTS monitoring system described in § 650.26(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line leaving port and ending with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line upon its return to port.

(ii) *Vessel Tracking System Demarcation Line.* The Vessel Tracking System Demarcation Line is defined by straight lines connecting the following points in the order stated (See Figures 3 and 4 to part 650):

VESSEL TRACKING SYSTEM DEMARCATION LINE

| Description | Longitude | Latitude |
|---|---|---|
| 1. Northern terminus point (Canada land mass) | 45°03′ N. | 66°47′ W. |
| 2. A point east of West Quoddy Head Light | 44°48.9′ N. | 66°56.1′ W. |
| 3. A point east of Little River Light | 44°39.0′ N. | 67°10.5′ W. |
| 4. Whistle Buoy ''8BI'' (SSE of Baker Island) | 44°13.6′ N. | 68°10.8′ W. |
| 5. Isle au Haut Light | 44°03.9′ N. | 68°39.1′ W. |
| 6. Pemaquid Point Light | 43°50.2′ N. | 69°30.4′ W. |
| 7. A point west of Halfway Rock | 43°38.0′ N. | 70°05.0′ W. |
| 8. A point east of Cape Neddick Light | 43°09.9′ N. | 70°34.5′ W. |
| 9. Merrimack River Entrance ''MR'' Whistle Buoy | 42°48.6′ N. | 70°47.1′ W. |
| 10. Halibut Point Gong Buoy ''1AHP'' | 42°42.0′ N. | 70°37.5′ W. |
| 11. Connecting reference point | 42°40′ N. | 70°30′ W. |
| 12. Whistle Buoy ''2'' off Eastern Point | 42°34.3′ N. | 70°39.8′ W. |
| 13. The Graves Light (Boston) | 42°21.9′ N. | 70°52.2′ W. |
| 14. Minots Ledge Light | 42°16.2′ N. | 70°45.6′ W. |
| 15. Farnham Rock Lighted Bell Buoy | 42°05.6′ N. | 70°36.5′ W. |
| 16. Cape Cod Canal Bell Buoy ''CC'' | 41°48.9′ N. | 70°27.7′ W. |
| 17. A point inside Cape Cod Bay | 41°48.9′ N. | 70°05′ W. |
| 18. Race Point Lighted Bell Buoy ''RP'' | 42°04.9′ N. | 70°16.8′ W. |
| 19. Peaked Hill Bar Whistle Buoy ''2PH'' | 42°07.0′ N. | 70°06.2′ W. |
| 20. Connecting point, off Nauset Light | 41°50′ N. | 69°53′ W. |
| 21. A point south of Chatham ''C'' Whistle Buoy | 41°38′ N. | 69°55.2′ W. |
| 22. A point in eastern Vineyard Sound | 41°30′ N. | 70°33′ W. |
| 23. A point east of Martha's Vineyard | 41°22.2′ N. | 70°24.6′ W. |
| 24. A point east of Great Pt. Light, Nantucket | 41°23.4′ N. | 69°57′ W. |
| 25. A point SE of Sankaty Head, Nantucket | 41°13′ N. | 69°57′ W. |
| 26. A point west of Nantucket | 41°15.6′ N. | 70°25.2′ W. |
| 27. Squibnocket Lighted Bell Buoy ''1'' | 41°15.7′ N. | 70°46.3′ W. |

VESSEL TRACKING SYSTEM DEMARCATION LINE—Continued

| Description | Longitude | Latitude |
|---|---|---|
| 28. Wilbur Point (on Sconticut Neck) | 41°35.2′ N. | 70°51.2′ W. |
| 29. Mishaum Point (on Smith Neck) | 41°31.0′ N. | 70°57.2′ W. |
| 30. Sakonnet Entrance Lighted Whistle Buoy ''SR'' | 41°25.7′ N. | 71°13.4′ W. |
| 31. Point Judith Lighted Whistle Buoy ''2'' | 41°19.3′ N. | 71°28.6′ W. |
| 32. A point off Block Island Southeast Light | 41°08.2′ N. | 71°32.1′ W. |
| 33. Shinnecock Inlet Lighted Whistle Buoy ''SH'' | 40°49.0′ N. | 72°28.6′ W. |
| 34. Scotland Horn Buoy ''S'', off Sandy Hook (NJ) | 40°26.5′ N. | 73°55.0′ W. |
| 35. Barnegat Lighted Gong Buoy ''2'' | 39°45.5′ N. | 73°59.5′ W. |
| 36. A point east of Atlantic City Light | 39°21.9′ N. | 74°22.7′ W. |
| 37. A point east of Hereford Inlet Light | 39°00.4′ N. | 74°46′ W. |
| 38. A point east of Cape Henlopen Light | 38°47′ N. | 75°04′ W. |
| 39. A point east of Fenwick Island Light | 38°27.1′ N. | 75°02′ W. |
| 40. A point NE of Assateague Island (VA) | 38°00′ N. | 75°13′ W. |
| 41. Wachapreague Inlet Lighted Whistle Buoy ''A'' | 37°35.0′ N. | 75°33.7′ W. |
| 42. A point NE of Cape Henry | 36°55.6′ N. | 75°58.5′ W. |
| 43. A point east of Currituck Beach Light | 36°22.6′ N. | 75°48′ W. |
| 44. Oregon Inlet (NC) Whistle Buoy | 35°48.5′ N. | 75°30′ W. |
| 45. Wimble Shoals, east of Chicamacomico | 35°36′ N. | 75°26′ W. |
| 46. A point SE of Cape Hatteras Light | 35°12.5′ N. | 75°30′ W. |
| 47. Hatteras Inlet Entrance Buoy ''HI'' | 35°10′ N. | 75°46′ W. |
| 48. Ocracoke Inlet Whistle Buoy ''OC'' | 35°01.5′ N. | 76°00.5′ W. |
| 49. A point east of Cape Lookout Light | 34°36.5′ N. | 76°30′ W. |
| 50. Southern terminus point | 34°35′ N. | 76°41′ W. |

* * * * *

*Figures 3 and 4 to Part 650 [Amended]*

4. Figures 3 and 4 to part 650 are added to read as follows:

**BILLING CODE 3510–22–W**

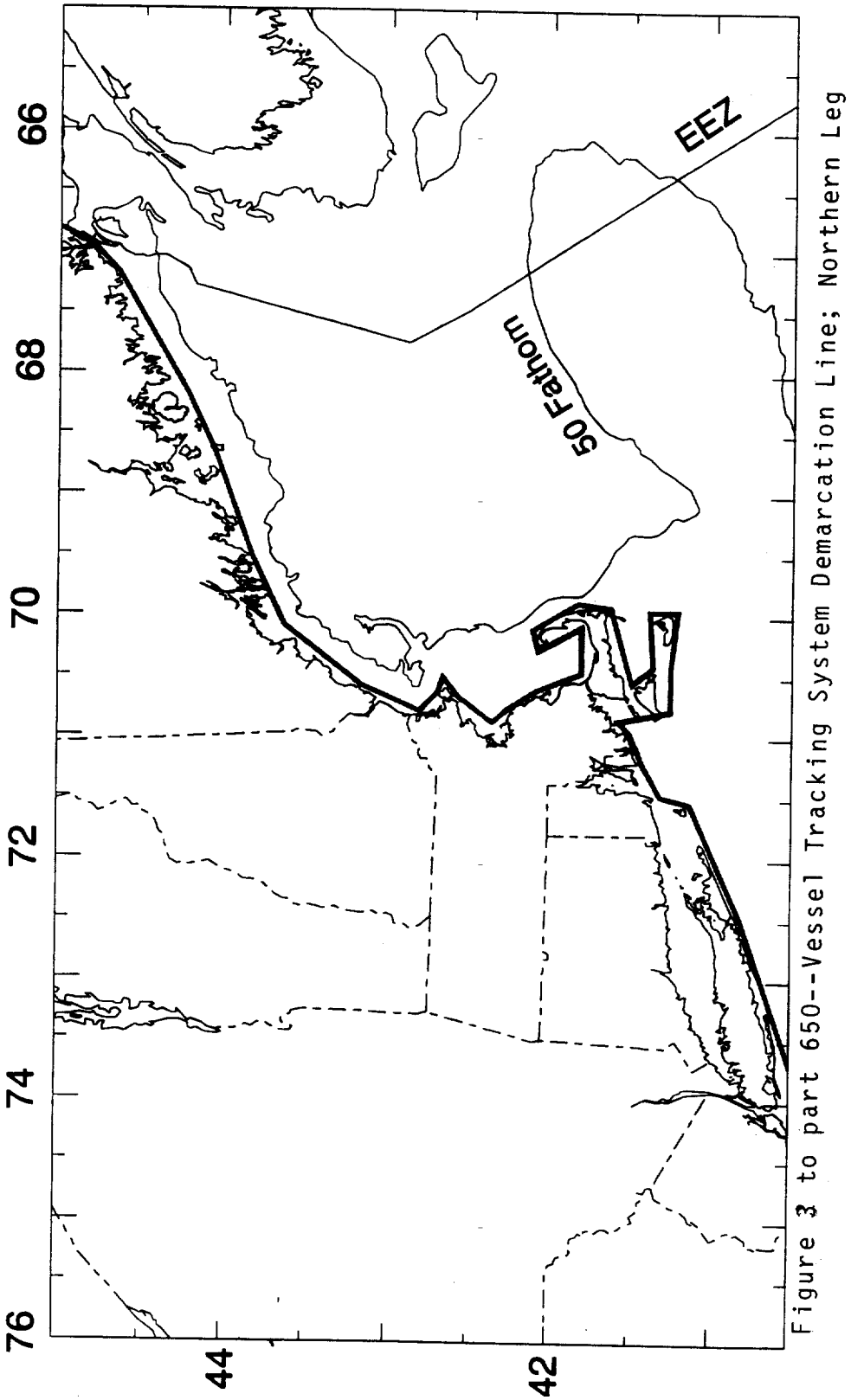


Figure 3 to part 650--Vessel Tracking System Demarcation Line; Northern Leg

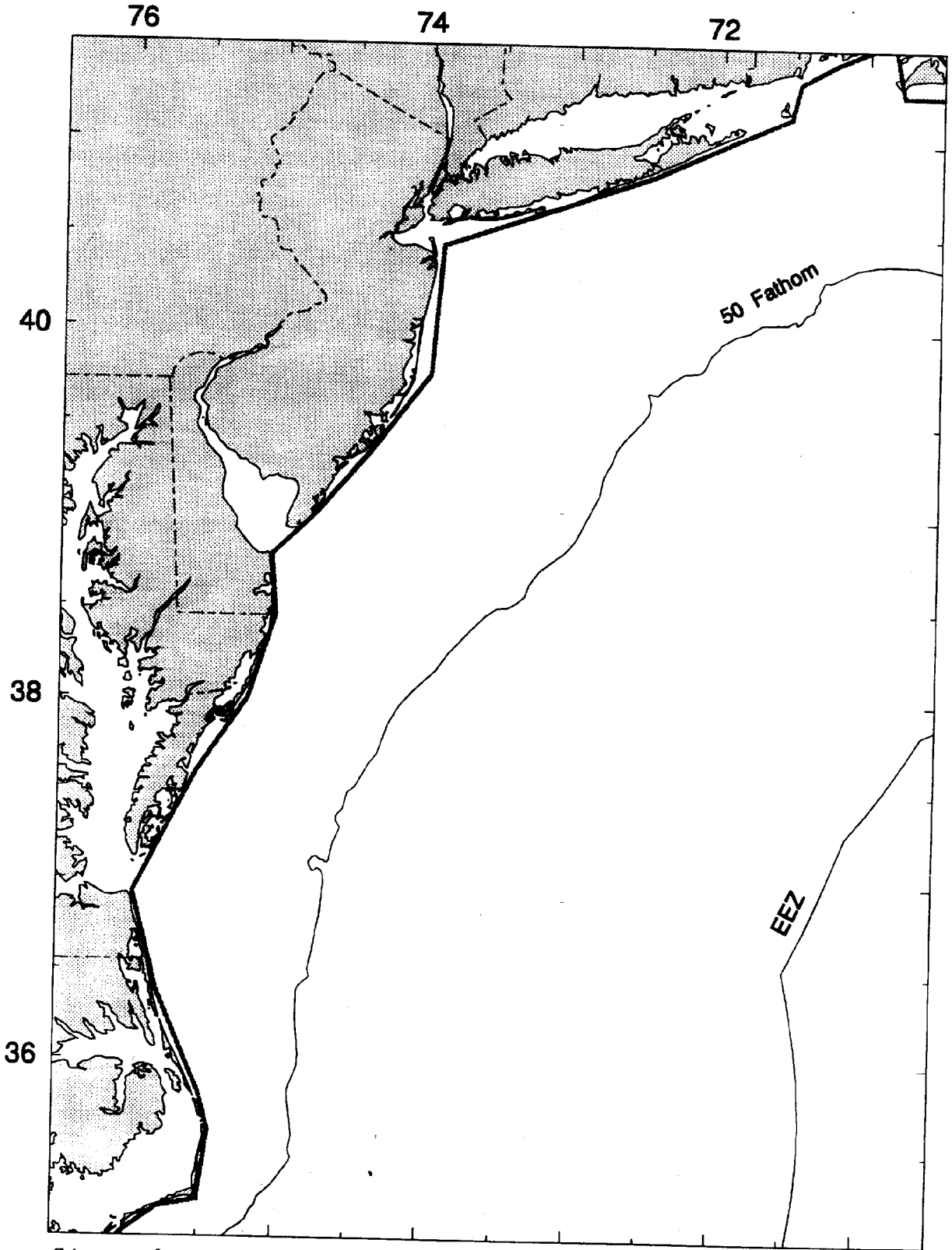


Figure 4 to part 650--Vessel Tracking System Demarcation Line; Southern Leg

BILLING CODE 3510–22–C

## PART 651—NORTHEAST MULTISPECIES FISHERY

5. The authority citation for part 651 continues to read as follows:

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

### § 651.2 [Amended]

6. In § 651.2, the definition of ''COLREGS Demarcation Lines'' is removed.

7. In § 651.22, paragraph (b)(3)(iv) is redesignated as paragraph (b)(3)(v); a new paragraph (b)(3)(iv) is added; and paragraph (b)(3)(iii) is revised to read as follows:

### § 651.22 Effort-control program for limited access vessels.

* * * * *

(b) * * *

(3) * * *

(iii) *Accrual of DAS.* DAS for vessels that are under the VTS monitoring system described in § 651.29(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line leaving port and ending with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line upon its return to port.

(iv) *Vessel Tracking System Demarcation Line.* The Vessel Tracking System Demarcation Line is defined as straight lines connecting the following points in the order stated (See Figures 6 and 7 to part 651):

VESSEL TRACKING SYSTEM DEMARCATION LINE

| Description | Longitude | Latitude |
|---|---|---|
| 1. Northern terminus point (Canada land mass) | 45°03′ N. | 66°47′ W. |
| 2. A point east of West Quoddy Head Light | 44°48.9′ N. | 66°56.1′ W. |
| 3. A point east of Little River Light | 44°39.0′ N. | 67°10.5′ W. |
| 4. Whistle Buoy ''8BI'' (SSE of Baker Island) | 44°13.6′ N. | 68°10.8′ W. |
| 5. Isle au Haut Light | 44°03.9′ N. | 68°39.1′ W. |
| 6. Pemaquid Point Light | 43°50.2′ N. | 69°30.4′ W. |
| 7. A point west of Halfway Rock | 43°38.0′ N. | 70°05.0′ W. |
| 8. A point east of Cape Neddick Light | 43°09.9′ N. | 70°34.5′ W. |
| 9. Merrimack River Entrance ''MR'' Whistle Buoy | 42°48.6′ N. | 70°47.1′ W. |
| 10. Halibut Point Gong Buoy ''1AHP'' | 42°42.0′ N. | 70°37.5′ W. |
| 11. Connecting reference point | 42°40′ N. | 70°30′ W. |
| 12. Whistle Buoy ''2'' off Eastern Point | 42°34.3′ N. | 70°39.8′ W. |
| 13. The Graves Light (Boston) | 42°21.9′ N. | 70°52.2′ W. |
| 14. Minots Ledge Light | 42°16.2′ N. | 70°45.6′ W. |
| 15. Farnham Rock Lighted Bell Buoy | 42°05.6′ N. | 70°36.5′ W. |
| 16. Cape Cod Canal Bell Buoy ''CC'' | 41°48.9′ N. | 70°27.7′ W. |
| 17. A point inside Cape Cod Bay | 41°48.9′ N. | 70°05′ W. |
| 18. Race Point Lighted Bell Buoy ''RP'' | 42°04.9′ N. | 70°16.8′ W. |
| 19. Peaked Hill Bar Whistle Buoy ''2PH'' | 42°07.0′ N. | 70°06.2′ W. |
| 20. Connecting point, off Nauset Light | 41°50′ N. | 69°53′ W. |
| 21. A point south of Chatham ''C'' Whistle Buoy | 41°38′ N. | 69°55.2′ W. |
| 22. A point in eastern Vineyard Sound | 41°30′ N. | 70°33′ W. |
| 23. A point east of Martha's Vineyard | 41°22.2′ N. | 70°24.6′ W. |
| 24. A point east of Great Pt. Light, Nantucket | 41°23.4′ N. | 69°57′ W. |
| 25. A point SE of Sankaty Head, Nantucket | 41°13′ N. | 69°57′ W. |
| 26. A point west of Nantucket | 41°15.6′ N. | 70°25.2′ W. |
| 27. Squibnocket Lighted Bell Buoy ''1'' | 41°15.7′ N. | 70°46.3′ W. |
| 28. Wilbur Point (on Sconticut Neck) | 41°35.2′ N. | 70°51.2′ W. |
| 29. Mishaum Point (on Smith Neck) | 41°31.0′ N. | 70°57.2′ W. |
| 30. Sakonnet Entrance Lighted Whistle Buoy ''SR'' | 41°25.7′ N. | 71°13.4′ W. |
| 31. Point Judith Lighted Whistle Buoy ''2'' | 41°19.3′ N. | 71°28.6′ W. |
| 32. A point off Block Island Southeast Light | 41°08.2′ N. | 71°32.1′ W. |
| 33. Shinnecock Inlet Lighted Whistle Buoy ''SH'' | 40°49.0′ N. | 72°28.6′ W. |
| 34. Scotland Horn Buoy ''S'', off Sandy Hook (NJ) | 40°26.5′ N. | 73°55.0′ W. |
| 35. Barnegat Lighted Gong Buoy ''2'' | 39°45.5′ N. | 73°59.5′ W. |
| 36. A point east of Atlantic City Light | 39°21.9′ N. | 74°22.7′ W. |
| 37. A point east of Hereford Inlet Light | 39°00.4′ N. | 74°46′ W. |
| 38. A point east of Cape Henlopen Light | 38°47′ N. | 75°04′ W. |
| 39. A point east of Fenwick Island Light | 38°27.1′ N. | 75°02′ W. |
| 40. A point NE of Assateague Island (VA) | 38°00′ N. | 75°13′ W. |
| 41. Wachapreague Inlet Lighted Whistle Buoy ''A'' | 37°35.0′ N. | 75°33.7′ W. |
| 42. A point NE of Cape Henry | 36°55.6′ N. | 75°58.5′ W. |
| 43. A point east of Currituck Beach Light | 36°22.6′ N. | 75°48′ W. |
| 44. Oregon Inlet (NC) Whistle Buoy | 35°48.5′ N. | 75°30′ W. |
| 45. Wimble Shoals, east of Chicamacomico | 35°36′ N. | 75°26′ W. |
| 46. A point SE of Cape Hatteras Light | 35°12.5′ N. | 75°30′ W. |
| 47. Hatteras Inlet Entrance Buoy ''HI'' | 35°10′ N. | 75°46′ W. |
| 48. Ocracoke Inlet Whistle Buoy ''OC'' | 35°01.5′ N. | 76°00.5′ W. |
| 49. A point east of Cape Lookout Light | 34°36.5′ N. | 76°30′ W. |
| 50. Southern terminus point | 34°35′ N. | 76°41′ W. |

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*Figures 6 and 7 to Part 651 [Amended]*

8. Figures 6 and 7 to part 651 are added and the caption is added to Figure 4 to part 651 to read ''Figure 4 to part 651—Sink Gillnet Closure Areas''.

**BILLING CODE 3510–22–W**

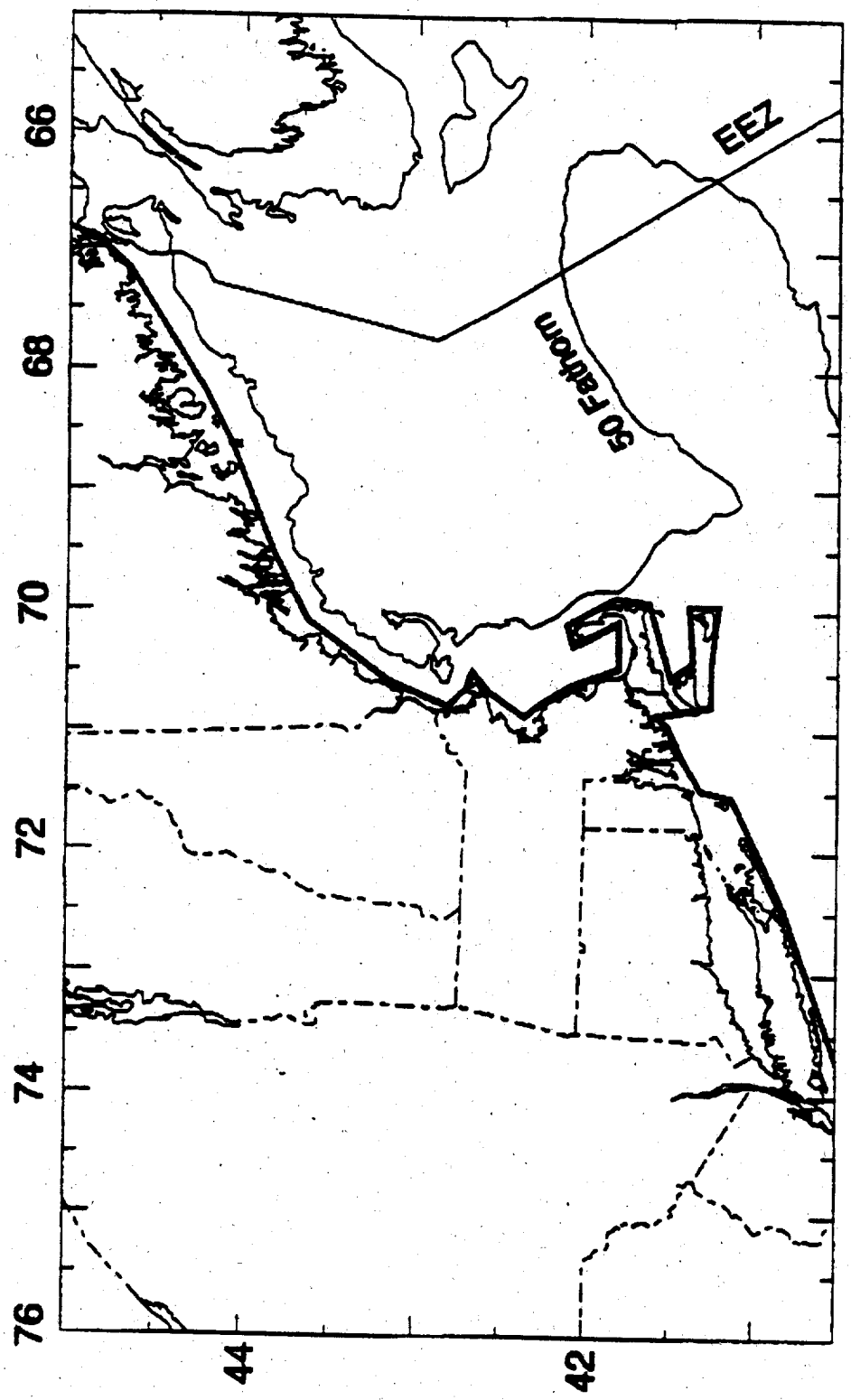


FIGURE 6 to part 651 -- Vessel Tracking System Demarcation Line - Northern Leg

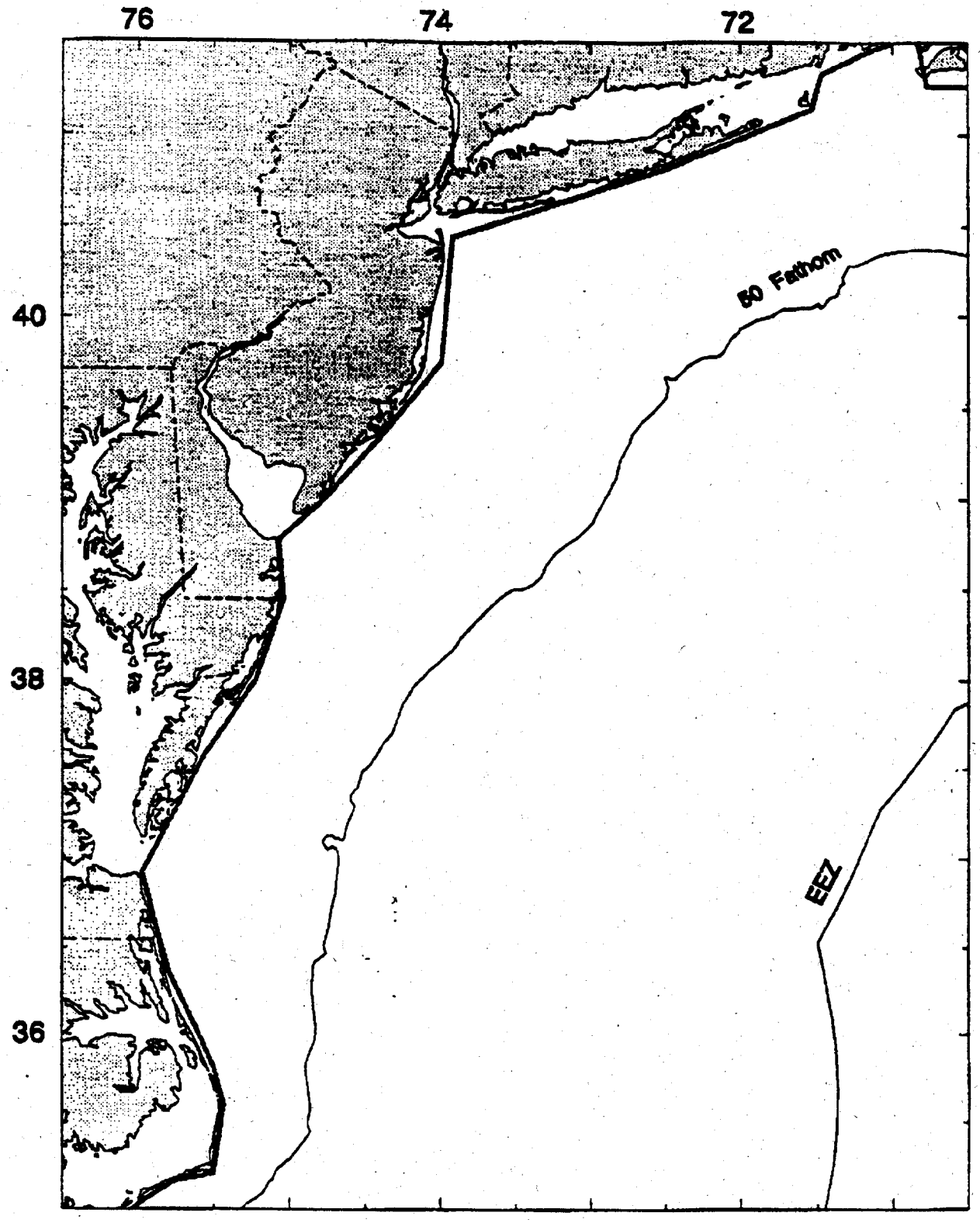


FIGURE 7 to part 651 -- Vessel Tracking System Demarcation Line - Southern Leg

[FR Doc. 95–16595 Filed 7–7–95; 8:45 am]
BILLING CODE 3510–22–C

# Proposed Rules

**Federal Register**
Vol. 60, No. 131
Monday, July 10, 1995

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 ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 284

**[Docket No. RM93–4–008]**

### Standards For Electronic Bulletin Boards Required Under Part 284 Of The Commission's Regulations

July 3, 1995.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of filing and opportunity to file comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) has received a filing from the Electronic Bulletin Board (EBB) containing a consensus proposal for modifying the capacity release data sets. The Commission is affording interested persons an opportunity to file comments on this filing.

**DATES:** Comments due by July 12, 1995.

**ADDRESSES:** Comments should be filed at: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:**

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (202) 208–2294
Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (202) 208–1283
Brooks Carter, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (202) 501–8145

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington DC 20426.

### Notice of Filing and Opportunity to File Comments

July 3, 1995.

Take notice that on June 29, 1995, the Electronic Bulletin Board (EBB) Working Group filed a consensus proposal for modifying the capacity release data sets. Among the modifications are the inclusion of a new dataset for replacement capacity as wells as changes to or the addition of the following fields: rate form/type code; discount indicator; minimum acceptable volumetric commitment percentage, minimum volumetric commitment percentage, award minimum volumetric commitment percentage; gas transaction point zone; effective time/end time; interruptible indicator; upload of request for download data end date. The filing also contains proposed revisions to the EDI implementation guide relating to this change. The Working Group further requests that the changes become effective 90 days after the Commission order to provide an appropriate amount of implementation time.

Any person desiring to submit comments on this filing should file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 on or before July 12, 1995.

**Linwood A. Watson, Jr.,**
*Acting Secretary.*

[FR Doc. 95–16785 Filed 7–7–95; 8:45 am]
**BILLING CODE 6717–01–M**

## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Parts 201 and 202

**[Docket No. 95–1A]**

### Restoration of Certain Berne and WTO Works

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Office is proposing regulations for the filing of Notices of Intent to Enforce (NIEs) copyright and the registering of copyright claims as required by the Uruguay Round Agreements Act (URAA); the Act automatically restores copyright for certain foreign works effective January 1, 1996. Although restoration is automatic, the copyright owner must file a Notice of Intent to Enforce the restored copyright in order to enforce rights against reliance parties. The Act requires the Copyright Office to establish regulations for filing NIEs and for registration of those restored works. The Office is seeking public comment on its proposed regulations.

**DATES:** Comments should be in writing and received on or before August 23, 1995.

**ADDRESSES:** If sent by mail, fifteen copies of written comments should be addressed to: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20540. Telephone: (202) 707–8380. Telefax: (202) 707–8366. If hand delivered, fifteen copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–407, First and Independence Avenue, SE., Washington, DC 20540. If sent electronically via the internet send to: (NPRMURAA@LOC.GOV). Comments submitted electronically must include the following information: your name, the organization or institution you represent, if any; your

mailing address; telephone number and FAX number, if any.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

## I. Background

On December 8, 1994, President Clinton signed the ''Uruguay Round Agreements Act'' (URAA), Public Law 103–465, 108 Stat. 4809. The URAA contains several significant copyright amendments. It amends the software rental provision found in 17 U.S.C. 109(b) by eliminating the expiration or sunset date, amends Titles 17 and 18 to create civil and criminal remedies for ''bootlegging'' sound recordings of live musical performances and music videos, and adds a new 17 U.S.C. 104A which restores copyright in certain foreign works. The URAA also gives the Copyright Office several responsibilities related to restoration of those works.

### *A. Restoration of Copyright of Eligible Works*

Under the URAA, restoration of copyright in works from countries which are currently eligible occurs automatically on January 1, 1996. An eligible country is a nation, other than the United States, that is a member of the Berne Convention,[1] or a member of the World Trade Organization, or is the subject of a presidential proclamation.

Works from any source country eligible under the URAA may be subject to automatic copyright restoration. However, to be so restored, a work must meet certain other requirements:

1. It is not in the public domain in its source country through expiration of the term of protection;

2. It is in the public domain in the United States due to noncompliance with formalities imposed at any time by United States copyright law, lack of subject matter protection in the case of sound recordings fixed before February 15, 1972, or lack of national eligibility;

3. It has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country;

4. If published, it was first published in an eligible country and was not published in the United States during the 30-day period following publication in such eligible country.

Notwithstanding the fact that the work meets the above requirements, any work ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government, is not a restored work.

### *B. Effective Date of Restoration*

On February 9, 1995, the Copyright Office published a notice in the **Federal Register** summing up the provisions in the URAA with regard to the restoration of copyright protection for certain foreign works and announcing a public meeting on March 20, 1995, to discuss those provisions related to the responsibilities Congress gave the Copyright Office. 60 FR 7793 (Feb. 9, 1995). The effective date of copyright restoration is crucial to fulfilling those responsibilities in a timely manner. Eligible copyrights are restored automatically on the date the Agreement on Trade Related Aspects of Intellectual Property (TRIPs) enters into force with respect to the United States (URAA, section 514(a)). As discussed in the February notice, the Copyright Office concluded that the effective date of copyright restoration is January 1, 1996. 60 FR 7793 (1995). Since then President Clinton has issued a proclamation confirming that the date on which the obligations of the TRIPs Agreement will take effect for the United States is January 1, 1996. Proclamation No. 6780, 60 FR 15845 (Mar. 27, 1995).

## II. The Copyright Office's Responsibilities

Although copyright restoration is automatic for eligible works, the new section 104A, which will go into effect on January 1, 1996, charges the Office with establishing regulations for two filings which may be made with the Copyright Office and may assist the owner of the restored work in securing certain remedies. The URAA requires the Copyright Office to publish regulations governing the filing of Notices of Intent to Enforce (NIEs) a restored copyright and the registering of copyright claims in restored works no later than ninety days before the date the TRIPs Agreement takes effect with respect to the United States. This date has been determined to be January 1, 1996; therefore, the Copyright Office will need to publish final regulations establishing the procedures for filing NIEs and applications for registration by no later than October 1, 1995.

The Act also requires the Office to publish a list in the **Federal Register** identifying restored works and their ownership where NIEs have been filed with the Office. The Office must publish its first list by no later than May 1, 1996, and must publish lists at regular four-month intervals for a period of two years thereafter. The Office must also maintain for inspection and copying a list containing all NIEs.

### *A. Notices of Intent To Enforce*

In order to enforce certain rights against reliance parties, the URAA directs copyright owners to notify these parties that they are enforcing the rights in a restored work. A reliance party is a business or individual who, relying on the public domain status of a work, was already using the work prior to the enactment of the URAA. The URAA authorizes the owner of a right in a restored work either to serve an actual NIE directly on a reliance party or provide constructive notice through the filing of such notices with the Copyright Office. Notices may be served on a reliance party at any time after the date of restoration of the restored copyright, i.e., January 1, 1996. As noted above, the Copyright Office is to publish a list in the **Federal Register** identifying NIEs filed with it. Reliance parties have a twelve-month grace period after they have been notified either by publication in the **Federal Register** or by actual notice to sell off previously manufactured stock, to publicly perform or publicly display the work, or to authorize others to conduct these activities. All reliance parties, except those who created derivative works, must cease using the work after the twelve-month grace period unless they reach a licensing agreement with the copyright owner for continued use of the restored work. The effective date of notification is thus very important both to owners of the restored works and reliance parties.

### *B. Registration of Copyright Claims in Restored Works*

The second filing that the owner of a restored work may want to make with the Copyright Office is an application for registration of a copyright claim. The URAA directs the Office to provide procedures for such registration, but it does not require owners of the restored works to register. An author of a work which is not considered a Berne work must obtain or seek registration for a work before he or she can bring a copyright infringement action in federal court.[2] While the owner of rights in a

[1] Convention concerning the creation of an International Union for the Protection of Literary and Artistic Works (Sept. 9, 1886, revised in 1908, 1928, 1948, 1967, 1971), hereinafter cited as the Berne Convention.

[2] The question of whether a work from a country that is a member of WTO but not Berne must be registered was not specifically addressed in the legislation; therefore, it would seem that works that do not come under the definition of a ''Berne Convention work'' found in 17 U.S.C. 101 would have to be registered before the owner can initiate a suit.

Berne work does not have to register before initiating a copyright infringement suit, the holder of a copyright certificate of registration may secure some procedural advantages in litigating the suit. Under 17 U.S.C. 412 the remedies of statutory damages and attorney's fees are typically contingent upon the securing of a copyright registration before the date of copyright infringement. Under section 410(c), a certificate of registration obtained within five years from the date of publication is accorded prima facie evidence of the validity of the copyright and the facts stated in the certificate. After five years, the weight accorded the certificate is within the discretion of the court.

## III. The Comments

### *A. Comments Submitted*

Recognizing that the URAA makes significant changes in established U.S. copyright practice, the Copyright Office sought public comment even before it published a Notice of Proposed Rulemaking (NPRM) concerning the implementation of the URAA. To that end, the Office published a notice inviting interested parties to submit written comments and/or to attend a public meeting held at the Copyright Office on March 20, 1995, to discuss issues related to NIEs and registration of restored works. 60 FR 7793 (1995). It also sent this notice to over ninety artists rights organizations and industry groups, as well as 182 foreign government agencies with copyright authority, to give them the opportunity to respond. Approximately forty individuals from outside the Copyright Office attended the meeting, including representatives from authors and artists rights organizations, museums, the publishing industry, the film industry, and the computer software industry.[3] The Copyright Office accepted written comments filed after the meeting from those unable to attend the meeting or those able to attend, who wanted to comment further. A total of fifteen comments were received.

The Office received comments from the following parties: Dr. Theodore H. Feder, for Artists Rights Society; Andrew Yeates, for Channel Four Television; Confederation Internationale des Societes d'Auteurs et Compositeurs (CISAC); Fernando Zapata Lopez, for Direccion Nacional del Derecho de Autor of Colombia; Melinda T. Koyanis, for Harvard University Press; Nobutake Ide, for Japanese Society for Rights of Authors, Composers and Publishers (JASRAC); Edwin Komen, of Cleary & Komen; Maria Pallante, for the National Writers Union; Blanche Gwilliams, for the Performing Rights Society of the United Kingdom; Neil Turkewitz, for the Recording Industry Association of America (RIAA); Eduardo Bautista, for Sociedad General de Autores de Espana (SGAE); Jean-Marc Gutton, for Société des auteurs dans les arts graphiques et plastiques (ADAGP); Janine Lorente, for Société des Auteurs et Compositeurs Dramatiques (SACED); Jay Gast, Jerry L. Robb, and Nancy H. McAleer, for Thomson & Thomson; and Richard Wincor, of Coudert Brothers. Those attending the meeting but not filing written comments include: Dr. Carole Ganz Brown, for the National Science Foundation; Linda Chase, Melissa Levine, and Billie Munro, for the Smithsonian; Hayden Gregory, for the American Bar Association; Herbert Hirsch, of Fried, Frank, Harris, Shriver & Jacobson; Carol Risher and Lois Wasoff, for the Association of American Publishers; Bernard Korman and Gloria Messinger, of Dornbush Mensch Mandelstam & Schaeffer; Steve Metalitz, for the International Intellectual Property Alliance; Felipe Mier and Juan Jose Ortega, for the Association of Producers and Distributors of Mexican Films; Charles Ossola, for the American Society of Media Photographers; Bill Patry, former Assistant Counsel, Subcommittee on Intellectual Property and Judicial Administration; Shira Perlmutter, for the International Literary and Artistic Association; and Ralph Weinsten, for Copyright Connection.

### *B. Formality Issue*

It was at times unclear whether the commentators were speaking with regard to NIEs or registration of copyright claims. However, it is clear that many of the commentators view the NIEs and registration for restored works as burdensome formalities and ask for their abolition or simplification. For example, both CISAC and Mr. Gutton of ADAGP asserted that requirements for NIEs and registration for restored works are new formalities in violation of the Berne Convention. CISAC asked that no formalities be required in order to assure protection in the United States for eligible foreign works of visual art and photography. Mr. Ide representing JASRAC asked that after a twelve-month grace period, no procedure be required to enforce rights against any party, including reliance parties.

The Copyright Office cannot alter the legislative requirements. The restoration of copyright in certain foreign works considered in the public domain in the United States creates a conflict between reliance parties and copyright owners, with legitimate interests on both sides. Reliance parties have invested capital and labor in the lawful exploitation of public domain property; the sudden restoration of copyright divests them of these investments. Without some provision addressing this potential loss, successful challenges based on the ''taking'' clause of the Fifth Amendment of the U.S. Constitution would appear possible.

On the other hand, it was important that the United States restore copyright protection in certain foreign works. The United States arguably failed to fully conform its law to the Berne Convention in 1989 when it declined to interpret Article 18(1)[4] on restoration as being mandatory. Moreover, foreign copyright claimants have lost copyright protection due to inadvertent noncompliance with unique U.S. formalities.

The filing of NIEs was required in the draft URAA legislation. When the U.S. Justice Department reviewed the draft bill, it concluded that under existing precedents interpreting the Fifth Amendment, the notice of intent to enforce the restored copyright avoided an unconstitutional ''taking.''[5] These procedures are part of the enacted bill. Such a filing is not inconsistent with the Berne Convention because Article 18(3)[6] of the Berne Convention specifically permits member nations to determine ''conditions'' for applying the principles of restoration.

Neither procedures permitting copyright registration of restored works nor requiring the filing of NIEs are formalities in violation of the Berne Convention. Registration is entirely voluntary for Berne works since copyright registration of restored works is not a prerequisite for the filing of a copyright infringement action. Copyright restoration occurs automatically; the URAA merely creates

[3] A summary of the meeting can be found in the Public Information Office of the Copyright Office, Room LM–401, James Madison Memorial Building, Washington, D.C.

[4] This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection. Berne Convention art. 18(1)(Paris text).

[5] *See* Memorandum from Chris Schroeder, Counsellor to the Assistant Attorney General, Office of Legal Counsel, United States Dept. of Justice to Ira S. Shapiro, General Counsel, USTR, on Whether Certain Copyright Provisions in the Draft Legislation to Implement the Uruguay Round of Multilateral Trade Negotiations Would Constitute a Taking Under the Fifth Amendment (July 29, 1994).

[6] The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle. Berne Convention art. 18(3) (Paris text).

a narrow set of conditions that requires notice to reliance parties. These conditions do not violate the Berne Convention. Without such notice the effect of restoration on a reliance party could be unconstitutional. Moreover, the information sought on the NIEs is calculated to assist in the voluntary licensing of the restored work. The decision of Congress to enact these provisions is, therefore, supported by the legitimate interests of both reliance parties and copyright owners, by constitutional considerations, and by Article 18(3) of the Berne Convention.

*C. Issues Related to Notices of Intent to Enforce*

The URAA specifies the minimum content of the NIEs. It requires that the notice be signed by the owner or the owner's agent.[7] In addition to the signature, the URAA states that the NIE must contain the title, including an English-language translation, any other alternative titles known to the owner by which the restored work may be identified, the name of the owner, and an address and telephone number at which the owner can be located. The URAA specifies that the Copyright Office can ask for additional information, but the failure to provide such information will not invalidate the NIE. At the March 20 meeting, the Office sought information from representatives of authors and user groups on what optional data would be helpful in creating a useful public record for both groups.

1. Useful Public Record

Many of the commentators expressed concern that unless filers of NIEs provide information beyond the minimum required by the statute, the NIE will not provide adequate notice to reliance parties. A number of commentators, including Ms. Perlmutter, Ms. Wasoff, and Thomson & Thomson asked that a public record be created for NIEs that provides information sufficient to identify a work and differentiate it from those with the same title. The commentators noted that the type of work and the name(s) of the author(s) would provide particularly valuable and essential information. Ms. Wasoff, Ms. Risher, Mr. Mier, Mr. Ortega, Mr. Chaubeau, and Thomson & Thomson also indicated that other information would help in differentiating between works, such as date and nation of first publication, names of producers, directors, and leading actors (in the case of motion pictures), and birth and death dates for authors. Though date and location of publication could be helpful as identifying information, Dr. Feder and Ms. Koyanis pointed out that the date of publication is not particularly useful in establishing the expiration of the copyright term since most countries use the date of the author's death to establish the term. Ms. Koyanis and Thomson & Thomson stated that the NIE should specify whether the ''owner'' named is the owner of the restored copyright or the owner of an exclusive right. Several parties, including Dr. Feder, Ms. Messinger, and Thomson & Thomson suggested that the person who signs the certification statement should indicate whether he or she is acting as an agent. Ms. Koyanis suggested that no more proof of agency be required beyond that currently required for routine registrations.

2. Group Filing

Dr. Feder, Mrs. Gwilliams, and Mr. Bautista asked the Copyright Office to permit the filing of a single NIE for the body of an author's work. Mr. Patry pointed out that the law requires a NIE to be filed only for the ''restored works'' for which the copyright is going to be enforced against reliance parties, not all works, and that the titles must all be listed in the **Federal Register**. Mr. Patry stated that this was done as part of an effort to balance the interests of owners of restored works and reliance parties, so that the reliance parties could have a date certain when they would not have liability through constructive notice.

3. Acknowledgement

Another issue addressed at the public meeting was whether the publication in the **Federal Register** would be sufficient notice to the filer of a NIE that the NIE had been received and/or recorded by the Office. A number of parties, including Mr. Ossola, Ms. Munro, Dr. Feder, Mr. Ortega, and Thomson & Thomson asserted that acknowledgement of receipt and recordation of a NIE is an essential service that the Copyright Office should provide since foreign remitters will be anxious to know the status of the NIE(s) and would otherwise flood the Office with calls.

4. Fees

The Act allows the Office to charge a reasonable fee for recording a NIE, and the Office raised the question of what this fee should be. Mr. Komen stated that fees for NIEs should be consistent with current recordation fees. Thomson & Thomson suggested that since most works will have two titles, the basic fee ($20) could cover the first two titles, with an additional $10 for each group of ten or fewer titles. Mr. Turkewitz urged the Copyright Office to keep fees for the NIE to a minimum.

*D. Issues Related to Registration of a Restored Work*

Another subject addressed at the public meeting was what the registration procedures should be for restored works. Particularly, the Office asked whether there should be a new registration form, what simultaneous filing under the URAA meant, whether group registration should be available, who the appropriate author is for registration purposes, and what the appropriate fee and deposit should be.

1. A New Registration Form

Mr. Yeates and Thomson & Thomson supported the creation of a new form. Mr. Komen recommended against adoption of a separate URAA copyright registration form.

2. Simultaneous Filing

Thomson & Thomson stated that simultaneous filing of a NIE and a registration should be allowed, as is currently the case with an assignment or a renewal application and a registration. Mr. Turkewitz urged that simultaneous registration of claims of copyright be both automatic and at no additional cost.

3. Group Registration

Many of the commentators urged the Copyright Office to allow group registration of restored works. Mr. Gutton and Dr. Feder asked the Copyright Office to accept one registration for the entire body of an artist's work. Ms. Koyanis noted that it is unlikely that the entire body of an artist's restored work will have been developed and distributed in such a way that the same facts would apply, but she asserted that a single registration could suffice if the facts do agree for all works, and if each work is given a title or description to aid identification. Thomson & Thomson indicated that every work in a group registration should have the same author(s) and owner(s).

4. Author

Dr. Feder, Mr. Yeates, Mr. Zapata, Mr. Gutton and Thomson and Thomson all stated that the author should be determined by the law of the source country.

[7] Ownership of a restored work vests initially in the author or initial rightholder (if the work is a sound recording) of the work as determined by the law of the source country of the work. Amended sec. 104A(b).

5. Fees

Ms. Pallante and Thomson and Thomson suggested that fees be kept consistent with current Copyright Office practice.

6. Claimant and Transfer Statement

Thomson & Thomson noted that the claimant should be the owner of all the restored rights in the United States on the date the application is filed. Mr. Zapata, Mr. Turkewitz, and Thomson & Thomson stated that a claimant should be required to indicate if there has been a transfer of rights and that a transfer statement should be attached to the application. Dr. Feder and Mr. Turkewitz asked that a person claiming ownership by virtue of transfer be required to set forth all documents (omitting confidential information) by which the transfer occurred. At a minimum, Mr. Turkewitz asked that a transfer statement identify the name of the person from whom the rights were acquired as well as the date and location of the transfer. Mr. Yeates stated that the source country should be required in order to demonstrate how the author claiming the benefit of restored copyright has acquired title. Ms. Koyanis stated that as with current registrations, the owner should not be required to submit documents showing the chain of title to the Office.

7. Deposit

Thomson & Thomson suggested that, as copyright notice is not an issue, deposit requirements be greatly simplified. With regard to motion pictures, they asked that the deposit copy represent the foreign published version, not the U.S. dubbed version.

*E. Public Access to NIE and Registration Information*

The final topic of discussion at the March 20th meeting was what kind of records the Office should maintain for these new filings.

1. Online Record

Mr. Yeates indicated that for overseas distributors any system whereby NIE or registration information can be easily accessed online via the Internet would be helpful. Ms. Koyanis also supported the availability of the records on the Internet. Many of the parties, including Ms. Koyanis, Mr. Komen, and Thomson & Thomson stated that it is critical to include the effective date of the NIE in the COPICS [8] record. Ms. Koyanis, Mr. Komen, Ms. Pallante, and Thomson & Thomson argued that the online record would be of little use unless the author's name is included in COPICS, and unless that name is fully indexed and searchable. Ms. Pallante recommended that COPICS be adjusted to allow for searches within designated time periods. Mr. Yeates recommended a system that would highlight URAA registrations for those conducting searches.

2. Frequency of **Federal Register** Publication

The Act requires the Office to publish a list identifying the titles and ownership of restored works for which NIEs have been filed at four-month intervals and then again annually. The Office proposed publishing the list at shorter intervals. Many of the parties felt that the list of NIEs should be published on a four-month schedule as opposed to more often. They also felt that publication in the **Federal Register** was not the best record and urged the Office to provide a more detailed record, available on COPICS. The parties stated that the annual publication in the **Federal Register** would be costly and not necessarily helpful.

## IV. Procedures for Notices of Intent to Enforce

A Copyright Office task force has been meeting for several months to discuss issues related to establishing regulations for both URAA filings. The Office also carefully considered comments of the interested parties on these issues. Most of the commentators supported a detailed NIE rather than the minimal information required by the statute. Based on those comments, the Office is encouraging the filer of a NIE to give more information than is required under the URAA. As provided in the statute, this additional information is optional and will not affect the validity of the notice; however, the Copyright Office and the interested parties believe this additional information, such as the identity of the author, is necessary in order to identify the specific work where enforcement of copyright is sought. The additional information will also facilitate the licensing of uses of restored works. We, therefore, urge those parties who are filing NIEs to provide this additional information, if at all possible.

*A. Proposed Format for NIEs*

The Copyright Office will not publish NIE forms; however a proposed format for the NIE is included in the Appendix below. Moreover, this format will be available over the Internet, and could be downloaded for use as a form. The proposed format requests information required by the statute and information which is optional but deemed necessary and useful. The Copyright Office adopted a similar approach of providing a format but not a form for the filings under NAFTA, and filers followed the suggested format with few problems.

*B. The Public Record*

The URAA requires publication of the titles and owners of restored works in the **Federal Register**, and the Copyright Office will do this. Since publication in the **Federal Register** is costly and the parties indicated that such information would not be as accessible as information made available via the Internet, the Office will limit the information published in the **Federal Register** to titles and the name of the first owner listed on the NIE. However, the Copyright Office plans to make much of the information contained in the NIE available on COPICS, which can be accessed over the Internet. Online access will be the primary means for providing this information to the public. The database will be searchable by title, copyright owner, and author.

*C. Recordation Fee*

The Office is proposing a fee of $30 for recording a NIE covering one work; and for recording an NIE covering multiple works $30, plus $1 for each additional work beyond the first work. The proposed regulation additionally includes special provisions relating to foreign payments which must be followed in order to permit processing of the fee.

For all URAA filings, both recordation of an NIE and registration of a restored work, the Copyright Office will accept Visa, Master Card, and American Express credit cards. The Copyright Office is accepting these credit cards for URAA filings in order to make payment in U.S. dollars easier. Payment by credit card will be available only for URAA filings. Acceptance of credit cards for URAA filings will serve as a test, however, under which the Office can determine the feasibility of accepting credit cards in other areas at a later date.

*D. Certification*

The Office will require the filer to sign a short certification statement at the end of the NIE indicating that the information given is correct to the best of his or her knowledge. The statute states that any materially false statement knowingly made with respect to any

[8] COPICS is the Copyright Office's automated database of registrations and recorded copyright transfers and other documents. These records may be accessed by the public on terminals in the Copyright Office at the Library of Congress and are also available via the Internet.

restored copyright identified in any Notice of Intent shall make void all claims and assertions made with respect to such restored copyright. 104A(e)(3) of the URAA.

*E. Mailing Address*

It is expected that the volume of NIEs filed at the Copyright Office may be high and turnaround time is critical; therefore, it is important that URAA mail not come in with regular mail addressed to the Copyright Office. The Copyright Office is planning to obtain a special post office box. Notices of Intent to Enforce should be mailed to: (Address to be given in the final rule) or delivered personally to: (Address to be given in the final rule).

**V. Procedures for Registering Copyright Claims in Restored Works**

The URAA raises a number of unique considerations regarding registering copyright claims in restored works. First, a number of technical requirements, many of which are contained in the definition of ''restored work,'' govern whether a foreign copyright is subject to automatic restoration under the URAA. In many cases applicants seeking restoration will be foreign claimants who are unfamiliar with the registration procedures of the U.S. Copyright Office. In addition, communication over technical issues may be difficult. Finally, virtually all of the restored copyrights will be older works; and in some cases, this will raise problems with submitting a copy or phonorecord of the work.

The Copyright Office weighed all of these considerations before developing the proposed procedure for registering copyright claims in restored works. The Copyright Office believes the proposed procedure is as simple as it can be, while still maintaining the basic integrity of the public record and adhering to the provisions of the copyright law and the URAA.

*A. Registration Forms*

Because the URAA creates unique requirements for eligibility, the Copyright Office believes it is necessary to create two new forms which are specifically designed to secure only the necessary information. One of the new forms will cover registration of individual restored works and works published under a single series title, and the second form will cover registration of groups of related restored works under the conditions set forth in the regulations.

*B. Foreign Law Questions*

One of the more difficult issues facing the Copyright Office is to what extent foreign law issues should be raised in the registration process. Section 104A(b) of the Act provides: ''A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work.'' The Copyright Office does not plan to question an applicant's determination of foreign law issues. Interested parties may wish to comment on this matter.

*C. Deposit Required*

In recognition of the difficulty some applicants might have in submitting a deposit of an older work ''as first published,'' the Copyright Office has proposed special deposit provisions which permit a deposit of other than the first published edition of the work, if necessary. However, applicants should keep in mind that the deposit serves as a crucial part of the public record.

*D. Registration Fee*

The fee for registration will be the standard $20, since the Copyright Office believes the work in administering the proposed registration procedure for restored works will be roughly comparable to general registration procedures. In addition, special group registration options are proposed which will permit the registration of:

(1) A group of works published under a single series title. This option would be filed on the basic GATT registration form and would cost the basic fee of $20 for up to a year's worth of episodes, installments, or issues published under the same single series title; and

(2) A group of up to 10 related individual works published within the same calendar year. This option would be filed on the GATT/GROUP registration form and would cost a fee of $10 per individual work.

Finally, special rules are proposed regarding payment, including permitting the use of credit cards for fee payment.

*E. Mailing Address*

For the reasons given above in discussion of NIE filings, the Office has determined that a separate mailing address is necessary for all URAA filings. This address will be given in the final rule.

**VI. NAFTA**

Exactly a year before the URAA was signed into law, Congress enacted the North American Free Trade Agreement Implementation Act (NAFTA) of December 8, 1993, adding a new section 104A to the Copyright Code that allowed copyright restoration in certain Mexican and Canadian works. See generally, **Federal Register** notices leading to the implementation of NAFTA, 59 FR 1408 (Jan. 10, 1994); 59 FR 12162 (Mar. 16, 1994); and 59 FR 58787 (Nov. 15, 1994). Although Congress modeled the URAA provisions on NAFTA, there are significant differences. For example, under the URAA, copyright restoration is automatic; under NAFTA it was not. Moreover, the URAA requires an English translation of the title as part of the NIE. On January 1, 1996, section 104A, as modified by the URAA, will replace the NAFTA version of section 104A.

In enacting these two laws, Congress intended the restoration provisions to operate separately from one another. Therefore, works restored under NAFTA are not additionally restored under the URAA. Unfortunately, the statutory language in the URAA creates some ambiguities. The recent presidential proclamation clarifies some of these questions. 60 FR 15845 (Mar. 27, 1995).

The proposed regulations clarify other issues relating to the operation of NAFTA. A technical amendment is proposed for the first sentence of the regulation governing filings under NAFTA whereby reference to section 104A is deleted in favor of reference to the public law. This change is made necessary by the deletion of the NAFTA version of section 104A on January 1, 1996. In addition, proposed §§ 201.32 and 202.12 of the Copyright Office regulations contain provisions clarifying that works already restored under NAFTA do not additionally fall within the provisions of the URAA.

Despite the differences in NAFTA and URAA filings, the task force has determined that the group registration procedures available for URAA restored works should also apply to those restored works that come in under NAFTA.

**Appendix—Notice of Intent to Enforce a Copyright Restored Under the Uruguay Round Agreements Act (URAA)**

1. Title: _____
(If this work does not have a title, state ''No title.'')
or
Brief description of work (for untitled works only):

2. English translation of title (if applicable):

_____

3. Alternative title(s) (if any):

_____

4. Type of work: _____
(e.g. painting, sculpture, music, motion picture, sound recording, book)

5. Name of author(s): _____

6. Source country: _____

7. Approximate year of publication: _____

8. Additional identifying information:

_____

(e.g. for movies: director, leading actors; for photographs or books: subject matter/ content)

9. Name of copyright owner:

_____

(Statements may be filed in the name of the owner of the restored copyright or the owner of an exclusive right therein.)

10. If you are not the owner of all rights, specify the right for which the NIE is being filed: _____

_____

(e.g. translation, screenplay, etc.)

11. Address at which copyright owner may be contacted: _____

_____

(Give complete address, including an ''attention'' line, or ''in care of'' name, if any. Give the country if other than the United States.)

12. Telephone number of owner: _____

13. Telefax number of owner: _____

14. Certification and Signature:

I hereby certify that, for each of the work(s) listed above, I am the copyright owner, or the owner of an exclusive right, or the owner's authorized agent and that the information given herein is true and correct to the best of my knowledge.

Signature: _____

Name (printed or typed): _____

As agent for (if applicable): _____

Date: _____

**Note:** Notices of Intent to Enforce must be in English, except for the original title, and either typed or printed by hand legibly in dark, preferably black, ink. They should be on 8½″ by 11″ white paper of good quality, with at least a 1-inch (or 3cm) margin.

**List of Subjects**

*37 CFR Part 201*

Copyright, Restoration of Copyright.

*37 CFR Part 202*

Registration of claims to copyright, Restored works.

**Proposed Regulations**

In consideration of the foregoing, the Copyright Office proposes to amend 37 CFR parts 201 and 202 in the manner set forth below:

## PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

**Authority:** 17 U.S.C. 702.

**§ 201.31 [Amended]**

2. Section 201.31 is amended by revising the first sentence of paragraph (a) to read as follows:

(a) *General.* This section prescribes the procedures for submission of Statements of Intent pertaining to the restoration of copyright protection in the United States for certain motion pictures and works embodied therein as required by the North American Free Trade Agreement Implementation Act of December 8, 1993, Public Law 103–182.

* * *

3. A new § 201.32 is added to read as follows:

**§ 201.32 Procedures for filing Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act.**

(a) *General.* This section prescribes the procedures for submission of Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act, as required in 17 U.S.C. 104A(a). On or after May 1, 1996, and approximately every four months thereafter, the Copyright Office will publish in the **Federal Register** a list of works for which Notices of Intent to Enforce have been filed. It will maintain a list of these works. The Office will also make a more complete version of the information contained in the Notice of Intent to Enforce available on its automated database, which can be accessed over the Internet.

(b) *Definitions.*

(1) *Restored work* means an original work of authorship that—

(i) Is protected under 17 U.S.C. 104A(a);

(ii) Is not in the public domain in its source country through expiration of term of protection;

(iii) Is in the public domain in the United States due to—

(A) Noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

(B) Lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(C) Lack of national eligibility; and

(iv) Has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country.

(2) *Source country* of a restored work is—

(i) A nation other than the United States;

(ii) In the case of an unpublished work—

(A) The eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than one author or rightholder, the majority of foreign authors or rightholders are nationals or domiciliaries of eligible countries; or

(B) If the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and

(iii) In the case of a published work—

(A) The eligible country in which the work is first published, or

(B) If the restored work is published on the same day in two or more eligible countries, the eligible country which has the most significant contacts with the work.

(3) *NAFTA work* means a work restored to copyright on January 1, 1995, as a result of compliance with procedures contained in the North American Free Trade Agreement Implementation Act of December 8, 1993, Public Law 103–182.

(c) *Forms.* The Copyright Office does not provide forms for Notices of Intent to Enforce filed with the Copyright Office. It does suggest that filers follow the format set out in the Appendix (found in the preamble) and give all of the information listed in paragraph (d) of this section. Notices of Intent to Enforce should be typed or printed by hand legibly in dark, preferably black, ink, on 8½ by 11 inches white paper, with at least a 1 inch (or 3 cm) margin.

(d) *Requirements for Notice of Intent to Enforce a copyright restored under the Uruguay Round Agreements Act.*

(1) Notices of Intent to Enforce should be sent to the following address:[Address to be given in the final rule]

(2) The document should be clearly designated as ''Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act'';

(3) Notices of Intent to Enforce must include:

(i) Required information:

(A) The title of the work, or if untitled, a brief description of the work;

(B) An English translation of the title if title is in a foreign language;

(C) Alternative titles if any;

(D) Name of the copyright owner of the restored work, or of an owner of an exclusive right therein;

(E) The address and telephone number where the owner of copyright or the exclusive right therein can be reached;

(F) The following certification signed and dated by the owner of copyright, or the exclusive right therein, or authorized agent:

I hereby certify that for each of the work(s) listed above, I am the copyright owner, or the

owner of an exclusive right, or the owner's authorized agent and that the information given herein is true and correct to the best of my knowledge.

Signature _____

Name (printed or typed) _____

As agent for (if applicable) _____

Date: _____

(ii) Optional information:

(A) Type of work (painting, sculpture, music, motion picture, sound recording, book, etc.);

(B) Name of author(s);

(C) Source country;

(D) Approximate year of publication;

(E) Additional identifying information (director, leading actors, subject/content, etc.);

(F) Rights for which the Notice of Intent to Enforce is being filed (translation, screenplay, etc.);

(G) Telefax number at which owner, exclusive rights holder, or agent thereof can be reached.

(4) Notices of Intent to Enforce may cover multiple works provided that each work is identified by title, all the works have the same author, all the works are owned by the identified copyright owner or owner of an exclusive right, and the rights for which the notice is being filed are the same. In the case of Notices of Intent to Enforce covering multiple works, the notice will separately designate for each work covered the title of the work, or if untitled, a brief description of the work; an English translation of the title if the title is in a foreign language; alternative titles, if any; the type of work; the source country; the approximate year of publication; and additional identifying information.

(5) Notices of Intent to Enforce may be submitted to the Copyright Office on or after January 1, 1996.

(e) *Fee.*

(1) *Amount.* The fee for recording Notices of Intent to Enforce is $30 for notices covering one work. For notices covering multiple works as described in paragraph (d)(4) of this section, the fee is $30, plus $1 for each additional work covered beyond the first designated work. (For example, the fee for a Notice of Intent to Enforce covering 3 works would be $32.)

(2) *Method of Payment.* (i) Checks, money orders, or bank drafts. The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. International money orders, and postal money orders that are negotiable only at a post office are not acceptable. Currency will not be accepted.

(ii) Copyright Office deposit account. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts please write: Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559. Request a copy of Circular 5, ''How to Open and Maintain a Deposit Account in the Copyright Office.''

(iii) Credit cards (for use only in filings under the Uruguay Round Agreements Act). The Copyright Office will accept VISA, MasterCard, and American Express. A filer using a credit card must provide a separate cover letter stating the name of the credit card he or she wishes to use, the credit card number, the expiration date of the credit card, and his or her signature authorizing the Office to charge the fees to his or her account. Debit cards cannot be accepted for payment. To protect the security of the credit card number, the filer must not write his or her credit card number on the Notice of Intent to Enforce.

(f) *Public online access.*

(1) Almost all of the information contained in the Notice of Intent to Enforce may be secured online through the Internet. This information may be secured in the Copyright Office History Documents (COHD) file through the Library of Congress electronic information system LC MARVEL.

(2) Alternative ways to connect through Internet are:

(i) Telnet to locis.loc.gov or the numeric address 140.147.254.3, or

(ii) telnet to marvel.loc.gov, or the numeric address 140.147.248.7 and log in as marvel, or

(iii) use a Gopher Client to connect to marvel.log.gov, (use port 70), or

(iv) use the Library of Congress World Wide Web at: http://lcweb.loc.gov, or http://www.loc.gov.

(3) Information available online: The title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of an exclusive right; the author; the type of work; the date of receipt of the NIE in the Copyright Office; the date of publication in the **Federal Register**; the rights covered by the notice; and the address, telephone and telefax number (if given) of the copyright owner.

(4) Online records of Notice of Intent to Enforce will be searchable by the title, the copyright owner or owner of an exclusive right, and the author.

(g) *NAFTA work.* The copyright owner of a work restored under NAFTA by the filing of a NAFTA Statement of Intent to Restore with the Copyright Office prior to January 1, 1995, is not required to file a Notice of Intent to Enforce under this regulation.

## PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

4. The authority citation for part 202 is revised to read as follows:

**Authority:** 17 U.S.C. 702.

5. A new § 202.12 is added to read as follows:

### § 202.12 Restored copyrights.

(a) *General.* This section prescribes rules pertaining to the registration of foreign copyright claims which have been restored to copyright protection under section 104A of 17 U.S.C., as amended by the Uruguay Round Agreements Act, Pub. L. No. 103–465.

(b) *Definitions.* (1) For the purposes of this section, *restored copyright* has the same meaning as set forth in 17 U.S.C. 104A(h), as amended by the URAA.

(2) *Descriptive statement for a computer program* is a statement consisting of the following elements: the title of the computer program; a description of the purpose and function of the program; an identification of size of the program (i.e. quantity of lines, pages, or bytes in the programming code); the language in which the program is written; and the operating system, platform or computer environment in which the program functions.

(3) *Descriptive statement for a database* is a statement consisting of the following elements: title of the database; name and content of each separate file of the database, including a description of its subject matter; origin of its data or contents; an estimate of the total number of pages or data records.

(4) *Reliance party* means any person who—

(i) With respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated 17 U.S.C. 106 if the restored work had been subject to a copyright protection and who, after the source country becomes

an eligible country, continues to engage in such acts;

(ii) Before the source country of a particular work becomes an eligible country, makes or acquires one or more copies of phonorecords of that work; or

(iii) As the result of the sale or other disposition of a derivative work, covered under the new 17 U.S.C. 104A(d)(3), or of significant assets of a person, described in the new 17 U.S.C. 104A(d)(3) (A) or (B), is a successor, assignee, or licensee of that person.

(c) *Registration*—(1) *General.* Application, deposit, and fee for registering a copyright claim in a restored work under section 104A, as amended, may be submitted to the Copyright Office on or after January 1, 1996. The application, fee, and deposit should be sent in a single package to the following address: (Address to be given in final rule).

(2) *GATT Form.* Application for registration for single works restored to copyright protection under URAA should be made on Form *GATT*. Application for registration for a group of works published under a single series title and published within the same calendar year should also be made on Form *GATT*. Finally, application for a group of up to 10 individuals, and related works as described in paragraph (c)(5)(ii) of this section, should be made on Form *GATT/GROUP*.

These forms may be secured from the Copyright Office after October 1, 1995. Requests for these forms may also be made by calling the Copyright Office Hotline anytime after October 1 at (202) 707–9100 and leaving a message. In addition, legible photocopies of this form are acceptable if reproduced on good quality, 8½ by 11 inch white paper, and printed head to head so that page two is printed on the back of page one.

(3) *Fee.*

(i) *Amount.* The fee for registering a copyright claim in a restored work is $20. The fee for registering a group of multiple episodes under a series title under paragraph (c)(5)(i) of this section is also $20. The fee for registering a group of related works under paragraph (c)(5)(ii) of this section is $10 per individual work.

(ii) *Method of payment.*

(A) Checks, money orders, or bank drafts. The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. In addition, international money orders, and postal money orders that are negotiable only at a post office are not acceptable. Currency will not be accepted.

(B) Copyright Office deposit account; The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts please write: Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559. Request a copy of Circular 5, ''How to Open and Maintain a Deposit Account in the Copyright Office.''

(C) Credit cards (for use only in filings under the Uruguay Round Agreements Act). The Copyright Office will accept VISA, MasterCard, and American Express Cards. A filer using a credit card needs to provide a separate cover letter stating the name of the credit card he or she wishes to use, the credit card number, the expiration date of the credit card, and his or her signature authorizing the Office to charge the fees to his or her account. Debit cards cannot be accepted for payment. To protect the security of the credit card number, the filer must not write his or her credit card number on the registration application.

(4) *Deposit.*

(i) *General.* The deposit for a work registered as a restored work under the amended section 104A, except for those works listed in paragraph (c)(4) (ii) through (v) of this section, should consist of one copy or phonorecord which best represents the copyrightable content of the restored work. In descending order of preference, the deposit should be:

(A) The work as first published;

(B) A reprint or re-release of the work as first published;

(C) A photocopy or identical reproduction of the work as first published;

(D) A revised version which includes a substantial amount of the copyrightable content of the restored work with an indication in writing of the percentage of the restored work appearing in the revision.

(ii) *Computer programs.* The deposit requirements for computer programs in descending order of preference are as follows:

(A) A machine-readable copy of the program and a descriptive statement of the computer program;

(B) An eye-readable printout of 10 representative pages of the program, preferably source code, and a descriptive statement of the computer program;

(C) A descriptive statement of the computer program.

(iii) *Literary works embodied solely in machine-readable format.* The deposit of literary works embodied solely in machine-readable format shall consist of any 10 representative pages (printout or transcription) of the contents of the work.

(iv) *Databases.* The deposit requirements of databases in descending order of preference are as follows:

(A) Any 10 representative pages (printout or transcription) or records of the contents of the database and a descriptive statement of the database;

(B) A descriptive statement of the database.

(v) *Visual arts.* With the exception of 3-dimensional works of art, the general deposit preferences specified under paragraph (c)(4)(i) of this section shall govern. For 3-dimensional works of art, the preferred deposit is one or more photos, preferably in color.

(vi) *Special relief.* An applicant who is unable to deposit any of the preferred deposits may seek an alternative deposit under special relief. 37 CFR 202.20(d). In such a case, the applicant should indicate in writing why the deposit preferences cannot be met, and submit alternative identifying materials clearly showing some portion of the copyrightable contents of the restored work which is the subject of registration.

(vii) *Motion pictures.* If the deposit is a film print (16 as 35 mm), call the Performing Arts Section of the Examining Division for delivery instructions. (202) 707–6040 or fax (202) 707–6048.

(5) *Group registration.* Copyright claims in multiple restored works may be registered as a group in the following circumstances:

(i) *Single series title.* Works published under a single series title in multiple episodes, installments, or issues during the same calendar year may be registered as a group, provided the owner of U.S. rights is the same for all episodes, installments, or issues. The Form *GATT* should be used and the number of episodes or installments should be indicated in the title line. The fee for registering a group of such works is $20. In general, the deposit requirements applicable to restored works will be applied to the episodes or

installments in a similar fashion. In the case of weekly or daily television series, applicants should first request guidance as to the proper deposit from the Performing Arts Section of the Examining Division.

(ii) *Group of related works.* A group of related works may be registered on the Form *GATT/GROUP*, provided the following conditions are met: The author is the same for all works in the group; the owner of all United States rights is the same for all works in the group; all works must have been published in the same calendar year; all works must fit within the same subject matter category [*i.e.* literary works, musical work, motion picture, etc.]; and there must be at least two and not more than 10 individual works in the group submitted. Applicants registering a group of related works must file for registration on the Form *GATT/GROUP*. The fee for registering a group of related works is $10 per individual work.

(d) *Works excluded.* Works which are not copyrightable subject matter under title 17 of the U.S. Code, other than sound recordings fixed before February 15, 1972, should not be registered as restored copyrights.

Dated: July 3, 1995.

**Marilyn J. Kretsinger,**

*Acting General Counsel.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 95–16765 Filed 7–7–95; 8:45 am]

BILLING CODE 1410–30–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[OH21–1–6989; FRL–5255–9]**

### Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** The USEPA is proposing approval of revisions to the Ohio State Implementation Plan (SIP) adopted by the Ohio Environmental Protection Agency (OEPA) on March 15, 1993, and December 30, 1994. The USEPA's proposal is based upon a revision request to satisfy the requirements of the Clean Air Act, which was submitted by the State to the USEPA on June 7, 1993, and February 17, 1995. The revisions concern Ohio Administrative Code (OAC) Chapter 3745–21, ''Carbon Monoxide, Ozone, Hydrocarbon Air Quality Standards, and Related Emission Requirements,'' and this proposed action addresses volatile organic compound (VOC) reasonably available control technology (RACT) for major sources not covered by a control techniques guideline (CTG) located in the Cleveland/Akron/Lorain and Cincinnati nonattainment areas. The USEPA has evaluated the revisions to Rules 04 and 09, along with a letter committing to publish Findings and Orders correcting deficiencies in the rules, submitted by OEPA on June 21, 1995, and two permits to install (PTI) which OEPA has committed to submit as SIP revisions. USEPA proposes to approve the requested revisions, which establish site-specific non-CTG VOC RACT regulations. The approval will not be finalized until Ohio issues the completed Findings and Orders, and allows public comment on them, and submits the permits to install as SIP revisions. Subsequent to review of these Findings and Orders, USEPA will take final action on the requested revisions through the letter notice process. The effective date of this SIP revision will be the date that the letter notice is issued.

**DATES:** Comments on this revision and on the proposed U.S.EPA action must be received by August 9, 1995.

**ADDRESSES:** Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA's analysis are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Office of Air and Radiation (OAR), Docket and Information Center (Air Docket (6102) room M1500, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Alexis Cain, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–7018.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On November 15, 1990, amendments to the 1977 Clean Air Act (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Under the pre-amended CAA, ozone nonattainment areas were required to adopt reasonably available control technology (RACT) rules for sources of volatile organic compound (VOC) emissions. VOCs contribute to the production of ground level ozone and smog. These rules were required as part of an effort to achieve the National Ambient Air Quality Standard for ozone.

RACT, as defined in 40 CFR 51.100(o), means devices, systems process modifications, or other apparatus or techniques that are reasonably available taking into account (1) the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard, (2) the social, environmental and economic impact of such controls, and (3) alternative means of providing for attainment and maintenance of such standard. The USEPA issued three sets of control technique guidelines (CTGs) documents, establishing a ''presumptive norm'' for RACT for various categories of VOC sources. Those sources not covered by a CTG were called non-CTG sources. The USEPA determined that a given nonattainment area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under pre-amended section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that projected attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987, were required to adopt RACT for all CTG sources and for all major (i.e., having a potential to emit 100 tons per year or more of VOC emissions) non-CTG sources.

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG, i.e., a CTG issued prior to the enactment of the Clean Air Act Amendments of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. The non-CTG requirement includes unregulated emission units within a source if they total more than 100 tons per year in the aggregate. Section 182(b)(2) requires nonattainment areas that previously were exempt from RACT requirements to ''catch up'' to those nonattainment areas that became subject to those

requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas.

This proposed action addresses VOC RACT for site-specific non-CTG sources located in the Cleveland/Akron/Lorain and Cincinnati nonattainment areas. Non-CTG RACT for the other areas of Ohio designated moderate or above, Toledo and Dayton-Springfield, has been addressed in a separate rulemaking in the **Federal Register** on March 23, 1995 (60 FR 15235–15241) along with RACT for CTG sources.

The following is the USEPA's evaluation of the submitted revisions to Ohio Administrative Code (OAC) Chapter 3745–21 ''Carbon Monoxide, Ozone, Hydrocarbon Air Quality Standards, and Related Emission Requirements,'' including the following amendments: 3745–21–01, Definitions, 3745–21–04, Attainment Dates and Compliance Time Schedules, and 3745–21–09, Control of Emissions of Volatile Organic Compounds from Stationary Sources.

## II. USEPA Evaluation and Action

In determining the approvability of a VOC rule, the USEPA must evaluate the rule for consistency with the requirements of the Act and USEPA regulations, as found in section 110 and Part D of the Act and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). A detailed analysis of the submittals and discussion of the USEPA's basis for proposing approval is contained a USEPA Technical Support Document (TSD) dated June 23, 1995.

This action addresses VOC regulations applying to non-CTG sources. The USEPA finds that Ohio's non-CTG VOC RACT rules for sources located in the Cleveland/Akron/Lorain and Cincinnati nonattainment areas are approvable. These rules had previously been disapproved by USEPA in the **Federal Register** for May 9, 1994 (59 FR 23796–23799) as a result of deficiencies cited in the **Federal Register** on September 23, 1993 (58 FR 49458–49463). For four of the site-specific rules, approval is contingent upon issuance by the Ohio Environmental Protection Agency (OEPA) of Findings and Orders which correct deficiencies in the rules. A rule establishing RACT for one additional company, Sprayon Products, for which there is no current rule, will be contained in an additional Finding and Order. In a June 21, 1995 letter to USEPA, OEPA has committed to publish these Findings and Orders. Subsequent to review of these Findings and Orders, USEPA will take final action on the requested revisions through a letter notice to OEPA and the affected sources. The effective date of the revisions will be the date that the letter notice is issued. Interested parties wishing to comment on these revisions or on USEPA approval by means of the letter notice must submit written comments by August 9, 1995.

A discussion of these rules, contained in OAC 3745–21–09, follows.

*(FF) Steelcraft Manufacturing Co., Cincinnati*

The deficiency previously cited by USEPA (lack of sufficient recordkeeping and reporting requirements) has been corrected by subjecting this source to the recordkeeping and reporting requirements of paragraph (B)(3), previously approved by USEPA.

*(GG) Chevron USA, Incorporated, Cincinnati Area*

Recordkeeping requirements have been added to this rule to ensure enforceability, thus correcting the deficiency previously cited by USEPA.

*(HH) Goodyear Tire and Rubber Co., Akron, Massillon Road*

Recordkeeping requirements have been added to this rule to ensure enforceability, thus correcting the deficiency previously cited by USEPA.

*(II) International Paper Co., Springdale*

This source is an offset lithographic printer, a category for which a draft CTG was published on December 12, 1992, although no final CTG was published. A Finding and Order issued by OEPA will require that the alcohol content in the fountain solution be no greater than 8.5 percent by volume, and that the fountain be refrigerated to 60 °F, which was determined to be RACT in the draft CTG. In addition, the rule imposes limits on the VOC content of coatings and inks which were determined to be the lowest available, based on correspondence between the company and vendors of coatings and inks.

*(JJ) Goodyear Tire and Rubber Co., Akron, Tech Way Drive*

USEPA concerns about a provision allowing the use of an alternative method and/or procedure to Goodyear Method E–826 (Revision 1, 1983) for determining residual monomer content have been addressed by inclusion in the rule of language requiring that this alternative method and/or procedure be approved by the USEPA as a SIP revision. Another USEPA-cited deficiency has been corrected by adding requirements for daily analyses and recordkeeping on residual monomer content in polymer blend tanks.

*(KK) Morton Thiokol, Cincinnati*

This rule requires the company to control VOC emissions from its methyltin production processes through use of a VOC recovery system which achieves at least 70 percent control efficiency. Control efficiency must be calculated weekly, and failure to achieve adequate control efficiency must be reported. In addition, the railcar unloading process must be a closed-loop system which uses compressed VOC for unloading, without any venting into the atmosphere. Previously cited deficiencies have been corrected through addition to the rule of a requirement that determination of VOC usage and recovery be performed on a daily basis to calculate a weekly average for purposes of compliance determination, and by an explanation by the company and Ohio of the closed-loop unloading process.

*(LL) Lubrizol Corporation, Painesville (Cleveland Area)*

Recordkeeping requirements have been added to paragraph (3)(a) of this rule to ensure enforceability, addressing a deficiency previously cited by USEPA.

*(MM) PPG Industries, Inc., Cleveland*

A deficiency previously cited by USEPA (lack of sufficient recordkeeping and reporting requirements) has been corrected by subjecting this source to the recordkeeping and reporting requirements of paragraph (B)(4). In addition, a definition of the term ''control system'' has been added to paragraph 3745–21–01(Q), eliminating another previously-cited deficiency.

*(NN) Midwest Mica, Cleveland*

Midwest Mica creates electrical insulation products using mica chips held together by resins. The rule requires emissions from each of the coating or laminating lines to be vented to a control device achieving 98 percent destruction of VOCs. However, the rule lacks a requirement for capture efficiency. A Finding and Order issued by OEPA will correct this deficiency by requiring 81 percent total control efficiency (taking into account both capture and destruction) and referencing USEPA test methods for determining capture efficiency. Lines which employ less than five tons of VOCs per year are exempted from this requirement, but the company must keep monthly records documenting emissions from these lines, and report

emission levels which exceed five tons per year. Recordkeeping requirements for the control device are covered by paragraph (B)(3).

*(OO) Armco Steel Company, Middletown (Cincinnati Area)*

RACT for this facility involves the use of rolling oil, rust preventative oil, pre-lube oil and anti-galling material with the lowest available VOC content. USEPA cited deficiencies in the rule as a result of the company's failure to demonstrate that the VOC content of rolling oil and anti-galling material used is the lowest available. For anti-galling material, this deficiency has been corrected through the use a water-based material. A Finding will state a new limit on pounds of VOC per gallon of anti-galling material. For rolling oil, this deficiency has been addressed through provision of correspondence with vendors stating that the oil in use has the lowest VOC content available. The Finding will correct the limit on VOC content per gallon for rolling oil and rust preventative oil, and provide a VOC content limit for pre-lube oil. Previous limits in the rule were based on an incorrect application of ASTM method D2369–81 to the oils in use. Actual emissions of VOCs per gallon of oil applied are a small fraction of the total VOC content, since most of the oil is recovered and recycled. Additional USEPA concerns about the lack of recordkeeping and reporting requirements have been addressed by making Rule 09(OO) subject to the recordkeeping and reporting requirements in paragraph (B)(3).

*(PP) Formica Corporation, Cincinnati*

The deficiency previously cited by USEPA (lack of sufficient recordkeeping requirements) has been corrected by subjecting this source to the requirements of paragraph (B)(3).

*(QQ) DayGlo Color Corporation, Cleveland*

This rule requires the company to use a vacuum system consisting of a vacuum pump and condenser as a filtration system which separates methanol from solid dye. Each mixing vessel larger than 400 gallons must be completely covered at all times, except when the vessel is empty or being emptied, and except for small openings for the mixer shaft and for adding materials to the vessel.

*(SS) Ritrama Duramark, Cleveland*

Ritrama Duramark operates two lines which apply coatings to a continuous web. Line 1 is a vinyl casting line and line 2 applies adhesives to paper. Line 2 is covered by the paper coating rule—09(F). The vinyl film casting line, covered by (SS), applies a vinyl organosol to a paper substrate in order to create a vinyl casting. The vinyl is then dried in an oven which is vented to an incinerator. The rule requires 100 percent capture efficiency and 98 percent destruction of VOCs from this line.

*(TT) ICI Americas, Perry*

The rule requires that emissions from stage 1 and stage 2 reactor vent streams be vented to a flare which meets the requirement of OAC 3745–21–09(DD)(10)(d), and the diked area of the carbon disulfide tanks must be completely covered by styrofoam sheets in order to reduce VOC emissions. Control on distillation vents was determined to be economically infeasible.

*(YY) PMC Specialties Group, Cincinnati*

PMC manufactures methyl anthranilate (MA), anthranilic acid (AA); saccharin, and o-carboalkoxybenzenefulfoanamide (OCBS). The rule requires that emissions from the MA and AA process reactor vent streams be vented to an enclosed combustion device that is designed and operated to achieve at least a 95 percent reduction in VOC emissions. Under this rule, the OCBS manufacturing process is required to limit its emissions to 12 pounds of VOC per 6,000 pounds of product, which results in a 90 percent reduction in VOC emissions. Controls on emissions from the saccharin manufacturing process were evaluated by OEPA and found to be technically or economically infeasible.

*(ZZ) Firestone Synthetic Rubber & Latex Company, Akron*

All reactor process vent streams must be vented to an enclosed combustion device achieving 98 percent reduction, or to a flare which meets the requirements of paragraph (DD)(10)(d). An exemption is made for process vent streams vented to a flare constructed prior to March 21, 1993, which is maintained in accordance with design specifications.

*(AAA) Reilly Industries, Cleveland*

Reilly refines crude coal tar, producing ''front end'' naphthalene oil products, creosote oil, heavy (enamel) oil, electrode binder pitch, pellet pitch, roofing tar, and road tar. The facility's major emissions sources include: storage tanks for crude product; eight distillation stills (in two ''batteries'' of four each—one battery for continuous processing, the other for batch processing), and storage tanks for refined products. The distillation stills are covered by OAC 3745–21–07 (G), which requires 85 percent destruction of VOCs emissions. USEPA concerns about the enforceability of paragraph 07 (G) will be addressed in a Finding and Order which affirms that the stills are covered by this rule, and which clarifies the test methods to be used to measure VOCs. The rule requires 90 percent control on each storage tank larger than 40,000 gallons which contains crude coal tar, refined tar or front end oil; this rule does not cover tanks containing creosote oil and solution oil. However, the low volatility of these products leads to low emissions, eliminating the need for add-on controls. Storage tanks with controls built before July 1, 1992 are exempt from the 90 percent control requirement, but must be operated and maintained in accordance with design specifications.

*(BBB) BF Goodrich, Akron Chemical Plant*

The rule requires that emissions from the agerite resin D process be vented to a control device which achieves 90 percent control efficiency; emissions from the superlite (trademark) and diphenylamine-based antioxidants process must be vented to control devices achieving 95 percent control efficiency.

The schedules for compliance with each of these rules are contained in OAC 3745–21–04(C)(40–51,53,54,59–62). Rules (C)(42), (C)(43), (C)(44), (C)(45) and (C)(47) were approved in the March 23, 1995 **Federal Register** (60 FR 15235–15241). The remaining schedules are timely, and are approved.

In addition to the non-CTG VOC RACT rules contained in OAC 3745–21–09, OEPA has committed to submit a Finding and Order for Sprayon Products, in Bedford Heights, which establishes a generic VOC RACT limit of 81 percent reduction from the 1990 baseline. This limit will be based on VOC emissions per can filled, thereby allowing changes in production not to affect the percent control limit. Operations which already meet a federally-enforceable RACT requirement, or which have combined annual emissions of less than five tons per year will be exempt from the baseline and the 81 percent reduction requirement. The facility will be allowed one year to petition OEPA and USEPA for an alternative control plan if it can be demonstrated that the 81 percent control requirement is not technically or economically feasible.

Along with its review of Ohio's non-CTG VOC RACT rules, USEPA reviewed RACT studies for sources which are subject to the non-CTG RACT requirement but for which Ohio has not submitted a non-CTG rule. Ohio determined that no rule was necessary for these sources because no controls beyond those already federally enforceable were technically or economically feasible. USEPA concurs with this judgement. The justification for not including a rule for these sources follows.

*Excello Specialty Company, Cleveland*

RACT for this facility is defined as the operation of control devices with 85 percent overall control efficiency on its coating lines, which is required by a permit to install (PTI).

*Hilton Davis Company, Cincinnati*

The company utilizes in-line condensers, vacuum pumps, and scrubbers that have process functions as well as emissions control functions. In addition, emissions at the company's wastewater treatment plant are controlled by a thermal oxidizer which is required by a PTI. Additional controls were evaluated by OEPA and found to be technically or economically infeasible.

*Monsanto Company, Addyston*

Thermal incineration, catalytic incineration and carbon adsorption of emissions from various processes at this source were evaluated by OEPA and found to be technically or economically infeasible.

*Proctor & Gamble, Ivorydale (Cincinnati Area)*

Existing controls have process functions or serve primarily as particulate matter control. Additional controls of VOC emissions from this source were evaluated by OEPA and found to be technically or economically infeasible.

*General Electric Company, Euclid Specialty Coating, Cleveland*

The facility utilizes condensers that have process functions as well as emissions control functions. Additional controls at this source were evaluated by OEPA and found to be technically or economically infeasible.

*BF Goodrich Company, Avon Lake*

Add-on controls were evaluated at this source were evaluated by OEPA and found to be technically or economically infeasible.

## III. Proposed Rulemaking Action and Solicitation of Public Comment

The USEPA has evaluated the State's submittal for consistency with the Act, USEPA regulations, and USEPA policy. The USEPA has determined that the submitted non-CTG rules meet the Act's requirements, and with this action proposes approval, under section 110(k)(3), of the following rules:

OAC 3745–21–01: (Q); (T).

OAC 3745–21–04: (C)(40); (C)(41); (C)(46); (C)(48); (C)(49); (C)(50); (C)(51); (C)(53); (C)(54); (C)(59); (C)(60); (C)(61); (C)(62).

OAC 3745–21–09: (FF); (GG); (HH); (II); (JJ); (KK); (LL); (MM); (NN); (OO); (PP); (QQ); (SS); (TT); (YY); (ZZ); (AAA); (BBB).

Approval of OAC 3745–21–09 (II), (NN), (OO) and (AAA) is contingent upon approval of Findings and Orders outlined in a June 21, 1995 letter from OEPA to USEPA. Subsequent to USEPA review, the Findings and Orders for International Paper, Midwest Mica, Armco (AK) Steel, Reilly Industries, and Sprayon Products, along with permits to install for Excello Specialty Company and Hilton Davis Company, will be approved into the Ohio ozone SIP through a letter notice.

Public comments are solicited on USEPA'S proposed rulemaking action. Public comments received by August 9, 1995, will be considered in the development of USEPA's final rulemaking action. Notice of final action on the requested revisions will be provided by letter to OEPA and the affected sources, and a subsequent document of such action will be published in the **Federal Register**.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State has elected to adopt the program provided for under section 110 of the Clean Air Act. The rules and commitments being approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs or $100 million or more to State, local, or tribal

governments in the aggregate or to the private sector.

*List of Subjects in 40 CFR Part 52*

Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671(q).

Dated: June 28, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 95–16826 Filed 7–7–95; 8:45 am]

**BILLING CODE 6560–50–P**

## 40 CFR Part 52

**[OH80–1–6979; FRL–5256–2]**

## Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** The USEPA is proposing to approve Ohio's 1990 base-year ozone precursor emissions inventories for the Canton, Cleveland, Cincinnati and Youngstown ozone nonattainment areas as revisions to the ozone portion of the Ohio State Implementation Plan (SIP). The emissions inventories were submitted to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions for the year 1990. The Ohio ozone nonattainment areas covered by this rulemaking are Canton (Stark County); Cincinnati (Butler, Clermont, Hamilton and Warren Counties); Cleveland (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); and Youngstown (Mahoning and Trumbull Counties). Initial notification of such approval would be by letter to the State of Ohio.

**DATES:** Comments on this action must be received by August 9, 1995.

**ADDRESSES:** Written comments should be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Richard Schleyer, Environmental Engineer, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5089.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 182(a)(1) of the Clean Air Act Amendments of 1990 (Act) requires States with ozone nonattainment areas to submit a comprehensive, accurate and current inventory of actual ozone precursor emissions (which includes volatile organic compounds (VOC), nitrogen oxides ($NO_X$), and carbon monoxide (CO)) for each ozone nonattainment area by November 15, 1992. This inventory must include anthropogenic base-year (1990) emissions from stationary point, area, non-road mobile, and on-road mobile sources, as well as biogenic (naturally occurring) sources in all ozone nonattainment areas. The emissions inventory must be based on conditions that exist during the peak ozone season (generally the period when peak hourly ozone concentrations occur in excess of the primary ozone National Ambient Air Quality Standard—NAAQS). Ohio's annual ozone season is from April 01 to October 31 of each year.

### II. Criteria for Evaluating Ozone Emissions Inventories

Guidance for preparing and reviewing the emission inventories is provided in the following USEPA guidance documents or memoranda: ''State Implementation Plans; General Preamble for the Implementation of Title I of the Act,'' (Preamble) as published in the April 16, 1992 **Federal Register** (57 FR 13498); ''Emission Inventory Requirements for Ozone State Implementation Plans,'' (EPA–450/4–91–010) dated March 1991; a memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, entitled ''Public Hearing Requirements for the 1990 Base-Year Emissions Inventories for Ozone and Carbon Monoxide Nonattainment Areas,'' dated September 29, 1992; ''Procedures for the Preparation of Emissions Inventories for Carbon Monoxide and Precursors of Ozone, Volumes I and II,'' (EPA–450/4–91–016 and EPA–450/4–91–014) (Procedures; Volumes I and II) dated May 1991; ''Procedures for Emissions Inventories Preparation, Volume IV: Mobile Sources,'' (EPA–450/4–81–026d) (Procedures; Volume IV) dated 1992; and ''Supplement C to Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources,'' (AP–42) dated September 1990.

As a primary tool for the review of the quality of emission inventories, the USEPA has also developed three levels (I, II, and III) of emission inventories checklists. The Level I and II checklists are used to determine that all required components of the base-year emission inventory and associated documentation are present. These reviews also evaluate the level of quality of the associated documentation and the data provided by the State and assess whether the emission estimates were developed according to the USEPA guidance. The Level III review evaluates crucial aspects and the overall acceptability of the emission inventory submittal. Failure to meet one of the ten critical aspects would lead to disapproval of the emissions inventory submittal.

Detailed Level I and II review procedures can be found in the USEPA guidance document entitled ''Quality Review Guidelines for 1990 Base Year Emissions Inventories,'' (Quality Review) (EPA–454/R–92–007) dated August 1992. Level III criteria were attached to a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Emission Inventory Issue,'' dated June 24, 1993. The Level I, II, and III checklists used in reviewing this emissions inventory submittal are attached to two USEPA technical support documents dated June 23, 1995.

### III. State Submittal

On March 15, 1994, the Ohio Environmental Protection Agency (OEPA) submitted a revision to the ozone portion of Ohio's SIP which consisted of the 1990 base-year ozone emissions inventory for the following ozone nonattainment areas in Ohio: Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo and Youngstown. The USEPA has completed its review of the emissions inventories submitted for the Canton (which includes Stark County), Cincinnati (which includes Butler, Clermont, Hamilton and Warren Counties), Cleveland (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties) and Youngstown (which includes Mahoning and Trumbull Counties) ozone nonattainment areas. The 1990 base-year emissions inventories submitted for all other areas are addressed in separate rulemakings.

*Inventory Preparation Plan/Quality Assurance Plan*

All States were required to submit an Inventory Preparation Plan (IPP) to USEPA for review and approval by October 1, 1991. The IPP documents the

procedures utilized in the development of an emissions inventory and contains the quality assurance and quality control plan (QA/QC). On March 19, 1992, the State of Ohio submitted a final ozone emissions IPP. On April 15, 1992, USEPA informed the State that the IPP was not approvable at the time. Subsequently, USEPA has worked with the State to correct deficiencies in the IPP. With the March 1994 SIP revision request, the State submitted documentation of how the emissions inventory was prepared, as well as a quality assurance report for the point, area, and mobile source portions of the emissions inventory. The USEPA finds that this documentation and quality assurance report are acceptable to meet the requirements of an IPP.

*Point Source Emissions Inventory*

For each nonattainment area, the State submitted a point source emissions inventory of all facilities that emit at least 10 tons per year (tpy) of VOC, or 100 tpy $NO_X$ or CO. The State also included sources that emit 100 tpy of VOC, CO, or $NO_X$ located in a 25-mile boundary surrounding each nonattainment area. The point source emissions inventory contains general facility information, number of sources, production schedules and related emissions for each source, emissions limitation, control efficiency and rule effectiveness (RE), as applicable, and total emissions on an annual and daily ozone season basis.

The following methods were employed by the State to identify sources to be included in the 1990 base-year emissions inventory: the 1989 records for plants in the Emissions Inventory System (EIS) were checked and plants meeting the VOC, CO or $NO_X$ criteria were revised with 1990 emissions data; the air permit records were reviewed for plants that are candidates for inclusion in the point source inventory; and current industrial directories and the Toxic Release Information System (TRIS) database were checked for additional point source emissions. For facilities in the point source inventory, the State acquired the emissions data by means of the following: mail surveys; plant inspections; telephone calls; and air permit files.

The USEPA reviewed the point source emissions data by cross referencing the point source inventory to the following sources: USEPA's guidance document entitled ''Major CO, $NO_2$, and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume I: Classified Ozone Nonattainment Areas,'' (EPA–450/4–92–005a) February 1992; a 1990 TRIS Retrieval; and a 1990 Aerometric Information Retrieval Systems (AIRS) Facility Subsystem—Emission to Compliance Comparison Report.

Where a source was governed by a regulation or a control device, the emissions limit was stated. An RE factor was then applied in the determination of emissions. In accordance with USEPA guidance, a standard RE factor of 80 percent was utilized, unless otherwise justified.

*Area Source Emissions Inventory*

Area source emissions were calculated using State-specific data as well as USEPA guidance documents and technical memoranda developed for various categories. The State utilized emission factors from Procedures; Volumes I and IV, and AP–42 and provided necessary documentation. The following area source categories were included in the emissions inventory: gasoline loading and distribution, dry cleaning, degreasing, architectural surface coatings, traffic markings, automobile refinishing, graphic arts, cutback asphalt, pesticide application, commercial/consumer solvents, bakeries, waste management practices (landfills), leaking underground storage tanks, incineration of solid waste, stationary fossil fuel combustion, and fires (structural, open burn, etc.). Vehicle refueling emissions were included as part of the mobile source emissions inventory.

The area source inventory was reviewed utilizing USEPA's guidance documents, and the Level I and II checklists, to ensure that all source categories and their related emissions (and emission factors) were included in the area source emissions inventory. Seasonal adjustments, rule effectiveness, and rule penetration factors were applied as indicated in the State submittal.

*On-Road Mobile Source Emissions Inventory*

Development of Emission Factors

In the development of the mobile source emissions inventory, the State utilized USEPA's mobile source emissions model, Mobile 5a, for the determination of emissions factors for eight vehicle types and twelve roadway types. Hard-copy documentation of the input and output files are provided in the State's submittal. Where available, the State-specific inputs were utilized in the development of the input files for Mobile 5a.

Development of Vehicle Miles Travelled (VMT)

*Canton, Cleveland and Youngstown Areas:* The 1990 VMT for each roadway type was developed by the Ohio Department of Transportation (ODOT). ODOT maintains data on each section of highway in the State of Ohio. VMT were developed by the State Road Inventory System and reported through the Highway Performance Monitoring System (HPMS) to the Federal Highway Administration (FHWA).

Each roadway section daily VMT (dVMT) is computed as the annual average daily traffic (AADT) for that section times the length of the section. The county dVMT is the sum of the dVMT for each highway functional classifications in the county. The total dVMTs are then summed as a statewide total. The statewide totals are then compared by functional class to the 1990 HPMS submittal. For those classifications where traffic counts are available for all or nearly all their sections, the totals were essentially the same. For those with more off-systems roads, the resulting totals were larger than the HPMS's submittal value (as expected). Correction factors were computed from the two sets of totals and applied to the individual cells.

ODOT used permanent and portable vehicle classification equipment to develop the vehicle mix by functional classification of highway. Traficomp III vehicle classification equipment are used to support the HPMS data collection effort. A software program called OHIO CONVERT formats vehicle classification data into the FHWA Vehicle Classification categories.

*Cincinnati-Hamilton Interstate Nonattainment Area:* For the Cincinnati-Hamilton Interstate area, the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) was responsible for the development of the mobile source emissions inventory. OKI developed this inventory for the Ohio and Kentucky portions of the interstate nonattainment area. OKI utilized the OKI Travel Demand Model to estimate the traffic volume on each roadway segment and an OKI utility program to which calculates the loaded speed, VMT and emissions for each roadway segment.

The OKI travel demand model is a computerized travel demand forecasting model for the entire interstate nonattainment area. The model uses a four phase sequential travel demand forecasting process of trip generation, distribution modal choice and assignment. The OKI Travel Demand Model is composed of TRANPLAN

programs and Fortran programs written by OKI.

The model takes zonal demographic data and the transportation network as inputs and produces estimated traffic volumes on each roadway segment in the network. Traffic zones are the analysis units in the model. The OKI region is divided into 909 zones. The output of the model is a loaded highway network which contains information for each link such as initial speed, capacity, distance, functional class district number area type and forecasted traffic.

The USEPA has reviewed the mobile source emissions inventory utilizing the checklist contained in the Quality Review guidance document. This was used to ensure that recommended procedures were followed in the development of the mobile source portion of the emissions inventory.

*Off-Road Mobile Source Emissions Inventory*

Canton, Cincinnati and Youngstown Areas: The State developed emissions estimates for the following off-road categories according to USEPA guidance: aircraft, railroad locomotives, recreational boating, off road motorcycles, agricultural equipment, construction equipment, industrial equipment, and lawn and garden equipment. Documentation was provided as to the sources of emissions factors utilized and were submitted in the area source emissions inventory portion of the submittal.

Cleveland Area: The State utilized emissions estimates for non-road emissions developed by the Office of Mobile Sources (OMS–USEPA) in October 1992, in accordance with USEPA requirements for the Cleveland/Akron off-road mobile source emissions inventory. These OMS emissions estimates are provided for off-road diesel engines, as well as two-stroke and four-stroke gasoline engines, including off-road motorcycles, construction equipment, farm equipment, lawn and garden equipment, industrial equipment, and recreational vessels. In addition, the State included in the off-road mobile source inventory emissions from aircraft, railroads, and commercial vessels, which are not included in the OMS data. These estimates were developed using emissions factors from AP–42 and activity factors gathered from various sources.

The off-road mobile source inventory was reviewed utilizing the Level I and II checklists and USEPA's guidance documents to ensure that all source categories and their related emissions factors were included in the off-road mobile source emissions inventory.

*Biogenic Emissions Inventory*

The State of Ohio developed the naturally occurring (or biogenic) emissions for the Canton, Cincinnati, Cleveland and Youngstown areas according to a USEPA's guidance document entitled ''User's Guide to the Personal Computer Version of the Biogenic Emissions Inventory System (PC–BEIS),'' (EPA–450/4–91–017) dated July 1991. Meteorological data utilized in PC–BEIS was collected in accordance with USEPA guidance. The ten warmest days from the period between 1988 to 1990 with the highest hourly peak ozone concentrations in each ozone nonattainment areas was collected and reviewed. As required by USEPA guidance, the fourth highest daily maximum ozone concentration for each nonattainment area was selected and utilized in the model. The State provided hard copy documentation as to the meteorological inputs utilized and PC–BEIS output files for the biogenic emissions inventory for the Canton, Cincinnati, Cleveland and Youngstown nonattainment areas.

## IV. Approval of the Emissions Inventories

In a letter addressed to Robert Hodanbosi, Chief, Division of Air Pollution Control, OEPA, dated March 23, 1995, USEPA provided comments on the 1990 base-year ozone emissions inventories submitted for the Canton, Cincinnati, Cleveland and Youngstown areas. These comments addressed corrections that would be needed before the inventories could be finally approved.

In a letter addressed to William MacDowell, Chief, Regulation Development Section, dated June 8, 1995, the State of Ohio provided a response to comments on the area, on-road and off-road mobile, and biogenic source emissions. The USEPA has reviewed these responses and finds that the State has satisfied the Agency's comments and that the emissions inventory for the area, on-road mobile, non-road mobile, and biogenic sources is approvable.

However, the State has not responded to the point source emissions inventory comments (these comments addressed possible facilities that may be required to be included in the point source emissions inventory). The State is currently making determinations regarding such facilities, and once completed, will submit the revised point source inventory to be included as part of this SIP revision. Please note that the State has satisfied the procedural requirements for the development of the point source emissions inventory. Therefore, in anticipation of the corrections, USEPA is proposing to approve the State's point source emissions inventory. No further action will occur on this SIP revision until the State submits (and USEPA completes) its review of the response to the point source emissions comments.

## V. Summary of Ozone Emissions Inventory

The following summary indicates the emissions inventories for an average ozone summer weekday for the Canton, Cincinnati, Cleveland and Youngstown ozone nonattainment areas. Please note that the point source emissions estimates stated may be revised (please refer to ''Approval of the Emissions Inventories'' section above). The emissions are stated in tons per ozone season weekday:

CANTON OZONE NONATTAINMENT AREA

[Tons per day]

| Source type | VOC | CO | $NO_X$ |
|---|---|---|---|
| Point sources .... | 12.36 | 6.51 | 40.11 |
| Area sources ..... | 18.93 | 1.54 | 0.98 |
| On-road mobile sources ..... | 31.66 | 188.59 | 16.24 |
| Off-road mobile sources ..... | 23.72 | 63.00 | 15.89 |
| Biogenic sources | 36.66 | ..... | ..... |
| Totals ..... | 123.33 | 259.64 | 73.22 |

CINCINNATI OZONE NONATTAINMENT AREA

[Tons per day]

| Source type | VOC | CO | $NO_X$ |
|---|---|---|---|
| Point sources | 70.93 | 88.67 | 280.00 |
| Area sources . | 64.48 | 5.41 | 2.29 |
| On-road mobile sources | 125.84 | 793.16 | 130.68 |
| Off-road mobile sources | 37.37 | 274.57 | 34.45 |
| Biogenic sources ..... | 109.04 | ..... | ..... |
| Totals .. | 407.66 | 1161.81 | 447.42 |

CLEVELAND/AKRON OZONE NONATTAINMENT AREA

[Tons per day]

| Source type | VOC | CO | $NO_X$ |
|---|---|---|---|
| Point sources | 80.24 | 707.32 | 244.77 |
| Area sources | 120.86 | 12.64 | 9.54 |
| On-road mobile sources | 248.37 | 1,402.01 | 176.58 |
| Off-road mobile sources | 80.19 | 808.32 | 70.92 |
| Biogenic sources | 195.32 | ..... | ..... |
| Totals | 724.98 | 2,930.29 | 501.81 |

YOUNGSTOWN OZONE NONATTAINMENT AREA

[Tons per day]

| Source type | VOC | CO | $NO_X$ |
|---|---|---|---|
| Point sources | 16.33 | 18.74 | 23.25 |
| Area sources | 27.80 | 13.02 | 7.00 |
| On-road mobile sources | 48.97 | 293.54 | 29.87 |
| Off-road mobile sources | 13.48 | 87.88 | 10.98 |
| Biogenic sources | 50.26 | ..... | ..... |
| Totals | 156.84 | 413.18 | 71.10 |

## VI. Proposed Rulemaking Action and Solicitation of Public Comment

Public comments are solicited on USEPA's proposed rulemaking action. Public comments must be received by August 9, 1995. Notice of final action on the requested approval of the emissions inventories will be provided to the State of Ohio by letter, and a subsequent notice of such action will be published in the **Federal Register**. Subsequent to the submittal of acceptable point source corrections, USEPA will issue a letter to the State of Ohio providing notice of USEPA's final action on the requested approval of the inventories. The effective date of these SIP revisions shall be the date that the letter notice is issued. Interested parties wishing to comment on these SIP revisions, or on USEPA's approval by means of the letter notice procedure, must submit written comments by August 9, 1995. USEPA plans to announce such final action in the **Federal Register** within 30 days of its effective date.

## VII. Proposed Action

The USEPA is proposing to approve, with ''letter notice'' of any final action, Ohio's 1990 base-year ozone precursor emissions inventories for the Canton (Stark County); Cincinnati (Butler, Clermont, Hamilton and Warren Counties); Cleveland (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); and Youngstown (Mahoning and Trumbull Counties) ozone nonattainment areas.

Please note that no further action will occur on this SIP revision until the State submits (and USEPA completes its review) on the response to the point source emissions inventory comments.

## VIII. General Provisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

## List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671(q).

Dated: June 28, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 95–16832 Filed 7–7–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 70

**[AD–FRL–5256–6]**

## Clean Air Act Proposed Interim Approval of Operating Permits Program; Santa Barbara County Air Pollution Control District, California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes interim approval of the Operating Permits Program submitted by the Santa Barbara County Air Pollution Control District (Santa Barbara or District) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

**DATES:** Comments on this proposed action must be received in writing by August 9, 1995.

**ADDRESSES:** Comments should be addressed to Martha Larson, Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** Martha Larson (telephone: 415/744–1238), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

**SUPPLEMENTARY INFORMATION:**

## I. Background and Purpose

As required under title V of the Clean Air Act (Act) as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable State operating permits program and the

corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70 (part 70). Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit title V programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

## II. Proposed Action and Implications

### *A. Analysis of State Submission*

The analysis contained in this notice focuses on specific elements of Santa Barbara's title V operating permits program that must be corrected to meet the minimum requirements of 40 CFR part 70. The full program submittal, the Technical Support Document (TSD), which contains a detailed analysis of the submittal, and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.

1. Title V Program Support Materials

Santa Barbara's original title V program was submitted by the California Air Resources Board (CARB) on November 15, 1993. Additional material was submitted on March 2, 1994, August 8, 1994, December 8, 1994 and June 15, 1995. The submittal was found to be complete on January 13, 1994. The Governor's letter requesting source category-limited interim approval, California enabling legislation, and Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in Santa Barbara's submittal. The Santa Barbara submission does contain a complete program description, District implementing and supporting regulations, and all other program documentation required by § 70.4. An implementation agreement is currently being developed between Santa Barbara and EPA.

2. Title V Operating Permit Regulations and Program Implementation

Santa Barbara's regulations adopted or revised to implement title V include Regulation XIII, Part 70 Operating Permit Program, adopted November 9, 1993; Rule 202, Exemptions to Rule 201: Sections 202.A.1., 202.A.2., 202.A.3., 202.C., 202.D., 202.E., and 202.F., adopted March 10, 1992; Rule 205, Standards for Granting Applications: Sections 205.C.1.a.23., definition of ''Net Emissions Increase,'' 205.C.5.b.1.a.2.c., significant increases for new source nonattainment review, and 205.C.5.c.6., public notification and comment period, adopted July 30, 1991; and Rule 210, Fees, adopted May 7, 1991. The regulations substantially meet the requirements of 40 CFR part 70, §§ 70.2 and 70.3 for applicability; §§ 70.4, 70.5, and 70.6 for permit content, including operational flexibility; § 70.7 for public participation and minor permit modifications; § 70.5 for complete application forms; and § 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are several deficiencies in the program that are outlined under Section II.B. below as interim approval issues and further described in the Technical Support Document.

*a. Variances*—Santa Barbara has authority under State and local law to issue a variance from State and local requirements. Sections 42350 et sec. of the California Health and Safety Code and District Regulation V, Rule 506 allow the District to grant relief from enforcement action for permit violations. In the opinion submitted with California operating permit programs, California's Attorney General states that ''(t)he variance process is *not* part of the Title V permitting process and does not affect federal enforcement for violations of the requirements set forth in a Title V permit.'' (Emphasis in original.)

The EPA regards these State and district variance provisions as wholly external to the program submitted for approval under part 70, and consequently, is proposing to take no action on these provisions of State and local law. The EPA has no authority to approve provisions of State or local law, such as the variance provisions referred to, that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

*b. Permit Content*—Santa Barbara's permit content rule (Rule 1303) does not include certain important § 70.6 permit content requirements. Santa Barbara's rule does not require the level of detail regarding recordkeeping associated with monitoring found in § 70.6(a)(3)(ii) (A) and (B). Paragraph D.1.f. of Rule 1303 more generally addresses the requirements for recordkeeping associated with monitoring. Paragraph 1303.D.1.f. provides that operating permits issued pursuant to this rule will contain conditions establishing applicable recordkeeping requirements. Although 1303.D.1.f. does not explicitly state the recordkeeping requirements associated with monitoring, the paragraph's general language is consistent with the requirements of § 70.6(a)(3)(ii) (A) and (B).

In addition to lacking specific recordkeeping requirements of § 70.6, paragraph 1303.D.1.b. of Santa Barbara's rule does not require the permit to contain identification of any difference in form from the applicable requirement upon which a term or condition is based, as is required under § 70.6(a)(1)(ii). Additionally, Santa Barbara's definition of ''prompt'' reporting in the case of deviations, found in 1303.D.1.g, applies only to deviations due to emergency upset conditions, and does not define ''prompt'' for all deviations, as is required under § 70.6(a)(3)(iii)(B).

Santa Barbara's part 70 program submittal included a ''Standard Permit Format,'' (Appendix B–1, submitted November 15, 1993). The conditions of the Standard Permit Format included conditions that would correct the deficiencies identified above. For interim approval, EPA is specifically approving the Standard Permit Format

that was submitted as part of Santa Barbara's part 70 program [Appendix B–1, Sections C, E.3.c through h, and E.6, submitted November 15, 1993.] Any modifications to these sections of the Standard Permit Format must be approved by EPA. Failure to include these conditions in part 70 permits will be cause for EPA to object to a District operating permit. See § 70.8(c)(1). In order to receive full approval, Santa Barbara must modify Rule XIII to include the level of detail regarding recordkeeping associated with monitoring found in § 70.6(a)(3)(ii) (A) and (B), identification of difference in form from the applicable requirement, consistent with the requirements of § 70.6(a)(1)(ii), and definition of ''prompt'', consistent with § 70.6(a)(3)(iii)(B).

*c. Insignificant Activities*—Section 70.4(b)(2) requires States to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a State program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a State must request and EPA must approve as part of that State's program any activity or emission level that the State wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

Santa Barbara submitted District Rule 202, its current permit exemption rule, as its list of insignificant activities. It is clear that Rule 202 was not developed with the purpose of defining insignificant activities under the District's title V program in mind; the applicability provisions of the rule state that the exemptions apply to the requirements of Rule 201, the District requirements for obtaining Authority to Construct permits and non-federally enforceable Permits to Operate. Santa Barbara did not provide EPA with criteria used to develop the exemptions list, information on the level of emissions from the activities, nor with a demonstration that these activities are not likely to be subject to an applicable requirement. Therefore, EPA cannot propose full approval of the list as the basis for determining insignificant activities.

For other State and district programs, EPA has proposed to accept, as sufficient for full approval, emission levels for insignificant activities of 2 tons per year for criteria pollutants and the lesser of 1000 pounds per year, Section 112(g) de minimis levels, or other title I significant modification levels for hazardous air pollutants (HAP) and other toxics (40 CFR 52.21(b)(23)(i)). The EPA believes that these levels are sufficiently below the applicability thresholds of many applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a title V application. The EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in Santa Barbara. This request for comment is not intended to restrict the ability of States or districts, including Santa Barbara, to propose, and EPA to approve, different emission levels if the State or district demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements.

*d. Definition of Title I Modification*—Among the several criteria that Santa Barbara includes in its definition of ''significant part 70 permit modification'' is the provision that it not included a ''minor permit modification.'' Santa Barbara's exclusion of minor permit modifications as well as its definition of ''title I (or major) modification'' to include only modifications that are major under federal NSR and PSD resulting in a 'significant' net emissions increase, or a new or modified HAPs source resulting in a 'de minimis' increase of HAPs, clearly indicates that Santa Barbara does not interpret ''title I modification'' to include ''minor NSR changes.'' Additionally, Santa Barbara's definition of ''title I modification'' does not include modifications under part 60. Santa Barbara's definition of ''significant part 70 permit modification'' includes only ''Any equivalent or identical replacement of an emissions unit that is subject to standards promulgated under CAA, sections 111 or 112.'' Therefore, Santa Barbara's rule would not require all modifications under part 60 to be processed as significant permit revisions. Part 70 requires all modifications under title I of the Act to be processed as significant permit modifications (§ 70.7(e)(2)(i)(A)(5)). The EPA is currently in the process of determining the proper definition of ''title I modification.'' As further explained below, EPA has solicited public comment on whether the phrase ''modification under any provision of title I of the Act'' in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act.

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other things, allow State programs with a more narrow definition of ''title I modification'' to receive interim approval (59 FR 44572). The Agency explained its view that the better reading of ''title I modification'' includes minor NSR, and solicited public comment on the proper interpretation of that term (59 FR 44573). The Agency stated that if, after considering the public comments, it continued to believe that the phrase ''title I modification'' should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to allow States with a narrower definition to be eligible for interim approval.

Santa Barbara's exclusion of certain types of modifications under part 60 from the definition of ''title I (or major) modification'' and ''significant part 70 permit revision'' is an interim approval issue. EPA's initial part 70 proposal (56 FR 21712) identified part 60 modifications as title I modifications. No comment was received on the inclusion of part 60 modifications in the definition of ''title I modification,'' and EPA is not considering modifying the definition to remove modifications under part 60. With respect to minor NSR, the EPA hopes to finalize its rulemaking revising the interim approval criteria under 40 CFR 70.4(d) expeditiously. If EPA establishes in its rulemaking that the definition of ''title I modification'' can be interpreted to exclude changes reviewed under minor NSR programs, Santa Barbara's exclusion of minor new source review from the definition of ''significant part 70 permit modification'' and interpretation of ''title I (or major) modification'' would be consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition of ''title I modification'' must include changes reviewed under minor NSR, Santa Barbara's definition and

interpretation will become a basis for interim approval. If the definition and interpretation become a basis for interim approval as a result of EPA's rulemaking, Santa Barbara would be required to revise its definition and interpretation to include minor NSR in addition to revising the definition and interpretation to include all part 60 modifications in order to conform to the requirements of part 70.

Accordingly, today's proposed approval does not identify Santa Barbara's exclusion of minor new source review from the definition of ''significant part 70 permit modification'' and interpretation of ''title I (or major) modification'' as necessary grounds for either interim approval or disapproval. EPA does not believe that it is appropriate to determine whether this is a program deficiency until EPA completes its rulemaking on this issue. Santa Barbara submitted a June 15, 1995 letter from Peter Cantle, Engineering Division Manager, Santa Barbara County Air Pollution Control District, committing to revise the definitions of ''title I (or major) modification'' and ''significant part 70 permit revision'' to include all modifications under 40 CFR part 60. EPA has therefore identified Santa Barbara's definitions of ''signification part 70 permit modification'' and ''title I (or major) modification'' as an interim approval issue on the basis that the definitions do not adequately include modifications under part 60.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (adjusted annually based on the Consumer Price Index (CPI), relative to 1989 CPI). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum,'' (40 CFR 70.9(b)(2)(i)).

Santa Barbara has opted to make a presumptive minimum fee demonstration. The fees collected under Santa Barbara's existing fee schedule in Rule 210 results in title V facilities paying an average of $112.20 per permitted ton in permitting and emissions fees. Santa Barbara calculated its fee level at $112.20 per ton by adding up the annual permit equipment and emissions fees paid by sources identified as title V facilities ($2,373,000), and dividing that number by the permitted emissions (tons per year of regulated air pollutants) from those facilities.

In addition, Santa Barbara's title V fee rule (Rule 1304.D.11) requires that all costs incurred by the District for issuance of Part 70 permits be ''reimbursable costs.'' This will result in additional fees of $119,000 per year, an additional $20.65 per ton of actual emissions, as calculated by the District. Based on a conservative billing rate of $80 per hour, the District expects revenues of $119,000 annually. These fees combined result in collection of an amount that is well above the presumptive minimum. The District does not specifically require this emissions-based fee to be adjusted annually based upon the CPI. However, the District meets this requirement as a practical matter, because Santa Barbara's fees are significantly above the presumptive minimum. Santa Barbara's fee schedule was developed based on an estimation of workload associated with administration of the title V program. For more information, see Section III.C of Santa Barbara's Title V Operating Permit Program Description, and Appendix B–10 of the program submittal, available in the docket.

4. Provisions Implementing the Requirements of Other Titles of the Act

*a. Authority and Commitments for Section 112 Implementation*—Santa Barbara has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining ''federally enforceable requirements'' and requiring each permit to incorporate conditions that assure compliance with all such federally enforceable requirements. EPA has determined that this legal authority is sufficient to allow Santa Barbara to issue permits that assure compliance with all Section 112 requirements.

EPA is interpreting the above legal authority to mean that Santa Barbara is able to carry out all Section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards, U.S. EPA.

*b. Authority and Commitments for Title IV Implementation*—Santa Barbara certified in a letter from Peter Cantle, Engineering Division Manager, Santa Barbara County Air Pollution Control District, dated March 2, 1994, that there are no acid rain sources in the District. Santa Barbara committed in the March 2, 1994 letter to expeditiously adopt the appropriate legal authority necessary to issue timely Title IV permits to new or existing sources that become subject to or opt into Title IV.

*B. Proposed Interim Approval and Implications*

The EPA is proposing to grant interim approval to the operating permits program submitted by CARB on behalf of the Santa Barbara County Air Pollution Control District on November 15, 1993, and supplemented on March 2, 1994, August 8, 1994, December 8, 1994, and June 15, 1995. If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, Santa Barbara would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a federal permits program for the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if the District failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If Santa Barbara then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the District had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still had not submitted a corrective program that

EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove Santa Barbara's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In all cases, if, six months after EPA applied the first sanction, Santa Barbara had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a district has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a district title V operating permits program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for that district upon interim approval expiration.

1. Santa Barbara's Title V Operating Permits Program

If EPA finalizes this interim approval, Santa Barbara must make the following changes, or changes that have the same effect, to receive full approval (all required revisions are to District Rule XIII unless otherwise noted):

*a. Variances*—Revise Rule 1305.G(1) to read ''The terms and conditions of any variance or abatement order *that would prescribe a compliance schedule* shall be incorporated into the permit as a compliance schedule, to the extent required by Part 70 rules.''

*b. Permit Content*—Revise Rule 1303.D.1.f. permit content requirements to provide adequate specificity with regard to the applicable recordkeeping requirements. See § 70.6(a)(3)(ii)(A) and (B).

*c. Insignificant Activities*—Provide a demonstration that activities that are exempt from permitting under Rule XIII, (pursuant to rule 202, the District's permit exemption list) are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, Rule XIII may restrict the exemptions to activities that are not likely to be subject to an applicable requirement and emit less than District-established emission levels. The District should establish separate emission levels for HAP and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements. See § 70.4(b)(2).

Additionally, Revise Rule XIII to require that insignificant activities that are exempted because of size or production rate be listed in the permit application. See § 70.5(c). See 1302.D.1.f., Definition of insignificant activities.

Additionally, Revise Rule 1301 definition of ''Insignificant Activities'' to delete the last sentence, which contradicts the requirement that applications may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required. See § 70.5(c).

*d. Definition of Administrative Permit Amendment*—Revise 1301, definition of ''Administrative Permit Amendment'' part 6. Santa Barbara must define by rule what ''other changes'' will be determined to be administrative permit amendments. In order for ''other changes'' to qualify as an administrative permit amendment, the specific changes must be approved by the Administrator as part of the part 70 program. See § 70.7(d)(1)(iv).

*e. Operational Flexibility Notification*—Rule 1304.E.2 and E.3 must be revised to incorporate a requirement that sources notify EPA of changes made under the operational flexibility provisions. See § 70.4(b)(12).

*f. Public Notification Requirement*—Revise Rule 1304.D.6 to include notice ''by other means if necessary to assure adequate notice to the affected public.'' See § 70.7(h)(1).

*g. Significant Changes to Monitoring Requirements*—Revise Rule 1301, definition of ''Minor Permit Modification'' part (4) to read ''The modification does not involve any relaxation of any existing reporting or recordkeeping requirements in the permit, *or any significant changes to existing monitoring requirements in the permit.*'' See § 70.7(e)(2)(i)(2) and § 70.7(e)(4)(i).

*h. Form of Applicable Requirement*—The rule does not require the identification of any difference in form from the applicable requirement upon which the term or condition is based. Regulation XIII must be revised to include this requirement. This requirement is included in the Standard Permit Format. EPA is specifically approving the Standard Permit Format that was submitted as part of Santa Barbara's part 70 program (Appendix B–1, Section C, November 15, 1993 submittal). Any modifications to the standard permit format must be approved by EPA. Failure to include these conditions in part 70 permits will be cause for EPA to object to a District operating permit. See § 70.6(a)(1)(i).

*i. Applicable Requirement Trading*—Add emissions trading provisions consistent with § 70.6(a)(10), which require that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

*j. Prompt Reporting of Deviations*—Santa Barbara has not defined ''prompt'' in their program with respect to reporting of all deviations. Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Santa Barbara's requirement for reporting of deviations is limited to deviations due to emergency upset conditions. Under part 70, deviations include, but are not limited to, upset conditions. Santa Barbara must revise rule 1303.D.1.g to be consistent with the more inclusive part 70 requirement. To make Rule XIII more inclusive, Rule 1303.D.1.g could be revised to read ''* * * Deviations shall be reported within 72 hours of the occurrence * * *.''

Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. Therefore, as an alternative to the revision to Rule 1303.D.1.g above, Rule XIII could be revised to require prompt reporting of all deviations, and to require that prompt be defined in each permit. Rule 1303.D.1.g could be revised to read ''Conditions establishing all applicable reporting requirements; *conditions establishing prompt* reporting of any deviations from permit-stipulated requirement, *including definition(s) of ''prompt'' for all deviations.* All applicable reports shall be submitted every 6 months and shall be certified by a responsible official. Deviations due to emergency upset conditions shall be reported within 72

hours of the occurrence. *All other deviations shall be reported promptly, as defined in the permittee's permit.* The probable cause of deviations and remedial measure taken to correct this shall also be reported at this time.'' The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

As a third alternative, Santa Barbara could revise Rule XIII to include definitions of ''prompt'' for other types of deviations in addition to those caused by emergency upset conditions. Part 70 allows the permitting authority to define ''prompt'' in relation to the degree and type of deviation. Therefore, Santa Barbara may also revise Rule XIII to define reporting times for other types of deviations, if the types of deviations and their related reporting times are specifically defined in Santa Barbara's rule.

Meeting the requirements of § 70.6(a)(3)(iii)(B) through one of the three methods outlined above is a requirement for full approval of Santa Barbara's part 70 program.

*k. Exemptions*—Delete Rule 1301.B.4. Section 70.3(b) requires that major sources, affected sources (acid rain sources), and solid waste incinerators regulated pursuant to section 129(e) of the CAA may not be exempted from the program. Although section 129(g)(1)(3) of the CAA exempts solid waste incineration units subject to section 3005 of the Solid Waste Disposal Act, part 70 does not exempt these units. Any solid waste incineration unit that meets the definition of ''major source'' under part 70 would be subject to the requirement to obtain a part 70 permit regardless of the unit's applicability under section 129.

*l. Recordkeeping for off-permit changes*—Santa Barbara's rule does not require that the permittee keep records describing off-permit changes and the emissions resulting from these changes. Santa Barbara's rule must be revised to be consistent with the requirements of § 70.4(b)(14)(iv).

*m. Definition of Title I Modifications and Significant Part 70 Permit Modifications*—Rule 1301 defines ''modification'' to include all modifications under 40 CFR part 60. However, the definitions of ''title I (or major) modification'' and ''significant part 70 permit modification'' do not clearly define all modifications under part 60 as title I modifications and do not clearly ensure they will be treated as significant permit modifications. See discussion in Section II.A.2.d of this notice. Santa Barbara submitted a June 15, 1995 letter from Peter Cantle, Engineering Division Manager, Santa Barbara County Air Pollution Control District, committing to provide interpretive guidance demonstrating that all modifications under 40 CFR part 60 will be treated as significant permit modifications. In order to receive final interim approval, Santa Barbara must finalize and submit to EPA interpretive guidance demonstrating that all modifications under 40 CFR part 60 will be treated as significant permit modifications. In order to receive full approval, Santa Barbara must clarify the definitions of ''title I (or major) modification'' and ''significant part 70 permit modification'' to include all modifications under 40 CFR part 60.

*n. Reporting of an Emergency*—In order to obtain an affirmative defense in an emergency, Santa Barbara requires in Rule 1303.F.d., among other things, that the permittee submit a description of the emergency within 4 days of the emergency. Santa Barbara must revise 1303.F.d to require submittal of notice of emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency, to be consistent with § 70.6(g)(3)(iv) and in order to maintain the affirmative defense of emergency. Prior to amending the rule, Santa Barbara should insure that sources are aware that this 2 day notice is necessary in order to maintain the affirmative defense. This could be accomplished by including a permit condition in all permits issued that requires notice of emergency to be submitted within 2 days.

2. California Enabling Legislation—Legislative Source Category Limited Interim Approval Issue

Because California State law currently exempts agricultural production sources from permit requirements, the California Air Resources Board has requested source category-limited interim approval for all California districts. The EPA is proposing to grant source category-limited interim approval to the operating permits program submitted by the California Air Resources Board on behalf of Santa Barbara on November 15, 1993. In order for this program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

The above described program and legislative deficiencies must be corrected before Santa Barbara can receive full program approval. For additional information, please refer to the TSD, which contains a detailed analysis of Santa Barbara's operating permits program and California's enabling legislation.

3. District Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act (60 FR 8333; February 14, 1995). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow States time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Santa Barbara must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing District regulations.

For this reason, EPA is proposing to approve the use of Santa Barbara's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Santa Barbara of rules specifically designed to implement section 112(g). However, since the sole purpose of this approval is to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of this proposed approval to 12 months following promulgation by EPA of the section 112(g) rule.

4. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of Santa Barbara's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, Santa Barbara will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in a Memorandum of Agreement between Santa Barbara and EPA, expected to be completed prior to approval of Santa Barbara's section 112(l) program for delegation of unchanged federal standards. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

## III. Administrative Requirements

*A. Request for Public Comments*

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the District's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by August 9, 1995.

*B. Executive Order 12866*

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

*C. Regulatory Flexibility Act*

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

*D. Unfunded Mandates Act*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

## List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: June 30, 1995.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 95–16827 Filed 7–7–95; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 405

**[BPO–121–P]**

**RIN 0938–AG48**

## Medicare Program; Telephone and Electronic Requests for Review of Part B Initial Claim Determinations

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would allow beneficiaries, providers, and physicians (and other suppliers), who are entitled to appeal Medicare Part B initial claim determinations, to request a review of the carrier's initial determination by telephone or electronic transmission. (Currently, a request for review may be made only in writing.) Allowing the use of telephone and electronic requests would expedite the review process by supplementing, *not replacing*, the current review procedures. It would also improve carrier relationships with the provider and beneficiary communities by providing quick and easy access to the appeals process. (This rule would not provide for telephone or electronic requests for review of Part B initial determinations made by Peer Review Organizations and Health Maintenance Organizations.)

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 8, 1995.

**ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–121–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPO–121–P. Comments received timely will be available for public inspection as they are received, generally beginning

approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Rosalind Little, (410) 966–6972.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Under current Medicare regulations, if a party indicates dissatisfaction with a Part B initial determination on a claim, either a review is made in accordance with regulations set forth in 42 CFR 405.807 (Review of initial determination) and section 12010 of the Medicare Carriers Manual (effective October 1990) or the request is dismissed if the appellant is not a proper party. (''Party'' is defined at § 405.802 as a person enrolled under Part B of title XVIII, his/her assignee, or other entity having standing in the initial or appellate proceedings.)

Section 405.807 sets forth the review process to be followed by a party who is dissatisfied with an initial determination by a carrier. A party is currently required to file a written request for review of the initial determination with the carrier, the Social Security Administration, or HCFA within 6 months after the date of the notice of the initial determination. The carrier may, upon request by the party, extend the time period to file a request for review if it finds the party had good cause for failing to request a timely review. The review, an independent reexamination of the entire claim, is performed by carrier staff who played no part in making the initial determination.

''Supplier'' is defined at § 400.202 as a physician or other practitioner, or an entity other than a ''provider,'' that furnishes health care services under Medicare. Although ''supplier'' encompasses physicians, for clarity in this document, we refer to both ''physicians'' and ''suppliers''.

''Provider'' is defined at § 400.202 as a hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice, that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement but only to furnish outpatient physical therapy or speech pathology services.

Under section 1879(d) of the Social Security Act (the Act), a provider, or a physician or other supplier that accepts assignment to furnish services to Medicare beneficiaries has the same appeal rights as an individual beneficiary under certain limited circumstances if the issue in dispute involves medical necessity or custodial care or home health denials involving the failure to meet homebound or intermittent skilled nursing care requirements. Additionally, regulations at 42 CFR part 405, subpart H (Appeals Under the Medicare Part B Program) provide that a supplier or physician that has taken assignment of a Part B Medicare claim has the same appeal rights as the beneficiary.

## II. Proposed Changes to the Procedures for Requesting a Review

We propose to change the Medicare regulations at § 405.807 to allow a party to request a review of a Part B initial claim determination by telephone or by electronic transmission, in addition to the current provisions for a written request. The term ''electronic transmission'' would refer to tape-to-tape, disk-to-disk, or any other HCFA-approved electronic media form for electronic transmission. Fax machine transmissions would not be considered ''electronic transmissions.'' We have included in this section proposed methods for allowing parties to request a review by telephone or electronic transmission.

### *A. Telephone Requests for Review*

The notice accompanying the carrier's initial determination, which explains how to initiate a request for review, would include the telephone number designated by the carrier for making review requests. If an appellant initiates a request for review by telephone, the carrier would assign the request a confirmation number. During the telephone discussion, the appellant would be given the confirmation number and the name of the person who received his or her telephone request. It is important that the confirmation number be kept by the party requesting a review. If it is unclear to the carrier that a request was filed or filed timely, the confirmation number would assist the carrier in locating its records of the telephone request. While providing a confirmation number serves as additional protection for the appellant, loss of the number would not affect access to the appeal process and or appeal records.

We believe that allowing appellants to initiate a request for review by telephone would facilitate easier access to the appeals process. We recognize, however, that there may be instances in which the appellants may have difficulty in reaching a carrier by telephone. In order to ensure that appellants who encounter difficulties have sufficient time to file a written request for review by the 180-day deadline, we would limit the period to request a review by telephone to a period of 150 days after the date of the notice of the initial determination. This shorter period for initiating a review by telephone would afford an appellant who may be unsuccessful in reaching a carrier by telephone an additional ''window of opportunity'' to make a written request for review before the time to appeal expires.

We believe that providing this window would establish a safeguard for appellants who were unable to reach the carrier by telephone. This safeguard is necessary because of difficulty verifying that the appellant could not reach the carrier by telephone. Therefore, if the appellant telephoned the carrier on the 150th day and could not get through, he or she would still have an additional 30 days to submit a written request for review.

We intend to establish instructions for carriers that would ensure that the right to a review is not compromised. These instructions would include, but may not be limited to, the following:

### *B. Requests for Review*

- The carrier's initial claim notice must specify the telephone number that a party dissatisfied with the initial determination can call to request a review. The initial claim notice must also specify the timeframe for requesting review by telephone (that is, 150 days), as well as the timeframe for filing a written request for review (that is, 180 days).
- The carrier must inform and educate the beneficiaries about its telephone review process through any one of the following:

—Bulletins/newsletters.
—Newspaper articles.
—Senior citizen groups.
—Beneficiary outreach workshops.
—Carrier's customer service/inquiry department.
—Provider relations department.

- The carrier must document all telephone calls at the time a call is received. The carrier must record the date the appellant called and the confirmation number assigned to assure timely filing.

- The carrier must attempt to resolve as many issues as possible during the telephone conversation. Some telephone reviews may not be processed or completed because of the complexity of issues, need for additional documentation, or other factors. At the end of each telephone review, the carrier must advise the appellant of further appeal rights.
- The carrier must give the appellant a written determination advising him or her of the results of the review, regardless of whether a review is requested by telephone, in writing, or via electronic transmission.

*C. Electronic Requests for Review*

Filing review requests electronically would be easier and faster for parties than submitting a letter or the HCFA–1964 form (Request for Review of Part B Medicare Claim). Electronic requests would shorten the mailing time for submitting review requests and eliminate the paper hassle of hardcopy requests. Currently, not all of the carriers have the capacity to receive electronic requests for review. However, in the future all carriers will have the capability to accept electronic requests for review from entities that submit their claims electronically. We propose to provide for electronic requests for review but to limit this process to those entities that electronically bill their claims to a carrier system that has the capability to receive electronic requests for review. We would instruct carriers to inform their billers whenever they obtain this capability and inform them how the process works.

The following steps show how the electronic process is expected to work:

- Once the biller electronically receives notification of the initial claim determination from the carrier, he or she must enter a ''specified code'' to indicate that the retransmission is a request for review.
- For each line of the claim being submitted for review, the biller must indicate the reason for the review in the ''Notes'' field. This request for review is transmitted to the carrier.
- Any additional documentation the biller wants to submit can be mailed, or with carrier agreement, faxed to the carrier.

An appellant would have a 180-day period to request a review of an initial determination by electronic means, which is the same time allowed to file a written request for review. The appellant submitting an electronic request for review would receive an online acknowledgement at the time of transmission. Therefore, the appellant would have documentation that a request for review was filed and the time of filing. Since the appellant who submitted an electronic request would have more control over initiating the request for review than an appellant who telephoned for a request, we are not limiting electronic requests to 150 days.

The above explanation is being furnished simply to provide an idea of the way the process should work. However, should this proposed rule be finally implemented, the above process is not necessarily the exact process that will be employed.

## III. Reasons for the Revisions

Parties to a Part B determination, particularly physicians who take assignment, often contact carriers by telephone to dispute a determination that a service was not covered or to obtain information about why they were paid less than they thought was reasonable. Sometimes, physicians call because they believe the code assigned to the service is incorrect, or they want to correct some other error they believe the carrier made.

Many beneficiaries raise questions about initial determinations if a denial or partial denial of a bill is involved. Beneficiaries often want to know why charges were reduced, especially if they believe the charges were reasonable.

As a result of these calls, carriers frequently make corrections by telephone, calling the process a reopening, informal review, or other name. This action requires administrative funds, even though the party has not actually used the administrative review process. The carrier, in effect, may do two reviews in place of one for each instance in which the informal action does not satisfy the party.

A party that calls to inquire about the initial determination, we believe, would be pleased to know he or she has the option of writing or calling to request a review. Whenever possible, the carrier would attempt to resolve issues during a call and provide a review determination at the conclusion of the call. At the end of each telephone review, the carrier would advise the party of further appeal rights.

The current review process that requires a party to write to request a review takes time and effort, especially for beneficiaries. At times, the party requesting a review in writing may have to wait approximately 45 days to receive a review determination. Our intention in encouraging telephone requests for reviews is to foster quick communication between the review staff and the parties. The proposed additional means of requesting a review by telephone or electronic transmission would improve customer service in the following ways:

- Making access to the appeals process easier.
- Saving time.
- Providing a more prompt response.
- Reducing paperwork. (Currently a party must write a letter or complete HCFA Form 1964 (Request for Review) or submit a completed EOMB to request a review.)
- Ensuring prompt payments.
- Improving our relationship with the beneficiary and physician/supplier communities.

## IV. Exclusions From Telephone and Electronic Reviews

We do not intend to provide for telephone requests for review on Part B determinations made by Peer Review Organizations (PROs) because of the types of issues PROs handle. The issues are usually medically focused and highly technical. We also believe this process would not be administratively efficient and reasonable, if, in most cases, adjudication cannot occur at the time of the call. The process could actually result in delays and/or duplication of effort. We believe the issues and documentation needed to process PRO appeals are sufficiently different from other Part B reviews and the telephone request process would be cumbersome for these appeals.

Similarly, we do not intend to provide for telephone requests for review on Part B initial determinations made by Health Maintenance Organizations (HMOs). Requests for reconsideration of initial determinations made by HMOs are governed exclusively by 42 CFR part 417, subpart Q. Unlike part 473, subpart B (PRO reconsiderations and appeals process), there is no cross-reference to part 405, subpart H in part 417, subpart Q.

Electronic requests for review would be available to those billers that bill their claims to a carrier system that has the capability to receive electronic requests for review. Although PROs may make the review determination, it is the carrier or fiscal intermediary's responsibility to process any adjustments to the claim, as a result of the review determination. Since the PROs are not involved in the billing process, the PROs would not need to have the capability to receive claims and/or electronic requests for reviews.

## V. Provisions of the Proposed Regulation

Under sections 205(a), 1102(a), 1871(a)(1) and 1872 of the Act, the

Secretary has the authority to prescribe regulations as may be necessary to administer the Medicare program. It is under these statutory authorities that we propose to change the Medicare regulations to allow a party to request a review of a Part B initial claim determination by telephone or by electronic transmission.

We propose to revise § 405.807 (Review of Initial Determination) as follows:

- Redesignate existing paragraph (d) as new paragraph (b) and remove the words ''in writing'' from newly redesignated paragraph (b).
- Redesignate existing paragraph (b) as paragraph (c) and revise it to allow the additional methods of telephone and electronic transmission for a party (other than a PRO) to request a review of an initial determination by a carrier.
- Redesignate existing paragraph (c) as paragraph (d) and revise it to allow for a period of 150 days after the date of the notice of the initial determination for a party to telephone the carrier and request a review.
- Add new paragraph (e) to clarify that a beneficiary, provider, or attending practitioner who is dissatisfied with a PRO initial determination may request a review of an initial determination only in writing.

## VI. Collection of Information Requirements

Section 405.807 of this document contains information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These reporting and recordkeeping requirements are not effective until a notice of OMB's approval is published in the **Federal Register**. This proposed rule would impose minimal recordkeeping requirements. We would require carriers to assign a confirmation number to a party that initiates a request for review by telephone. The party would be given the confirmation number by the person who received his or her telephone request. We anticipate that the confirmation number would be the same number the carrier uses as its internal control number/documentation number (usually a 13-digit number). If this can be done, there would not be any additional recordkeeping on the carrier's part. The carrier is already assigning this number and recording it.

The party who would be given the confirmation number would have to record the number. This number would confirm that the party timely filed a request should that become an issue later. The confirmation number would assist the carrier in locating its record of the telephone request. It would take less than one minute for the carrier to assign and record the confirmation number and the same for the party to record the confirmation number. While providing a confirmation number serves as additional protection for the party, loss of the number would not affect access to the appeal process and/or appeal records. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

## VII. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comments, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## VIII. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, carriers and beneficiaries are not considered to be small entities. We consider all providers, physicians, and other suppliers to be small entities. Under this proposed rule, beneficiaries, providers, and physicians and other suppliers may request a review of an initial claim determination by telephone or through electronic transmission. This review is the first level of appeal for Part B claims and is performed by carrier staff who had no part in making the initial determination. This review, without the presence of oral testimony by the appellant party, is considered to be less costly to all parties and is a more expeditious way of handling complaints than a hearing.

Section 1102(b) of the Act requires us to prepare a regulatory impact statement if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a regulatory impact statement since we have determined, and we certify, that this rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this proposed rule was not reviewed by the Office of Management and Budget.

### List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405 would be amended as follows:

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405, subpart H is revised to read as follows:

**Authority:** Secs. 205(a), 1102, 1842(b)(3)(C), 1869(b), and 1871, and 1872 of the Social Security Act, as amended. (42 U.S.C. 405(a), 1302, 1395u(b)(3)(C), 1395ff(b), 1395hh and 1395ii.)

## Subpart H—Appeals Under the Medicare Part B Program

2. Section 405.807 is revised to read as follows:

### § 405.807 Review of initial determination.

(a) *General.* A party to an initial determination by a carrier, who is dissatisfied with the initial determination, may request that the carrier review the determination. If a review is requested, the request for review does not constitute a waiver of the right to a hearing (under § 405.815) subsequent to the review.

(b) *Definition. Request for review* is a clear expression by a party to an initial determination that indicates he or she is dissatisfied with the initial determination and wants to appeal the matter.

(c) *Place and method of filing a request.* Except for the limitation on PRO requests set forth in paragraph (e) of this section, a request by a party for a carrier to review the initial determination may be made only in one of the following ways:

(1) In writing and filed at an office of the carrier or at an office of SSA or HCFA.

(2) By telephone to the telephone number designated by the carrier as the

appropriate number for its receipt of requests for review.

(3) By electronic transmission to the carrier.

(d) *Time of filing request.* (1) For telephone requests, a party to the initial determination may request a review of the initial determination within 150 days after the date of the notice of the initial determination.

(2) For requests made in writing or by electronic transmission, a party to the initial determination may request a review of the determination within 180 days after the date of the notice of the initial determination.

(3) The carrier may, upon request by the party affected, extend the period for requesting the review.

(4) For telephone requests, a party to the initial determination is not precluded from later making a written or electronic request if unable to contact the carrier within the 150 day timeframe. The party has an additional 30 days to submit a written or electronic request for review.

(e) *Exception to telephone and electronic review requests.* A party that submits a request for review of a Medicare Part B initial determination on a claim by a PRO must follow the submittal requirements described in paragraph (c)(1) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 28, 1995.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 95–16807 Filed 7–7–95; 8:45 am]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 32 and 36

**[DA 95–1409]**

### Proposed Reporting Requirements on Video Dialtone Costs and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** On June 23, 1995, the Bureau issued an Order Inviting Comments that solicits comments on proposed reports for local exchange carriers offering video dialtone service. The proposed reports would enable the Commission to monitor video dialtone's impact on LECs cost, local telephone rates, and the assignment of costs between federal and state jurisdictions. The Bureau acted under authority delegated to it in the *Video Dialtone Reconsideration Order,* (FCC 94–269. 10 FCC Rcd 244, 326(1994)) which set forth accounting and reporting requirements for LECs that offer video dialtone service.

**DATES:** Comments are due July 26, 1995. Reply comments are due August 14, 1995.

**ADDRESSES:** The Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Ackerman, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0810.

**SUPPLEMENTARY INFORMATION:** On November 7, 1994 the Commission issued the *Video Dialtone Reconsideration Order,* requiring LECs to establish two sets of subsidiary accounting records to capture the shared and wholly dedicated video dialtone investment, revenue and expense. The Commission also required the summaries of these records be filed on a quarterly basis in order to enhance the Commission's ability to identify and evaluate video dialtone costs for the tariff review process and for future monitoring efforts. The Commission delegated to the Common Carrier Bureau the authority to determine the content and format of the subsidiary records and the quarterly reports. In addition, the Commission directed the Bureau to develop a data collection program to track the impact of video dialtone on local telephone rates and the assignment of costs between federal and state jurisdictions. The Bureau Order asks parties to comment on its proposal to establish a quarterly report and an annual report in which they would collect and summarize video dialtone investment, expense and revenue data disaggregated by regulated and nonregulated classification and also by jurisdictional categories. The Order also requests that parties identify the circumstances under which the Bureau could streamline or lift these proposed reporting requirements and the changes it should make in response to those circumstances.

Complete text of this Order Inviting Comments is available for inspection and copying in the Accounting and Audits Division public reference room, 2000 L Street, NW., Suite 812, Washington DC. Copies are also available from International Transcription Service, Inc., at 2100 M Street, NW., Suite 140, Washington, DC 20037, or call (202) 857–3800.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95–16844 Filed 7–7–95; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 95–103, RM–8659]**

### Radio Broadcasting Services; Wyeville, WI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Josephine Miracle requesting the allotment of Channel 267A to Wyeville, Wisconsin, as that community's first local service. The coordinates for Channel 267A are 44–01–39 and 90–16–35. There is a site restriction 8.7 kilometers (5.4 miles) east of the community.

**DATES:** Comments must be filed on or before August 21, 1995, and reply comments on or before September 5, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Josephine Miracle, 206 East 19th Street, Lockport, Illinois 60441.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–103, adopted June 23, 1995, and released June 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

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.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–16842 Filed 7–7–95; 8:45 am]

BILLING CODE 6712–01–F

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Part 195

**[Docket PS–140, Notice 2]**

**RIN 2137–AC34**

## Areas Unusually Sensitive to Environmental Damage

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Extension of comment period.

**SUMMARY:** This notice extends the comment period for the public workshop notice on areas unusually sensitive to environmental damage which RSPA published May 26, 1995.

**DATES:** Interested persons are invited to submit comments by August 25, 1995.

**ADDRESSES:** Written comments must be submitted in duplicate and mailed or hand delivered to the Dockets Unit, Room 8421, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Please refer to the docket and notice numbers stated in the heading of this notice. All comments and materials cited in this document will be available for inspection and copying in Room 8421 between 8:30 a.m. and 4:30 p.m. each business day. Non-federal employee visitors are admitted into the DOT headquarters building through the southwest entrance at Seventh and E Streets, SW.

**FOR FURTHER INFORMATION CONTACT:** Christina Sames, (202) 366–4561, about this document, or the Dockets Unit, (202) 366–5046, for copies of this document or other materials in the docket.

**SUPPLEMENTARY INFORMATION:** On June 15 and 16, 1995, RSPA held a public workshop on unusually sensitive environmental areas. The workshop's purpose was to openly discuss the criteria being considered by RSPA to determine areas unusually sensitive to environmental damage from a hazardous liquid pipeline release. The criteria are needed to carry out statutory requirements. RSPA requested that persons unable to attend the workshop submit written comments by June 26, 1995.

The American Petroleum Institute (API) sent a letter to the docket requesting a 60 day extension be granted for comment to the notice announcing the public workshop on areas unusually sensitive to environmental damage (60 FR 27948). API stated that an extension was necessary to allow its members time to review the information in the notice, to evaluate the potential value of the approach, and to prepare comments for RSPA's consideration.

RSPA has decided the 60 day extension to the public comment period is reasonable to allow API and others to evaluate and respond to the information presented in the public workshop notice. The comment period will therefore be extended to close on August 25, 1995.

**Authority:** 49 U.S.C. 60102, 60108, 60109; 49 CFR 1.53 and Appendix A to part 106.

Issued in Washington, DC on July 3, 1995.

**Cesar De Leon,**

*Acting Associate Administrator for Pipeline Safety.*

[FR Doc. 95–16811 Filed 7–7–95; 8:45 am]

BILLING CODE 4910–60–P

# Notices

**Federal Register**

Vol. 60, No. 131

Monday, July 10, 1995

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

### Food Safety and Inspection Service

**[Docket No. 95–031N]**

### National Advisory Committee on Microbiological Criteria for Foods; Meeting

The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a meeting on July 18 through July 20 1995, at the Ramada Hotel Denver West, 14707 West Colfax, Golden, Colorado 80401, (303) 279–7611. The committee will meet on Tuesday, July 18, from 8:30 AM to 5:00 PM and on Thursday, July 20, from 1:00 PM to 3:00 PM. Subcommittees will meet Wednesday, July 19, from 8:30 AM to 5:00 PM, and Thursday, July 20, from 8:30 AM to 12:00 PM.

The NACMCF provides advice and recommendations to the Secretaries of Agriculture, and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed. This includes criteria pertaining to microorganisms that indicate whether food has been processed using good manufacturing practices. The meeting will include the following activities, as time permits:

I. A critique and comment session on the International Committee on Microbiological Specifications for Foods' draft document, ''Principles for Establishment and Application of Microbiological Specifications for Foods.''
II. A discussion on the role of the Food Safety and Inspection Service in animal production food safety.
III. A session to review and propose modifications to the NACMCF document, ''Hazard Analysis and Critical Control Point System.''
IV. A presentation and discussion about the terms and concepts of microbial risk assessment.
V. A discussion on the microbiology of raw produce as related to public health issues.
VI. A presentation and discussion about pathogens other than *Vibrio vulnificus* in shellfish.
VII. A meeting and discussion on the use of microorganisms as indicators of the safety of meat, poultry, and egg products.
VIII. Meetings held by the subcommittees.
IX. Public comments.

The NACMCF meeting is open to the public on a space available basis. Interested persons may file comments relating to the activities listed above prior to and following the meeting. These comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 311, 1255 22nd Street, NW., Washington, DC 20250. Background materials are available for inspection by contacting Mr. Fedchock on (202) 254–2517.

Done at Washington, DC, on: July 5, 1995.

**Michael R. Taylor,**

*Administrator.*

[FR Doc. 95–16939 Filed 7–7–95; 8:45 am]

**BILLING CODE 3410–DM–P**

### Forest Service

### Oregon Coast Provincial Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Oregon Coast Provincial Advisory Committee will meet on July 27, 1995, in Depoe Bay, Oregon, at the Surfrider (motel/restaurant), 3115 NW Highway 101 (2 miles north of Depoe Bay). The meeting will begin at 9:30 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Coastal Landscape Analysis and Modeling Study (CLAMS); (2) Coastal Oregon Productivity Enhancement (COPE); (3) watershed analysis: from President's Plan to projects; (4) North Coast Adaptive Management Area; (5) powerful questions (discuss/prioritize powerful questions developed at April 27, 1995, meeting), and (7) open public forum. All Oregon Coast Province Advisory Committee meetings are open to the public. The ''open forum'' is scheduled near the conclusion of the meeting. Interested citizens are encouraged to attend. The Committee welcomes the public's written comments on committee business at any time.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Harry Bonini, Public Affairs Officer, at (503) 750–7075, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: July 3, 1995.

**José Linares,**

*Acting Forest Supervisor.*

[FR Doc. 95–16836 Filed 7–7–95; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–821–807]**

### Notice of Antidumping Order: Ferrovanadium and Nitrided Vanadium From the Russian Federation

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

**EFFECTIVE DATE:** July 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department of Commerce (the Department) regulations are in reference to the provisions as they existed on December 31, 1994.

*Scope of Order*

The products covered by this order are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.*, more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen. Excluded from the scope of this order are vanadium additives other than

ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to this order are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.5040, 8112.40.3000, and 8112.40.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

*Antidumping Duty Order*

In accordance with sections 735(a) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') made its final determination that ferrovanadium and nitrided vanadium from the Russian Federation (''Russia'') is being sold at less than fair value (60 FR 27957, May 26, 1995). On July 3, 1995, the International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise from Russia.

Therefore, all unliquidated entries of ferrovanadium and nitrided vanadium from Russia that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1995, the date of publication of the Department's preliminary determination (60 FR 438), are liable for the assessment of antidumping duties.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market exceeds the United States price for all relevant entries of ferrovanadium and nitrided vanadium from Russia. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below.

The ad valorem weighted-average dumping margins are as follows:

| Manufacturer/Producer/Exporter | Weighted-Average Margin |
|---|---|
| Galt Alloys, Inc | 3.75 |
| Gesellschaft far Elektrometallurgie m.b.H. (and its related companies Shieldalloy Metallurgical Corporation, and Metallurg, Inc.) | 11.72 |
| Odermet | 10.10 |
| Russia-wide Rate | 108.00 |

This notice constitutes the antidumping duty order with respect to ferrovanadium and nitrided vanadium from Russia. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 3, 1995.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 95–16839 Filed 7–7–95; 8:45 am]

BILLING CODE 3510–DS–P

**[A–357–804]**

## Notice of Amendment to Final Determination and Antidumping Duty Order: Silicon Metal From Argentina

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

**EFFECTIVE DATE:** July 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Kristin Heim or Elizabeth Graham, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798 and 482–4105, respectively.

### Summary

On May 30, 1995, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) April 7, 1995, remand determination and entered Final Judgment. See *American Alloys, Inc. et al.* v. *United States of America,* Slip-Op 95–98, Court No. 91–10–00782 (CIT May 30, 1995).

On September 26, 1991, the Department published the Antidumping Duty Order of Silicon Metal from Argentina (56 FR 48779, September 26, 1991). The weight-averaged margin was determined to be 8.65 percent.

The Department prepared the final results of redetermination pursuant to a remand order dated December 9, 1994, from the Court of International Trade, which was based upon the U.S. Court of Appeals for the Federal Circuit's opinion in *American Alloys, Inc. et al.* v. *United States,* 30 F.3d 1469 (Fed.Cir. 1994). In accordance with the Federal Circuit's order, the Department attempted to analyze whether indirect taxes rebated under Argentina's Reembolso program should be accounted for in the calculation of U.S. price (USP), pursuant to 19 U.S.C. 1677a(d)(1)(C), when determining the dumping margin. Because the respondent refused to allow verification, the Department made its remand determination on the basis of best information available (BIA) which resulted in a dumping margin of 17.87 percent.

### Background

The Reembolso is a program through which the Government of Argentina provided tax and duty rebates to silicon metal exporters that purchased domestically produced and imported inputs. In the antidumping investigation, the Department determined that the USP should be adjusted upward by the amount of the rebated taxes which the respondent, Electrometalurgica Andina S.A.I.C. (Andina), received upon export of the subject merchandise to the United States. Petitioners challenged the methodology the Department used to make this determination, arguing that the Department had failed to investigate whether the taxes rebated under Reembolso were imposed directly upon silicon metal or inputs physically incorporated into silicon metal. In petitioners' view, this inquiry was necessary to determine which of the taxes rebated under the Reembolso program were directly related to the exported merchandise or components physically incorporated therein.

The CIT affirmed the Department's determination that this type of inquiry was relevant to a countervailing investigation, but not an antidumping investigation. The CIT also instructed the Department to examine more closely the tax pass-through issue. *American Alloys, Inc.* v. *United States,* 810 F. Supp. 1294, 1296 (CIT 1993). Petitioners subsequently appealed and the U.S. Court of Appeals for the Federal Circuit reversed and remanded the lower court's decision, holding that the Department must undertake a directly-related inquiry in the antidumping investigation of silicon metal from Argentina. *American Alloys, Inc.* v. *United States,* 30 F.3d 1469 (Fed.Cir. 1994). In addition, the Federal Circuit reversed the Court of International

Trade's ruling that the Department had to conduct a tax pass-through analysis in the home market. In so doing, the Federal Circuit found that the Department's verification in the investigation that taxes were included in the home market price was based on sufficient record evidence.

**ITA Remand Results**

The Department attempted to follow the Court's remand instructions to examine whether each tax was directly related to the merchandise in question and its physically incorporated components. In so doing, the Department requested the respondent, Andina, to identify which components used in the production of silicon metal were physically incorporated into silicon metal, and which of the taxes rebated under the Reembolso program were directly related to the silicon metal or the components physically incorporated therein. Andina filed its response and petitioners subsequently commented. The Department then issued a deficiency questionnaire requesting additional information which the Department concluded was necessary to complete a physical incorporation analysis and the directly related test. Andina responded and petitioners subsequently submitted comments on this response.

Due to the substantial amount of new information submitted by Andina, a verification was deemed necessary. Andina initially indicated its willingness to participate in a verification. However, Andina subsequently informed the Department that it would not allow a verification of the responses. Andina cited cost reductions, reduced personnel, preparation of annual financial statements and difficulty in locating documentation from the period of investigation (March 1 through August 31, 1990) as reasons for its decision not to participate in the verification.

Because the respondent refused to allow verification of its responses, the Department was forced to make its remand determination on the basis of BIA pursuant to section 776(c) of the Tariff Act of 1930, as amended, 19 U.S.C. 1677e(c). Accordingly, as BIA, the Department did not allow an adjustment to USP for the rebated taxes received under the Reembolso program. Therefore, we have calculated the dumping rates for Andina without making an upward adjustment to USP for the amount of the Reembolso tax rebated received. In addition, the adjustment to USP of the value-added tax (VAT) that was disallowed in the first remand can now be reinstated. In adjusting USP for the VAT, we employed the methodology developed as a result of the Court's decision in *Federal-Mogul, et al.* v. *United States*, 834 F. Supp 1391 (CIT 1993). See Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France, 59 FR 14136, March 25, 1994.

Based on our examination of the record, we determine the LTFV margin to be:

| Producer/Manufacturer Exporter | Margin (percentage) |
|---|---|
| Andina | 17.87 |
| All others | 17.87 |

Dated: June 30, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–16837 Filed 7–7–95; 8:45 am]

BILLING CODE 3510–DS–M

## Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 95–048. *Applicant:* University of Nebraska - Lincoln, Physics and Astronomy Department, 205 Brace Lab, Lincoln, NE 68588-0111. *Instrument:* Integrated Sensors, Model MD100. *Manufacturer:* Integrated Sensors Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of singly and multiply charged ions of helium, neon, oxygen, and other common gases in order to further the knowledge of the structure of atoms and how they interact with beams of x-ray. *Application Accepted by Commissioner of Customs:* June 21, 1995.

*Docket Number:* 95–049. *Applicant:* Auburn University, 311 Ingram Hall, Auburn University, AL 36849. *Instrument:* Electron Microscope, Model JEM-2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for study of the microstructure of metals, metal alloys, ceramics, intermetallic compounds, metal - matrix composites and polymers. The experiments to be conducted include:

1. characterization of multiphase intermetallic compounds,

2. dynamic investigations of nickel aluminides at elevated temperatures,

3. edge-on microscopy of intermetallic - metal joints,

4. microstructural and chemical characterization of nanoparticulate materials,

5. imaging of polymeric thin films,

6. high resolution imaging of structural ceramic materials, and

7. crystallographic characterization of phases by electron diffraction.

In addition, the instrument will be used for the training of faculty, staff and graduate students. *Application Accepted by Commissioner of Customs:* June 21, 1995.

*Docket Number:* 95–050. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695-7212. *Instrument:* Mass Spectrometer, Model IMS-6f. *Manufacturer:* Cameca Instruments, France. *Intended Use:* The instrument will be used to determine the levels of impurities to the PPB and PPT level in materials of engineering importance using the SIMS techniques of dynamic depth profiling, static surface analysis, three dimensional depth profiling, surface mapping, etc. These techniques will be applied for both negative and positive ions, for both conducting samples and insulators using the appropriate primary ion beam with both electron and molecular flooding as needed to provide the optimum sensitivity and depth resolution. In addition, the instrument will be used for educational purposes in the Materials Science and Engineering materials characterization course, ''Advanced Scanning Electron Microscopy and Surface Analysis'' MAT 612. *Application Accepted by Commissioner of Customs:* June 21, 1995.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 95–16838 Filed 7–7–95; 8:45 am]

BILLING CODE 3510–DS–F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Technical Assistance for Public Participation

**AGENCY:** Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)).

**ACTION:** Notice of request for expressions of interest.

**SUMMARY:** On May 24, 1995, the Department of Defense published in the **Federal Register** a request for comments on several options being considered for providing technical and public participation assistance to community members of Restoration Advisory Boards (RABs) and Technical Review Committees (TRCs) established at Department of Defense facilities. The Department of Defense has not yet decided which option(s) to implement. One option under consideration involves the use of independent technical assistance provider(s) to administer and provide this assistance. The Department of Defense is issuing this notice to request expressions of interest from eligible organizations and institutions for cooperative agreements of grants to provide technical and public participation assistance to community members of established RABs and TRCs. This request is for expressions of interest only. Expressions of interest are expected to be no more than three pages long and it is not anticipated that they will require prior meetings or discussion with Department of Defense personnel. Guidance on the establishment of RABs can be found for non-closure bases in the April 14, 1994, Department of Defense Management Guidance for Execution of the FY 94/95 and Development of the FY 96 Defense Environmental Restoration Program and for closure bases in the September 9, 1993, Department of Defense policy for establishing RABs at closure bases. Section 326 of the National Defense Authorization Act for Fiscal Year 1995 (NDAA–95), provides for technical assistance funding to citizens affected by the environmental restoration activities ongoing at Department of Defense facilities.

**DATES:** Submittals must be received on or before September 8, 1995.

**ADDRESSES:** Mailed submittals should be addressed to: the Office of the Deputy Under Secretary of Defense for Environmental Security/Cleanup, 3400 Defense Pentagon, Washington, DC 20301–3400.

**FOR FURTHER INFORMATION CONTACT:** Patricia Ferrebee or Marcia Read at (703) 697–7475.

**SUPPLEMENTARY INFORMATION:** Today's notice has the following sections:



### I. Introduction

Section 326(a) of the National Defense Authorization Act for Fiscal Year 1995 (NDAA–95) (Public Law 103–337), provides for technical assistance funding to citizens affected by the environmental restoration of Department of Defense facilities and requires the promulgation of regulations on this funding. In the May 24, 1995, **Federal Register**, the Department of Defense published a request for comments on proposed options for providing technical and public participation assistance to community members of TRCs and RABs. The options deal with the question of administering funds for assisting community members near Department of Defense facilities. Among the options being considered is the use of an independent party other than the Department of Defense to administer this program and to provide the assistance. The purpose of this notice is to seek expressions of interests from eligible organizations and institutions that would be interested in participating in this effort.

### II. Discussion of the Technical and Public Participation Assistance Provider Concept

The RABs and TRCs which receive funding for assistance may have little experience in applying for federal grants or meeting the various record keeping, accounting and contracting and other requirements established in the Department of Defense grant and procurement regulations. Rather than having the community members on RABs and TRCs devote some of their limited resources to managing grants in compliance with Department of Defense regulations, the Department of Defense may seek to procure one or more independent technical assistance providers to provide technical and public participation assistance to community members of TRCs and RABs. Technical assistance would include the provision of technical advisors, facilitators, mediators and educators. Public participation assistance means the provision of training and related expenses. Technical assistance providers would assume full responsibility for ensuring that the technical services and public participation support provided are delivered in a timely and effective manner, and that all funds are managed and disbursed in full compliance with appropriate Department of Defense regulations. The technical assistance provider would be subject to audit(s) and liable for any costs disallowed as a result of an audit. The provider would also be responsible for ensuring that use of the funds was consistent with the overall program budget, scope of work and the allocations for individual RABs and TRCs. The technical assistance provider concept could incorporate either a nationwide provider or a series of providers set up by geographic area.

The community members of individual RABs and TRCs would be responsible for making requests to the community co-chair or designated members of the RAB or TRC responsible for applying to the designated technical assistance provider for assistance and for preparing facility specific statements describing the type and level of support requested. The provider would be responsible for allocating available resources among these competing requests using general guidelines and established criteria provided by the Department of Defense.

Technical assistance providers would be responsible for ensuring that use of the funds was consistent with the overall program budget, scope of work and the allocations for individual RABs and TRCs, and for ensuring that all funds are managed and disbursed in full compliance with applicable Department of Defense regulations. Providers would report periodically to the Department of Defense on activities performed under this program. Providers would also provide information to the Department of Defense on the status of the program including the information for the report to Congress required by the legislation.

### III. Expressions of Interest and Informational Proposals

Respondents to this notice should have, at a minimum, the following qualifications:

(1) Perceived as neutral and credible.

(2) Either have or be able to obtain an interdisciplinary staff with demonstrated expertise in hazardous substance remediation, investigation, management and/or research.

(3) Management capability, for both financial and scientific management, and a demonstrated skill in planning

and scheduling projects of comparable magnitude to that discussed in this notice.

(4) Ability to provide facilitation and mediation services.

(5) Knowledge and experience in environmental restoration activities preferably at federal facilities.

(6) A demonstrated ability to disseminate results of hazardous substance information through an interdisciplinary program to locally affected and concerned citizens.

(7) The ability to perform the required tasks either nationally or within a defined geographic area.

(8) Not-for-profit.

Expressions of Interest submitted in response to this notice shall indicate interest in serving as a technical assistance provider for providing technical and public participation assistance to community members of TRCs and RABs that, at a minimum, includes the following:

(1) The identity of the responding institution, organization or consortium, including the name, title, telephone number, mailing address, facsimile number and where available electronic mailing address of an individual point-of-contact.

(2) Brief statement of qualifications.

(3) Summary of ability to perform the required tasks at either a regional or national level.

Respondents are advised that the Department of Defense is not requesting extensive data on technical performance, partnership arrangements, or project economics as part of any proposed submission under this notice. Respondents are also advised that any procurement of technical assistance providers in the future would not be limited to parties and organizations responding to this notice.

## IV. Special Instructions

Expressions of Interest shall be prepared in accordance with the special instructions provided, and shall be structured in the order that follows. Respondents may reproduce and complete these forms electronically (by computer software) in lieu of completing the actual forms published in this notice. There is no preference given to the use of published forms versus electronically recreated forms.

(1) Cover letter.

(2) Expression of Interest response form (see Appendix A).

(3) Attachments to Expression of Interest response form.

*Cover Letter*

A single page cover letter should accompany the expression of interest response form. The cover letter should contain a basic statement of interest on the part of the responding party in serving as a provider. The cover letter must include the notice of proprietary information described in Section VI if one is required.

*Expression of Interest Response Form*

Appendix A of this notice provides a form that shall be used for the preparation of the Expression of Interest response form. Submitters are required to complete the form in accordance with the instructions that follow, and then to photocopy that form for use in their submission. Instructions for the form are provided in the following section.

(1) Respondent: Identify the name(s) of the submitting institutions, organization or consortium listing the primary party first and listing all other participants in the response.

(2, 3, 4, and 5) Mailing address: Provide the full mailing address of the primary single point-of-contact for the respondent (i.e. the party that Department of Defense should contact if necessary).

(6) Primary contact. The name of the person who will serve as the primary point-of-contact for the expression of interest.

(7 and 8) Phone/Fax Numbers. The telephone and facsimile numbers for the person identified in item (6), area code first.

(9) Electronic address: Where one is available, the electronic mail address of the primary contact.

(10) Project phase: Respondent should check the box indicating which phase(s) of the project the respondent is interested in.

(11) Geographic area: Respondent should indicate whether the Expression of Interest is national in coverage or should indicate the geographic area in which it could provide service.

(12) Attached statements: Respondents shall indicate the number of attached pages.

*Attachment to Expression of Interest Response Form*

Respondent shall attach two statements. Attachment 1 shall indicate that the respondent meets the qualifications listed in Section III. Attachment 2 shall include a summary of the respondent's ability to perform the required tasks as described in Section II.

## V. Number of Copies Required

Each submittal should consist of seven (7) copies, one original and six (6) photocopies. The original copy of the expression of interest shall contain all documents that bear original signatures. Indicate the copy number of each copy using number ''1'' for the original and numbers ''2 through 7'' for the six copies.

The cover letters, expressions of interest and attachments should be contained on sheets of paper that contain no writing or information of any kind on the reverse sides. In each instance, for all items, no other information shall appear with, or be added to, that required in Appendix A.

## VI. Proprietary Information

Submitters should strive to avoid including proprietary and confidential business information in their expressions of interest. However, information provided by a respondent and identified as a trade secret or confidential business information will be treated in confidence, to the extent permitted by law, provided that this information is clearly marked by the submitter with the term ''Confidential Proprietary Information,'' and provided that appropriate page numbers are inserted into the notice that is set forth in the following section which must be placed in the expression of interest cover letter:

**Notice on Restriction on Disclosure and Use of Data**

This submission includes data that constitute trade secrets or confidential business information and shall not be duplicated, used, disclosed, in whole or in part, for any purpose other than to analyze information contained in this submission, except to the extent permitted or required by law. This restriction does not limit the Government's right to use information contained in these data if it is obtained from another source without restriction. The data that are subject to this restriction are contained in sheets _____ [insert page numbers or other identification of sheets].

## VII. Submission of Preparation Costs

The Department of Defense is not able to reimburse respondents for any costs associated with the preparation of expressions of interests or informational proposals.

Dated: July 3, 1995.

**L.M. Bynum,**

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

APPENDIX A

**U.S. Department of Defense; Expressions of Interest Response Form for Administration of a Program To Provide Technical and Public Participation Assistance to Community Members of Restoration Advisory Boards (RABs) and Technical Review Committees (TRCs)**

(1) Respondent:
(2) Mailing Address:
(3) City:
(4) State:
(5) Zip Code:
(6) Primary Contact and Title:
(7) Phone Number:
(8) Fax Number:
(9) E-mail Address:
(10) Project phase:
Respondent is interested in:
☐ Initial Phase (FY95)
☐ Subsequent Phase (if implemented)
☐ Both phases
(11) Geographic area:
☐ Nationwide
☐ Other
If other, specify area:
(12) Number of attached pages:

[FR Doc. 95–16777 Filed 7–7–95; 8:45 am]

BILLING CODE 5000–04–M

## Office of the Secretary of Defense

### Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

**AGENCY:** Defense Contract Audit Agency, DOD.

**ACTION:** Notice of Membership of the Defense Contract Audit Agency Performance Review Boards.

**SUMMARY:** This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

**EFFECTIVE DATE:** July 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dale R. Collins, Director, Personnel and Security Division, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia 22304–6178, 703–274–7325.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

**Headquarters Performance Review Board**

Mr. John van Santen, Assistant Director, Resources, Defense Contract Audit Agency, Chairperson
Mr. Russell Richards, Assistant Director, Operations, Defense Contract Audit Agency, member
Mr. Lawrence Uhlfelder, Assistant Director, Policy and Plans, Defense Contract Audit Agency, member

**Regional Performance Review Board**

Mr. William Kraft, Regional Director, Mid-Atlantic, Defense Contract Audit Agency, Chairperson
Mr. Charles Cherry, Regional Director, Central, Defense Contract Audit Agency, member
Ms. Barbara Reilly, Deputy Regional Director, Northeastern, Defense Contract Audit Agency, member

Dated: July 3, 1995.

**L.M. Bynum,**

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

[FR Doc. 95–16776 Filed 7–7–95; 8:45 am]

BILLING CODE 5000–04–M

## Department of the Air Force

### USAF Scientific Advisory Board Meeting

The Blue Ribbon Panel on Air Force Safety of the USAF Scientific Advisory Board will meet on 7 July 1995 at Randolph AFB, TX from 8:00 am to 5:00 pm.

The purpose of the meeting is to gather data in support of the 1995 study on the Air Force Safety Program.

The meeting will be closed to the public in accordance with Section 5526 of Title 5, United States Code, specifically subparagraphs (c) (1) (4) and (6) thereof.

For further information, contact Air Force Safety at (703) 614–3908.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 95–16789 Filed 7–7–95; 8:45 am]

BILLING CODE 3910–01–P

### USAF Scientific Advisory Board Meeting

The Blue Ribbon Panel on Air Force Safety of the USAF Scientific Advisory Board will meet on 13 July at Scott AFB, IL from 8:00 am to 5:00 pm.

The purpose of the meeting is to gather data in support of the 1995 study on the Air Force Safety Program.

The meeting will be closed to the public in accordance with Section 5526 of Title 5, United States Code, specifically subparagraphs (c) (1), (4), and (6) thereof.

For further information, contact Air Force Safety at (703) 614–3908.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 95–16790 Filed 7–7–95; 8:45 am]

BILLING CODE 3910–01–P

### USAF Scientific Advisory Board Meeting

The Blue Ribbon Panel on Air Force Safety of the USAF Scientific Advisory Board will meet on 14 July at Wright-Patterson AFB, OH from 8:00 am to 5:00 pm.

The purpose of the meeting is to gather data in support of the 1995 study on the Air Force Safety Program.

The meeting will be closed to the public in accordance with Section 5526 of Title 5, United States Code, specifically subparagraphs (c) (1), (4), and (6) thereof.

For further information, contact Air Force Safety at (703) 614–3908.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 95–16791 Filed 7–7–95; 8:45 am]

BILLING CODE 3910–01–P

### USAF Scientific Advisory Board Meeting

The Blue Ribbon Panel on Air Force Safety of the USAF Scientific Advisory Board will meet on 28 July 1995 at Langley AFB, TX from 8:00 am to 5:00 pm.

The purpose of the meeting is to gather data in support of the 1995 study on the Air Force Safety Program.

The meeting will be closed to the public in accordance with Section 5526 of Title 5, United States Code, specifically subparagraphs (c)(1) (4), and (6) thereof.

For further information, contact Air Force Safety at (703) 614–3908.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 95–16792 Filed 7–7–95; 8:45 am]

BILLING CODE 3910–01–P

## DEPARTMENT OF EDUCATION

### Notice of Meeting

**AGENCY:** National Assessment Governing Board, Education.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also

describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** July 20, 1995.

**TIME:** 11:00 a.m. (et).

**LOCATION:** National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet July 30, 1995 from 11:00 a.m. until 12:30 p.m. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The agenda items for this meeting are (1) review and approval of the August 3–5, 1995 meeting agenda, and (2) review of budget workshop plans.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: July 5, 1995.

**Roy Truby,**

*Executive Director, National Assessment Governing Board.*

[FR Doc. 95–16795 Filed 7–7–95; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Central Valley Project—Proposed Commercial Firm Power Rates

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Proposed Central Valley Project Commercial Firm Power Rate Adjustment.

**SUMMARY:** The Western Area Power Administration (Western) is proposing a rate adjustment for commercial firm power service (Proposed Rates) for the Central Valley Project (CVP), for the remaining period under the current Schedule for Rates for Commercial Firm-Power Service (Rate Schedule CV–F7). The power repayment study (PRS) and other analysis indicate that Western's commercial firm power rates need to be revised. At this time, only the commercial firm power rates are being adjusted. Other rate schedules approved as part of Western's Rate Order No. 59, and all other provisions under Rate Schedule CV–F7 will remain unchanged. A rate adjustment addressing all provisions of Rate Schedule CV–F7 will occur prior to its expiration on April 30, 1998.

The Proposed Rates will continue to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. The rate impacts are detailed in a rate brochure to be distributed to all interested parties. The Proposed Rates are scheduled to go into effect on October 1, 1995.

The Proposed Rates consist of base energy rates up to a 70-percent load factor, tier energy rates at or above a 70-percent load factor, and capacity rates.

The Proposed Rates are designed to recover 40-percent of the revenue requirement from the capacity rate and 60-percent from the energy rate.

A comparison of the current rates under Rate Schedule CV–F7, and the Proposed Rates for the same time period, show rate adjustments beginning on October 1, 1995; October 1, 1996; and October 1, 1997. The Proposed Rates and applicable revenue requirement split are provided in Table 1 below.

TABLE 1.—PROPOSED COMMERCIAL FIRM POWER RATES

| Effective period | Total composite (mills/kWh) | Capacity ($/kW-mo) | Base energy (mills/kWh) | Tier energy (mills/kWh) | Capacity/ energy split |
|---|---|---|---|---|---|
| 10/01/95 to 09/30/96 | 24.00 | 4.89 | 13.35 | 26.05 | 40/60 |
| 10/01/96 to 09/30/97 | 26.60 | 5.41 | 15.01 | 26.16 | 40/60 |
| 10/01/97 to 04/30/98 | 27.00 | 5.50 | 15.26 | 26.26 | 40/60 |

The Tier Rate will be applied to commercial firm energy at 70- percent load factor and above, with the load factor based on the lesser of the customer's (1) maximum demand for the month or, if a scheduling customer, maximum scheduled demand for the month; or (2) contract rate of delivery for commercial firm power.

The Assistant Secretary for Conservation and Renewable Energy of the Department of Energy (DOE), approved the existing rate schedules on an interim basis on April 12, 1993 (Rate Order No. WAPA–59, 58 FR 35933 (July 2, 1993), and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedule on a final basis on September 22, 1993, under FERC Docket No. EF93–5011–000, (64 FERC Part 61,332). The existing rate schedule was effective on May 1, 1993, for the period ending April 30, 1998. Under the current CVP Rate Schedule CV–F7, the composite rate on October 1, 1995, will be 31.55 mills per kilowatt-hour (mills/kWh), the base energy rate will be 17.73 mills/kWh, the tier energy rate will be 34.70 mills/kWh, and the capacity rate will be $6.57 per kilowatt-month (kW-mo). Table 2 provides a comparison of the rates in the current CVP Rate Schedule CV–F7 and the Proposed Rates along with the percentage change in the rates:

TABLE 2.—COMPARISON OF CURRENT AND PROPOSED RATES

| Percentage change in commercial firm power rates | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Effective period | Total composite (mills/kWh) | Percent change | Capacity ($/kW-mo) | Percent change | Base energy (mills/kWh) | Percent change | Tier energy (mills/kWh) | Percent change |
| Current rate schedule: | | | | | | | | |
| 10/01/95 to 09/30/97 .. | 31.55 | ..... | 6.57 | ..... | 17.73 | ..... | 34.70 | |
| 10/01/97 to 04/30/98 .. | 34.37 | ..... | 7.16 | ..... | 19.33 | ..... | 37.46 | |
| Proposed rates: | | | | | | | | |
| 10/01/95 to 09/30/96 .. | 24.00 | −24 | 4.89 | −26 | 13.35 | −25 | 26.05 | −25 |
| 10/01/96 to 09/30/97 .. | 26.60 | −16 | 5.41 | −18 | 15.01 | −15 | 26.16 | −25 |
| 10/01/97 to 04/30/98 .. | 27.00 | −21 | 5.50 | −23 | 15.26 | −21 | 26.26 | −30 |

**Other Rate Provisions Associated With the Proposed CVP Power Rates**

*Power Factor Adjustment Clause*

This provision contained in CVP Rate Schedule CV–F7, will remain the same under the Proposed Rates.

*Low Voltage Loss Adjustment*

This provision contained in CVP Rate Schedule CV–F7, will remain the same under the Proposed Rates.

*Revenue Adjustment Clause*

The methodology for the Revenue Adjustment Clause (RAC) is being amended in a concurrent process.

**DATES:** The consultation and comment period will begin July 7, 1995, and will end not less than 30 days later, or August 11, 1995. Under the existing rate schedule, a rate increase will occur October 1, 1995. In an effort to avoid large rate fluctuations, and the resultant impact on customers, the Proposed Rate must be put in place on or before October 1, 1995. To meet this deadline, the comment period has been shortened to 30 days in accordance with the regulations on Rate Adjustments found at 10 CFR 903.14.

The proposed rates reflect roughly a 16% to 24% decrease from the commercial firm power rates in CVP Rate Schedule CV–F7. The recent change in the level of customers' purchases from Western, and the determination of the resulting rate impacts prevented Western from initiating this rate adjustment at an earlier date. Because of the limited scope of this rate adjustment, Western feels a 30 day comment period is appropriate and allows sufficient opportunity for input into the rate adjustment. A public information forum will be held on July 26, 1995, beginning at 10 a.m. at the Red Lion Hotel, 2001 Point West Way, Sacramento, California, 95815. A public comment forum at which Western will receive oral and written comments will also be held on July 26, 1995, beginning at 1 p.m., at the same location. To be considered, written comments should be received by Western by close of business on August 11, 1995. This is the end of the consultation and comment period. Comments should be sent to the address below: James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097, (916) 649–4418.

**FOR FURTHER INFORMATION CONTACT:** Debbie Dietz, Director, Division of Rates, Studies, and Power Billing, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097, (916) 649–4453.

**SUPPLEMENTARY INFORMATION:** Power and transmission rates for the CVP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and Acts of Congress approved August 26, 1937 (50 Stat. 844, 850); August 12, 1955 (69 Stat. 719); and October 23, 1962 (76 Stat. 1173, 1191), and Acts amendatory or supplementary thereof.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of DOE delegated (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

**Availability of Information**

All brochures, studies, comments, letters, memoranda, or other documents made or kept by Western for the purpose of developing the Proposed Rates for commercial firm power, are and will be made available for inspection and copying at the Sacramento Area Office, located at 1825 Bell Street, Suite 105, Sacramento, California 95825.

**Determination Under Executive Order 12866**

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

**Environmental Evaluation**

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508); and DOE NEPA Regulations (10 CFR part 1021), Western conducts environmental evaluations of the CVP commercial firm power rate adjustment and develops the appropriate level of environmental documentation prior to the implementation of any rate adjustment.

Issued at Golden, Colorado, June 22, 1995.

**J.M. Shafer,**

*Administrator.*

[FR Doc. 95–16820 Filed 7–7–95; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5256–1]**

### Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final action to grant a case-by-case extension.

**SUMMARY:** The EPA is granting final approval to Great Lakes Chemical Corporation (Great Lakes), in El Dorado, Arkansas for an additional case-by-case extension for specific injected wastes which were impacted by the August 8, 1990, ban date (California listed wastes, solvents less than one (1) percent solvent constituents and First Third wastes). This action responds to the petition submitted under 40 CFR 148.4 according to procedures set out in 40 CFR 268.5, which allows any person to request that the Administrator grant, on a case-by-case basis, an extension of the applicable effective date based on a showing that the petitioner has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste. The Agency proposed action on this request in a May 24, 1995, **Federal Register** notice. See 55 FRL–5210–5212. By granting this approval, Great Lakes can inject the above identified wastes through September 30, 1995, but not later than this date without being subject to the prohibitions applicable to such wastes.

**DATES:** This Action is effective June 30, 1995.

**ADDRESSES:** The docket for this action is located at the EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is open during normal business hours, 8:00 a.m. through 4:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Gus Chavarria, Acting Chief Water Supply Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733 or telephone (214) 655–7165.

**SUPPLEMENTARY INFORMATION:** EPA is today approving of the application submitted by Great Lakes Chemical Corporation (Great Lakes), requesting an extension to the June 30, 1995, extended date of the RCRA land disposal restrictions (LDR) treatment standards applicable to wastewaters with the hazardous wastes codes K117, K118, K131, K132, and F039. To be granted such a request, the applicant must demonstrate, among other things, that there is insufficient capacity to manage its waste and has entered into a binding contractual commitment to construct or otherwise provide such capacity, but due to circumstances beyond its control, such capacity could not reasonably be made available by the effective date. Great Lakes adequately met these requirements and was granted an initial Case-By-Case Extension for one year effective June 30, 1994 to June 30, 1995, with the option to renew this extension for up to one additional year (see FR 5151–5153. Based on the Case-By-Case extension provisions and request by Great Lakes to extend the ban date, Great Lakes will be allowed, upon final approval to land dispose of its K117, K118, K131, K132, and F039 wastes upon final approval, until September 30, 1995, without being subject to the land disposal restrictions applicable to such wastes. Final Approval of this extension, will only be valid for injection into Well Nos. 5 and 6.

Effective Date: This approved extension of the LDR effective date becomes effective June 30, 1995.

Addresses: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

For Further Information Contact: The RCRA/Superfund Hotline, at (800) 424–9346 (toll free) or (703) 412–9810, in the Washington, DC metropolitan area.

Dated: June 30, 1995.

**Myron O. Knudson,**

*Director, Water Management Division (6W), EPA Region 6.*

[FR Doc. 95–16828 Filed 7–7–95; 8:45 am]

**BILLING CODE 6560–50–P**

**[FRL–5227–3]**

### Border Environment Cooperation Commission, CD. Juarez, Chihuahua; Notice of Public Meeting

The Border Environment Cooperation Commission (BECC) cordially invites you to attend the next public meeting of the Board of Directors on Friday, July 28, 1995, from 9:00 a.m.–5:00 p.m., at the Gran Hotel, in Tijuana, Baja California. The meeting is free and open to the public.

The primary purpose of the meeting will be to receive public comment on BECC ''Guidelines for Project Submission and Criteria for Project Certification.'' Additional agenda items will include an overview of BECC Technical Assistance and Outreach Programs, and a discussion of BECC proposed rules regarding confidentiality and complaints.

**Proposed Agenda**

1. Opening Statements
2. Approval of Proposed Agenda
3. Approval of Minutes from May 19, 1995 Board of Directors Meeting
4. Report from Advisory Council
5. Public Comment and Discussion of Guidelines for Project Submission and Criteria for Certification
6. Consideration of Project Certifications
7. Report on Technical Assistance Program
8. Status of the Outreach Program
9. Comments by Directors and Advisors
10. Adjournment

Any member of the public interested in submitting written comments to the Board of Directors should submit written material to the BECC staff by July 14, 1995. Anyone interested in making a brief oral statement to the Board will be able to during the public meeting. Considering translation requirements, written presentations should be limited to three pages.

In order to allow adequate time to plan and arrange for the public meeting, please confirm your attendance no later than July 14, 1995 to BECC by letter, phone, or fax to: Blvd. Tomás Fernandez No. 7940 or P.O. Box 221648, Ed. Torres Campestre, sexto piso, El Paso, TX 79913, Cd. Juárez, Chih. C.P. 23470, Tel.: (91–16) 29–23–95 (from México), (011–52–16) 29–23–95 (from U.S.), Fax: (91–16) 29–23–97 (from México), (011–52–16) 29–23–97 (from U.S.).

**Tracy J. Williams,**

*Public Outreach Coordinator.*

[FR Doc. 95–16830 Filed 7–7–95; 8:45 am]

**BILLING CODE 6560–50–M**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1055–DR]**

### Kentucky; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Kentucky, (FEMA–1055–DR), dated June 13, 1995, and related determinations.

**EFFECTIVE DATE:** July 3, 1995.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of

Kentucky dated June 13, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in this declaration of June 13, 1995:

The Counties of Fulton, Jackson, Perry, and Rockcastle for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Associate Director, Response and Recovery Directorate.*

[FR Doc. 95–16822 Filed 7–7–95; 8:45 am]

BILLING CODE 6718–02–M

**[FEMA–1059–DR]**

## Virginia; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1059–DR), dated July 1, 1995, and related determinations.

**EFFECTIVE DATE:** July 3, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the Commonwealth of Virginia dated July 1, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 1, 1995:

Greene County for Public Assistance (already designated for Individual Assistance.)

The City of Lexington for Individual Assistance (already designated for Public Assistance.)

The counties of Albemarle, Augusta, Campbell, Culpeper, and Giles, and, the cities of Lynchburg and Staunton for Individual and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Associate Director, Response and Recovery Directorate.*

[FR Doc. 95–16824 Filed 7–7–95; 8:45 am]

BILLING CODE 6718–02–M

**[FEMA–1059–DR]**

## Virginia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1059–DR), dated July 1, 1995, and related determinations.

**EFFECTIVE DATE:** July 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 1, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from severe storms and flooding on June 22, 1995 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Hazard Mitigation may be designated at a later date, if warranted. Further, you may provide direct Federal assistance for emergency work at 100 percent Federal funding for 72 hours following declaration, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Gunter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

Greene County for Individual Assistance only;

The City of Buena Vista and the Counties of Madison and Rockbridge for Individual Assistance and Public Assistance; and

The City of Lexington for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: July 3, 1995.

**James L. Witt,**

*Director.*

[FR Doc. 95–16823 Filed 7–7–95; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL MARITIME COMMISSION

## Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Delmar International, Inc., 147–55 175th Street, Jamaica, NY 11434, Officers: Herbert William Julich, President, Robert Iny, Vice President

U.S. Airfreight, Inc., 7213 N.W. 46th Street, Miami, FL 33166, Officers: José Almanzar, President, Blanca Almanzar, Vice President

Air Cargo Centralam, Inc., 8001 SW 157th Court, Miami, FL 33193, Officers: Arelys E. Crespo, President, Ordonel A. Crespo, Vice President

LT International, 1480 W 8th Street, Brooklyn, NY 11204, Lersvidhya Thienvanich, Sole Proprietor

A.T. Associates Inc., 347 Fifth Avenue #310, New York, NY 10016, Officers: Tariq A. Kahn, President, Zafar Aboul Rashid, Director

Customized Brokers, Inc., 7220 N.W. 36 Street, Suite 103, Miami, FL 33166, Officer: Patricia Compres, President.

Dated: July 3, 1995.

By the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 95–16798 Filed 7–7–95; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Rebecca Carson McWilliams; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 21, 1995.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Rebecca Carson McWilliams*, Halls, Tennessee; to acquire an additional 3.74 percent, for a total of 27.73 percent, of the voting shares of Lauderdale County Bancshares, Halls, Tennessee, and thereby indirectly acquire Lauderdale County Bank, Halls, Tennessee.

Board of Governors of the Federal Reserve System, July 3, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–16796 Filed 7–7–95; 8:45 am]

BILLING CODE 6210–01–F

### SunTrust Banks, Inc., et al.; Notice of 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 21, 1995.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. SunTrust Banks, Inc.*, Atlanta, Georgia; to engage *de novo* in leasing personal or real property or acting as agent, broker, or adviser, pursuant to § 225.25(b)(5)(i) and (ii) of the Board's Regulation Y.

**B. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Mountain Parks Financial Corp.*, Denver, Colorado; to engage *de novo* through its subsidiary, Mountain Parks Mortgage Co., Denver, Colorado, in the business of making, acquiring and servicing residential mortgages as an approved HUD mortgagee, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 3, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–16797 Filed 7–7–95; 8:45 am]

BILLING CODE 6210–01–F

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–921–05–1320–01; MTM 80697]**

### Coal Lease Offering

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of coal lease offering by sealed bid; MTM 80697—Western Energy Company.

**SUMMARY:** Notice is hereby given that the coal resources in the lands described below in Rosebud County, Montana, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by Western Energy Company, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181–287), as amended.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement, and hearing have been completed in accordance with 43 CFR 3425. Concerns and issues expressed by the public during the public scoping process centered on social, economic, and cultural impacts to the Northern Cheyenne and Crow Tribes, hydrologic impacts to the area, and the need to do an Environmental Impact Statement (EIS) as the appropriate level of environmental documentation for the development of the coal resources. Three alternatives (Preferred, No Action, and Cultural Resource Avoidance) were developed to analyze impacts and to address issues relating to the proposed action. The Preferred Alternative, including special stipulations and mitigation measures, was chosen because it will maximize the beneficial use of the subject coal resource and will mitigate impacts to one historic site and two sites which have high values as traditional cultural properties.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

### Coal Offered

The coal resource to be offered consists of all recoverable reserves in the following described lands located approximately 10 miles west of the town of Colstrip:

T. 1 N., R. 39 E., P.M.M.,
Sec. 2: S½NW¼, N½NE¼SE¼.
T. 1 N., R. 40 E., P.M.M.,
Sec. 6: Lots 1, 2, 3, 4, S½N½, S½;
Sec. 8: E½, N½NW¼;
Sec. 14: S½SW¼, SE¼.
T. 2 N., R. 40 E., P.M.M,
Sec. 32: All.

Containing 2,061 acres, Rosebud County, Montana.

The Rosebud seam, averaging 22.3 feet in thickness, is the only economically minable coal seam within the tract. The tract contains an estimated 35.6 million tons of recoverable reserves. Coal quality, as received, averages 8,360 BTU/lb, 25.52 percent moisture, 10.03 percent ash, and 0.97 percent sulfur. This coal bed is being mined in adjoining tracts by Western Energy Company.

**Rental and Royalty**

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

**DATES:** Lease Sale—The lease sale will be held at 11 a.m., Wednesday, August 9, 1995, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Bids—Sealed bids must be submitted on or before 10 a.m., Wednesday, August 9, 1995, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

**SUPPLEMENTARY INFORMATION:** Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: June 29, 1995.

**Randy D. Heuscher,**

*Acting Chief, Branch of Solid Minerals.*

[FR Doc. 95–16780 Filed 7–7–95; 8:45 am]

**BILLING CODE 4310–DN–P**

**[AZ–024–1330–00]**

## Draft White Canyon Resource Plan Amendment and Environmental Assessment for the Phoenix Resource Management Plan and the Safford District Resource Management Plan, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Bureau of Land Management, Phoenix District, in response to a land exchange proposal, is preparing a Plan Amendment and Environmental Assessment to amend the Phoenix Resource Management Plan and the Safford District Resource Management Plan (RMPs) in compliance with the Federal Land Policy and Management Act of 1976, as amended, and Section 102(2)(c) of the National Environmental Policy Act of 1969. The proposal involves exchanging selected public lands for private lands with high resource values. The selected lands include 1,828 acres of federal mineral estate and 4,721 acres of public lands which includes 160 non-wilderness acres of the White Canyon Area of Critical Environmental Concern (ACEC)—most of the ACEC is now managed as the White Canyon Wilderness. Three hundred fifty-five (355) acres of these selected public lands were transferred from the Safford District to the Phoenix Resource Area (Phoenix District) under a 1991 boundary adjustment. The plan amendment/environmental assessment considers changing the current land tenure decision from retention for these lands and mineral estate to disposal through an exchange and considers changing the White Canyon ACEC designation. Four plan amendment alternatives, including the no action alternative, are analyzed. The proposed action is to make available for exchange 4,721 acres of public lands and 1,828 acres of federal minerals, and to remove ACEC designation from 300 non-wilderness acres of which 160 acres are to be included in the proposed exchange. The proposed action would also remove ACEC designation from 1,620 acres now included within the White Canyon Wilderness.

Written specific comments are needed on the draft to be considered in the final amendment/environmental assessment. Public open houses will be held at the following locations and times:

Florence Open House, August 1, 1995, 3–7 p.m. at the Florence Unified School District Office, Administration Building, 350 S. Main St., Florence, Arizona 85232 (602) 868–2300.

Mesa Open House, August 2, 1995, 3–7 p.m. at the Cholla Room, Centennial Hall, 201 North Center Street, Mesa, Arizona (602) 644–2178.

**DATES:** Written public comments may be submitted during the open houses or to the address given below. Public comments will be accepted until September 8, 1995.

**ADDRESSES:** Written comments should be mailed to and copies of the draft plan amendment/environmental assessment are available from: Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027, ATTENTION MCFARLIN AMENDMENT.

**FOR FURTHER INFORMATION CONTACT:** Shela McFarlin, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027 or telephone (602) 780–8090.

Dated: June 30, 1995.

**G.L. Cheniae,**

*District Manager.*

[FR Doc. 95–16781 Filed 7–7–95; 8:45 am]

**BILLING CODE 4310–32–P–M**

## Intent To Reopen Formal Scoping and Hold Public Meetings Concerning the Environmental Impact Statement on the Proposed Warm Springs Project; Iron, Kane, and Washington Counties, Utah; Coconino County, Arizona; and Clark County, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management (BLM) and the Office of Surface Mining Reclamation and Enforcement (OSM) (the Agencies) intend to offer the public an opportunity to comment, in either written or oral form, on changes to the proposed size and mine life at the Smoky Hollow Mine that may affect the analysis of impacts in the environmental impact statement (EIS) on the proposed Warm Springs Project.

Andalex Resources, Inc. (Andalex) has recently submitted revisions to the permit application packages (PAPs) for the proposed Smoky Hollow Mine. These revisions identify a proposed mining area of nearly 25,000 acres of leased Federal and State land within Andalex's 36,419-acre leasehold that would contain sufficient coal reserves to accommodate proposed underground mining operations over the next 40 years. Previous proposals had identified a mining area of 9,775 acres of Federal and State land that would have been mined over a 30-year period. No other major changes are being proposed in the revisions to the PAPs. Coal would still be: (1) mined by underground methods, (2) produced at a rate in the range of 2.5 to 3 million tons per year, and (3) hauled by contractor-supplied trucks to the proposed unit-train loadout facilities near Cedar City, Utah, and Moapa, Nevada. The larger mining area would constitute an expansion of the underground workings identified in the

original proposal, but would not involve an additional mine.

Formal scoping activities are being announced to explain the revisions to the PAPs and solicit public input pertaining to any additional environmental concerns that may need to be addressed in the Warm Springs Project EIS.

**DATES:** *Comment Period:* Written comments pertaining to additional environmental concerns that may need to be addressed in the EIS will be accepted through September 5, 1995, at either of the two locations listed below, under **ADDRESSES**.

*Public Meetings:* BLM and OSM will hold seven public meetings for the receipt of oral statements pertaining to additional environmental concerns that may need to be addressed in the EIS. The Agencies intend to conduct these meetings under an open-house format. No formal presentation will be given, but Agency representatives will be on hand to answer questions and receive public comment/statements. The first open-house/meeting will be held on August 8, 1995, in the Juniper No. 3 Conference Room of the Holiday Inn, 1575 West 200 North in Cedar City, Utah. Successive open-house/meetings will be held on August 9, 1995, in the Hurricane Senior Citizen Center, 95 North 300 West in Hurricane, Utah; August 10, 1995, in the Tucson Room of the Little America Hotel, 500 South Main Street in Salt Lake City, Utah; August 14, 1995, in the Moapa Community Center, Highway 168 in Moapa, Nevada; August 15, 1995, in the Willows Room of the Shilo Inn, 296 West 100 North in Kanab, Utah; and August 16, 1995, in the City of Page Council Chambers, 697 Vista Avenue in Page, Arizona. The final open-house/meeting will be held on August 17, 1995, at the Embassy Suites Hotel, 706 South Milton Road in Flagstaff, Arizona. Each open-house/meeting will begin at 7 p.m. local time and continue as long as necessary to accommodate the needs of all interested parties. Agency representatives will remain present at the open-house/meeting site until at least 10 p.m.

**ADDRESSES:** Written comments pertaining to additional environmental concerns that may need to be addressed in the EIS should be mailed or hand-delivered to either: (1) Mat Millenbach, Utah State Director, c/o Kanab Resource Area, Bureau of Land Management, 318 North 100 East, Kanab, Utah 84741, (Attention: Michael Noel); or (2) Peter A. Rutledge, acting Chief, Technical Support Division, Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733, (Attention: Floyd McMullen).

**FOR FURTHER INFORMATION,** contact either: (1) Michael Noel, BLM EIS Project Manager (telephone: 801–644–2672); or (2) Floyd McMullen, OSM EIS Project Manager (telephone: 303–672–5601) at the Kanab, Utah and Denver, Colorado, locations given under **ADDRESSES**.

**SUPPLEMENTARY INFORMATION:** Andalex Resources, Inc. (Andalex), with cooperation from: The Garkane Power Association, Inc.; the Utah Power and Light Company; the Overton Power District; the U.S. West Communications Company; the Moapa Valley Telephone Company, Inc.; the Union Pacific Railroad Company; the Kane County Board of Commissioners; the Iron County Board of Commissioners; and, a private, bulk-carrier transport company; proposes to develop the Warm Springs Project.

The Warm Springs Project would have seven elements: (1) the proposed Smoky Hollow Mine; (2) a proposed 138–kV power transmission line extending from an existing powerline southeast of Big Water to the mine; (3) a proposed microwave communication system that would serve the mine; (4) either the Warm Creek Road, an existing county-maintained road passing through a corner of the Glen Canyon National Recreation Area (NRA) which would require reconstruction and realignment, or the Benchtop Road, a new county road that would be constructed over Nipple and Tibbet Benches; (5) a proposed unit-train loading facility adjacent to the Union Pacific Railroad right-of-way (ROW) west of Cedar City, Utah, near Iron Springs; (6) a proposed unit-train loading facility adjacent to the Union Pacific Railroad ROW southwest of Moapa, Nevada; and (7) a proposed truck-maintenance facility near either Fredonia, Arizona, or Hurricane, Utah.

The Smoky Hollow Mine would be a new underground coal mine located at the site of the inactive Missing Canyon Coal (Test) Mine, about 6 miles north of the Glen Canyon NRA, 13 miles northeast of the City of Big Water, Utah, and 15 miles north of the Arizona/Utah border. The mine, the majority of the powerline, the microwave communication system, and the Warm Creek/Benchtop Road would be located in eastern Kane County, Utah. The reminder of the powerline would be located in Coconino County, Arizona. The coal-loadout facilities would be located in Iron County, Utah, and Clark County, Nevada. The truck maintenance facility would be located in either Coconino County, Arizona, or Washington County, Utah.

The proposed Smoky Hollow Mine that would be considered in the environmental analysis would be in operation for up to 54 years, including 1 to 2 years for premining construction and development, 40 years of active coal mining, 2 years for reclamation, and, a minimum of 10 years for total bond release. Andalex proposes to eventually recover 100 to 120 million tons of coal during this period, using primarily longwall mining methods. The coal, proposed to be produced at a rate in the range of 2.5 to 3 million tons per year, would be hauled by contractor-supplied trucks over county, State, and Federal roads to the new unit-train loadout facilities near Cedar City, Utah, and Moapa, Nevada. Once loaded on railcars, produced coal would be delivered to developing markets in the southwestern United States and in foreign countries along the western rim of the Pacific Ocean (the Pacific Rim).

The proposed Smoky Hollow Mine area would encompass about 25,000 acres of land located in Secs. 25 through 28, and 33 through 35, T. 40 S., R. 3 E., Sec. 31, T. 40 S., R. 4 E.; Secs. 1, 3 through 5, 8 through 15, 17 23 through 25, and 36, T. 41 S., R. 3 E; and Secs. 5 through 10, 16 through 21, and 29 through 32, T. 41 S., R. 4 E., all in the Salt Lake Meridian. About 150 to 200 acres in this area would be disturbed by exploration activities and by mine-support facilities (including ventilation facilities, a coal stockpile, equipment and operation buildings, coal-processing and loadout facilities, a sediment pond, and a topsoil stockpile). The surface effects of underground mining (subsidence) within the Smoky Hollow Mine area could potentially occur on about 14,000 acres.

BLM and OSM originally announced their intent to jointly prepare an EIS on the proposed Warm Springs Project on July 14, 1992 (57 FR 31207). Scoping activities concerning the proposed Project and the EIS conducted by the Agencies since that time have, so far, resulted in over 1,000 letters and over 3,000 comments from the interested public.

At this time, BLM and OSM are requesting that any interested party submit written comments, and/or attend one of the public meetings to submit oral statements, pertaining to additional environmental concerns that may need to be addressed in the EIS. Comments/statements that are received will assist the Agencies in gathering information and in further defining the scope of

issues and concerns to be evaluated in the EIS.

Please note that the current effort is an extension of the scoping activities for the EIS that have been taking place over the last several years. The Agencies have retained the scoping comments submitted previously by the public and suggest that commenters focus their attention on those additional environmental concerns that they feel need to be addressed in the EIS. It is not necessary to repeat comments that were submitted during previous scooping activities.

The EIS is being prepared to assist the Assistant Secretary of the Interior, Land and Minerals Management, and the BLM Authorized Officer(s) in making decisions to approve or disapprove the mining plan and the various rights-of-way grants pertaining to the proposed Project.

The public should be aware that any material(s) submitted in response to this **Federal Register** notice will become part of the public record and will be accessible to any member of the public who desire to see it.

Dated: June 28, 1995.

**G. William Lamb,**

*Acting State Director, Utah State Office, Bureau of Land Management.*

[FR Doc. 95–16779 Filed 7–7–95; 8:45 am]

BILLING CODE 4310–DQ–M

## National Park Service

### Notice of Meeting

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m. at the following location and date.

**DATES:** July 26, 1995.

**LOCATION:** University of New Orleans, University Center, Room 211B, Lakefront, New Orleans, Louisiana 70140.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana 70130–1142, (504) 589–3882, extension 108.

**SUPPLEMENTARY INFORMATION:** The Delta Region Preservation Commission was established pursuant to Section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Old Business
—New Business
—New Discussion of Interpretive Material
—General Park Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: June 21, 1995.

**Frank A. Catroppa,**

*Acting Field Director Southeast Area.*

[FR Doc. 95–16845 Filed 7–7–95; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–365–366 (Preliminary) and 731–TA–734–735 (Preliminary)]**

### Certain Pasta From Italy and Turkey

### Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Italy and Turkey of certain pasta (except oriental-style noodles),[2] provided for in subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of Italy and Turkey and that are alleged to be sold in the United States at less than fair value (LTFV).[3] The Commission also unanimously determined that imports of oriental-style noodles from Italy and Turkey are negligible.

### Background

On May 12, 1995, a petition was filed with the Commission and the Department of Commerce by counsel for Borden, Inc., Columbus, OH; Hershey Foods Corp, Hershey, PA; and Gooch Foods, Inc. (Archer Daniels Midland Co.), Lincoln, NE, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of certain pasta from Italy or Turkey and by reason of LTFV imports from Italy and Turkey. Accordingly, effective May 12, 1995, the Commission instituted countervailing duty and antidumping investigations No. 701–TA–365–366 (Preliminary) and 731–TA–734–735 (Preliminary). The petition in these investigations was filed subsequent to the effective date of the Uruguay Round Agreements Act (''URAA''). These investigations, thus, are subject to the substantive and procedural rules of the law as modified by the URAA. *See* P.L. 103–465, approved Dec. 8, 1994, 108 Stat. 4809, at § 291.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 19, 1995 (60 FR 26899). The conference was held in Washington, DC, on June 2, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 26, 1995. The views of the Commission are contained in USITC Publication 2905 (July 1995), entitled ''Certain pasta from Italy and Turkey: Investigations Nos. 701–TA–365–366 (Preliminary) and 731–TA–734–735 (Preliminary).''

Issued: June 28, 1995.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of these investigations, certain pasta consists of dry non-egg pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegtables, vegetable purees, milk, gluten, diasastes, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by these investigations is typically sold in the retail market in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions. Excluded from the scope of these investigations are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of dry non-egg pasta containing up to two percent egg white.

[3] Chairman Peter S. Watson and Vice Chairman Janet A. Nuzum made affirmative determinations on the basis of the threat of material injury.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–16803 Filed 7–7–95; 8:45 am]

BILLING CODE 7020–02–P

**[Investigations Nos. 731–TA–736 and 737 (Preliminary)]**

## Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany and Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of preliminary antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–736 and 737 (Preliminary) under section 733(a) of the Tariff Act of 1930, as amended by section 212(b) of the Uruguay Round Agreements Act (URAA), Public Law 103–465, 108 Stat. 4809 (1994) (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Germany and Japan of large newspaper printing presses and components thereof, whether assembled or unassembled, provided for in subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.60.00, and 8443.90.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 14, 1995. The Commission's views are due at the Department of Commerce within 5 business days thereafter, or by August 21, 1995.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** June 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

**SUPPLEMENTARY INFORMATION:**

### Background

These investigations are being instituted in response to a petition filed on June 30, 1995, by Rockwell Graphic Systems, Inc., Westmont, IL.

### Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

### Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

### Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 21, 1995, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202–205–3181) not later than July 19, 1995, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

### Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 26, 1995, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 3, 1995.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–16802 Filed 7–7–95; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Job Training Partnership Act: Technical Assistance for CET Job Training Model Replication

The Department of Labor (DOL) is announcing the availability of technical assistance to Job Training Partnership Act (JTPA) service providers. The Center for Employment Training (CET) is being funded by DOL to provide such technical assistance to replicate the CET Job Training Model which has been identified as particularly effective in training and placing hard-to-serve client populations. Eight service providers

will receive technical assistance from CET toward the development and implementation of programs using the CET Job Training Model for use within the JTPA system in their communities. An additional 16 service providers may receive technical assistance pending funding availability.

Selected organizations would enter into agreement with the Center for Employment Training to receive the technical assistance required for the development and start-up of the local CET Job Training Model program. This is a non-monetary award to selected sites.

A series of information seminars will be held at CET's headquarters in San Jose, California. Interested parties should contact CET to find out the dates of upcoming information seminars. Alternative arrangements can be made to schedule a seminar or visit suitable to an organization's own time frame. To be considered for receipt of technical assistance, an eligible organization must: (1) Attend an information seminar and (2) submit a complete application to DOL, see below.

**TO ARRANGE ATTENDANCE AT AN INFORMATION SEMINAR:** Arrangements to attend an information seminar shall be made through Max Martinez, CET Replication Project Training Director, Center for Employment Training, 701 Vine Street, San Jose, CA 95110. The telephone number is (408) 287–7924. That is not a toll-free number.

**APPLICATION DATES:** Applications will be accepted and reviewed on an open submission basis. Applications that meet program standards and eligibility criteria will be accepted on a first come basis. Consequently, it is in the interest of organizations to submit proposals on a timely basis. To allow time for applicants to attend an information seminar, applications will be accepted with postmarks starting August 1. Once 8 acceptable applications have been received, other acceptable applications may be placed on a waiting list for future technical assistance pending additional federal funding.

**APPLICATION ADDRESS:** Applications for this technical assistance award shall be mailed by certified mail, return receipt requested, to Janice Perry, Grant Officer, Department of Labor, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210. The telephone number is (202) 219–8702. This is not a toll free number.

**FOR FURTHER INFORMATION CONTACT:** Lisa Stuart, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Room N–4666, Washington, DC 20210. The telephone number is (202) 219–6825. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

## Background

The Center for Employment Training offers a unique program which challenges standard notions of training the disadvantaged. It provides a holistic approach to train the hard-to-serve through an integrated program of practical hands-on job skills training and in-context remediation including English-as-a-Second Language. CET focuses on technical skills training, but integrates basic education and related services in context with this core training. This method of learning was endorsed by the Secretary of Labor's Commission on Achieving Necessary Skills (SCANS). CET's program is unique in that it is accessible to all, with no entry tests or screening out hard-to-serve clients. This represents the direction of the 1992 JTPA amendments, which stress targeting of services to those most in need and intensifying and improving the quality of services offered. The CET design, as implemented through this replication, will reflect key provisions of the new JTPA program design such as targeting the hard-to-serve, comprehensive one-stop services, integration of training and remediation, and focus on quality jobs enabling self-sufficiency.

CET is widely recognized as one of the most effective job training programs in the country. CET's program serving minority single mothers was the only program to have a significant long-term impact in a comprehensive study, the Minority Female Single Parent Demonstration, funded by the Rockefeller Foundation and conducted by Mathematica Policy Research. Additionally, recent research on dropout youth, known as the JOBSTART study, conducted by the Manpower Demonstration Research Corporation (MDRC), found that CET was the only program, of thirteen studied, that achieved significant impacts. These studies provide significant evidence of the effectiveness of CET's program model.

## Technical Assistance

Technical assistance will be provided for up to 24 sites to replicate the CET Job Training Model. This technical assistance award will provide for training and technical assistance for local entities which are selected to operate CET Job Training Model programs. This award to CET is made as a modification to an existing DOL–CET agreement that previously provided for training and technical assistance for up to 14 sites.

Selected organizations would enter into agreements with the Center for Employment Training to receive the technical assistance required for the development and start-up of the local CET Job Training Model program. This is a non-monetary award to selected sites.

The technical assistance award includes the provision of local and CET on-site training to enable an organization to start its own CET Job Training Model program. Training would be provided during the period of agreement between CET and the selected site(s). The award covers the cost of services that will be required of CET in providing technical assistance. Start-up costs, including site development and preliminary staffing costs, will be the responsibility of the selected service providers. Operations costs of the selected CET model program also are not included and are expected to come from the organization's regular JTPA, JOBS, and other local, state and foundation funding.

## Eligibility

This award is to provide services to the JTPA community. Eligible applicants are limited to service delivery area JTPA administrative entities who run their own training programs, consortiums of service providers, not-for-profit community-based organizations as defined under Section 4 of JTPA and local education organizations. Two types of applications will be accepted:

(1) Applications from JTPA administrative entities, and (2) joint applications with one party being the JTPA administrative entity and the other being an organization listed above. Applications that do not include the local JTPA administrative entity will not be accepted. This process is to ensure that all service providers have coordinated with their JTPA funding stream and that the administrative entity has committed to funding the program the service provider is being trained to operate.

JTPA administrative entities will have the opportunity, if desired, to sub-contract with CET directly to establish a CET administered job training center. This would be done through a sole source arrangement where local procurement processes allow for it.

## Information Seminars

The three day information seminars are targeted to JTPA program administrators, community based training organizations, government

officials, foundation directors or other individuals that would be involved in funding or operating the model program. The principal decision makers for these entities are the desired participants.

The seminars will provide participants with the opportunity to tour CET skill training centers and to directly observe the CET job training model in action. It will provide the opportunity to meet and interact with CET instructors and students. Distinguished researchers will present study results related to their research of the CET program design. Information will be provided about CET's technical assistance program, the process for applying for technical assistance and the requirements for selection of CET model development sites. Applicants are encouraged to attend an information seminar prior to submitting their applications.

**Applications**

Applications will be accepted on a first come first serve basis starting August 1, 1995 from eligible applicants that meet the standards below.

To be considered, all applicants must meet the following standards:

(1) Applicants must be or become a JTPA service provider. If the service provider is not the JTPA administrative entity, the application must be submitted jointly with the JTPA administrative entity. A joint application should elaborate on the relationship between the service provider and the administrative entity. This should include descriptions of previous services; JTPA, JOBS and other training contract funding levels; and the level of cooperation between the service provider and the administrative entity.

(2) The proposed service provider must include a written commitment from their organization's board of directors.

(3) Applicants must be able to show that there is solid JTPA or other funding sources available to the proposed service provider. The applicants must commit to or have a reasonable likelihood of receiving operating funds of at least $1,000,000 a year. A smaller amount may be acceptable for SDAs and other organizations operating in communities with limited funding resources. Any local procurement procedures that would be required prior to initiating the project, including those for a sole source award, if applicable, should be detailed. A timeline for the procurement process should be provided.

(4) The applicants must show a substantial startup funding commitment. A minimum of $250,000 is expected although lesser amounts with an explanation of why that level of funding is sufficient may be acceptable.

(5) The applicants must commit to sending staff for training throughout the technical assistance period.

(6) The applicants must commit to follow all key aspects of the CET-model training design, as discussed at the information seminar, including open admission of hard-to-serve client groups.

(7) The applicant must indicate its willingness to: (a) begin staff training within 3 months of notice of technical assistance award and, (b) open a new training site within 6 months of notice of technical assistance award. Those applicants who wish to schedule technical assistance after this period are encouraged to submit applications. Services to those applicants, however, will be contingent upon additional federal funding and may not be selected as part of this first come first serve request for proposals.

(8) The applicants must stipulate which of the following replication site service provider option it wishes to pursue:

a. An incorporated SDA with 501(c)(3) status operates the program;

b. A non-SDA, nonprofit, community-based or local education organization operates the program; or

c. The Center for Employment Training operates the program.

(9) The applicants must state that they are willing to participate in evaluation studies.

Applications will be reviewed against the above standards. All acceptable applications will be ranked based upon date received. The initial 8 sites will be provided with technical assistance under this agreement. Additional service providers, including those applicants who request assistance outside the current time frame, will be served contingent upon the availability of funds. Applications which do not meet the standard will be notified with an explanation.

Signed at Washington, DC, this 30th day of June 1995.

**James M. Aaron,**

*Director, Office of Employment and Training Programs.*

[FR Doc. 95–16831 Filed 7–7–95; 8:45 am]

BILLING CODE 4510–30–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (95–052)]**

### NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

**DATES:** Monday, July 31, 1995, 8:30 a.m. to 5:00 p.m.; Tuesday, August 1, 1995, 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** NASA Headquarters, Conference Room MIC 6–A&B–West, 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Kathy Dakon, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Status of Prior SScAC Recommendations
—Agency Streamlining
—Science Policy Guide
—FY 96 Budget Update
—Subcommittee Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 30, 1995.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer.*

[FR Doc. 95–16833 Filed 7–7–95; 8:45 am]

BILLING CODE 7510–01–M

## NUCLEAR REGULATORY COMMISSION

### Report to Congress on Abnormal Occurrences October–December, 1994; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires NRC to disseminate information on abnormal occurrences (AOs) (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the

fourth quarter of CY 1994, the following incidents at NRC licensed facilities were determined to be AOs and are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 17, No. 4, (''Report to Congress on Abnormal Occurrences: October–December 1994''). This report will be available at NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20037 about three weeks after the publication date of this **Federal Register** Notice.

**Nuclear Power Plants**

*94–20 Core Shroud Cracking in Boiling Water Reactors*

One of the AO reporting guidelines notes that a major deficiency in design, construction, or operation having safety implications requiring immediate attention can be considered an AO. A second reporting guideline notes that recurring incidents and incidents with implications for similar facilities (generic incidents) that create a major safety concern can be considered an AO.

*Date and Place*—From October 1993 through the present, various General Electric-designed boiling water reactors.

*Nature and Probable Consequences*—Intergranular stress corrosion cracking (IGSCC) of General Electric (GE)-designed boiling water reactor (BWR) reactor vessel internals has been identified as a technical issue of concern by both NRC and the industry. Core shroud cracking as a result of IGSCC was initially discovered overseas and later identified in operating BWR plants within the United States. Although no adverse consequences are expected at currently observed levels of shroud cracking, it has been postulated that a 360-degree through-wall core shroud crack in concert with a loss-of-coolant accident has the potential to lead to core damage.

NRC has been meeting every year since 1988 with the BWR Owners Group (BWROG) and GE to review the generic safety implications of potential failure of reactor internals, with IGSCC as one of the failure mechanisms of concern.

Cracking of BWR core shrouds was first observed in an overseas BWR in 1990. It was located in the heat affected zone of a circumferential weld in the beltline elevation of the shroud, and was reported by GE via Rapid Information Communication Services Information Letter (RICSIL) 054. The core shroud is a stainless steel cylinder which performs the following functions: (1) Separates feedwater in the reactor vessel's downcomer annulus from cooling water flowing through the reactor core, (2) maintains core geometry, and (3) provides a refloodable volume under postulated accident conditions. The potential loss of a refloodable volume under accident conditions has the potential of resulting in core damage making BWR core shroud cracking the most significant concern related to potential failures of reactor internals reported during 1993 and 1994.

In response to this concern, several actions were taken by NRC. In a meeting with the BWROG in January 1992, the staff emphasized that a comprehensive program should be developed to address internals cracking and that the utilities should adopt an enhanced inspection program. In September 1993, Information Notice (IN) 93–79, ''Cracking at the Beltline Region Welds in Boiling Water Reactors,'' was issued in response to the discovery of significant circumferential cracking of the core shroud welds at Brunswick Unit 1. (This event was also included in NRC's ''Report to Congress on Abnormal Occurrences, October–December 1993.'' [NUREG–0090, Vol. 16, No. 4]). Following the additional discovery of significant core shroud cracks at Dresden Unit 3 and Quad Cities Unit 1 in May and June 1994, respectively, NRC issued IN 94–42 ''Cracking in the Lower Region of the Core Shroud in Boiling Water Reactors,'' June 7, 1994; IN 94–42 Supplement 1, July 19, 1994; and Generic Letter (GL) 94–03, ''Intergranular Stress Corrosion Cracking of BWR Core Shrouds,'' July 25, 1994.

GL 94–03 requested that BWR licensees inspect their core shrouds at the next refueling outage, and perform a safety analysis to support continued operation of their facilities until corrective actions were implemented. During the same period of time, the BWROG initiated the BWR Vessels and Internals Project (BWRVIP) to facilitate industry response to the core shroud and internals cracking issues. Licensee responses to GL 94–03 were received during August and September 1994, and several BWR licensees began outages in September 1994.

*Cause or Causes*—IGSCC of BWR vessel internals is a time dependent material degradation process which is accelerated by the presence of crevices, residual stresses, material sensitization, irradiation, cold work and corrosive environments.

*Actions Taken To Prevent Recurrence*

*Licensees*—Several domestic BWR licensees performed visual examinations of their core shrouds in accordance with the recommendations of GE RICSIL 054 or GE Services Information Letter (SIL) 572, which was issued in late 1993 and incorporates domestic experience.

*NRC*—Because of the extent of cracking observed, NRC evaluated safety concerns associated with the possibility of a 360-degree circumferential separation of the shroud following a pipe break. Such separation might either prevent full insertion of the control rods, or open a gap in the shroud large enough so that the resulting leakage would limit adequate core cooling by the emergency core cooling system. The accident scenarios of primary concern are the main steam line break and the recirculation line break, which are normally referred to as loss-of-coolant accidents.

The most serious event associated with cracks in the upper shroud welds is the steam line break, since the lifting forces generated may be sufficient to elevate the top guide and potentially affect the ability to insert rods. The most serious event associated with cracks in the lower elevations of the core shroud is the recirculation line break. A recirculation line break concurrent with a 360-degree through-wall weld failure could cause a lateral displacement of the shroud or opening of a crack, which would allow enough leakage through the shroud and out of the break affecting the ability to adequately cool the core.

NRC performed a probabilistic risk assessment of the consequences of shroud separation at the lower elevation for Dresden Unit 3 and Quad Cities Unit 1. The assessment estimated the potential contribution to core damage frequency from a cracked shroud. Assuming that severe shroud cracking (360-degree through-wall cracking) did exist, a large rupture of either a steam or recirculation line would have to occur to generate sufficiently large loads to move the shroud. No events involving a large rupture of a steam line or recirculation line have ever occurred, and probabilistic risk assessments have shown that such ruptures have a low probability of occurring. Furthermore, for welds in the upper portion of the shroud, such extensive degradation in and of itself can be detected during normal operation by a power/flow mismatch condition.

From the above evaluations, NRC made conservative estimates of the risk contribution to core damage from shroud cracking and concluded that immediate corrective actions are not necessary. Although immediate plant shutdowns to implement corrective actions are not necessary, degradation of the core shroud does have the potential to impact plant safety. The core shroud provides the important functions of

properly directing coolant flow through the core, maintaining core geometry, and providing a refloodable volume under postulated accident conditions. NRC therefore considers that 360-degree cracking of the shroud is a safety concern for the long term based on: (1) The potential to exceed the American Society of Mechanical Engineer Code's structural margins, if the cracks are sufficiently deep and continue to propagate through the subsequent operating cycle; and (2) the potential effects on the ability to protect against core damage.

Even though licensees have justified (through engineering evaluations) continued operation with significant cracks existing in core shrouds, BWRs with core shroud materials susceptible to IGSCC will eventually have to be repaired or modified to inhibit cracking and thereby assure structural integrity of the shrouds in the long term.

Due to the location and the extent of the cracking recently found, NRC and the BWROG agreed that additional attention to this issue was warranted. BWROG met with NRC on June 28, 1994, to announce the formation of BWRVIP, which is headed by several high level utility executives to direct its efforts. BWRVIP has since submitted documents which addressed an integrated safety assessment of the issue, inspection plans for the reactor internals, and generic criteria for repairs and flaw acceptance.

NRC has reviewed these documents and concurs with the BWRVIP recommended generic repair criteria and flaw assessment methodology. Inspection scope and methodology are still under consideration.

In addition to the aboves actions, in order to verify compliance with the structural integrity requirements of 10 CFR 50.55a and to assure that the risk associated with core shroud cracking remains low, NRC concluded that it is appropriate for BWR licensees to implement timely inspections and/or repairs, as appropriate, at their plants. To implement this position, NRC issued GL 94–03 (July 25, 1994) which requested BWR licensees to inspect their core shrouds by the next outage and to justify continued safe operation until all appropriate corrective actions have been implemented.

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**Other NRC Licensees**

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

*94–21 Recurring Incidents of Administering Higher Doses Than Procedurally Allowed for Diagnostic Imaging at Ball Memorial Hospital in Muncie, Indiana*

One of the AO reporting guidelines notes that a serious deficiency in management or procedural controls in a major area can be considered an AO.

*Date and Place*—October 1988 through June 1993; Ball Memorial Hospital; Muncie, Indiana.

*Nature and Probable Consequences*—On July 19, 1993, NRC was notified that nuclear medicine technologists employed by the licensee had increased the dosages of radiopharmaceuticals used in diagnostic studies. NRC was also informed that the technologists had falsified the required records of the dosages administered.

On July 21 through August 9, 1993, NRC conducted an inspection of the licensed facility. The inspection revealed that since 1988, nuclear medicine technologists employed by the licensee have been administering radiopharmaceutical dosages above the approved dose ranges for diagnostic image studies by as much as 40 percent. The inspection also verified that subsequent to administering high doses, the technologists entered false information in NRC-required records. The doses were increased for imaging studies of the lung, liver, bone, and gastrointestinal tract using technetium–99m and xenon–133.

NRC inspectors did not identify any medical misadministrations, as defined in 10 CFR 35.2, as a result of this practice of administering higher than approved doses for diagnostic imaging.

*Cause or Causes*—According to the licensee, one technologist told licensee officials that dosages were increased to minimize patient discomfort, to reduce imaging time for critically ill patients and to enhance the clarity of images for studies performed on obese patients.

*Action Taken To Prevent Recurrence*

*Licensee*—The licensee conducted an internal review. Based on the findings from this review, the licensee initially suspended two nuclear medicine technologists from all NRC-licensed activities. Subsequently, the licensee terminated one of the two individuals and the other individual was allowed to continue to perform duties that do not involve NRC-licensed activities.

The licensee also committed to a number of corrective actions. Some of the corrective actions include: Assigning a pharmacist or a radiologist to verify all radioisotope dosages; implementing a unit dose system; obtaining the services of an assistant radiation safety officer; and conducting monthly and quarterly audits of the Nuclear Medicine Section for at least one year.

*NRC*—A special safety inspection was conducted by NRC from July 21 to August 9, 1993. Subsequent to that inspection, NRC conducted a followup review.

NRC issued a Confirmatory Action Letter on July 26, 1993, and a Confirmatory Order Modifying License on October 20, 1993. These documented specific procedures and verifications to prevent any further unauthorized increases in patient doses.

On May 23, 1994, NRC issued an Order against a former nuclear medicine technologist of the licensee. The Order required the following: (1) Prohibited the technologist from involvement in NRC-licensed activities for a period of one year; (2) required the technologist to provide a copy of the Order to any prospective employer who engages in NRC-licensed activities for a three-year period; and (3) required the technologist to notify NRC within 20 days of accepting employment involving NRC-licensed activities.

On May 27, 1994, the technologist requested a hearing and on September 26, 1994, a settlement agreement was reached. The settlement was reviewed and approved by the Atomic Safety and Licensing Board on October 3, 1994. The agreement resulted in the withdrawal of the requirement for the technologist to provide a copy of the Order to any prospective employer who engages in NRC-licensed activities. The settlement retained provisions (1) and (3) of the Order.

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*94–22 Medical Therapy Misadministration at Veterans Affairs Medical Center in Long Beach, California*

One of the AO reporting guidelines notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

*Date and Place*—August 9, 1994; Veterans Affairs Medical Center; Long Beach, California.

*Nature and Probable Consequences*—On August 9, 1994, the licensee's radiation safety officer (RSO) notified NRC of a misadministration involving a therapeutic dose of strontium–89 (Sr–89).

The RSO reported that a patient scheduled to receive 185 megabecquerel

(MBq) (5 millicurie [mCi]) of thallium–201 (a radiopharmaceutical not regulated by NRC) for a myocardial perfusion study was mistakenly administered 148 MBq (4 mCi) of Sr–89 (which is regulated by NRC). Based on the misadministration of the Sr–89, the licensee estimated that the patient received 250 centigray (250 rads) to the surface of the bone. The RSO reported that no action was taken to mitigate the consequences of the dose (i.e., administration of calcium as a blocking agent) because the patient had a preexisting heart condition which could have been exacerbated by administering calcium. The licensee also stated that medical experts were contacted to assist in an assessment of potential health effects to the patient. In addition, the licensee reported that with the exception of emergency procedures, it had voluntarily suspended all nuclear medicine procedures involving the intravenous administration of radiopharmaceuticals and had initiated an internal review of the misadministration.

On August 10, 1994, NRC issued a Confirmatory Action Letter to confirm the licensee's actions as stated above.

*Cause or Causes*—The cause of the misadministration was attributed to the administering technologist's failure to verify the isotope as well as the dosage (by reading the label on the syringe) prior to injection.

*Actions Taken To Prevent Recurrence*

*Licensee*—Corrective actions initially proposed by the licensee included the following: (1) Physically separating diagnostic unit dosages from therapeutic radiopharmaceutical dosages in the licensee's hot lab; (2) packaging unit dosages received from a local radiopharmacy in different containers, according to isotopes; and (3) retraining technologists in requirements for identifying radiopharmaceuticals prior to injection.

*NRC*—Two NRC inspectors conducted a special safety inspection on August 10–12 and 17–19, 1994, to review the circumstances associated with the misadministration and to review the licensee's corrective actions. In addition, NRC contracted a medical physician consultant to assist in its evaluation of the potential consequences of the patient's radiation exposure. The consultant stated that there were no adverse health effects to the patient.

An Enforcement Conference was held with the licensee on November 30, 1994, to discuss an apparent violation involving the failure of an individual working under the supervision of an authorized user physician to follow the licensee's written radiation safety procedures. Additional concerns discussed during the conference included the licensee's use of an informal labeling system for unit radiopharmaceuticals which was identified as a potential programmatic weakness. The licensee presented information during the conference which supported its view that the error which led to the August 9, 1994, misadministration was an isolated failure rather than a programmatic problem.

Based on its review of information developed during the inspection and information provided during the Enforcement Conference, NRC concluded that the misadministration was the result of an isolated failure. A Notice of Violation was issued on December 29, 1994, for a violation involving the failure of an individual working under the supervision of a physician authorized user to follow the licensee's written procedures for verifying a radiopharmaceutical dose prior to administration to a patient. The violation was categorized as a Severity Level IV violation.

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*94–23 Medical Brachytherapy Misadministration at North Memorial Medical Center in Robbinsdale, Minnesota*

One of the AO reporting guidelines notes that a therapeutic exposure to any part of a body not scheduled to receive radiation can be considered an AO.

*Date and Place*—August 3, 1994; North Memorial Medical Center; Robbinsdale, Minnesota.

*Nature and Probable Consequences*—On August 15, 1994, a licensee informed NRC that a patient received 1380 centigray (cGy) (1380 rads) to a wrong treatment site during a brachytherapy treatment for metastatic lung cancer.

On August 3, 1994, a catheter was inserted into the patient's bronchus and a ribbon containing 20 seeds of iridium–192 having a total activity of 673.4 megabecquerel (18.2 millicuries) was then inserted into the catheter and moved to the proper treatment location. The treatment plan was intended to deliver a prescribed dose of 2000 cGy (2000 rads) to the intended target. The treatment began at 11:15 a.m. on August 3, 1994, and continued until its scheduled completion at 10:15 a.m. on August 4, 1994.

At about 7 p.m. on August 3, 1994, a nurse informed the physician that the visible portion of the catheter appeared to be protruding approximately 25.4 to 30.5 centimeters (10 to 12 inches) from the patient's nose. This was a significantly greater protrusion than previously observed, indicating that the catheter had moved from its initial placement. The nurse secured the catheter in place with additional tape. The physician stated that, based on the information available to him at that time, he determined that the catheter and ribbon had moved but that the tumor was receiving some radiation dose and therefore he continued the treatment. The iridium-192 seeds were removed on August 4 as planned. On August 4, 1994, a staff radiologist read the portable x-ray film taken on August 3, 1994, and indicated that the iridium implant was not seen.

Due to catheter displacement, the tumor dose was significantly reduced and estimated to be 620 cGy (620 rads) or 31 percent of the intended dose. The remaining dose of 1380 cGy (1380 rads) was delivered to an unintended site.

The patient was notified of the event by the treating physician on August 4, 1994, and again by another physician on August 17, 1994. The referring physician was informed by the treating physician on August 4, 1994.

An NRC medical consultant was retained to perform a clinical assessment of this misadministration. The medical consultant concluded that it is improbable that the patient will experience any long term consequences as a result of the exposure to the unintended treatment site.

*Cause or Causes*—The licensee has determined that the catheter movement caused a misadministration of the intended dose. Two possible explanations for the catheter movement could be the following: (1) Failure to properly secure the catheter in place with tape; or (2) nasal discharge decreasing the adhesive capability of the tape.

*Action Taken To Prevent Recurrence*

*Licensee*—The licensee's corrective actions include: amending the nursing staff procedure so that the attending physician will be contacted if there are further questions; directing nurses to follow the standing protocol for obtaining an administrative consult; providing additional inservice training; documenting the final length of the catheter in the patient chart; and documenting the catheter position on each visit to the patient's room.

*NRC*—NRC conducted a safety inspection from August 15 through September 7, 1994, to review the circumstances of the misadministration. One apparent violation and one area of concern were identified. An Enforcement Conference was held with

the licensee on October 11, 1994. Enforcement action is pending. NRC is continuing its review.

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A copy of NUREG–0090, Vol. 17, No. 4 is available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW., (lower level), Washington, DC 20037, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of this report (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 3rd day of July 1995.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission.*

[FR Doc. 95–16808 Filed 7–7–95; 8:45 am]

**BILLING CODE 7590–01–M**

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**[Docket No. STN 50–456]**

## Commonwealth Edison Company; Braidwood Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–72, issued to the Commonwealth Edison Company (the licensee), for Braidwood Station, Unit 1, located in Will County, Illinois.

### Environmental Assessment

*Identification of Proposed Action*

The proposed action requests an exemption from certain requirements of 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for Normal Operation,'' to allow application of an alternate methodology to determine the low temperature overpressure protection (LTOP) setpoint for Braidwood Station, Unit 1. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, ''Low Temperature Overpressure Protection,'' which has been approved by the ASME Code Committee.

The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. The NRC staff is revising 10 CFR 50.55a, which will endorse the 1993 Addenda and Appendix G of Section XI into the regulations.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specification P/T limits applicable for normal heatup and cooldown in accordance with Appendix G to 10 CFR Part 50 and Sections III and XI of the ASME Code. The exemption was requested by the licensee by letter dated November 30, 1994, and supplemented by letter dated May 11, 1995.

*The Need for the Proposed Action*

In 10 CFR 50.60 it states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR 50 defines P/T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power-Operated Relief Valves (PORVs) that are set at a pressure low enough that if a transient occurred while the coolant temperature is below the LTOP enabling temperature, they would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee's LTOP analysis indicates that using the Appendix G safety margins to determine the PORV setpoint would result in a pressure setpoint within its operating window, but there would be no margin for normal operating pressure surges. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the reactor coolant pumps during normal operation. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for Braidwood, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by Appendix G to 10 CFR Part 50. The alternate methodology is consistent with ASME Code Case N–514.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations.

*Environmemntal Impacts of the Proposed Action*

The Commission has completed its evaluation of the licensee's application.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (1/4) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Braidwood reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change involves use of more realistic safety margins for determining the PORV setpoint during LTOP events. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of Braidwood Station.

*Agencies and Persons Consulted*

In accordance with its stated policy, on June 15, 1995, the staff consulted with the Illinois State Official, Mr. Frank Niziolek; Head, Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for exemption dated November 30, 1994, as supplemented May 11, 1995, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 3rd day of July 1995.

For the Nuclear Regulatory Commission.

**Ramin R. Assa,**

*Project Director, Project Directorate III–2, Division of Reactor Projects–III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–16809 Filed 7–6–95; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on July 26 and 27, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

Most of the meeting will be closed to public attendance to discuss Westinghouse Electric Corporation proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

*Wednesday, July 26, 1995—8:30 a.m. until the conclusion of business*

*Thursday, July 27, 1995—8:30 a.m. until the conclusion of business*

The Subcommittee will continue its review of the Westinghouse COBRA/TRAC best-estimate ECCS thermal hydraulic code. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

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. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff.

Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, 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, the Westinghouse Electric Corporation, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (edt). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: June 30, 1995.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 95–16810 Filed 7–7–95; 8:45 am]

BILLING CODE 7590–01–M

**[Docket 70–364]**

## Babcock and Wilcox Company; Parks Township Facility; Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has taken action with regards to the remaining issues (Sections Q and X) referred to the Commission's Executive Director for Operations, by the Atomic Safety and Licensing Board, in its Initial Director's Decision, dated January 3, 1995, *Babcock and Wilcox Company* (Pennsylvania Nuclear Service Operation Parks Township, PA), LBP–95–1, 41 NRC 1, 35 (1995). Section Q was interpreted as a request that the NRC test for radioactive contamination in the general vicinity of Kepple Hill and Riverview in Parks Township, and Section X was interpreted as a request

for the NRC to investigate radiological contamination on the Farmers Delight Dairy Farm. Notice of Receipt of Petition for Director's Decision under 10 CFR 2.206, dated March 3, 1995, was published in the **Federal Register** on March 13, 1995, (60 FR 13478).

The Director of the Office of Nuclear Material Safety and Safeguards has determined, after taking actions with respect to each request discussed in the Decision, that no further action by the Commission is warranted. The reasons for this Decision are explained in the ''Director's Decision under 10 CFR 2.206'' (DD–95–12), which is published below.

A copy of the Decision will be filed with the Office of the Secretary of the Commission in accordance with 10 CFR 2.206(c). As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

A copy of the Petition, Initial Decision, Notice of Receipt of Petition for Director's Decision under 10 CFR 2.206, and other documents related to the Petition are available for inspection in the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555, and the Local Public Document Room located at the Apollo Memorial Library, 219 N. Pennsylvania Avenue, Apollo, Pennsylvania 15613.

Dated at Rockville, Maryland this 26th day of June 1995.

For the Nuclear Regulatory Commission.

**Malcolm R. Knapp,**

*Deputy Director, Office of Nuclear Material Safety and Safeguards.*

## I. Introduction

By Petition dated January 5, 1994, Citizens' Action for a Safe Environment (CASE) and the Kiski Valley Coalition To Save Our Children (the Coalition) (together referred to as Intervenors or Petitioners) filed a joint request for an informal hearing pursuant to 10 CFR Part 2, Subpart L, with regard to Babcock & Wilcox Company's (Licensee) application for renewal of Special Nuclear Material (SNM) License SNM–414 issued to the Licensee by the U.S. Nuclear Regulatory Commission (NRC or Commission) for the Pennsylvania Nuclear Service Operations facility located in Parks Township, Armstrong County, Pennsylvania (Parks Township facility). In a Memorandum and Order dated April 22, 1994, the Presiding Officer granted the request for hearing and admitted the Petitioners as Intervenors.[1] An informal hearing was conducted pursuant to Subpart L of the Commission's procedural regulations. In the Initial Decision, dated January 3, 1995, authorizing the renewal of the materials license, the Presiding Officer, pursuant to 10 CFR 2.1205(k)(2), referred to the Commission's Executive Director for Operations for consideration, as a request for action under 10 CFR 2.206, 12 areas of concern raised in that proceeding by the Intervenors.[2] These concerns were referred to my office for review. Each of these concerns were reviewed with respect to the requirements of 10 CFR 2.206. Two concerns[3] (Sections Q and X) were found to satisfy the requirements of 10 CFR 2.206. On March 7, 1995, a latter was sent to the Intervenors acknowledging the treatment of the Intervenors' Sections Q and X as requests for action under 10 CFR 2.206.[4]

Section Q has been interpreted as a request for the Commission to test for radioactive contamination in the general vicinity of Kepple Hill and Riverview in Parks Township. The apparent concern is that this area is downwind of the Apollo facility, which the Intervenors assert had been releasing radioactivity at a rate above regulatory limits. The Intervenors rely on letters dated April 20, 1966, and May 26, 1969, concerning the need for experimental data for an air surveillance program at the Apollo plant and authorization by the Commission's predecessor, the Atomic Energy Commission (AEC), for the discharge of radioactive materials in concentrations exceeding 10 CFR Part 20 limits.

Section X has been interpreted as a request for the Commission to investigate radiological contamination on the Farmers Delight Dairy Farm (apparently located in Parks Township). The apparent concern is that past operations of the Parks Township facility caused radioactive contamination of the farm. As basis for this request, the Intervenors assert that there is information in a 1966 U.S. Department of Agriculture (USDA) study that indicates that the cattle on the farm were having thyroid problems and that radionuclides were showing up in the cows' milk.

I have completed my evaluation of the matters raised by the Intervenors and have determined that, for the reasons stated below, no further action by the Commission is warranted.

## II. Background

The Nuclear Material and Equipment Company (NUMEC) began operations at the Apollo and Parks Township facilities in the late 1950s. The Atlantic Richfield Company (ARCO) purchased the stock of NUMEC in 1967. In 1971, Babock & Wilcox (B&W) purchased NUMEC and is the current owner of the Apollo and Parks Township facilities.

The primary function of the NUMEC Apollo facility was the conversion of low-enriched (less than 5 wt. percent U–235) uranium hexafluoride to uranium oxide for use in fuel for light-water-moderated power reactors and to produce high-enriched (> 93 wt. percent U–235) nuclear fuel material for use in naval reactors. The B&W Apollo facility ceased manufacturing nuclear fuel in 1983 and has completed site decommissioning. The Commission staff expects to terminate the Apollo facility license in 1995.

The primary function of the NUMEC Parks Township facility was the fabrication of plutonium fuel, the preparation of high-enriched uranium fuel, and the production of zirconium/hafnium bars. The Parks Township facility ceased fuel fabrication activities in 1980 and is currently conducting decontamination and refurbishment of nuclear reactor components and equipment. The Parks Township license was last renewed on May 16, 1984, with an expiration date of May 31, 1989, and the license is currently under timely renewal.[5]

## III. Discussion

The NRC staff has evaluated the Intervenors' two requests for action pursuant to 10 CFR 2.206. The evaluation and my disposition for each request are discussed below.

1. Test for radioactive contamination in the general vicinity of Kepple Hill and Riverview areas in Parks Township.

The Intervenors' request is based on their interpretation of letters dated April 20, 1966, and May 26, 1969, from Roger D. Caldwell, Manager, Health, Safety

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[1] *Babcock and Wilcox Company* (Pennsylvania Nuclear Service Operations, Parks Township, PA), LBP–94–12, 39 NRC 215 (1994).

[2] *Id.*, LBP–95–1, 41 NRC 1, 35 (1995).

[3] As the Commission recently noted, there were three concerns (Sections Q, R, and X). However, one of the concerns (Section R) was included within Section Q. *See Babcock and Wilcox Company* (Pennsylvania Nuclear Service Operations, Parks Township, PA), CLI–95–04, slip op. at 7 (April 26, 1995), 41 NRC ____.

[4] In the acknowledgement letter it was noted that the other concerns (Sections B, H, I, M, P, S, T, U, W, and Y) had been addressed by the Commission staff in affidavits of Michael A. Lamastra and Heather M. Astwood. These affidavits were submitted to the Atomic Safety and Licensing Board in the Subpart L proceeding on September 22, 1994.

[5] The Commission on April 26, 1995, denied the Intervenors' petition for review of the Presiding Officer's January 3, 1995, Initial Decision (License Renewal), LBP–95–1 (''Initial Decision''). The staff expects to renew the license in 1995.

and Licensing, of NUMEC concerning the need for experimental data for an air surveillance program at the NUMEC Apollo plant[6] and authorization by the Atomic Energy Commission for the discharge of radioactive materials in concentrations exceeding 10 CFR Part 20 limits.[7]

By application dated November 13, 1968, and supplement dated March 5, 1969, and pursuant to 10 CFR 20.106(b), NUMEC requested that License SNM–145 be amended to permit concentrations up to 100 times the limits specified in Part 20, Appendix B, Table II, in any stack effluent, provided that concentrations at the roof edge and in the local environment complied with 10 CFR Part 20 limits. By License Amendment 31, dated May 26, 1969, the AEC authorized NUMEC to discharge radioactive material from any stack, in concentrations up to 100 times the values specified in Appendix B, Table II, of 10 CFR Part 20[8] subject to the following conditions:

(a) Concentrations of radioactive material measured by the continuously operating air samplers positioned at the plant roof perimeter shall not exceed the values specified in Appendix B, Table II, of 10 CFR Part 20; and

(b) an environmental air sampling program shall be conducted in the neighboring unrestricted areas[9] of the plant.

Accordingly, even though NUMEC was authorized to discharge *at the stack* up to 100 times the value specified in Appendix B, Table II, NUMEC was still required to meet the limits *at the site boundary* (*see* footnote 8). Moreover, NUMEC was required to meet these same values at the plant roof perimeter.

To evaluate the Intervenors' concern about the alleged contamination in the general vicinity of the Kepple Hill and Riverview areas of Parks Township, the staff estimated the average airborne uranium concentrations using the results from the environmental monitoring program, which was a condition of the License. The NRC staff calculated the average airborne uranium concentrations to be $3.6\times10^{-13}$uCi/cc.[10] This calculated value is less than one tenth of the maximum permissible concentration in air for insoluble uranium-238 and uranium-235; the requirement for unrestricted air effluent set forth in 10 CFR Part 20, Appendix B, Table II. Accordingly, the releases from the facility were within 10 CFR Part 20 requirements for unrestricted release and, therefore, were not a safety concern.

The NRC staff also estimated the potential contamination of soil outside the plant boundary from facility operations.[11] Using conservative assumptions, the Commission staff calculated a maximum concentration of 12 pCi per gram of soil. This is less than the Commission's current release criteria for uranium.[12]

The Commission staff also reviewed environmental radiation monitoring data collected during the facility's period of operation. Environmental radiation monitoring has been conducted at the Apollo site since 1968. Monitoring programs included measurements of radioactive materials in the environment (river water, and sediment, air, soil, and vegetation) and thermoluminescent dosimetry (TLD) measurements of direct radiation in the environment. Radiological monitoring stations have been active in the Apollo facility area for as long as three decades, monitoring the Allegheny and Kiskiminetas Rivers and various tributaries, as well as other surface waters and ground water. These include Commission, State, and B&W stations. Based on its review of this data, the Commission staff concludes that operation of the Apollo facility did not result in any significant changes to normal background levels outside the immediate site area.

The Commission staff also reviewed the results of an aerial radiological survey to measure gamma radiation [13] levels in the area of the Apollo facility. At the request of the Commission, the survey was conducted by EG&G Energy Measurement Group from June 15–19, 1981. The survey data identified only background levels of radiation.

In summary, the Commission staff calculated the potential airborne uranium concentration and potential contamination of soil, reviewed the environmental monitoring and aerial radiological survey data, and concluded that the radioactive releases from the Apollo facility have been within regulatory limits and have not resulted in concentrations of radioactivity in the soil greater than the NRC release criteria stated in the Branch Technical Position (*see* footnote 12). In reaching this conclusion, the staff took into account the fact that in 1969, the AEC authorized NUMEC to release at the stack, radioactive materials in concentrations up to 100 times the values (applicable at the site boundary) listed in Appendix B of 10 CFR Part 20. The Intervenors' request that the Commission test for radiological contamination in the general vicinity of Kepple Hill and Riverview in Parks Township is granted to the extent of the review described above. However, the Intervenors have failed to raise any substantial health or safety issues. Therefore, no further action is warranted.

2. Investigate potential radiological contamination on the Farmers Delight Dairy Farm located in the vicinity of the Parks Township facility.

In its request for the Commission to investigate radiological contamination on the Farmers Delight Dairy Farm, the Intervenors assert that information contained in a U.S. Department of Agriculture (USDA) report entitled NUMEC–1966 indicates that cattle on the farm are having thyroid problems and that radionuclides are showing up in the cows' milk. The Intervenors indicate that the report was read to them over the telephone by a reference librarian at the USDA Library in Beltsville, Maryland. The Intervenors also assert that the report ''vanished'' from that Library.

To evaluate the NUMEC–1966 report, the Commission staff searched its files,

[6] One of the sub-areas of concern accepted as an issue in the informal hearing was ''[w]hether B&W Management practices as manifested by the management of the Apollo facility threaten offsite releases of radiation from the Park Township facility.'' LBP–94–12, 39 NRC, 215, 222–23 (1994).

[7] Prior to January 1994, NRC regulations for radioactivity in effluents to unrestricted areas were contained in 10 CFR 20.106. The current requirements are found in 10 CFR 1302. 10 CFR 20.106(a) limited radioactivity in air effluents to unrestricted areas to less than those listed in Appendix B, Table II, except as authorized in 10 CFR 20.106(b). 10 CFR 20.106(b) allowed licensees to propose limits higher than those specified in 10 CFR 20.106(a), if certain conditions were met. 10 CFR 20.106(d) clarified that the limits listed in Appendix B, Table II, apply at the boundary of the restricted area and not at the stack discharge point.

[8] The values set forth in 10 CFR Part 20, Appendix B, Table II, are the regulatory limits applicable at the site boundary, not at the stack.

[9] 10 CFR 20.1003 defines ''unrestricted area'' as ''. . . an area, access to which is neither limited nor controlled by the licensee.'' Prior to January 1, 1994, an unrestricted area was defined as ''. . . any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials, and any area used for residential quarters.''

[10] An estimate of the average airborne uranium concentration can be calculated using a uranium deposition rate of 20 pCi/$Ft_2$/week (measured by NUMEC during plant operation) and assuming a gravitational settlement rate of 0.001 meters per second.

[11] An estimate of the soil uranium concentration can be calculated using a uranium deposition rate of 20 pCi/$Ft_2$/week (measured by NUMEC during plant operation) and assuming a 1cm depth, a soil density of 1.5g $cm_{-3}$, and a 15-year operating period at Apollo.

[12] The current release criteria for uranium, which is 30 pCi per gram, is set forth in the Commission's ''Branch Technical Position'' (BTP) published in the **Federal Register**, October 23, 1981.

[13] Gamma radiation is electromagnetic photons originating from the nucleus of an atom. Gamma rays are similar to x-rays.

requested both B&W and ARCO to search their files, and requested the USDA to check its files for a copy of the report. No copy was found. However, the USDA did confirm that the only copy in its system was missing from the USDA Beltsville, Maryland, library. It was also determined that NUMEC–1966 was not a USDA report but a NUMEC-published document. The Commission staff again searched its files and requested that B&W and ARCO search their files for a NUMEC report entitled NUMEC–1966. Again, no copy was found.

Since the Commission staff was unable to evaluate the NUMEC–1966 report, the staff reviewed environmental radiation monitoring data collected from the area of the Parks Township facility. Environmental radiation monitoring has been conducted at the Parks Township site since 1969. The monitoring program includes measurements of radioactive materials in the environment (air, soil, and vegetation) and TLD measurements of direct radiation in the environment. These include Commission, State, and B&W monitoring stations. The NRC staff has also taken soil samples from private residences and other locations in the Parks Township area.[14] The NRC staff has reviewed the environmental monitoring data, including the soil samples, and concluded that there has been no significant increase in background levels outside of the immediate site area of the Parks Township facility. The Intervenors' request that the Commission investigate potential radiological contamination on the Farmers Delight Dairy Farm is granted to the extent of the review described above. The Intervenors have, however, failed to raise a substantial health or safety concern; therefore, no further action is warranted.

### IV. Conclusion

The institution of proceedings pursuant to 10 CFR 2.206 is appropriate only where substantial health and safety issues have been raised. *See Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), CLI–75–8, 2 NRC 173, 175–76 (1975), and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 923 (1984). This is the standard that I have applied to determine whether the actions requested by the Intervenors are warranted. Since no substantial health and safety issues have been raised by the Intervenors and for the reasons discussed above, no basis exists for taking any further action in response to the requests beyond that described above. Accordingly, in this matter, the Commission is taking no further action pursuant to 10 CFR 2.206.

As provided by 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision.

Dated at Rockville, Maryland, this 26th day of June, 1995.

For the Nuclear Regulatory Commission.

**Malcolm R. Knapp,**

*Deputy Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 95–16787 Filed 7–7–95; 8:45 am]

BILLING CODE 7590–01–M

[14] The NRC soil sampling results were reported in NRC combined Inspection Reports Nos. 70–135/93–01 and 70–364/93–02; 70–135/93–02 and 70–364/93–03; 70–135/93–03 and 70–364/93–04; 70–135/94–01 and 70–364/94–01; and 70–135/94–02 and 70–364/94–02.

## OFFICE OF PERSONNEL MANAGEMENT

**[Form DPRS–2809]**

### Notice of Request for Review of a Currently Approved Information Collection

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announced a request for review of a currently approved information collection. Form DPRS–2809, Request to Change FEHB Enrollment or to Receive Plan Brochures, is used by former spouses who are eligible to elect, cancel, or change health benefits enrollment during open season.

Approximately 28,000 forms are completed annually. This form requires approximately 10 minutes to complete. The annual burden is 4,700 hours.

For copies of this proposal, contact Doris R. Benz on (703) 908–8564.

**DATES:** Comments on this proposals should be received on or before August 9, 1995.

**ADDRESSES:** Send or deliver comments to—

Robert A. Yuran, Chief, Financial Management Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, N.W., Room 4351, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

[FR Doc. 95–16816 Filed 7–7–95; 8:45 am]

BILLING CODE 6325–01–M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**SUMMARY OF PROPOSAL(S):**

(1) *Collection title:* Sick Pay and Miscellaneous Payments Report.

(2) *Form(s) submitted:* BA–10.

(3) *OMB Number:* 3220–0175.

(4) *Expiration date of current OMB clearance:* October 31, 1995.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 140

(8) *Total annual responses:* 140.

(9) *Total annual reporting hours:* 128.

(10) *Collection description:* The Railroad Retirement Solvency Act of 1983 added Sec. 1(h)(8) to the RRA expanding the definition of compensation for purposes of computing the Tier 1 portion of an annuity to include sickness payments and certain payments other than sick pay which are considered compensation within the meaning of Sec. 1(h)(8). Collection obtains the sick pay and other types of payments considered compensation within the meaning of Sec. 1(h)(8).

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad

Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Ronald J. Hodapp,**

*Chief, Information Resources Management.*

[FR Doc. 95–16835 Filed 7–7–95; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–35916; File Nos. SR–NSCC–95–04; SR–MCC–95–02; SR–SCCP–95–03]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Midwest Clearing Corporation; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Temporary Approval on an Accelerated Basis of Proposed Rule Changes Relating to the Guarantee of Trades in Continuous Net Settlement Systems

June 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that the National Securities Clearing Corporation (''NSCC''), Midwest Clearing Corporation (''MCC''), and Stock Clearing Corporation of Philadelphia (''SCCP'') (collectively referred to as ''Clearing Corporations'') filed with the Securities and Exchange Commission (''Commission'') on May 19, 1995, May 26, 1995, and June 12, 1995, respectively, the proposed rule changes as described in Items I and II below, which items have been prepared primarily by the Clearing Corporations. The proposals seek approval of rule changes relating to the guarantee of trades in the Clearing Corporations' continuous net settlement systems. The Commission is publishing this notice and order to solicit comments from interested persons and to extend temporary approval of the proposed rule changes on an accelerated basis through June 28, 1996.

### I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposals seek approval of the Commission's temporary order that authorizes the Clearing Corporations: (1) to guarantee at an earlier time the settlement of participant trades in their Continuous Net Settlement (''CNS'') systems and (2) to use revised clearing fund calculations to protect against any increased risk caused by such earlier guarantees.[2]

### II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Clearing Corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Clearing Corporations have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

*(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

The proposed rule changes seek approval of the Clearing Corporations' procedures whereby the settlement of all pending CNS trades are guaranteed as of midnight (11:59 p.m. for MCC) on the day after the trade date for locked-in or automatically compared trades and as of midnight (11:59 p.m. for MCC) on the day trades are reported to members as compared for all other trades. The proposed rule changes also seek approval of the Clearing Corporations' revisions to the CNS portions of their clearing fund formulas. These revisions are designed to protect against increased risk associated with earlier guarantees.[4]

The Clearing Corporations believe that the proposed rule changes are consistent with the Act and particularly with Section 17A of the Act because they will help the Clearing Corporations to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[5]

*(B) Self-Regulatory Organizations' Statement on Burden on Competition*

The Clearing Corporations believe that the proposed rule changes will not impose a burden on competition.

*(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others*

The Clearing Corporations have neither solicited nor received any comments.

### III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Commission believes the Clearing Corporations' proposals to continue providing earlier guarantees for CNS trades along with using revised formulas for calculating clearing fund contributions are consistent with the Act and particularly with Section 17A of the Act.[6] Section 17A(b)(3)(F) of the Act[7] requires that the rules of clearing agencies be designed to assure the safeguarding of securities and funds that are in the custody or control of the clearing agencies or for which the clearing agencies are responsible and be designed to remove impediments to and perfect the national system for the clearance and settlement of securities transactions.

The Commission believes that these proposals promote the perfection of the national system by providing increased certainty as to settlement of securities transactions by reducing the time that clearing members are exposed to the risk of counterparty default. The Commission further believes that these proposals achieve that goal without compromising the safeguarding of securities and funds in the Clearing Corporations' custody or control or for which they are responsible.

The Clearing Corporations have requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filings in the **Federal Register**. The Commission finds good cause for so approving because accelerated approval will permit the Clearing Corporations to continue to provide their participants with earlier trade guarantees and to

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission has approved these proposals on a temporary basis on six previous occasions in Securities Exchange Act Release Nos. 27192 (August 29, 1989), 54 FR 37010 (approving File Nos. SR–NSCC–87–04, SR–MCC–87–03, and SR–SCCP–87–03 until December 31, 1990); 28728 (December 31, 1990), 56 FR 717 (approving File Nos. SR–NSCC–90–25, SR–MCC–90–08, and SR–SCCP–90–03 until June 30, 1991); 29388 (June 28, 1992), 56 FR 30951 (approving File Nos. SR–NSCC–91–06, SR–MCC–91–03, and SR–SCCP–91–03 through June 30, 1992); 30879 (July 1, 1992), 57 FR 30279 (approving File Nos. SR–NSCC–92–04, SR–MCC–92–07, and SR–SCCP–92–02 through June 30, 1993); 32547 (June 29, 1993), 58 FR 36491 (approving file Nos. SR–NSCC–93–04, SR–MCC–93–02, and SR–SCCP–93–02 through June 30, 1994); and 33996 (June 27, 1994), 59 FR 33996 (approving File Nos. SR–NSCC–94–09, SR–MCC–94–06, and SR–SCCP–94–02 through June 30, 1995).

[3] The Commission has modified the language in these sections.

[4] For a more detailed discussion of the proposals, refer to Securities Exchange Act Release Nos. 34261, 32547, 30879, 29388, 28728, and 27192 and the accompanying rule filings, *supra* note 3.

[5] 15 U.S.C. § 78q–1 (1988).

[6] 15 U.S.C. § 78q–1 (1988).

[7] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

continue to base clearing fund assessments on the revised formulas without any needless disruptions to their programs. During the proposals' temporary approval periods, the Commission and the Clearing Corporations have continued to examine the Clearing Corporations' procedures and safeguards applicable to earlier guarantees of CNS trades and the revised formulas for calculating CNS clearing fund contributions. To date, the earlier guarantee procedures and revised clearing fund formulas have functioned adequately.

The Clearing Corporations and the Commission will continue to monitor the adequacy of the Clearing Corporation's procedures and safeguards applicable to earlier guarantees of CNS trades and the revised clearing fund formulas is necessary. Each Clearing Corporation will remain under a continuing obligation to provide data to the Commission pertaining to earlier trade guarantees and the ability of the revised CNS clearing formulas to guard against any increased risks posed by earlier guarantees.[8]

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of each Clearing Corporation. All submissions should refer to the file numbers SR–NSCC–95–04, SR–MCC–95–02, and SR–SCCP–95–03 and should be submitted by July 31, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–NSCC–95–04, SR–MCC–95–02, and SR–SCCP–95–03) be and hereby are approved on a temporary basis through June 28, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 95–16784 Filed 7–7–95; 8:45 am]

BILLING CODE 8010–01–M

[8] The Commission reserves the right to amend the data request during the ensuing temporary approval period for any of the Clearing Corporations in order to obtain the most useful and accurate information available.

[9] 17 CFR 200.30–3(a)(12) (1994).

## TENNESSEE VALLEY AUTHORITY

### Environmental Impact Statement: Lamar County Alabama Water Supply Development

**AGENCIES:** Tennessee Valley Authority and U.S. Army Corps of Engineers.

**ACTION:** Notice of intent.

**SUMMARY:** The Tennessee Valley Authority (TVA) and the U.S. Army Corps of Engineers (COE) will prepare an Environmental Impact Statement (EIS) on water supply development for Lamar County, Alabama, located in west central Alabama. This EIS will consider a range of alternatives to provide an adequate and reliable water supply for the Lamar County area. Alternatives to be considered will include one or a combination of the following: construction of a surface impoundment on a tributary of Yellow Creek; installation of one or more water pipelines from existing reservoirs or streams, use of groundwater wells; direct withdrawal and storage from Yellow Creek; the no action alternative; and other alternatives identified during the scoping process. With this notice, TVA and the COE invite comments on the scope of this EIS. This notice is provided in accordance with the procedural requirements of the National Environmental Policy Act (NEPA), as well as TVA's and the COE's implementing procedures.

**DATES:** Written comments on the scope of the EIS must be received at the address below on or before December 15, 1995.

**ADDRESSES:** Comments should be sent to Dale V. Wilhelm, NEPA Liaison, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

**FOR FURTHER INFORMATION CONTACT:** Jack L. Davis, Manager, Water Resource Projects, Tennessee Valley Authority, WT 10C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499, phone (615) 632–7183.

**SUPPLEMENTARY INFORMATION:** The Tennessee Valley Authority and Lamar County in West Central Alabama are addressing the water supply needs for the County, in order to assure a safe and reliable water supply for the future.

At this time, Lamar County has abundant reserves of both surface and groundwater which are sufficient to meet the needs for the County. However, a county-wide study of development patterns, land use, and potential for contamination of existing groundwater sources indicates a high potential for contamination of groundwater from human activities. One well at Sulligent, Alabama, in the northern part of Lamar County, has already been abandoned as a result of groundwater contamination.

Any new water supply for Lamar County must: (1) Provide sufficient water to serve an expected increased growth, (2) be of good water quality and, (3) be from reliable water sources. It must be sufficient to provide water during peak demands and drought cycles, and it must be free of contamination. At the present time, groundwater, including the County public water system (which depends 100 percent on groundwater) and private wells, provides 93 percent of Lamar County's drinking water. Currently, there is a potential for groundwater contamination from natural sources and from human activities such as waste disposal, use of pesticides, underground storage tanks, and spills. The Tuscaloosa aquifer, on which the County depends almost exclusively for its water needs, is overlaid by permeable soils that allow infiltration and make the aquifer vulnerable to potential contamination. The water from the primary groundwater well is also high in iron. For these reasons, an alternative surface water supply is being considered.

TVA and Lamar County will evaluate alternatives to meet the water supply needs of the area. These analyses of water supply needs will include domestic, industrial, agricultural uses, and water quality. For planning purposes, projected benefits and costs will be evaluated for a 30 to 50 year period, depending on the alternative under consideration. Conservation effects on water use will also be considered.

The first step in the preparation of the EIS will be the determination of the scope of the EIS. It is anticipated that the scope will include possible construction of a surface impoundment on a tributary of Yellow Creek, installation of one or more water pipelines from existing reservoirs, in

stream flow withdrawals, pumped storage, or a combination of any of these. Different design concepts will also be addressed. In addition, as required by NEPA, the no action alternative will also be analyzed. One alternative, construction of a surface impoundment directly on Yellow Creek will not be considered at this time because of the potential impacts to large areas of regulated wetlands. Potentially important issues for discussion in the EIS include:

1. Effects on stream discharge, water quality, and availability;

2. Impacts on terrestrial and aquatic ecology, including threatened and endangered species and habitat loss;

3. Impacts on floodplains, wetlands, recreation, and existing land uses; and

4. Socioeconomic, historic, archeological, and cultural effects associated with completion of the project and alternatives to it.

This list is not intended to be all inclusive, nor is it intended to be a predetermination of impacts. As scoping and preparation of the EIS proceeds, other issues may be revealed which will necessitate further analyses.

TVA and COE invite comments on the above issues. Comments are also requested on environmental issues which should not be viewed as important and which should not be discussed in detail in the EIS.

Sometime during the scoping period, a public meeting will be held in Vernon (Lamar County) to receive comments about the scope of this EIS. Details about this meeting will be announced in area newspapers. Comments received at this meeting will be accorded the same weight as written comments.

As noted, the United States Army Corps of Engineers (Mobile District) will participate in this EIS process as a joint lead agency. Other Federal Agencies may also become cooperating agencies.

After the scoping process and the initial environmental analyses are completed, TVA and COE will prepare a draft EIS. A Notice of Availability of the draft EIS, soliciting public comments, will be published in the **Federal Register** and area newspapers. Those persons who choose not to comment on the scope of the document at this time, but wish to receive a copy of the draft for their review and comment, should write to the above address.

Dated: June 30, 1995.

**Kathryn J. Jackson,**

*Senior Vice President/Resource Group.*

[FR Doc. 95–16847 Filed 7–7–95; 8:45 am]

**BILLING CODE 8120–01–M**

## Adoption of Final Environmental Impact Statement

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Adoption of Final Environmental Impact Statement.

**SUMMARY:** In accordance with TVA's procedures implementing the National Environmental Policy Act (NEPA) and consistent with 40 CFR 1506.3 (1993), TVA has decided to adopt a Final Supplemental Environmental Impact Statement (FSEIS) that was issued by the U.S. Nuclear Regulatory Commission (NRC) in late April 1995. This FSEIS is entitled, ''Final Environmental Statement related to the operation of Watts Bar Nuclear Plant Units 1 and 2, Supplement No. 1.'' Notice of the availability of this FSEIS was published in the **Federal Register** on May 5, 1995 (60 FR 22,389). TVA has determined that the FSEIS meets the standards for an adequate FSEIS and can be adopted.

**ADDRESSES:** The FSEIS can be inspected by the public at the following places:

TVA Corporate Library, East Tower Building, 400 West Summit Hill Drive, Knoxville, Tennessee 37902;

TVA Corporate Library, Signal Place, 1101 Market Street, Chattanooga, Tennessee 37402;

and

TVA Technical Library, A100 National Environmental Research Center, CTR 1E, Muscle Shoals, Alabama 35660.

Copies of the FSEIS may also be obtained by writing or calling: Dale V. Wilhelm, Team Leader, Environmental Management Staff, 400 West Summit Hill Drive, WT 8C–K, Knoxville, Tennessee 37902, (615) 632–6693.

**FOR FURTHER INFORMATION CONTACT:** Jon M. Loney, Manager, Environmental Management Staff, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C–K, Knoxville, Tennessee 37902, (615) 632–2201.

**SUPPLEMENTARY INFORMATION:** On or about April 21, 1995, NRC released a FSEIS on the operation of TVA's Watts Bar Nuclear Plant (WBN). The supplement addresses changes in the plant design and the environment that occurred after NRC issued its ''Final Environmental Statement'' in 1978 on the operation of the plant. NRC concluded in the FSEIS that there have been no significant changes in potential environmental impacts associated with plant operation from those evaluated in its 1978 document. The FSEIS also concluded that TVA's preoperational and operational environmental and radiological monitoring programs were appropriate for establishing baseline conditions and for assessing resulting environmental impacts. Finally, the FSEIS concluded that the analysis of severe accident mitigation design alternatives for the plant demonstrated that none would be cost beneficial for further mitigating environmental impacts beyond the procedural changes which TVA had already committed to implement.

### Background

TVA is the electric supplier to an 80,000 square mile area containing parts of seven States. It and the distributors of the electricity, which TVA generates, serve about 7.5 million people. TVA currently has 25,600 megawatts of generating capacity on its system. This includes coal-fired units, nuclear units, hydro-electric units, combustion turbines, and pumped storage hydro units.

TVA's WBN is located in Rhea County, Tennessee, approximately 13 kilometers (8 miles) southeast of Spring City, Tennessee, and 80 kilometers (50 miles) northeast of Chattanooga, Tennessee. The site is located adjacent to TVA's Watts Bar Dam Reservation at Tennessee River Mile 528. WBN is a two unit pressurized water reactor nuclear plant. Each of its units has a nameplate capacity of 1,170 megawatts. TVA expects to load fuel in Unit 1 in the Fall of 1995. Unit 2 is approximately 65 percent complete. Alternatives to TVA completing Unit 2 are being evaluated as part of an integrated resource planning (IRP) process and an associated EIS. The IRP is scheduled to be completed in December 1995. In December 1994, the TVA Board of Directors announced that based on interim data from the IRP, it would not be in TVA's or its customers' interests for TVA itself to complete Unit 2.

In August 1970, TVA proposed to construct and operate WBN in order to meet forecasted power needs in the TVA region. The Atomic Energy Commission (AEC), now NRC, issued construction permits for the two units on January 23, 1973. TVA commenced construction of WBN in 1973. In 1976, TVA applied to NRC for licenses to operate WBN.

At the time TVA sought operating licenses, construction of WBN Unit 1 was 85 percent complete and Unit 2 was 65 percent complete. TVA's proposed fuel loading dates for the units were December 1979 and September 1980, respectively. However, licensing of the plant was delayed and the construction permits for the units were extended by NRC. The delay was due in part to installation of modifications that NRC ordered for most nuclear plants following the 1979 incident at the Three

Mile Island nuclear plant. In addition, the need for power in the TVA region and elsewhere in the country dramatically changed from the need forecasted in the early 1970s. After the Arab oil embargo in the mid-1970s, energy consumption in the country substantially declined. In the mid-1980's, plant licensing was delayed while TVA resolved a number of WBN-specific safety concerns that were raised by employees and the public. TVA implemented a series of corrective actions and plant modifications to prepare WBN Unit 1 for operation.

It takes many years to plan, permit, and construct new energy sources or to plan and deploy energy conservation programs (demand-side management programs). Years before the demand for electric energy arises, electric utilities have typically had to make decisions about the energy resource mix that they want on their systems to meet future demands. If no action is taken, a utility risks being unable to meet demand and the customers in its service territory would not be served. TVA, like most utilities, projects or forecasts the future demand for power in its region. Determining the need for power of future ''load'' on an utility system depends on two factors: (1) The capabilities of currently available energy resources, and (2) the forecast of future energy needs. If the forecasted need for power exceeds available capabilities to provide that power, additional energy resources must be obtained by the utility. These resources can be in the form of self-built generating facilities, purchases from other energy generators, or energy conservation measures that reduce the potential demand to levels capable of being met with existing energy resources.

TVA routinely produces three load forecasts to help in making energy resource decisions—a high-, medium-, and low-load forecast. The high forecast is designed to project a level of future energy demand for which there is a 90 percent chance or probability of not being exceeded. For the medium forecast, there is a 50 percent probability of not being exceeded; for the low forecast, a 10 percent probability of not being exceeded.

Under all of TVA's current forecasts, there is a need for additional energy resources in the immediate future to meet the demand for energy in the TVA region. In the medium-load forecast, there is a need in 1996 for the capacity of WBN Unit 1 (1170 megawatts) as well as an additional 850 megawatts. Under the high-load forecast, there is a need beyond WBN Unit 1's capacity for an additional 1500 megawatts in 1996. Only under the low-load forecast is there a slight surplus of capacity in 1996 of 300 megawatts with the capacity of WBN Unit 1 online.

Operating WBN Unit 1 will help meet projected future loads on the TVA power system at a very economically competitive cost. TVA has invested $6.4 billion in the construction of WBN Unit 1 and facilities which are shared in common with Unit 2. These costs have already been incurred and cannot be avoided even if TVA now chooses to meet future needs some other way. Operating the unit will allow TVA the opportunity of earning a return on the agency's investment. Compared to purchasing power or meeting demand with coal-fired generation or combustion turbine units, operation of WBN Unit 1 will be among TVA's lowest cost generating sources. WBN Unit 1's operating costs are projected to be approximately 1.7 cents/kwh. In contrast, the operating costs of alternative generating sources would range from 2.0 to 6.0 cents/kwh.

**Environmental Reviews**

In accordance with NEPA, TVA prepared and released in November 1972 a Final EIS on the potential environmental impacts associated with constructing and operating WBN. AEC relied on the TVA EIS when it issued construction permits to the plant in 1973. When TVA began the operating license application process for the WBN units in 1976, it updated the environmental analyses and information about the plant in a report entitled ''Environmental Information Statement,'' and supplemented this report in 1977 to respond to NRC questions. This report and supplement were made part of the public record for the plant. Relying in part on TVA's analyses and information, NRC then issued its 1978 Final EIS. This EIS supplemented the earlier TVA EIS, and focused on the potential environmental impacts associated with operating WBN.

In 1993, TVA initiated an interdisciplinary environmental review of WBN. The purpose of this review was to determine if there were any new, significant environmental impacts related to WBN that had not been addressed in TVA's 1972 EIS. This review relied on the substantial amount of environmental-related data that TVA had collected through its preoperational monitoring programs at WBN and a number of special environmental studies that TVA had conducted over the years at WBN. Review findings were documented in an August 1993 report entitled ''Review of Final Environmental Statement, Watts Bar Nuclear Plant Units 1 and 2.'' Based on this review, TVA determined:

The [1972] EIS concluded that the principal ways the plant will interact with the environment are: (1) Releases of small quantities of radioactivity to air and water, (2) release of minor quantities of heat and non-radioactive waste waters to TVA's Chickamauga Reservoir and major quantities of heat and water vapor from the plant's cooling towers into the atmosphere, (3) loss of aquatic life (such as fish larvae and plankton) that is drawn into the water intake, and (4) a change in land use from farming to industrial. These conclusions remain valid today.

* * * * *

Changes have occurred since the release of WBN's EIS in 1972. Most of these changes involve design modifications or changes in expected operational practices which improve safety or lessen potential environmental impacts. Additional information about environmental conditions in the vicinity of WBN has also been developed. None of the changes or new information materially affect impact projections in the EIS.

In September 1994, NRC decided to issue a formal supplement to its 1978 Final EIS. NRC released a Draft SEIS for public comment in November 1994. A public meeting to obtain comments on the Draft SEIS was held on January 10, 1995 in Sweetwater, Tennessee. NRC issued its FSEIS in late April 1995. Consistent with TVA's 1993 review, NRC did not identify any changes to WBN, significant new circumstances, or environmental concerns that substantially differed from those addressed earlier.

The FSEIS reached the following conclusions:

- There are no changes in the design of WBN that result in significant change in environmental impacts.
- Changes in proposed WBN operations have occurred but these changes do not result in significant environmental impacts.
- Changes in the population and demographics of the region have occurred; however these changes are not significant and changes in employment at the plant have not had significant socioeconomic impacts.
- Land use and water use impacts essentially remain unchanged.
- Regional climatology and WBN site meteorology have not changed significantly.
- There have been no significant changes in the terrestrial and aquatic environments in the vicinity of WBN.
- There have been no significant changes to the background of

radiological characteristics in the vicinity of the plant.

• Based on available data, it does not appear that any minority or low income communities would be disproportionally affected by WBN operations.

The action before NRC is responding to TVA's request for an operating license for Watts Bar Unit 1. A favorable decision would allow the operation of the unit by TVA. Although the actions before the two agencies are essentially the same from the perspective of potential environmental consequences, it was deemed inappropriate for TVA to participate as a cooperating agency in the preparation and issuance of the SEIS because TVA is the applicant for the NRC operating license. However, TVA provided NRC and its contractor, Pacific Northwest Laboratory, substantial amounts of environmental data, information, and analyses that it had collected and prepared over the years for WBN. Much of this data and information were used in the FSEIS.

In its regulations implementing NEPA, the Council on Environmental Quality (CEQ) strongly encourages agencies to reduce the paperwork and duplication that have frequently been the hallmarks of NEPA reviews. One of the methods identified by CEQ to accomplish these goals is adopting the environmental documents prepared by other agencies. 40 CFR 1500.4(n) (1994). Under applicable regulations, TVA is allowed to adopt the NRC FSEIS as its own.

TVA has carefully reviewed the FSEIS and has concluded that it adequately updates the earlier environmental reviews, adequately assesses the remaining environmental impacts associated with operation of WBN Unit 1, and is an adequate supplement. This review has been documented in a TVA publicly-available report entitled, ''Supplemental Environmental Review, Operation of Watts Bar Nuclear Plant.'' Accordingly, TVA hereby adopts NRC's ''Final Environmental Statement related to the operation of Wattts Bar Nuclear Plant, Units 1 and 2, Supplement No. 1.''

Dated: June 30, 1995.

**Kathryn J. Jackson,**

*Senior Vice President, Resource Group.*

[FR Doc. 95–16848 Filed 7–7–95; 8:45 am]

BILLING CODE 8120–01–M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Approved Motor Fuel Distribution Terminals

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of issuance of terminal control numbers for approved motor fuel terminals.

**SUMMARY:** IRS has developed Terminal Control Numbers (TCN) to clearly communicate to the motor fuel industry and other interested parties such as state excise taxing authorities, the motor fuel terminal facilities that meet the definitions of Internal Revenue Code Section 4081 and the regulations thereunder. The IRS intends to use the terminal numbers to coordinate dyed fuel compliance activities and in the future, excise fuel information reporting systems. IRS encourages states to adopt and use the numbers for motor fuel information reporting where appropriate. This list is published under the authority of Internal Revenue Code Section 6103(k)(7).

**What Facilities Are Included?**

The listing of Terminal Control Numbers represents IRS approved motor fuel terminal locations in the bulk transport/delivery system. Approved motor fuel terminals, as defined by Internal Revenue Code Section 4081 and the regulations thereunder, receive taxable fuel via a pipeline, ship, or barge, deliver taxable fuel across a truck rack and be operated by a terminal operator who is properly registered in good standing with IRS. Only those taxpayers who are registered with the IRS on a Registration for Tax-Free Transactions—Form 637 (637 Registration) with a suffix code of ''S'' may operate an approved terminal. Each TCN identifies a unique physical location in the bulk transport/delivery system and is therefore independent of the registered operator.

**When Does a Terminal Operator Need To Notify IRS of Changes?**

A terminal operator must notify the IRS for any of the following changes:

—Terminal ownership or operator changes; or

—A new terminal is opened; or

—A terminal ceases operation.

**How Should Notification Be Made?**

Notify the IRS District Office where the Form 637 is issued of the change and by FAX the IRS TCN Coordinator at: Internal Revenue Service CP:EX:ST:Ex:R&T, Excise, Research & Technology Group, Att: TCN Coordinator (202) 622–4388 FAX.

Changes to the terminal status or other information will be published by the Excise Program Office in the IRS Headquarters Office. Notification is required in order to retain approved status of the terminal and 637 Registration. Failure to notify of changes may lead to suspension or revocation of the approved status of the terminal or 637 Registration. Changes or suspensions of approved status will be published monthly.

If you have any questions regarding the approved terminals or the listing, you may contact: Terminal Number Coordinator—Claude ''Bud'' Smith at (202) 622–4370 or Excise Research & Technology Manager—John C. Love, Jr. (202) 622–4376 (not toll-free numbers).

**Marshall V. Washburn,**

*National Director, Specialty Taxes.*

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST

[July 1, 1995]

| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–92–AK–4500 | Chevron Anchorage | 459 W Bluff Rd | Anchorage | AK | 99501 |
| T–92–AK–4501 | MAPCO Alaska Anchorage | 1076 Ocean Dock Road | Anchorage | AK | 99501 |
| T–92–AK–4502 | Texaco R & M Anchorage | 1601 Tidewater | Anchorage | AK | 99501 |
| T–92–AK–4505 | Tesoro Alaska Petroleum Co | Mile 22.5 Kenai Spur Road | Kenai | AK | 99611 |
| T–92–AK–4503 | MAPCO Alaska North Pole | 1150 H & H Lane | North Pole | AK | 99705 |
| T–63–AL–2333 | Kerr-McGee Oxford | 2625 Highway 78 East | Anniston | AL | 36201 |
| T–63–AL–2300 | Amoco Oil Birmingham | 1600 Mims Ave Southwest | Birmingham | AL | 35211 |
| T–63–AL–2301 | Chevron Birmingham | 2400 28th St Southwest | Birmingham | AL | 35211 |
| T–63–AL–2302 | CITGO Birmingham | 2200 25th St Southwest | Birmingham | AL | 35211 |
| T–63–AL–2303 | Crown Central Birmingham | 2500 Nabors Road | Birmingham | AL | 35211 |
| T–63–AL–2305 | B P Oil Co Birmingham | 1600 Mims Ave SW | Birmingham | AL | 35211 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

[July 1, 1995]

| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–63–AL–2306 | Marathon Birmingham | 2704 28th St Southwest | Birmingham | AL | 35211 |
| T–63–AL–2307 | Phillips 66 Birmingham | 2635 Balsam Avenue | Birmingham | AL | 35211 |
| T–63–AL–2308 | Shell Birmingham | 2601 Wilson Road | Birmingham | AL | 35221 |
| T–63–AL–2309 | Southern Facilities Birmingham | 2400 Nabors Road | Birmingham | AL | 35211 |
| T–63–AL–2310 | Star Enterprise Birmingham | 2529 28th St Southwest | Birmingham | AL | 35211 |
| T–63–AL–2311 | Kerr-McGee Birmingham | 2600 Ishkooda Road | Birmingham | AL | 35211 |
| T–63–AL–2312 | Louis Dreyfus Birmingham | 1600 Mims Ave SW | Birmingham | AL | 35211 |
| T–63–AL–2321 | Kerr-McGee Blakely Island | U S Hwy 90 | Blakely Island | AL | 36633 |
| T–63–AL–2316 | Coastal Mobile Chickasaw | 200 Viaduct Rd | Chickasaw | AL | 36611 |
| T–63–AL–2314 | Amoco Oil Mobile | Hwy 90 and 98 | Mobile | AL | 36601 |
| T–63–AL–2315 | Coastal Fuels Mobile | PO Box 1423 | Mobile | AL | 36633 |
| T–63–AL–2322 | Amoco Oil Montgomery | 3560 Well Rd | Montgomery | AL | 36108 |
| T–63–AL–2323 | Chevron USA Montgomery | 200 Hunter Loop Road | Montgomery | AL | 31608 |
| T–63–AL–2324 | B P Oil Mongtomery | Access Highway 31 North | Montgomery | AL | 36108 |
| T–63–AL–2325 | Marathon Montgomery | 320 Hunter Loop Rural Rt 6 | Montgomery | AL | 36125 |
| T–63–AL–2327 | Southern Facilities Montgomery | 420 Hunter Loop Road | Montgomery | AL | 36108 |
| T–63–AL–2304 | Southeast Terminal Montgomery | Hwy 31 North | Montgomery | AL | 36108 |
| T–63–AL–2326 | S T Services Montgomery | 520 Hunter Loop Road | Montgomery | AL | 36108 |
| T–63–AL–2330 | S T Services Moundville | PO Box 6T | Moundville | AL | 35474 |
| T–63–AL–2334 | LL&E Petroleum Saraland | PO Box 308 | Saraland | AL | 36571 |
| T–63–AL–2335 | Murphy Sheffield | 136 Blackwell Road | Sheffield | AL | 35660 |
| T–63–AL–2329 | Hunt Refining Co | 1855 Fairlawn RD | Tuscaloosa | AL | 35401 |
| T–71–AR–2451 | Lion Oil El Dorado | 1000 McHenry | El Dorado | AR | 71730 |
| T–71–AR–2452 | TEPPCO El Dorado | Hwy 167 North | El Dorado | AR | 71730 |
| T–71–AR–2453 | Williams Pipe Line Fort Smith | 8101 Hwy 71 | Fort Smith | AR | 72903 |
| T–71–AR–2454 | TEPPCO Helena | 826 Old Highway | Helena | AR | 72342 |
| T–71–AR–2456 | North Little Rock Terminaling | 2725 Central Airport Rd | North Little Rock | AR | 72117 |
| T–71–AR–2457 | Exxon USA North Little Rock | 2724 Central Airport Rd | North Little Rock | AR | 72117 |
| T–71–AR–2458 | La Gloria Oil N Little Rock | 2626 Central Airport Road | North Little Rock | AR | 72117 |
| T–71–AR–2459 | Little Rock Terminaling | 3222 Central Airport Rd | North Little Rock | AR | 72117 |
| T–71–AR–2464 | Arkansas Terminaling & Trading | Rt 1 Box 67 A | North Little Rock | AR | 72117 |
| T–71–AR–2467 | Razorback Terminaling | 2801 West Hwy 102 Rt 2 | Rogers | AR | 72756 |
| T–71–AR–2460 | Cross Oil & Refining Smackover | East Sixth Street | Smackover | AR | 71762 |
| T–71–AR–2463 | Truman Arnold West Memphis | South of 8th Street | West Memphis | AR | 72303 |
| T–86–AZ–4311 | Sunbelt Refining Coolidge | 5415 E Randolph Rd | Coolidge | AZ | 85228 |
| T–86–AZ–4300 | Caljet Phoenix | 125 N 53rd Avenue | Phoenix | AZ | 85015 |
| T–86–AZ–4301 | Chevron USA Phoenix | 5110 West Madison | Phoenix | AZ | 85043 |
| T–86–AZ–4303 | Pro Petroleum Phoenix | 408 S 43rd Avenue | Phoenix | AZ | 85009 |
| T–86–AZ–4307 | UNOCAL Phoenix | 10 South 51st Avenue | Phoenix | AZ | 85001 |
| T–86–AZ–4304 | SFPP LP Phoenix | 49 North 53rd Ave Van Buren | Phoenix | AZ | 85063 |
| T–86–AZ–4306 | Texaco R & M Phoenix | 5325 West Van Buren | Phoenix | AZ | 85043 |
| T–86–AZ–4313 | ARCO Phoenix | 5333 W Van Buren St | Phoenix | AZ | 85043 |
| T–86–AZ–4305 | Mobil Oil Phoenix | 5333 W Van Buren | Phoenix | AZ | 85043 |
| T–86–AZ–4308 | Chevron USA Tucson | 3865 East Refinery Way | Tucson | AZ | 85713 |
| T–86–AZ–4310 | SFPP LP Tucson | 3841 East Refinery Way | Tucson | AZ | 85713 |
| T–86–AZ–4312 | Texaco Tucson | 3735 South Dodge Boulevard | Tucson | AZ | 85713 |
| T–86–AZ–4309 | S T Services Tucson | 3605 South Dodge | Tuscon | AZ | 85726 |
| T–33–CA–4750 | Mobil Oil Atwood | 1477 Jefferson | Anaheim | CA | 92806 |
| T–77–CA–4662 | UNOCAL Avila Beach | 10 San Rafael St | Avila Beach | CA | 93424 |
| T–77–CA–4655 | Kern Oil Bakersfield | 7724 East Panama Lane | Bakersfield | CA | 93307 |
| T–77–CA–4656 | Sunland Refing Bakersfield | 2152 Coffee Road | Bakersfield | CA | 93302 |
| T–77–CA–4657 | Texaco Bakersfield | 2436 Fruitvale Avenue | Bakersfield | CA | 93302 |
| T–77–CA–4661 | Golden Bear Refinery | Norris Rd & Manor | Bakersfield | CA | 93308 |
| T–68–CA–4603 | Exxon USA Benicia | 3410 East Second Street | Benicia | CA | 94510 |
| T–33–CA–4756 | Chevron USA Colton | 2297 South Riverside Avenue | Bloomington | CA | 92316 |
| T–33–CA–4757 | SFPP LP Colton | 2359 South Riverside Avenue | Bloomington | CA | 92316 |
| T–33–CA–4758 | Shell Oil Colton | 2307 South Riverside Avenue | Bloomington | CA | 92316 |
| T–33–CA–4759 | Texaco Colton | 2237 South Riverside Avenue | Bloomington | CA | 92316 |
| T–33–CA–4753 | ARCO Colton | 2395 S Riverside Avenue | Bloomington | CA | 92316 |
| T–33–CA–4754 | Mobil Oil Colton | 2305 S Riverside Avenue | Bloomington | CA | 92316 |
| T–33–CA–4766 | UNOCAL Bloomington | 2301 S Riverside | Bloomington | CA | 92316 |
| T–94–CA–4700 | SFPP LP Brisbane | Old County Road | Brisbane | CA | 94005 |
| T–33–CA–4751 | GATX Tank Storage | 2000 East Sepulveda Blvd | Carson | CA | 90810 |
| T–33–CA–4769 | ARCO Carson | 2149 E Sepulreda Blvd | Carson | CA | 90749 |
| T–68–CA–4600 | SFPP LP Chico | Midway & Hegan Lane | Chico | CA | 95927 |
| T–68–CA–4601 | Shell Oil Chico | Hegan Lane | Chico | CA | 95927 |
| T–68–CA–4620 | Ultramar Inc Chico | Midway & Hegan Lane | Chico | CA | 95927 |
| T–33–CA–4755 | Calnev Pipe Line Colton | 2051 West Slover Avenue | Colton | CA | 92324 |

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–68–CA–4605 | Wickland Oil Crockett | 90 San Pablo Ave | Crockett | CA | 94525 |
| T–33–CA–4761 | Calnev Pipe Line Daggett | 34277 Daggett-Yermo Road | Daggett | CA | 92327 |
| T–33–CA–4762 | S T Services Imperial | 349 Aten Road | El Centro | CA | 92251 |
| T–95–CA–4800 | Chevron USA El Segundo | 302 West El Segundo Blvd | El Segundo | CA | 90245 |
| T–68–CA–4606 | Chevron USA Eureka | 3400 Christie Street | Eureka | CA | 95501 |
| T–68–CA–4615 | UNOCAL Eureka | 1200 Railroad Ave | Eureka | CA | 95502 |
| T–77–CA–4651 | SFPP LP Fresno | 4149 South Maple Avenue | Fresno | CA | 93725 |
| T–77–CA–4660 | Chevron USA Fresno | 4073 S Maple | Fresno | CA | 93725 |
| T–68–CA–4608 | Pacific Refining Co Hercules | 4901 San Pablo Avenue | Hercules | CA | 94547 |
| T–33–CA–4771 | Chevron USA Huntington Beach | 17881 Gothard St | Huntington Beach | CA | 92647 |
| T–33–CA–4763 | SFPP LP Imperial | 345 W Aten Road | Imperial | CA | 92251 |
| T–33–CA–4764 | ARCO Long Beach | 5905 Paramount Ave | Long Beach | CA | 90805 |
| T–33–CA–4767 | Petro-Diamond Term Long Beach | 1920 Lugger Way | Long Beach | CA | 90805 |
| T–33–CA–4779 | Chemoil Long Beach | 2365 E Sepulveda Blvd | Long Beach | CA | 90810 |
| T–95–CA–4803 | UNOCAL Los Angeles | 13500 South Broadway | Los Angeles | CA | 90061 |
| T–95–CA–4806 | UNOCAL Center Street LA | 501 N Center St | Los Angeles | CA | 90012 |
| T–95–CA–4809 | Shell Oil Los Angeles | 2015 Long Beach Ave | Los Angeles | CA | 90058 |
| T–68–CA–4610 | Shell Oil Martinez | 1801 Marvin Vista | Martinez | CA | 94553 |
| T–68–CA–4611 | Tosco Refining Martinez | Solano Way & Waterfront RD | Martinez | CA | 94553 |
| T–68–CA–4607 | Chevron USA Avon | 611 Solano Way | Martinez | CA | 94553 |
| T–95–CA–4811 | Chevron USA Montebella | 601 South Vail Avenue | Montebella | CA | 90640 |
| T–33–CA–4772 | SFPP LP Orange | 1350 North Main Street | Orange | CA | 92667 |
| T–95–CA–4808 | Paramount Petroleum | 8835 Somerset Blvd | Paramount | CA | 90723 |
| T–68–CA–4613 | SFPP LP Rancho Cordova | 2901 Bradshaw Rd | Rancho Cordova | CA | 95741 |
| T–33–CA–4760 | Tosco Refining Colton | 271 E Slover Avenue | Rialto | CA | 92376 |
| T–68–CA–4614 | ARCO Richmond | 1306 Canal Boulevard | Richmond | CA | 94807 |
| T–68–CA–4616 | Chevron Richmond | 155 Castro St | Richmond | CA | 94802 |
| T–68–CA–4619 | Texaco Richmond | 100 Cutting Blvd | Richmond | CA | 94804 |
| T–68–CA–4617 | UNOCAL Richmond | 1300 Canal Blvd | Richmond | CA | 94804 |
| T–68–CA–4621 | Chevron USA Sacramento | 2420 Front Street | Sacramento | CA | 95818 |
| T–68–CA–4624 | Tosco Refining Sacramento | 66 Broadway at Riverside | Sacramento | CA | 95818 |
| T–68–CA–4618 | UNOCAL Sacramento | 76 Broadway | Sacramento | CA | 95818 |
| T–33–CA–4773 | Chevron USA San Diego | 2351 East Harbor Drive | San Diego | CA | 92113 |
| T–33–CA–4774 | Pacific Southwest San Diego | 4370 LaJolla Village Drive | San Diego | CA | 92113 |
| T–33–CA–4776 | SFPP LP San Diego | 9950 San Diego Mission Road | San Diego | CA | 92108 |
| T–33–CA–4777 | Shell Oil San Diego | 9950 San Diego Mission Road | San Diego | CA | 92108 |
| T–33–CA–4778 | Texaco San Diego | 9966 San Diego Mission Road | San Diego | CA | 92108 |
| T–33–CA–4782 | ARCO San Diego | 2295 E Harbor Drive | San Diego | CA | 92113 |
| T–33–CA–4783 | Mobil Oil San Diego | 9950 San Diego Mission Rd | San Diego | CA | 92108 |
| T–33–CA–4790 | UNOCAL San Diego | 2750 Murphy Canyon Rd | San Diego | CA | 92123 |
| T–77–CA–4650 | Chevron USA San Jose | 1020 Berryessa Road | San Jose | CA | 95133 |
| T–77–CA–4652 | SFPP LP San Jose | 2150 Kruse Avenue | San Jose | CA | 95131 |
| T–77–CA–4653 | Shell Oil San Jose | 2165 O'Toole Avenue | San Jose | CA | 95131 |
| T–33–CA–4780 | GATX Terminals San Pedro | Port of LA Berths 70–71 | San Pedro | CA | 90733 |
| T–33–CA–4781 | Western Fuel Oil Co San Pedro | 2100 North Gaffey | San Pedro | CA | 90731 |
| T–95–CA–4801 | Powerine Oil Santa Fe Springs | 12354 East Lakeland Rd | Santa Fe Springs | CA | 90670 |
| T–95–CA–4802 | Golden West Santa Fe Springs | 13415 Carmenita Road | Santa Fe Springs | CA | 90670 |
| T–33–CA–4784 | ARCO Signal Hill | 2350 Hathaway Drive | Signal Hill | CA | 90806 |
| T–33–CA–4785 | Shell Oil Signal Hill | 2457 Redondo Avenue | Signal Hill | CA | 90806 |
| T–94–CA–4703 | Shell Oil San Francisco | 135 North Access Road | So San Francisco | CA | 94080 |
| T–95–CA–4807 | ARCO Vinvale Terminal | 8601 S Garfield Ave | South Gate | CA | 90280 |
| T–68–CA–4625 | Tosco Refining Stockton | 3505 Navy Drive | Stockton | CA | 95203 |
| T–68–CA–4626 | S T Services Stockton | 2941 Navy Drive | Stockton | CA | 95203 |
| T–68–CA–4628 | Shell Oil Stockton | 3515 Navy Drive | Stockton | CA | 95203 |
| T–68–CA–4629 | Tesoro Refining Mktg Stockton | 3033 Navy Drive | Stockton | CA | 95205 |
| T–68–CA–4630 | Time Oil Stockton | 3015 Navy Drive | Stockton | CA | 95206 |
| T–68–CA–4609 | ARCO Stockton Terminal | 2700 West Washington St | Stockton | CA | 95203 |
| T–33–CA–4786 | Mobil Oil Torrance | 3700 West 190th Street | Torrance | CA | 90509 |
| T–68–CA–4604 | Chevron USA Banta | 22888 S Kasson Rd | Tracy | CA | 95376 |
| T–95–CA–4804 | Shell Oil Van Nuys | 8100 Haskell Avenue | Van Nuys | CA | 91326 |
| T–95–CA–4810 | Chevron USA Van Nuys | 15359 Oxnard Street | Van Nuys | CA | 91411 |
| T–77–CA–4654 | Shell Oil Ventura | 3284 North Ventura Avenue | Ventura | CA | 93001 |
| T–95–CA–4805 | Mobil Oil Vernon | 2709 East 37th Street | Vernon | CA | 90058 |
| T–68–CA–4622 | Shell Oil West Sacramento | 1509 South River Road | West Sacramento | CA | 95691 |
| T–68–CA–4631 | Tesoro Ref West Sacramento | 1700 South River Road | West Sacramento | CA | 95691 |
| T–68–CA–4612 | ARCO Sacramento | 1701 South River Road | West Sacramento | CA | 95691 |
| T–33–CA–4768 | Texaco Long Beach | 1926 East Pacific Coast Hwy | Wilmington | CA | 90744 |
| T–33–CA–4770 | Texaco LA Harbor | 2101 East Pacific Coast Hwy | Wilmington | CA | 90744 |
| T–33–CA–4789 | Ultramar Inc Wilmington | 2402 E Anaheim St | Wilmington | CA | 90744 |

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–33–CA–4752 | UNOCAL Wilmington | 1660 W Anaheim St | Wilmington | CA | 90744 |
| T–84–CO–4100 | Chase Pipeline Aurora | 15000 East Smith Road | Aurora | CO | 80011 |
| T–84–CO–4108 | Diamond Colorado Springs | 7810 Drennan | Colorado Springs | CO | 80925 |
| T–84–CO–4101 | Total Petroleum Denver | 5800 Brighton Boulevard | Commerce City | CO | 80022 |
| T–84–CO–4102 | Conoco Denver | 5575 Brighton Boulevard | Commerce City | CO | 80022 |
| T–84–CO–4103 | Diamond Shamrock Denver | 3601 East 56th Street | Commerce City | CO | 80022 |
| T–84–CO–4104 | Phillips 66 Commerce City | 3960 East 56th Avenue | Commerce City | CO | 80022 |
| T–84–CO–4105 | WYCO Pipe Line Dupont | 8160 Krameria | DuPont | CO | 80024 |
| T–84–CO–4106 | WYCO Pipe Line Fountain | 7 Miles South of Old Hwy 85 | Fountain | CO | 80024 |
| T–84–CO–4107 | Landmark Petroleum Fruita | 1493 Hwy 6 & 50 | Fruita | CO | 81521 |
| T–84–CO–4109 | Sinclair Pipeline Henderson | 8581 East 96th Ave | Henderson | CO | 80640 |
| T–06–CT–1250 | Hoffman Fuel Bridgeport | 156 East Washington Avenue | Bridgeport | CT | 6604 |
| T–06–CT–1256 | Shell Bridgeport Plant | 250 Eagles Nest Road | Bridgeport | CT | 6607 |
| T–06–CT–1253 | Star Enterprise E Hartford | Riverside Drive | East Hartford | CT | 6108 |
| T–06–CT–1255 | Amerada Hess Groton | 443 Eastern Point Road | Groton | CT | 6340 |
| T–06–CT–1257 | Amerada Hess New Haven | 100 River Street | New Haven | CT | 6513 |
| T–06–CT–1261 | Getty Terminal New Haven | 85 Forbes Avenue | New Haven | CT | 6512 |
| T–06–CT–1262 | Gulf Oil New Haven | 500 Waterfront Street | New Haven | CT | 6512 |
| T–06–CT–1263 | Mobil Oil New Haven | 134 Forbes Avenue | New Haven | CT | 6512 |
| T–06–CT–1254 | Northeast Petroleum New Haven | 481 East Shore Parkway | New Haven | CT | 6512 |
| T–06–CT–1264 | Gateway Terminal New Haven | 400 Waterfront St | New Haven | CT | 6512 |
| T–06–CT–1260 | Louis Dreyfus Norwich | 340 West Thomas Street | Norwich | CT | 6360 |
| T–06–CT–1252 | CITGO Rocky Hill | 109 Dividend Road | Rocky Hill | CT | 6067 |
| T–06–CT–1268 | Hoffman Fuel Stamford | 100 Southfield Avenue | Stamford | CT | 6902 |
| T–06–CT–1251 | Sprague Energy Stamford | 10 Water St | Stamford | CT | 6902 |
| T–06–CT–1270 | Northeast Petroleum Wethersfield | 80 Burbank Road | Wethersfield | CT | 6109 |
| T–06–CT–1259 | Amerada Hess Wethersfield | 50 Burbank Road | Wethersfield | CT | 6109 |
| T–52–MD–1553 | Steuart Petroleum DC | 401 Farragut Street NE | Washington | DC | 20111 |
| T–52–MD–1564 | Steuart Petroleum | 1333 M St SE | Washington | DC | 20111 |
| T–51–DE–1601 | Blades Terminal-Peninsula Oil | Blades Causeway | Blades | DE | 19973 |
| T–51–DE–1600 | Star Enterprise Delaware City | River Rd and J Street | Delaware City | DE | 19706 |
| T–51–DE–1603 | Wilco Inc, Peninsula Oil Co | PO Box 389 | Seaford | DE. | |
| T–59–FL–2138 | Coastal Fuels Cape Canaveral | Port Canaveral | Cape Canaveral | FL | 32920 |
| T–65–FL–2153 | Chevron USA Port Everglades | 1400 SE 24th Street | Fort Lauderdale | FL | 33316 |
| T–65–FL–2156 | Amerada Hess Port Everglades | 1501 SE 20th St | Fort Lauderdale | FL | 33316 |
| T–65–FL–2157 | CITGO Port Everglades | 800 SE 28th Street | Fort Lauderdale | FL | 33316 |
| T–65–FL–2150 | Coastal Fuels Port Everglades | 2401 Eisenhower Blvd | Fort Lauderdale | FL | 33316 |
| T–65–FL–2160 | Marathon Oil Port Everglades | 1601 SE 20th St | Fort Lauderdale | FL | 33316 |
| T–65–FL–2161 | Mobil Oil Port Everglades | 1150 Spangler Blvd | Fort Lauderdale | FL | 33316 |
| T–65–FL–2163 | Shell Oil Port Everglades | 909 SE 24 St | Fort Lauderdale | FL | 33335 |
| T–65–FL–2165 | Louis Dreyfus Port Everglades | 2701 SE 14th Ave | Fort Lauderdale | FL | 33316 |
| T–59–FL–2115 | Murphy Oil Freeport | 200 Center St | Freeport | FL | 32439 |
| T–65–FL–2154 | GATX Terminals Port Everglades | 1500 SE 26 Street | Ft Lauderdale | FL | 33316 |
| T–65–FL–2151 | S T Services Homestead | 13195 S W 288th Street | Homestead | FL | 33033 |
| T–59–FL–2102 | Amerada Hess Jacksonville | 2617 Heckscher Drive | Jacksonville | FL | 32226 |
| T–59–FL–2103 | Amoco Oil Jacksonville | 2054 Heckscher Drive | Jacksonville | FL | 32226 |
| T–59–FL–2104 | Chevron USA Jacksonville | 3117 Talleyrand Avenue | Jacksonville | FL | 32206 |
| T–59–FL–2105 | Coastal Fuels Jacksonville | 3529 Talleyrand Avenue | Jacksonville | FL | 32206 |
| T–59–FL–2106 | B P Oil Jacksonville | Access I–95 | Jacksonville | FL | 32218 |
| T–59–FL–2108 | Koch Refining Jacksonville | 1974 Talleyrand Avenue | Jacksonville | FL | 32239 |
| T–59–FL–2109 | Petroleum Fuel Jacksonville | 1903 E Adams St | Jacksonville | FL | 32202 |
| T–59–FL–2112 | Steuart Petroleum Jacksonville | 6531 Evergreen Avenue | Jacksonville | FL | 32208 |
| T–59–FL–2113 | Kerr-McGee Jacksonville | 2470 Talleyrand Blvd | Jacksonville | FL | 32206 |
| T–59–FL–2114 | Kerr-McGee Niceville | 904 Bayshore Drive | Niceville | FL | 32578 |
| T–59–FL–2122 | Coastal Fuels Point Manatee | PO Box 939 | Palmetto | FL | 34220 |
| T–59–FL–2116 | Chevron USA Panama City | 500 West Fifth Street | Panama City | FL | 32402 |
| T–59–FL–2117 | CITGO Panama City | 122 South Center Avenue | Panama City | FL | 32401 |
| T–59–FL–2118 | Coastal Fuels Pensacola | 640 S Barracks St | Pensacola | FL | 32501 |
| T–59–FL–2119 | Pensacola Terminals | 3088 Barrancas Avenue | Pensacola | FL | 32507 |
| T–59–FL–2120 | Louis Dreyfus Pensacola | 5115 South Clubb St | Pensacola | FL | 32501 |
| T–65–FL–2152 | Amoco Oil Port Everglades | 1180 Spangler Road | Port Everglades | FL | 33316 |
| T–65–FL–2164 | Star Enterprise Port Everglade | 1200 Southeast 28th Street | Port Everglades | FL | 33316 |
| T–59–FL–2124 | Shell Oil Port Tampa | 6500 Commerce St | Port Tampa | FL | 33616 |
| T–59–FL–2125 | Murphy Oil St Marks | 585 Port Leon Drive | St Marks | FL | 32355 |
| T–59–FL–2127 | TOC Terminals St Marks | 25 miles south of Tallahassee | St Marks | FL | 32355 |
| T–59–FL–2129 | GATX Terminal Taft | 9919 Palm Avenue | Taft | FL | 32824 |
| T–59–FL–2100 | Murphy Oil USA Tampa | 1306 Ingram Ave | Tampa | FL | 33601 |
| T–59–FL–2101 | Louis Dreyfus Tampa | 1523 Port Avenue | Tampa | FL | 33605 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–59–FL–2123 | GATX Terminals Port Tampa | 100 GATX Drive | Tampa | FL | 33605 |
| T–59–FL–2130 | Amoco Oil Tampa | 848 McCloskey Boulevard | Tampa | FL | 33605 |
| T–59–FL–2131 | Chevron USA Tampa | 5500 Commerce Street | Tampa | FL | 33616 |
| T–59–FL–2133 | CITGO Tampa | 801 McCloskey Blvd | Tampa | FL | 33605 |
| T–59–FL–2135 | B P Oil Tampa | 5881 Ingraham Street | Tampa | FL | 33686 |
| T–59–FL–2136 | Marathon Oil Tampa | 425 South 20th Street | Tampa | FL | 33605 |
| T–59–FL–2137 | Star Enterprise Tampa | 519 19th Street | Tampa | FL | 33605 |
| T–59–FL–2107 | Amerada Hess Tampa | 504 N 19th Street | Tampa | FL | 33605 |
| T–58–GA–2500 | Phillips Pipeline Albany | 1603 W Oakridge Dr | Albany | GA | 31707 |
| T–58–GA–2501 | Southern Facilities Albany | 1722 W Oakridge Dr | Albany | GA | 31707 |
| T–58–GA–2502 | Louis Dreyfus Albany | 1162 Gillionville Rd | Albany | GA | 31707 |
| T–58–GA–2505 | Louis Dreyfus Americus | Plains Road Highway 280 W | Americus | GA | 31709 |
| T–58–GA–2506 | Chevron USA Athens | 3460 Jefferson Road | Athens | GA | 30607 |
| T–58–GA–2508 | Louis Dreyfus Athens | 3450 Jefferson Road | Athens | GA | 30607 |
| T–58–GA–2511 | Louis Dreyfus Atlanta | 3132 Parrot Avenue Northwest | Atlanta | GA | 30318 |
| T–58–GA–2504 | S T Services Augusta | 209 Sand Bar Ferry Road | Augusta | GA | 30901 |
| T–58–GA–2514 | Star Enterprise Bainbridge | 803 East Shotwell Street | Bainbridge | GA | 31717 |
| T–58–GA–2515 | Louis Dreyfus Bainbridge | 1909 East Shotwell Street | Bainbridge | GA | 31717 |
| T–58–GA–2516 | Stratus Petroleum Blakely | Hwy 62 W & Chattahoochee Rd | Blakely | GA | 31723 |
| T–58–GA–2517 | S T Services Bremen | Hwy 27 South | Bremen | GA | 30110 |
| T–58–GA–2518 | Steuart Petroleum Brunswick | 211 Newcastle Street | Brunswick | GA | 31520 |
| T–58–GA–2519 | Fina Oil & Chemical Atlanta | 2970 Parrott Avenue | Chattahoochee | GA | 30318 |
| T–58–GA–2520 | Chevron USA Columbus | 5131 Miller Road | Columbus | GA | 31908 |
| T–58–GA–2521 | Crown Central Columbus | 4840 Miller Rd | Columbus | GA | 31904 |
| T–58–GA–2522 | ITAPCO Inc Columbus | 5225 Miller Road | Columbus | GA | 31904 |
| T–58–GA–2523 | Marathon Oil Columbus | 5030 Miller Road | Columbus | GA | 31908 |
| T–58–GA–2524 | S T Services Columbus | 800 Lumpkin Boulevard | Columbus | GA | 31901 |
| T–58–GA–2510 | Star Enterprise Doraville | 4127 Winters Chapel Road | Doraville | GA | 30360 |
| T–58–GA–2525 | Amerada Hess Doraville | 2836 Woodwin Road | Doraville | GA | 30362 |
| T–58–GA–2526 | Amoco Oil Doraville | 6430 New Peachtree Road | Doraville | GA | 30340 |
| T–58–GA–2527 | Ashland Doraville | 4201 Winters Chapel Road | Doraville | GA | 30360 |
| T–58–GA–2528 | Chevron USA Doraville | 4026 Winters Chapel Road | Doraville | GA | 30362 |
| T–58–GA–2529 | CITGO Doraville | 3877 Flowers Drive | Doraville | GA | 30362 |
| T–58–GA–2530 | Crown Central Doraville | 2765 Woodwin Rd | Doraville | GA | 30360 |
| T–58–GA–2531 | Exxon USA Doraville | 4143 Winters Chapel Rd | Doraville | GA | 30360 |
| T–58–GA–2532 | Marathon Oil Doraville | 6293 New Peachtree Road | Doraville | GA | 30341 |
| T–58–GA–2533 | Phillips Pipeline Doraville | 4149 Winters Chapel Road | Doraville | GA | 30360 |
| T–58–GA–2534 | Amoco Oil Doraville | 4064 Winters Chapel Rd | Doraville | GA | 30340 |
| T–58–GA–2535 | Southern Facilities Doraville | 2797 Woodwin Road | Doraville | GA | 30360 |
| T–58–GA–2537 | Louis Dreyfus Griffin | 643B East McIntosh Road | Griffin | GA | 30223 |
| T–58–GA–2538 | Chevron USA Macon | 2476 Allen Road | Macon | GA | 31206 |
| T–58–GA–2541 | Marathon Oil Macon | 2445 Allen Road | Macon | GA | 31206 |
| T–58–GA–2542 | S T Services Macon | 6225 Hawkinsville Road | Macon | GA | 31206 |
| T–58–GA–2543 | Southern Facilities Macon | 2505 Allen Road | Macon | GA | 31206 |
| T–58–GA–2544 | Louis Dreyfus Macon | 5041 Foryth Rd | Macon | GA | 31210 |
| T–58–GA–2545 | Marathon Oil Powder Springs | 3895 Anderson Farm Road NW | Powder Springs | GA | 30073 |
| T–58–GA–2547 | Louis Dreyfus Southeast | 2671 Calhoun Road | Rome | GA | 30161 |
| T–58–GA–2548 | Steuart Petroleum Savannah | 1 Woodcock Road | Savannah | GA | 31404 |
| T–58–GA–2550 | Colonial Oil Savannah | 101 North Lathrop Ave | Savannah | GA | 31401 |
| T–58–GA–2551 | Paktank Corp Savannah Term | Georgia Ports Garden City | Savannah | GA | 31418 |
| T–58–GA–2552 | UNOCAL Savannah | Deptford Tract President St | Savannah | GA | 31412 |
| T–58–GA–2503 | CITGO Savannah | Foundation Dr | Savannah | GA | 31402 |
| T–99–HI–4552 | Chevron USA Hilo | 666 Kalanianaole Avenue | Hilo | HI | 96720 |
| T–99–HI–4558 | Shell Oil Hilo | 661 Kalanianaole Ave | Hilo | HI | 96720 |
| T–99–HI–4559 | UNOCAL Hilo | 607 Kalanianaole Ave | Hilo | HI | 96420 |
| T–99–HI–4560 | Texaco Hilo | 999 Kalanianaole Ave | Hilo | HI | 96720 |
| T–99–HI–4561 | BHP Petroleum Americas Hilo | 700 Kalanianaole Ave | Hilo | HI | 96720 |
| T–99–HI–4553 | Chevron USA Honolulu | 777 North Nimitz Highway | Honolulu | HI | 96817 |
| T–99–HI–4556 | UNOCAL Honolulu | 411 Pacific St | Honolulu | HI | 96814 |
| T–99–HI–4557 | Shell Oil Honolulu | 789 N Nimitz | Honolulu | HI | 96814 |
| T–99–HI–4564 | BHP Petro Americas Term 29–A | 739A North Nimitz Highway | Honolulu | HI | 96814 |
| T–99–HI–4554 | Chevron USA Kahului | 100A Hobron Avenue | Kahului | HI | 96732 |
| T–99–HI–4563 | BHP Petro Americas Kahului | 140 H Hobron Ave | Kahului | HI | 96742 |
| T–99–HI–4565 | UNOCAL Kahului | 76 Hobron Ave | Kahului | HI | 96732 |
| T–99–HI–4566 | Shell Kahului | 60 Hobron | Kahului | HI | 96742 |
| T–99–HI–4562 | Shell Oil Nawiliwili | 3145 Waapa Rd | Lihue | HI | 96766 |
| T–99–HI–4551 | Texaco Barber's Point | Barber's Point | Oahu | HI | 96706 |
| T–99–HI–4555 | Chevron USA Port Allen | A & B Road Port | Port Allen | HI | 96704 |
| T–42–IA–3450 | Amoco Oil Bettendorf | 75 South 31st Street | Bettendorf | IA | 52722 |
| T–42–IA–3451 | Koch Refining Bettendorf | 4100 Elm St | Bettendorf | IA | 52722 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

[July 1, 1995]

| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–42–IA–3452 | Phillips Petro Bettendorf | 2925 Depot Street | Bettendorf | IA | 52722 |
| T–42–IA–3471 | UNO-VEN Riverdale | 312 South Bellingham Street | Bettendorf | IA | 52722 |
| T–42–IA–3465 | Williams Pipe Line Mason City | 2810 East Main | Clear Lake | IA | 50428 |
| T–42–IA–3463 | Williams Pipe Line Iowa City | 912 First Avenue | Coralville | IA | 52241 |
| T–42–IA–3454 | Amoco Oil Council Bluffs | 829 East South Bridge Rd | Council Bluffs | IA | 51501 |
| T–42–IA–3455 | National Coop Council Bluffs | 825 East South Omaha Bridge Rd. | Council Bluffs | IA | 51502 |
| T–42–IA–3456 | Amoco Oil Des Moines | 1501 Northwest 86th Street | Des Moines | IA | 50325 |
| T–42–IA–3457 | Williams Pipe Line Des Moines | 2503 Southeast 43rd Street | Des Moines | IA | 50317 |
| T–42–IA–3459 | Koch Refining Dubuque | PO Box 921 | Dubuque | IA | 52004 |
| T–42–IA–3460 | Williams Pipe Line Dubuque | 8038 St Joe's Prairie Rd | Dubuque | IA | 52003 |
| T–42–IA–3461 | Williams Pipe Line Fort Dodge | 6 miles from Ft Dodge | Duncombe | IA | 50532 |
| T–42–IA–3462 | Sinclair Pipeline Fort Madison | 35th St & Santa Fe Bridge | Fort Madison | IA | 52627 |
| T–42–IA–3458 | Amoco Oil Dubuque | 8 Mi W of Dubuque on Hwy 20 | Julian | IA | 52001 |
| T–42–IA–3464 | Kaneb Pipe Line Le Mars | US Hwy 75/7 Miles N of LeMars | Le Mars | IA | 51031 |
| T–42–IA–3466 | Kaneb Pipe Line Milford | 1 mile W of Milford & Hwy 71 | Milford | IA | 51351 |
| T–42–IA–3467 | Williams Pipe Line Milford | RT #1 | Milford | IA | 51351 |
| T–42–IA–3468 | Amoco Oil North Liberty | 2092 Hwy 965 NE | North Liberty | IA | 52317 |
| T–42–IA–3469 | Amoco Oil Ottumwa | Three miles west on US 34 | Ottumwa | IA | 52501 |
| T–42–IA–3470 | Heartland Pleasant Hill | 4500 Vandalia | Pleasant Hill | IA | 50317 |
| T–42–IA–3472 | Kaneb Pipeline Rock Rapids | State Hwy 9 | Rock Rapids | IA | 51246 |
| T–42–IA–3473 | Williams Pipe Line Sioux City | 4300 41st Street | Sioux City | IA | 51108 |
| T–42–IA–3453 | Williams Pipe Line Sioux South | 3701 South Lewis Blvd | Sioux City | IA | 51106 |
| T–42–IA–3474 | Williams Pipe Line Waterloo | 5360 Eldora Rd | Waterloo | IA | 50701 |
| T–82–ID–4150 | Boise Idaho Terminal | 321 North Curtis Road | Boise | ID | 83707 |
| T–82–ID–4152 | Flying J Boise | 70 North Philipi Road | Boise | ID | 83706 |
| T–82–ID–4151 | Northwest Terminaling Boise | 321 North Curtis Rd | Boise | ID | 83704 |
| T–82–ID–4155 | Amoco Oil Burley | 421 East Highway 81 | Burley | ID | 83318 |
| T–82–ID–4157 | Burley Products Terminal | 425 East Hwy 81 PO Box 233 | Burley | ID | 83318 |
| T–82–ID–4159 | Chevron Pipeline Pocatello | Rowland Road Route One | Pocatello | ID | 83201 |
| T–36–IL–3319 | Williams Pipe Line Amboy | 1222 U S Route 30 | Amboy | IL | 61310 |
| T–36–IL–3305 | GATX Terminals Argo | 8500 West 68th Street | Argo | IL | 60501 |
| T–36–IL–3304 | CITGO Mt Prospect | 2316 Terminal Drive | Arlington Heights | IL | 60005 |
| T–36–IL–3307 | Marathon Mt Prospect | 3231 Busse Road | Arlington Heights | IL | 60005 |
| T–36–IL–3316 | Shell Oil Des Plaines | 1605 East Algonguin Road | Arlington Heights | IL | 60005 |
| T–36–IL–3322 | ARCO Des Plaines Terminal | 1000 Terminal Drive | Arlington Heights | IL | 60005 |
| T–37–IL–3364 | Meioco Terminal | Rt 49 South | Ashkum | IL | 60911 |
| T–37–IL–3352 | Clark Rfg Peoria | 7022 South Cilco Lane | Bartonville | IL | 61607 |
| T–36–IL–3315 | Shell Oil Argo | 8600 West 71st Street | Bedford Park | IL | 60501 |
| T–36–IL–3310 | Martin Oil Blue Island | 3210 West 131st Street | Blue Island | IL | 60406 |
| T–36–IL–3300 | Clark Rfg Blue Island Term | 131st & Homan Avenue | Blue Island | IL | 60406 |
| T–37–IL–3366 | Phillips Petroleum E St Louis | 3300 Mississippi Ave | Cahokia | IL | 62206 |
| T–37–IL–3358 | Marathon Champaign | 511 S Staley Road | Champaign | IL | 61821 |
| T–37–IL–3367 | S T Services Chillicothe | 20206 Rt 29 North | Chillicothe | IL | 61523 |
| T–37–IL–3350 | Amoco Oil Peoria | 1101 Wesley Road | Creve Coeur | IL | 61611 |
| T–37–IL–3355 | Hicks Oils & Hicks Gas Inc | 1118 Wesley Road | Creve Coeur | IL | 61611 |
| T–36–IL–3301 | Amoco Oil Des Plaines | 2201 South Elmhurst Rd | Des Plaines | IL | 60018 |
| T–36–IL–3311 | Mobil Oil Des Plaines | 2312 Terminal Drive | Des Plaines | IL | 60005 |
| T–36–IL–3318 | UNO-VEN Des Plaines | 2304 Terminal Drive | Des Plaines | IL | 60056 |
| T–37–IL–3368 | Shell Oil Effingham | Rural Route 3 | Effingham | IL | 62401 |
| T–36–IL–3302 | Amoco Oil Forest View | 4811 South Harlem Avenue | Forest View | IL | 60402 |
| T–36–IL–3312 | Petroleum Fuel Forest View | 4801 South Harlem | Forest View | IL | 60402 |
| T–37–IL–3365 | Phillips 66 Decatur | 266 E Shafer | Forsuth | IL | 62535 |
| T–36–IL–3320 | Williams Pipeline Franklin | 10601 Franklin Avenue | Franklin Park | IL | 60131 |
| T–37–IL–3362 | Petroleum Fuel Granite City | 2801 Rock Road | Granite City | IL | 62040 |
| T–37–IL–3369 | Shell Oil Harristown | 600 E Lincoln Memorial Pky | Harristown | IL | 62537 |
| T–37–IL–3353 | Conoco Wood River | Route 3 | Hartford | IL | 62048 |
| T–37–IL–3354 | Hartford Wood River | 900 North Delmar | Hartford | IL | 62048 |
| T–37–IL–3356 | Clark Rfg Hartford | South Side Hawthorne | Hartford | IL | 62048 |
| T–37–IL–3371 | Williams Pipe Line Heyworth | Rural Route Two | Heyworth | IL | 61745 |
| T–36–IL–3313 | Phillips 66 Kankakee | 275 North 2750 Road West | Kankakee | IL | 60901 |
| T–37–IL–3357 | Lawrenceville Indian Refinery | Rt 1 South | Lawrenceville | IL | 62439 |
| T–36–IL–3317 | UNO-VEN Lemont | 135th New Avenue | Lemont | IL | 60439 |
| T–37–IL–3361 | La Gloria Oil Norris City | Rural Route 2 | Norris City | IL | 62869 |
| T–36–IL–3314 | S T Services Peru | 2830 West Market Street | Peru | IL | 61354 |
| T–37–IL–3372 | Williams Pipe Line Menard Cty | Rural Route Three | Petersburg | IL | 62675 |
| T–37–IL–3360 | Marathon Robinson | Rural Route One | Robinson | IL | 62454 |
| T–36–IL–3303 | Amoco Oil Rochelle | 100 East Standard Oil Road | Rochelle | IL | 61068 |
| T–36–IL–3308 | Marathon Oil Rockford | 7312 Cunningham Road | Rockford | IL | 61102 |
| T–36–IL–3306 | Clark Rfg Rockford | 1511 South Meridian Rd | Rockford | IL | 61102 |
| T–36–IL–3321 | J M Sweeney Stickney | 5200 West 41st Street | Stickney | IL | 60650 |
| T–36–IL–3309 | Marathon Willow Springs | 7600 LaGrange Road | Willow Springs | IL | 60480 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–37–IL–3351 | Amoco Oil Wood River | 335 South Old St Louis Rd | Wood River | IL | 62095 |
| T–35–IN–3201 | Amoco Oil Brookston | Route 43 | Brookston | IN | 47923 |
| T–35–IN–3206 | Ashland Clarksville | 214 Center Street | Clarksville | IN | 47124 |
| T–35–IN–3215 | La Gloria Oil Clermont | 9323 West 30th | Clermont | IN | 46234 |
| T–35–IN–3226 | Phillips 66 Clermont | 3230 N Raceway Road | Clermont | IN | 46234 |
| T–35–IN–3227 | S T Services Clermont | 3350 N Raceway Rd | Clermont | IN | 46234 |
| T–35–IN–3209 | CITGO East Chicago | 2500 East Chicago Ave | East Chicago | IN | 46312 |
| T–35–IN–3225 | Phillips 66 East Chicago | 400 East Columbus Dr | East Chicago | IN | 46312 |
| T–35–IN–3207 | Ashland Evansville | 2500 Broadway | Evansville | IN | 47712 |
| T–35–IN–3213 | ITAPCO Evansville Terminal | 2630 Broadway | Evansville | IN | 47712 |
| T–35–IN–3203 | Amoco Oil Granger | State Highway 23 | Granger | IN | 46530 |
| T–35–IN–3218 | Marathon Hammond | 4206 Columbia Avenue | Hammond | IN | 46327 |
| T–35–IN–3224 | Mobil Oil Hammond | 1527 141th Street | Hammond | IN | 46327 |
| T–35–IN–3228 | Shell Oil Hammond | 2400 Michigan St | Hammond | IN | 46320 |
| T–35–IN–3208 | Ashland Huntington | 4648 N Meridian Road | Huntington | IN | 46750 |
| T–35–IN–3210 | CITGO Huntington | 4393 N Meridian Rd US 24 | Huntington | IN | 46750 |
| T–35–IN–3211 | Gladieux T & M Huntington | 4757 US 24 E | Huntington | IN | 46750 |
| T–35–IN–3231 | Sun Huntington | 4691 N Meridian St | Huntington | IN | 46750 |
| T–35–IN–3234 | Lassus Bros Huntington | 4413 North Meridian Rd | Huntington | IN | 46750 |
| T–35–IN–3204 | Amoco Oil Indianapolis | 2500 N Tibbs Avenue | Indianapolis | IN | 46222 |
| T–35–IN–3219 | Marathon Indianapolis | 4955 Robison Rd | Indianapolis | IN | 46268 |
| T–35–IN–3222 | Marathon Speedway | 1304 Olin Ave | Indianapolis | IN | 46222 |
| T–35–IN–3230 | Shell Oil Zionsville | 5405 W 96th | Indianapolis | IN | 46268 |
| T–35–IN–3233 | Kerr-McGee Indianapolis | 9301 W 30th Street | Indianapolis | IN | 46234 |
| T–35–IN–3217 | Clark Rfg Clermont | W 30th St PO Box 34175 | Indianapolis | IN | 46234 |
| T–35–IN–3223 | Sun Clairmont | 3006 North Raceway Rd | Indianapolis | IN | 46234 |
| T–35–IN–3238 | Indianapolis Terminaling Co | 9410 E County Rd 300N | Indianapolis (CL) | IN | 46234 |
| T–35–IN–3237 | CountryMark Switz City | State Road 54 East | Linton | IN | 47441 |
| T–35–IN–3214 | CountryMark Mount Vernon | 1200 Refinery Road | Mount Vernon | IN | 47620 |
| T–35–IN–3220 | Marathon Mount Vernon | Old State Rd #69 South | Mount Vernon | IN | 47620 |
| T–35–IN–3239 | Mt Vernon Terminal Indian Ref | 300 Old Hwy 69 South | Mount Vernon | IN | 47620 |
| T–35–IN–3221 | Marathon Muncie | 2100 East State Road 28 | Muncie | IN | 47303 |
| T–35–IN–3229 | Shell Oil Muncie | 2000 E State Rd 28 | Muncie | IN | 47303 |
| T–35–IN–3212 | ITAPCO Kentuckiana | 20 Jackson St | New Albany | IN | 47150 |
| T–35–IN–3232 | TEPPCO Princeton | Highway 64 West | Oakland City | IN | 47660 |
| T–35–IN–3236 | CountryMark Peru | Highway 24 West | Peru | IN | 46970 |
| T–35–IN–3216 | La Gloria Oil Seymour | 9780 N US Hwy 31 | Seymour | IN | 47274 |
| T–35–IN–3235 | CountryMark Jolietville | 17710 Mule Barn | Westfield | IN | 46074 |
| T–35–IN–3205 | Amoco Oil Whiting | 2530 Indianapolis Blvd | Whiting | IN | 46394 |
| T–48–KS–3650 | Total Petroleum Arkansas City | 1400 South M Street | Arkansas City | KS | 67005 |
| T–48–KS–3651 | Farmland Ind Coffeyville | North & Linden Streets | Coffeyville | KS | 67337 |
| T–48–KS–3652 | Kaneb Pipe Line Concordia | Route 1 | Delphos | KS | 67436 |
| T–48–KS–3654 | Texaco El Dorado | South Haverhill Road | El Dorado | KS | 67042 |
| T–48–KS–3655 | Chase Pipeline Great Bend | Hwys 56 & 156 4 mi east of GB | Great Bend | KS | 67530 |
| T–48–KS–3656 | Kaneb Pipe Line Hutchison | 3300 East Avenue G | Hutchison | KS | 67501 |
| T–48–KS–3658 | Sinclair Pipeline Kansas City | 3401 Fairbanks Avenue | Kansas City | KS | 66106 |
| T–48–KS–3659 | Williams Pipeline Kansas City | 401 East Donovan Road | Kansas City | KS | 66115 |
| T–48–KS–3660 | National Coop McPherson | 2000 South Main Street | McPherson | KS | 67460 |
| T–48–KS–3661 | Williams Pipe Line Olathe | 13745 West 135th Street | Olathe | KS | 66062 |
| T–48–KS–3662 | Farmland Phillipsburg | Hwy 183 N | Phillipsburg | KS | 67661 |
| T–48–KS–3663 | S T Services Salina | West State Street & I–35 | Salina | KS | 67401 |
| T–48–KS–3664 | Chase Pipeline Scott City | Junction Highways 83 & 4 | Scott City | KS | 67871 |
| T–48–KS–3666 | Amoco Oil Valley Center | 7452 N Meridian | Valley Center | KS | 67147 |
| T–48–KS–3665 | Williams Pipe Line Topeka | US Hwy 75 RFD 1 | Wakarusa | KS | 66546 |
| T–48–KS–3667 | Williams Pipe Line Wathena | Hwy 36 1 mile East of Wathena | Wathena | KS | 66090 |
| T–48–KS–3669 | Coastal Refining Wichita | 1100 East 21st Street | Wichita | KS | 67214 |
| T–48–KS–3670 | Conoco Wichita | 8001 Oak Knoll Road | Wichita | KS | 67207 |
| T–48–KS–3671 | Phillips Pipeline Wichita | 2400 East 37th Street North | Wichita | KS | 67219 |
| T–61–KY–3261 | B P Oil Bromley | 409 River Road | Bromley | KY | 41016 |
| T–61–KY–3262 | Ashland Catlettsburg | Old St Rt 23 | Catlettsburg | KY | 41129 |
| T–61–KY–3263 | Ashland Covington | 230 East 33rd Street | Covington | KY | 41015 |
| T–61–KY–3265 | Henderson Terminaling | 2321 Old Geneva Road | Henderson | KY | 42420 |
| T–61–KY–3266 | Ashland Lexington | 1770 Old Frankfort Pike | Lexington | KY | 40504 |
| T–61–KY–3267 | Chevron USA Lexington | 1750 Old Frankfort Pike | Lexington | KY | 40504 |
| T–61–KY–3268 | Ashland Louisville | 4510 Algonquin Parkway | Louisville | KY | 40211 |
| T–61–KY–3269 | B P Oil Louisville | SW Parkway & Gibson Lane | Louisville | KY | 40211 |
| T–61–KY–3270 | Chevron USA Louisville | 4401 Bells Lane | Louisville | KY | 40211 |
| T–61–KY–3271 | ITAPCO Louisville | 4510 Bells Lane | Louisville | KY | 40211 |
| T–61–KY–3272 | Marathon Oil Louisville | 3920 Kramers Lane | Louisville | KY | 40216 |
| T–61–KY–3273 | Sun Louisville | 7800 Cane Run Road | Louisville | KY | 40258 |
| T–61–KY–3274 | Kerr-McGee Louisville | 4724 Camp Ground Road | Louisville | KY | 40216 |

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–61–KY–3264 | Chevron USA Covington | 700 River Road | Ludlow | KY | 41016 |
| T–61–KY–3276 | Ashland Paducah | Highway 62 & Ashland Road | Paducah | KY | 42003 |
| T–61–KY–3278 | ITAPCO Paducah | 233 Elizabeth St | Paducah | KY | 42001 |
| T–72–LA–2350 | B P Oil Alliance | | Alliance | LA | |
| T–72–LA–2351 | Chevron USA Arcadia | Highway 80 East | Arcadia | LA | 71001 |
| T–72–LA–2352 | CITGO Arcadia | Highway 80 East | Arcadia | LA | 71001 |
| T–72–LA–2353 | Exxon Co USA Arcadia | Highway 80 East | Arcadia | LA | 71001 |
| T–72–LA–2358 | Exxon USA Baton Rouge | 3329 Scenic Highway | Baton Rouge | LA | 70805 |
| T–72–LA–2382 | Paktank Corp Westwego | 106 Bridge City Avenue | Bridge City | LA | 70094 |
| T–72–LA–2360 | Mobil Oil Chalmette | 1700 Paris Rd Gate 50 | Chalmette | LA | 70043 |
| T–72–LA–2362 | Kerr-McGee Cotton Valley | Highway 7 South | Cotton Valley | LA | 71018 |
| T–72–LA–2383 | Phibro Marine Fuels | 7168 Shrimpers Row | Dulac | LA | 70353 |
| T–72–LA–2357 | Chevron USA Baton Rouge | 1315 Mengel Road | East Baton Rouge | LA | 70807 |
| T–72–LA–2363 | Marathon Oil Garyville | Highway 61 | Garyville | LA | 70051 |
| T–72–LA–2384 | Phibro Marine Fuel Gretna | 1125 Fourth St | Gretna | LA | |
| T–72–LA–2365 | Shell Oil Kenner | 143 Firehouse Drive | Kenner | LA | 70062 |
| T–72–LA–2366 | Phibro Energy USA Krotz Spring | Highway 105 South | Krotz Springs | LA | 70750 |
| T–72–LA–2367 | Calcasieu Lake Charles | West End of Tank Farm Road | Lake Charles | LA | 70606 |
| T–72–LA–2368 | CITGO Lake Charles | Cities Serv Hwy & LA Hwy 108 | Lake Charles | LA | 70601 |
| T–72–LA–2386 | Goldline Refinery | 4646 Hwy 3059 | Lake Charles | LA | 70601 |
| T–72–LA–2370 | Dubach Gas Co Claiborne Plant | Highway 2 PO Box 170 | Lisbon | LA | 71048 |
| T–72–LA–2373 | Star Enterprise New Orleans | Barataria & River Road | Marrero | LA | 70072 |
| T–72–LA–2371 | Murphy Oil USA Meraux | 2501 East St Bernard Hwy | Meraux | LA | 70075 |
| T–72–LA–2372 | Mobil Oil Morgan City | 1000 Young's Road | Morgan City | LA | 70380 |
| T–72–LA–2374 | GATX Terminals Norco | 1601 River Road | Norco | LA | 70079 |
| T–72–LA–2375 | Chevron USA Opelousas | Highway 182 South | Opelousas | LA | 70571 |
| T–72–LA–2359 | Petroleum Fuel Baton Rouge | 995 Earnest Wilson Road | Port Allen | LA | 70767 |
| T–72–LA–2376 | Placid Refining Co Port Allen | 1940 Louisiana Hwy One North | Port Allen | LA | 70767 |
| T–72–LA–2378 | Atlas Processing Co Shreveport | 3333 Midway PO Box 3099 | Shreveport | LA | 71133 |
| T–72–LA–2361 | Star Enterprise Convent | LA Highways 44 N of Sunshine | Union | LA | 70723 |
| T–72–LA–2381 | Conoco Westlake | 1980 Old Spanish Trail | Westlake | LA | 70669 |
| T–04–MA–1154 | Mobil Oil East Boston | 467 Chelsea Street | Boston | MA | 2128 |
| T–04–MA–1155 | CITGO East Braintree | 385 Quincy Ave | Braintree | MA | 2184 |
| T–04–MA–1153 | Gulf Oil Chelsea | 151 Everett Ave | Chelsa | MA | 2150 |
| T–04–MA–1156 | Exxon USA Everett | 52 Beachum Street | Everett | MA | 2149 |
| T–04–MA–1157 | Shell Oil Fall River | One New Street | Fall River | MA | 2720 |
| T–04–MA–1160 | B P Oil Revere | 41 Lee Burbank Highway | Revere | MA | 2151 |
| T–04–MA–1161 | Coastal Oil NE Revere | 222 Lee Burbank Hwy | Revere | MA | 2151 |
| T–04–MA–1162 | Global Petroleum Revere | 140 Lee Burbank Hwy | Revere | MA | 2151 |
| T–04–MA–1163 | Northeast Petroleum Salem | 25 Derby Street | Salem | MA | 1970 |
| T–04–MA–1164 | Northeast Petroleum Sandwich | 3 Coast Guard Road | Sandwich | MA | 2563 |
| T–04–MA–1165 | Coastal Oil NE South Boston | 900 E First Street | South Boston | MA | 2128 |
| T–04–MA–1168 | Mobil Oil Springfield | 145 Albany Street | Springfield | MA | 1105 |
| T–04–MA–1151 | L E Belcher Springfield | 615 St James Ave | Springfield | MA | 1109 |
| T–04–MA–1170 | Sprague Energy Weymouth | 5 Bridge St | Weymouth | MA | 2191 |
| T–52–MD–1550 | Amerada Hess Baltimore | 6200 Pennington Avenue | Baltimore | MD | 21226 |
| T–52–MD–1552 | B P Oil Baltimore | 2155 Northbridge Ave | Baltimore | MD | 21226 |
| T–52–MD–1554 | APEX Oil Baltimore | 5101 Erdman Avenue | Baltimore | MD | 21205 |
| T–52–MD–1555 | Conoco Baltimore | 3410 Farifield Road | Baltimore | MD | 21226 |
| T–52–MD–1556 | Crown Central Baltimore | 6000 Pennington Avenue | Baltimore | MD | 21226 |
| T–52–MD–1557 | Exxon USA Baltimore | 3801 Boston Street | Baltimore | MD | 21224 |
| T–52–MD–1558 | Mobil Oil Baltimore | 3445 Fairfield Road | Baltimore | MD | 21226 |
| T–52–MD–1559 | Petroleum Fuel Baltimore | 1622 South Clinton Street | Baltimore | MD | 21224 |
| T–52–MD–1560 | S T Services Baltimore | 1800 Frankfurst Avenue | Baltimore | MD | 21226 |
| T–52–MD–1561 | Shell Oil Baltimore | 2400 Petrolia Avenue | Baltimore | MD | 21226 |
| T–52–MD–1562 | Star Enterprise Baltimore | 2201 Southport Avenue | Baltimore | MD | 21226 |
| T–52–MD–1563 | Stratus Petroleum Baltimore | 3100 Vera Street | Baltimore | MD | 21226 |
| T–52–MD–1551 | Amoco Oil Baltimore | 801 East Ordance Rd | Curtis Bay | MD | 21226 |
| T–52–MD–1565 | Steuart Petroleum Piney Point | Route 249 | Piney Point | MD | 20674 |
| T–52–MD–1566 | Amoco Oil Salisbury | Parson's Road | Salisbury | MD | 21801 |
| T–52–MD–1567 | Cato Oil Salisbury | 1030 Marine Road PO Box 1030 | Salisbury | MD | 21801 |
| T–52–MD–1568 | Maritank Salisbury | Marine Road Route 12 | Salisbury | MD | 21801 |
| T–01–ME–1000 | Mobil Oil Bangor | 730 Lower Main Street | Bangor | ME | 4401 |
| T–01–ME–1011 | Webber Oil Bangor | 700 Main St | Bangor | ME | 4401 |
| T–01–ME–1013 | Webber Tanks Brewer | 230 South Main | Brewer | ME | 4412 |
| T–01–ME–1012 | Webber Tanks Buckport | Drawer CC River Road | Bucksport | ME | 4416 |
| T–01–ME–1002 | Coldbrook Energy Hampden | 809 Main Road No | Hampden | ME | 4044 |
| T–01–ME–1003 | B P Oil South Portland | 59 Main Street | South Portland | ME | 4106 |
| T–01–ME–1004 | Mobil Oil Portland | 170 Lincoln Street | South Portland | ME | 4106 |

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–01–ME–1007 | Getty Terminal South Portland | 27 Main Street | South Portland | ME | 4102 |
| T–01–ME–1008 | Gulf Oil South Portland | 175 Front St | South Portland | ME | 4106 |
| T–01–ME–1009 | Northeast Petroleum S Portland | One Clarks Road | South Portland | ME | 4106 |
| T–01–ME–1010 | Star Enterprise South Portland | 102 Mechanic Street | South Portland | ME | 4106 |
| T–01–ME–1001 | Koch Fuels South Portland | 5 Central Avenue | South Portland | ME | 4106 |
| T–38–MI–3031 | Total Petroleum Alma | 1925 East Superior St | Alma | MI | 48802 |
| T–38–MI–3000 | Amoco Oil Bay City | 411 Tiernan Road | Bay City | MI | 48707 |
| T–38–MI–3032 | Total Petroleum Bay City | 1806 Marquette | Bay City | MI | 48706 |
| T–38–MI–3036 | Uno Ven Bay City | 5011 Wilder Road | Bay City | MI | 48706 |
| T–38–MI–3038 | Crystal Refining Company | 801 North Williams | Carson City | MI | 48811 |
| T–38–MI–3001 | Amoco Oil Cheyboygan | 311 Coast Guard Drive | Cheyboygan | MI | 49721 |
| T–38–MI–3021 | Mobil Oil Dearborn | 6011 Wyoming | Dearborn | MI | 48126 |
| T–38–MI–3015 | Marathon Detroit | 12700 Toronto St | Detroit | MI | 48217 |
| T–38–MI–3025 | Shell Oil Detroit | 700 South Deacon | Detroit | MI | 48217 |
| T–38–MI–3030 | Sun River Rouge | 500 South Dix Avenue | Detroit | MI | 48217 |
| T–38–MI–3008 | CITGO Ferrysburg | 524 Third Street | Ferrysburg | MI | 49409 |
| T–38–MI–3013 | Koch Ferrysburg | 17806 North Shore Drive | Ferrysburg | MI | 49409 |
| T–38–MI–3022 | Mobil Oil Flint | G5340 North Dort Highway | Flint | MI | 48505 |
| T–38–MI–3026 | Shell Oil Grand Haven | 740 North 3rd St | Grand Haven | MI | 49417 |
| T–38–MI–3041 | Quality Oil Company | 630 Ottawa Avenue | Holland | MI | 49423 |
| T–38–MI–3009 | CITGO Jackson | 2001 Morrill Rd | Jackson | MI | 49201 |
| T–38–MI–3017 | Marathon Jackson | 2090 Morrill Rd | Jackson | MI | 49201 |
| T–38–MI–3027 | Shell Oil Jackson | 2103 Morrill Rd | Jackson | MI | 49201 |
| T–38–MI–3033 | Total Petroleum Lansing | 6300 West Grand River | Lansing | MI | 48906 |
| T–38–MI–3043 | Clark Rfg Marshall | 12451 S Old US 27 | Marshall | MI | 49068 |
| T–38–MI–3016 | Marathon Flint | 6065 North Dort Highway | Mt Morris | MI | 48458 |
| T–38–MI–3004 | Amoco Oil Napoleon | 6777 Brooklyn Road | Napoleon | MI | 49261 |
| T–38–MI–3010 | CITGO Niles | 2233 South Third | Niles | MI | 49120 |
| T–38–MI–3011 | Marathon Niles | 2140 South Third St | Niles | MI | 49120 |
| T–38–MI–3019 | Marathon Oil Niles | 2216 South Third Street | Niles | MI | 49120 |
| T–38–MI–3023 | Mobil Oil Niles | 2150 South Third Street | Niles | MI | 49120 |
| T–38–MI–3028 | Shell Oil Niles | 3252 Fulkerson Rd | Niles | MI | 49120 |
| T–38–MI–3040 | Koch Niles | 2303 South Third Street | Niles | MI | 49120 |
| T–38–MI–3020 | Marathon N Muskegon | 3005 Holton Rd | North Muskegon | MI | 49445 |
| T–38–MI–3039 | Delta Fuels of Michigan | 40600 Grand River | Novi | MI | 48375 |
| T–38–MI–3029 | Sun Owosso | 4004 West Main Rd | Owosso | MI | 48867 |
| T–38–MI–3005 | Amoco Oil River Rouge | 205 Marion Street | River Rouge | MI | 48218 |
| T–38–MI–3034 | Total Petroleum Romulus | 28001 Citrin Drive | Romulus | MI | 48174 |
| T–38–MI–3037 | Uno Ven Romulus | 29120 Wick Road | Romulus | MI | 48174 |
| T–38–MI–3006 | Amoco Oil Taylor | 8625 South Inkster Rd. | Taylor | MI | 48180 |
| T–38–MI–3007 | B P Oil Taylor | 24801 Ecorse Rd | Taylor | MI | 48180 |
| T–38–MI–3012 | Cousins Petroleum Taylor | 7965 Holland | Taylor | MI | 48180 |
| T–38–MI–3014 | Koch Taylor | 2450 Ecorse Rd | Taylor | MI | 48180 |
| T–38–MI–3042 | Ashland Detroit | 22970 Ecorse Road | Taylor | MI | 48180 |
| T–38–MI–3044 | Clark Rfg Taylor | 8000 S Beech Daly Rd | Taylor | MI | 48180 |
| T–38–MI–3035 | Total Petroleum Traverse City | 13544 West Bay Shore Dr | Traverse City | MI | 49684 |
| T–38–MI–3024 | Mobil Oil Woodhaven | 20089 West Road | Woodhaven | MI | 48183 |
| T–41–MN–3412 | Williams Pipe Line Alexandria | 709 3rd Ave W | Alexandria | MN | 56308 |
| T–41–MN–3410 | Duluth Petroleum Products | 5746 Old Hwy 61 | Esko | MN | 55733 |
| T–41–MN–3416 | Williams Pipe Line Rochester | 1331 Hwy 42 Southeast | Eyota | MN | 55934 |
| T–41–MN–3413 | Williams Pipe Line Mankato | Rural Route Nine | Mankato | MN | 56001 |
| T–41–MN–3414 | Williams Pipe Line Marshall | Route Four | Marshall | MN | 56258 |
| T–41–MN–3400 | Amoco Oil Moorhead | 1101 Southeast Main | Moorhead | MN | 56560 |
| T–41–MN–3406 | Erickson Petroleum Barge | 50 21st St | Newport | MN | 55055 |
| T–41–MN–3403 | Amoco Oil Twin Cities | 2288 West County Road C | Roseville | MN | 55113 |
| T–41–MN–3415 | Williams Pipe Line Roseville | 2451 W County Rd C | Roseville | MN | 55713 |
| T–41–MN–3401 | Amoco Oil Sauk Centre | 1 Mile W on County Rd 52 | Sauk Centre | MN | 56378 |
| T–41–MN–3402 | Amoco Oil Spring Valley | 2 Miles East of U S 16 | Spring Valley | MN | 55975 |
| T–41–MN–3407 | Koch Pine Bend | Junction Highways 52 & 55 | St Paul | MN | 55164 |
| T–41–MN–3408 | Koch St Paul | 778 Otto Avenue | St Paul | MN | 55102 |
| T–41–MN–3409 | Mobil Oil St Paul | 852 Hathaway | St Paul | MN | 55102 |
| T–41–MN–3411 | UNO-VEN St Paul | 747 Shepard Road | St Paul | MN | 55102 |
| T–41–MN–3404 | Ashland Refinery St Paul | 100 West Third Street | St Paul Park | MN | 55071 |
| T–41–MN–3405 | Conoco Wrenshall | 10 Broadway Street | Wrenshall | MN | 55797 |
| T–43–MO–3700 | Conoco Belle | HCR 3 | Belle | MO | 65013 |
| T–43–MO–3718 | Williams Pipeline Springfield | Junction MM Rd & Hwy 60 | Brookline | MO | 65619 |
| T–43–MO–3703 | Ayers Oil Canton | Fourth & Grant | Canton | MO | 63435 |
| T–43–MO–3704 | ITAPCO Missouri | 1400 S Giboney | Cape Girardeau | MO | 63701 |
| T–43–MO–3706 | Sinclair Pipeline Carrollton | S Main & 24 Business Route | Carrollton | MO | 64633 |
| T–43–MO–3708 | Williams Pipeline Columbia | Rural Route 1 Hwy 63 South | Columbia | MO | 65201 |
| T–43–MO–3702 | Texon Terminals Corp | PO Box 637 | Dexter | MO | 63841 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–43–MO–3707 | Williams Pipeline Carthage | 2 mi South of Jasper on US 71 | Jasper | MO | 64755 |
| T–43–MO–3709 | Phillips 66 Jefferson City | 2116 Idlewood | Jefferson City | MO | 65109 |
| T–43–MO–3711 | Kerr-McGee LaGrange | 905 North Main Street | LaGrange | MO | 63448 |
| T–43–MO–3712 | Sinclair Pipeline Mexico | Highway 54 East | Mexico | MO | 65265 |
| T–43–MO–3713 | Conoco Mount Vernon | US 66 New Highway 96 | Mount Vernon | MO | 65712 |
| T–43–MO–3715 | Sinclair Pipeline New Madrid | 211 Water Street | New Madrid | MO | 63869 |
| T–43–MO–3716 | Williams Pipeline Palmyra | 6 mi North on Highway 61 | Palmyra | MO | 63461 |
| T–43–MO–3710 | Conoco Kansas City | 6699 NW Riverpark Drive | Parkville | MO | 64152 |
| T–43–MO–3705 | TEPPCO Cape Girardeau | Rural Route 2 | Scott City | MO | 63780 |
| T–43–MO–3717 | Kerr-McGee St Louis | 4000 Koch Road | St Louis | MO | 63129 |
| T–43–MO–3725 | Shell Oil St Louis | 239 East Prairie | St Louis | MO | 63147 |
| T–43–MO–3726 | Clark Rfg St Louis | 4070 South First Street | St Louis | MO | 63118 |
| T–43–MO–3701 | JD Street St Louis | 3800 S 1st St | St Louis | MO | 63118 |
| T–43–MO–3719 | JD Street River Plant | 1 River Road | St Louis | MO | 63125 |
| T–43–MO–3721 | Williams Pipeline St Charles | 4695 South Service Road | St Peter | MO | 63376 |
| T–43–MO–3720 | Amoco Oil Sugar Creek | 1000 North Sterling | Sugar Creek | MO | 64054 |
| T–64–MS–2400 | Munro Petroleum Biloxi | 540 Bayview Avenue | Biloxi | MS | 39533 |
| T–64–MS–2401 | Chevron USA Collins | Old Highway 49 South | Collins | MS | 39428 |
| T–64–MS–2402 | Exxon USA Collins | Old US 49 & Kola Road | Collins | MS | 39428 |
| T–64–MS–2403 | B P Oil Collins | Fir Avenue South | Collins | MS | 39428 |
| T–64–MS–2404 | Shell Oil Collins | 49So & Kola RD | Collins | MS | 39428 |
| T–64–MS–2405 | Louis Dreyfus Collins | Fir Avenue South | Collins | MS | 39428 |
| T–64–MS–2406 | Greenville Republic Terminal | 310 Walthall Street | Greenville | MS | 38701 |
| T–64–MS–2408 | ITAPCO Greenville | 208 Short Clay Street | Greenville | MS | 38701 |
| T–64–MS–2409 | Southland Oil Lumberton | 5 Mi North of Lumberton Hwy 11 | Lumberton | MS | 39455 |
| T–64–MS–2410 | Amoco Oil Meridan | 181 65th Avenue | Meridian | MS | 39307 |
| T–64–MS–2411 | Chevron USA Meridian | 101 65th Avenue | Meridian | MS | 39301 |
| T–64–MS–2412 | CITGO Meridian | 180 65th Avenue | Meridian | MS | 39305 |
| T–64–MS–2413 | B P Oil Meridian | 1401 65th Ave S | Meridian | MS | 39307 |
| T–64–MS–2414 | Star Enterprise Meridian | 6540 N Frontage Rd | Meridian | MS | 39301 |
| T–64–MS–2415 | Louis Dreyfus Meridian | 1401 65th Ave S | Meridian | MS | 39307 |
| T–64–MS–2416 | Chevron USA Pascagoua | Industrial Road State Hwy 611 | Pascagoula | MS | 39568 |
| T–64–MS–2417 | Amerada Hess Purvis | US Hwy 11 | Purvis | MS | 39475 |
| T–64–MS–2418 | Southland Oil Sandersville | 2 mi N on Hwy 11 PO Drawer A | Sandersville | MS | 39477 |
| T–64–MS–2419 | CITGO Vicksburg | 1585 Haining Rd | Vicksburg | MS | 39180 |
| T–64–MS–2407 | Barrett Refining Vicksburg | 2222 Warrenton RD | Vicksburg | MS | 39182 |
| T–81–MT–4000 | Conoco Billings | 23rd & Fourth Ave South | Billings | MT | 59107 |
| T–81–MT–4007 | Exxon USA Billings | Lockwood Frontage Rd | Billings | MT | 59107 |
| T–81–MT–4001 | Conoco Bozeman | 316 West Griffin Drive | Bozeman | MT | 59715 |
| T–81–MT–4008 | Exxon USA Bozeman | 220 West Griffin Drive | Bozeman | MT | 59715 |
| T–81–MT–4006 | CENEX Glendive | P O Box 240 | Glendive | MT | 59330 |
| T–81–MT–4002 | Conoco Great Falls | 1401 52nd North | Great Falls | MT | 59405 |
| T–81–MT–4011 | Montana Refining Great Falls | 1900 10th Street | Great Falls | MT | 59403 |
| T–81–MT–4003 | Conoco Helena | 3180 Highway 12 East | Helena | MT | 59601 |
| T–81–MT–4009 | Exxon USA Helena | 3120 Highway 12 Eaast | Helena | MT | 59601 |
| T–81–MT–4005 | CENEX Laurel | P O Box 909 | Laurel | MT | 59044 |
| T–81–MT–4004 | Conoco Missoula | 3330 Raser Drive | Missoula | MT | 59802 |
| T–81–MT–4010 | Exxon USA Missoula | 3350 Raser Drive | Missoula | MT | 59801 |
| T–56–NC–2027 | Star Enterprise Raleigh | 2232 Ten-Ten Road | Apex | NC | 27502 |
| T–56–NC–2000 | Exxon USA Charlotte | 6801 Freedom Drive | Charlotte | NC | 28208 |
| T–56–NC–2001 | CITGO Charlotte | 7600 Mount Holly Road | Charlotte | NC | 28214 |
| T–56–NC–2003 | Crown Central Charlotte | 7720 Mount Holly Road | Charlotte | NC | 28214 |
| T–56–NC–2005 | Shell Oil Charlotte | 6851 Freedom Drive | Charlotte | NC | 28214 |
| T–56–NC–2006 | Conoco Facilities Charlotte | 7145 Mount Holly Road | Charlotte | NC | 28214 |
| T–56–NC–2007 | Star Enterprise Charlotte | 410 Tom Sadler Road | Charlotte | NC | 28130 |
| T–56–NC–2026 | Phibro Energy Inc Paw Creek | 7325 Old Mount Holly Road | Charlotte | NC | 28214 |
| T–56–NC–2009 | Star Enterprise Fayetteville | 992 Shaw Mill Road | Fayetteville | NC | 28303 |
| T–56–NC–2011 | Amoco Oil Greensboro | 7109 West Market Street | Friendship | NC | 27410 |
| T–56–NC–2014 | Exxon USA Greensboro | 6907 West Market Street | Greensboro | NC | 27409 |
| T–56–NC–2010 | Amerada Hess Greensboro | 6907B West Market Street | Greensboro | NC | 27419 |
| T–56–NC–2012 | Ashland Greensboro | 6311 Burnt Poplar Road | Greensboro | NC | 27409 |
| T–56–NC–2017 | B P Oil Greensboro | 6801 West Market Street | Greensboro | NC | 27409 |
| T–56–NC–2020 | Southern Facilities Greensboro | 115 Chimney Rock Road | Greensboro | NC | 27409 |
| T–56–NC–2021 | Star Enterprise Greensboro | 101 S Chimney Rock Rd | Greensboro | NC | 27419 |
| T–56–NC–2022 | Louis Dreyfus Greensboro | 6801 West Market Street | Greensboro | NC | 27409 |
| T–56–NC–2015 | Triad Terminal | 6376 Burnt Poplar Rd | Greensboro | NC | 27409 |
| T–56–NC–2002 | Marathon Oil Charlotte | 8035 Mt Holly Rd | Paw Creek | NC | 28130 |
| T–56–NC–2004 | Phillips 66 Charlotte | 502 Tom Sadler Road | Paw Creek | NC | 28130 |
| T–56–NC–2008 | Louis Dreyfus Charlotte | 7401 Old Mount Holly Road | Paw Creek | NC | 28214 |
| T–56–NC–2023 | Amerada Hess Paw Creek | 7615 Old Mount Holly Road | Paw Creek | NC | 28130 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–56–NC–2024 | Amoco Oil Paw Creek | 7924 Mt Holly Rd | Paw Creek | NC | 28130 |
| T–56–NC–2028 | Amerada Hess Selma | West State Road 1929 | Selma | NC | 27576 |
| T–56–NC–2029 | B P Oil Selma | Buffalo Road | Selma | NC | 27576 |
| T–56–NC–2030 | CITGO Selma | State Hwy 1003 and Oak St Ext | Selma | NC | 27576 |
| T–56–NC–2031 | Exxon USA Selma | 2555 West Oak Street | Selma | NC | 27576 |
| T–56–NC–2033 | Phibro Energy Inc Selma | 4383 Buffaloe Road | Selma | NC | 27576 |
| T–56–NC–2034 | Phillips Petro Selma | 4086 Buffalo Road | Selma | NC | 27576 |
| T–56–NC–2036 | Southern Facilities Selma | 4414 Buffalow Road | Selma | NC | 27576 |
| T–56–NC–2018 | Triad Terminal Selma | 2200 Oil Terminal Rd | Selma | NC | 27576 |
| T–56–NC–2025 | Crown Central Selma | 2999 W Oak St | Selma | NC | 27576 |
| T–56–NC–2037 | Amerada Hess Wilmington | 1312 S Front Street | Wilmington | NC | 28401 |
| T–56–NC–2039 | CTI of North Carolina Inc | 1002 S Front Street | Wilmington | NC | 28402 |
| T–56–NC–2041 | Koch Refining N Wilmington | 3325 River Road | Wilmington | NC | 28412 |
| T–56–NC–2042 | Koch Refining S Wilmington | 3334 River Rd | Wilmington | NC | 28412 |
| T–56–NC–2043 | Petroleum Fuel Wilmington | 3314 River Road | Wilmington | NC | 28403 |
| T–45–ND–3500 | Williams Pipeline Grand Forks | 3930 Gateway Drive | Grand Forks | ND | 58203 |
| T–45–ND–3502 | Amoco Oil Jamestown | 10 Mi West on I–94 Stand Spur | Jamestown | ND | 58401 |
| T–45–ND–3503 | Kaneb Pipe Line Jamestown | 3790 Hwy 281 SE | Jamestown | ND | 58401 |
| T–45–ND–3505 | Amoco Oil Mandan | | Mandan | ND | 58554 |
| T–45–ND–3504 | CENEX Minot | 700 Second Street SW | Minot | ND | 58701 |
| T–45–ND–3501 | Williams Pipe Line Fargo | 902 Main Avenue East | West Fargo | ND | 58078 |
| T–47–NE–3600 | Kaneb Pipe Line Columbus | Highway 30 | Columbus | NE | 68601 |
| T–47–NE–3602 | Williams Pipe Line Doniphan | 12275 South U S Hwy 281 | Doniphan | NE | 68832 |
| T–47–NE–3601 | Kaneb Pipe Line Geneva | U S Highway 81 | Geneva | NE | 68361 |
| T–47–NE–3606 | Kaneb Pipe Line Norfolk | Highway 81 | Norfolk | NE | 68701 |
| T–47–NE–3607 | Kaneb Pipe Line North Platt | Rural Route Four | North Platte | NE | 69101 |
| T–47–NE–3608 | Williams Pipe Line Omaha | Seventh & Yates Street | Omaha | NE | 68103 |
| T–47–NE–3610 | Kaneb Pipe Line Osceola | Rural Route 1 | Osceola | NE | 68651 |
| T–47–NE–3603 | Conoco Lincoln Products | Route 1 | Roca | NE | 68430 |
| T–47–NE–3605 | Williams Pipe Line Lincoln | 2000 Saltillo Road | Roca | NE | 68430 |
| T–47–NE–3609 | Conoco Pipeline Sidney | Rural Route 1 | Sidney | NE | 69162 |
| T–47–NE–3611 | Kaneb Pipe Line Superior | Rural Route 1 | Superior | NE | 68978 |
| T–02–NH–1050 | Sprague Energy Newington | Spaulding Turnpike | Newington | NH | |
| T–02–NH–1054 | Sprague Energy Portsmouth | Adjacent to Interstate 95 | Portsmouth | NH | 3801 |
| T–02–NH–1056 | Northeast Petroleum Portsmouth | 50 Preble Way | Portsmouth | NH | 3801 |
| T–22–NJ–1500 | Amerada Hess Bayonne | Lower Hook Road | Bayonne | NJ | 7002 |
| T–22–NJ–1501 | Coastal Oil Bayonne | Foot of East Fifth Street | Bayonne | NJ | 7002 |
| T–22–NJ–1505 | Amerada Hess Bogota | 238 West Fort Lee Road | Bogota | NJ | 7503 |
| T–22–NJ–1506 | Amoco Oil Carteret Terminal | 760 Roosevelt Avenue | Carteret | NJ | 7008 |
| T–22–NJ–1508 | Amerada Hess Edgewater | 615 River Road | Edgewater | NJ | 7020 |
| T–22–NJ–1509 | Crown Central Elizabeth | 450 South Front Street | Elizabeth | NJ | 7202 |
| T–22–NJ–1511 | Koch Fuels Gloucester City | Across Delaware River from PA | Gloucester City | NJ | 8030 |
| T–22–NJ–1512 | B P Oil Linden | Foot of Southwood Ave | Linden | NJ | 7036 |
| T–22–NJ–1513 | CITGO Linden | 4801 South Wood Avenue | Linden | NJ | 7036 |
| T–22–NJ–1514 | Bayway Refining Co | 1100 US Highway One | Linden | NJ | 7036 |
| T–22–NJ–1515 | Gulf Oil Linden | 2600 Marshes Deer Road | Linden | NJ | 7036 |
| T–22–NJ–1516 | Mobil Oil Linden | South Wood Avenue | Linden | NJ | 7036 |
| T–22–NJ–1518 | Amerada Hess Newark Doremus | 148–182 Doremus Avenue | Newark | NJ | 7105 |
| T–22–NJ–1520 | Getty Terminal Newark | 86 Doremus Rd | Newark | NJ | 7105 |
| T–22–NJ–1521 | Star Enterprise Newark | 909 Delaney Street | Newark | NJ | 7105 |
| T–22–NJ–1522 | Stratus Petroleum Newark | 678 Doremus Ave | Newark | NJ | 7105 |
| T–22–NJ–1523 | Sun Newark | 436 Doremus Avenue | Newark | NJ | 7105 |
| T–22–NJ–1502 | Amerada Hess Newark Delanny | 1111 Delanny St | Newark | NJ | 7105 |
| T–22–NJ–1524 | B P Oil Paulsboro | 303 Mantua Avenue | Paulsboro | NJ | 8066 |
| T–22–NJ–1525 | GATX Terminals Paulsboro | 3rd St & Billingsport Road | Paulsboro | NJ | 8066 |
| T–22–NJ–1526 | Mobil Oil Paulsboro | North Delaware Street | Paulsboro | NJ | 8066 |
| T–22–NJ–1528 | Amerada Hess Pennsauken | One Derousse Avenue | Pennsauken | NJ | 8110 |
| T–22–NJ–1529 | Star Enterprise Pennsauken | Foot of Cove Road | Pennsauken | NJ | 8110 |
| T–22–NJ–1533 | CITGO Petty's Island | Route 36 & Delaware River | Pennsauken | NJ | 8110 |
| T–22–NJ–1530 | Amerada Hess Perth Amboy | State Street | Perth Amboy | NJ | 8861 |
| T–22–NJ–1531 | Chevron USA Perth Amboy | 1200 State Street | Perth Amboy | NJ | 8861 |
| T–22–NJ–1545 | Amerada Hess Woodbridge | Smith Street & Convery Blvd | Perth Amboy | NJ | 8861 |
| T–22–NJ–1534 | Sun Piscataway | 1028 Stelton Road | Piscataway | NJ | 8854 |
| T–22–NJ–1519 | B P Oil Newark | Building 350 Coastel St | Port Newark | NJ | 7114 |
| T–22–NJ–1535 | Amerada Hess Port Reading | Cliff Road | Port Reading | NJ | 7064 |
| T–22–NJ–1536 | Amerada Hess Secaucus | 35 Meadowlands Parkway | Secaucus | NJ | 7094 |
| T–22–NJ–1537 | Royal Petroleum Sewaren | 115 State Street | Sewaren | NJ | 7077 |
| T–22–NJ–1538 | Shell Oil Sewaren | 111 State Street | Sewaren | NJ | 7077 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–22–NJ–1544 | Coastal Eagle Point Westville | U S Route 130 | South Westville | NJ. | |
| T–22–NJ–1540 | Gulf Oil Thorofare | 358 Kings Highway | Thorofare | NJ | 8086 |
| T–22–NJ–1542 | Mobil Oil Trenton | 2785 Lamberton Road | Trenton | NJ | 8611 |
| T–85–NM–4259 | S T Services Alamogordo | Highway 54 South of Town | Alamogordo | NM | 88310 |
| T–85–NM–4251 | Chevron USA Albuquerque | 3200 Broadway SE within city | Albuquerque | NM | 87105 |
| T–85–NM–4252 | Conoco Albuquerque | 4036 Broadway Southeast | Albuquerque | NM | 87105 |
| T–85–NM–4253 | Diamond Albuquerque | | Route Nine 6348 Street 30 Albuquerque. | NM | 87105 |
| T–85–NM–4254 | Phillips 66 Albuquerque | 6356 State Road 47 S W | Albuquerque | NM | 87105 |
| T–85–NM–4255 | Texaco Albuquerque | 3209 Broadway Southeast | Albuquerque | NM | 87103 |
| T–85–NM–4256 | Navajo Refining Artesia | US Highway 82 | Artesia | NM | 88210 |
| T–85–NM–4257 | Bloomfield Refining | # 89 Road 4990 | Bloomfield | NM | 87413 |
| T–85–NM–4258 | Giant Refining Ciniza | I–40 17 mi east of Gallup | Gallup | NM | 87301 |
| T–85–NM–4260 | Diamond Tucumcari | 3 Mi East on Hwy 54 | Tucumcari | NM | 88401 |
| T–88–NV–4350 | Calnev Pipe Line Las Vegas | 5049 N Sloan | Las Vegas | NV | 89114 |
| T–88–NV–4359 | Rebel Oil Las Vegas | 1900 West Sahara | Las Vegas | NV | 89102 |
| T–88–NV–4351 | Texaco Las Vegas | North Las Vegas | North Las Vegas | NV | 89030 |
| T–88–NV–4353 | SFPP LP Sparks | 301 Nugget Avenue | Sparks | NV | 89431 |
| T–88–NV–4354 | Time Oil Sparks | 525 B Street | Sparks | NV | 89431 |
| T–88–NV–4358 | Chevron USA Sparks | 275 Nugget Ave | Sparks | NV | 89431 |
| T–88–NV–4360 | Berry Hinckley Terminal | 147 South Stanford Way | Sparks | NV | 89431 |
| T–14–NY–1400 | Agway Energy Products | 184 Port Rd | Albany | NY | 12202 |
| T–14–NY–1401 | Cibro Petroleum Prod Albany | Port of Albany | Albany | NY | 12202 |
| T–14–NY–1403 | Mobil Oil Albany | 50 Church Street | Albany | NY | 12202 |
| T–16–NY–1450 | Stratus Petro Baldwinsville | Hillside Ave off Route 370 | Baldwinsville | NY | 13088 |
| T–16–NY–1456 | Agway Petroleum Corp Brewerton. | Rt 37 River Road | Brewerton | NY | 13029 |
| T–13–NY–1351 | Amerada Hess Bronx | 1392 Commerce Ave | Bronx | NY | 10461 |
| T–13–NY–1352 | Castle Port Morris Term Bronx | 290 Locust Avenue | Bronx | NY | 10454 |
| T–13–NY–1353 | Cibro Terminals Inc Bronx | 1040 East 149th Street | Bronx | NY | 10455 |
| T–13–NY–1354 | Getty Terminal Bronx | 4301 Boston Post Road | Bronx | NY | 10466 |
| T–11–NY–1308 | Amerada Hess Brooklyn | 722 Court Street | Brooklyn | NY | 11231 |
| T–11–NY–1301 | Amoco Oil Brooklyn | 125 Apollo Street | Brooklyn | NY | 11222 |
| T–11–NY–1302 | Metro Terminals Brooklyn | 498 Kingsland Avenue | Brooklyn | NY | 11222 |
| T–11–NY–1304 | Shell Oil Brooklyn | 25 Paidge Street | Brooklyn | NY | 11222 |
| T–11–NY–1313 | Star Enterprise Brooklyn | One North 12th Street | Brooklyn | NY | 11211 |
| T–16–NY–1458 | Mobil Oil Buffalo | One Babcock Street | Buffalo | NY | 14210 |
| T–11–NY–1460 | Mobil Oil Cold Spring Harbor | 95 Shore Road | Cold Spring | NY | 11724 |
| T–11–NY–1319 | Tosco Pipeline East Setauket | 19 Bell Meade Road | East Setauket | NY | 11733 |
| T–11–NY–1306 | Coastal Oil Flushing | 31–70 College Point Blvd | Flushing | NY | 11354 |
| T–16–NY–1462 | Agway Petroleum Corp Geneva | West River Road | Geneva | NY | 14456 |
| T–14–NY–1402 | CITGO Albany | 495 River Road | Glenmont | NY | 12077 |
| T–14–NY–1405 | Sears Petroleum Glenmont | Route 144 552 River Road | Glenmont | NY | 12077 |
| T–11–NY–1309 | Mobil Oil Glenwood Landing | Shore & Glenwood Rd | Glenwood Landing | NY | 11547 |
| T–14–NY–1406 | Stratus Petroleum Green Isle | Center Island | Green Island | NY | 12181 |
| T–11–NY–1307 | Castle Astoria | 500 Mamaroneck Avenue | Harrison | NY | 10528 |
| T–11–NY–1310 | Tosco Pipeline Holtsville | 586 Union Ave | Holtsville | NY | 11742 |
| T–11–NY–1305 | Mobil Oil Inwood | 464 Doughty Blvd | Inwood | NY | 11696 |
| T–11–NY–1320 | Shell Oil Inwood | 20 Rogers Ave | Inwood | NY | 11696 |
| T–11–NY–1312 | Star Enterprise Inwood | Rockawaw Blvd & East St | Inwood | NY | 11696 |
| T–16–NY–1455 | Sun Binghamton | 4324 Watson Boulevard | Johnson City | NY | 13790 |
| T–11–NY–1311 | Getty Terminal Long Island | 30–23 Greenpoint Avenue | Long Island City | NY | 11101 |
| T–16–NY–1463 | Agway Petroleum Corp Marcy | Rd # 2 Riverside Drive | Marcy | NY | 13403 |
| T–16–NY–1464 | Amerada Hess Marcy | Riverside Drive | Marcy | NY | 13403 |
| T–16–NY–1465 | Bray Terminals Marcy | River Road | Marcy | NY | 13403 |
| T–16–NY–1487 | Sears Oil Utica | Route 49 | Marcy | NY | 13403 |
| T–14–NY–1409 | Agway Petroleum Corp Milton | Sands Ave | Milton | NY | 12547 |
| T–13–NY–1356 | Amoco Oil Mount Vernon | 40 Canal St | Mount Vernon | NY | 10550 |
| T–14–NY–1414 | Sun Newburgh | 49 River Road | New Windsor | NY | 12553 |
| T–14–NY–1411 | Coastal Oil Newburgh | Hudson River | Newburgh | NY | 12551 |
| T–14–NY–1413 | Mobil Oil Newburgh | 20 River Road | Newburgh | NY | 12550 |
| T–14–NY–1421 | Amerada Hess Roseton | 590 River Road | Newburgh | NY | 12250 |
| T–11–NY–1315 | RAD Operating Oceanside | 7 Hampton Road | Oceanside | NY | 11572 |
| T–11–NY–1467 | Northville Industries Plainvie | Off Long Island Expressway | Plainview | NY | 11803 |
| T–11–NY–1303 | Tosco Pipeline Plainview | 150 Fairchild Avenue | Plainview | NY | 11803 |
| T–11–NY–1317 | Lewis Oil Port Washington | 65 Shore Road | Port Washington | NY | 11050 |
| T–14–NY–1404 | Petroleum Fuel Albany | 54 Riverside Avenue | Rensselaer | NY | 12144 |
| T–14–NY–1415 | Amerada Hess Rensselaer | River Road E Greenbush | Rensselaer | NY | 12144 |
| T–14–NY–1416 | Bray Terminals Rensselaer | 50 Riverside Drive | Rensselaer | NY | 12144 |
| T–14–NY–1417 | Sprague Energy Rensselaer | Riverside Avenue, PO Box 25 | Rensselaer | NY | 12144 |
| T–14–NY–1418 | Getty Terminal Rensselaer | 49 Riverside Avenue | Rensselaer | NY | 12144 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–14–NY–1419 | Gulf Oil Rensselaer | 60 Riverside Avenue | Rensselaer | NY | 12144 |
| T–14–NY–1420 | Sun Rensselaer | 58 Riverside Avenue | Rensselaer | NY | 12144 |
| T–11–NY–1318 | Tosco Riverhead | 212 Sound Shore Road | Riverhead | NY | 11901 |
| T–16–NY–1468 | Agway Petroleum Rochester | 754 Brooks Ave | Rochester | NY | 14619 |
| T–16–NY–1469 | Amerada Hess Rochester Lyell | 1975 Lyell Avenue | Rochester | NY | 14606 |
| T–16–NY–1472 | Mobil Oil Rochester | 675 Brooks Avenue | Rochester | NY | 14619 |
| T–16–NY–1473 | Sun Rochester | 1840 Lyell Avenue | Rochester | NY | 14606 |
| T–16–NY–1474 | United Refining Rochester | 1075 Chili Avenue | Rochester | NY | 14624 |
| T–16–NY–1452 | Amerada Hess Rochester Cairn | 22 Cairn Street | Rochester | NY | 14611 |
| T–13–NY–1355 | Mobil Oil Port Mobil | 4101 Arthur Kill Rd | Staten Island | NY | 10309 |
| T–13–NY–1362 | GATX Staten Island | 500 Western Ave | Staten Island | NY | 10302 |
| T–16–NY–1476 | Amerada Hess Syracuse | 420 West Hiawatha Boulevard | Syracuse | NY | 13204 |
| T–16–NY–1478 | CITGO Syracuse | 545 Solar Street | Syracuse | NY | 13204 |
| T–16–NY–1479 | Coastal Oil Syracuse | 475 Solar Street | Syracuse | NY | 13204 |
| T–16–NY–1480 | Mobil Oil Syracuse | 502 Solar Street | Syracuse | NY | 13204 |
| T–16–NY–1482 | Sun Syracuse | 540 Solar Street | Syracuse | NY | 13204 |
| T–16–NY–1457 | United Refining Tonawanda | 4545 River Road | Tonawanda | NY | 14150 |
| T–16–NY–1484 | Sun Tonawanda | 3733 River Road | Tonawanda | NY | 14150 |
| T–16–NY–1459 | Noco Energy Corp | 700 Grand Island Blvd | Tonawanda | NY | 14151 |
| T–16–NY–1486 | Mobil Oil Utica | 37 Wurz Avenue | Utica | NY | 13502 |
| T–16–NY–1453 | Coastal Oil Binghamton | 3121 Shippers Road | Vestal | NY | 13851 |
| T–16–NY–1451 | Mobil Oil Binghamton | 3301 Old Vestal Rd | Vestal | NY | 13850 |
| T–16–NY–1488 | Agway Petroleum Vestal | Shippers Road | Vestal | NY | 13851 |
| T–16–NY–1489 | Amerada Hess Vestal | 440 Prentice Road | Vestal | NY | 13850 |
| T–16–NY–1454 | CITGO Vestal | 3212 Old Vestal Road | Vestal | NY | 13850 |
| T–13–NY–1363 | A Tarricone Yonkers | 91 Alexander St | Yonkers | NY | 10701 |
| T–34–OH–3159 | Sun Akron | 999 Home Avenue | Akron | OH | 44310 |
| T–31–OH–3120 | UNO-VEN Columbus | 6433 Cosgray Road | Amlin | OH | 43002 |
| T–34–OH–3142 | Aurora Terminal & Trans | 1519 S Chillicothe Rd | Aurora | OH | 44202 |
| T–34–OH–3168 | Amoco Oil Aurora | 1521 Chillicothe Rd | Aurora | OH | 44202 |
| T–34–OH–3166 | Marathon Bellevue | Rural Route 4 | Bellevue | OH | 44811 |
| T–34–OH–3151 | Marathon Brecksville | 10439 Brecksville Road | Brecksville | OH | 44141 |
| T–34–OH–3140 | Ashland Refinery Canton | 2408 Gamfrinus Rd SW | Canton | OH | 44706 |
| T–34–OH–3143 | B P Oil Canton | 807 Hartford Southeast | Canton | OH | 44707 |
| T–31–OH–3100 | Ashland Cincinnati | 4015 River Road | Cincinnati | OH | 45204 |
| T–31–OH–3104 | B P Oil Cincinnati | 930 Tennessee Avenue | Cincinnati | OH | 45229 |
| T–31–OH–3122 | Boswell Oil Company | 5 W 4th St Floor 2500 | Cincinnati | OH | 45202 |
| T–34–OH–3150 | Fleet Supplies | 250 Mahoning Ave | Cleveland | OH | 44101 |
| T–34–OH–3157 | Shell Oil Cleveland | 2201 West Third Street | Cleveland | OH | 44113 |
| T–34–OH–3160 | Sun Cleveland | 3200 Independence Road | Cleveland | OH | 44105 |
| T–34–OH–3163 | UNO-VEN Cleveland | 2985 Eggers Avenue | Cleveland | OH | 44105 |
| T–31–OH–3101 | Ashland Columbus | 3855 Fisher Road | Columbus | OH | 43228 |
| T–31–OH–3105 | B P Oil Columbus | 303 North Wilson Road | Columbus | OH | 43204 |
| T–31–OH–3112 | Marathon Columbus | 4125 Fisher Rd | Columbus | OH | 43228 |
| T–31–OH–3114 | Shell Oil Distillate Columbus | 3651 Fisher Rd | Columbus | OH | 43228 |
| T–31–OH–3116 | Sun Columbus | 3499 West Broad Street | Columbus | OH | 43204 |
| T–31–OH–3107 | Clark Rfg Columbus | 4033 Fisher Road | Columbus | OH | 43228 |
| T–31–OH–3111 | Midwest Terminal Columbus | 3866 Fisher Rd | Columbus | OH | 43228 |
| T–34–OH–3144 | B P Oil Cleveland | 4850 E 49th Street | Cuyahoga Hts | OH | 44125 |
| T–31–OH–3106 | B P Oil Dayton | 621 Brandt Pike | Dayton | OH | 45404 |
| T–31–OH–3115 | Shell Oil Dayton | 801 Brandt Pike | Dayton | OH | 45404 |
| T–31–OH–3117 | Sun Dayton | 1708 Farr Drive | Dayton | OH | 45404 |
| T–31–OH–3121 | UNO-VEN Dayton | 1800 Farr Drive | Dayton | OH | 45404 |
| T–34–OH–3141 | Ashland Findlay | 709 Glessner | Findlay | OH | 45840 |
| T–34–OH–3145 | B P Oil Lorain | 12545 S Avon Belden Rd | Grafton | OH | 44044 |
| T–31–OH–3102 | Ashland Heath | 840 Heath Road | Heath | OH | 43056 |
| T–31–OH–3113 | Marathon Lebanon | 999 West State Rt 122 | Lebanon | OH | 45036 |
| T–31–OH–3118 | TEPPCO Lebanon | RT 122 2700 Hart Road | Lebanon | OH | 45036 |
| T–34–OH–3146 | B P Oil Lima | 817 West Vine Street | Lima | OH | 45804 |
| T–34–OH–3152 | Marathon Lima | 2990 South Dixie Highway | Lima | OH | 45804 |
| T–34–OH–3158 | Shell Oil Lima | 1500 West Buckeye Road | Lima | OH | 45804 |
| T–31–OH–3103 | Ashland Marietta | Old Rt 7 & Moores Junction | Marietta | OH | 45750 |
| T–34–OH–3156 | Shell Oil Akron | 246 N Cleveland | Mogodore | OH | 44260 |
| T–34–OH–3167 | B P Oil Niles | 1001 Youngstown Warren Rd | Niles | OH | 41446 |
| T–34–OH–3153 | Marathon Oregon | 4131 Seaman Road | Oregon | OH | 43616 |
| T–34–OH–3165 | UNO-VEN Oregon | 1840 Otter Creek Road | Oregon | OH | 43616 |
| T–31–OH–3108 | B P Oil Sciotoville | 106 Harding Ave | Portsmouth | OH | 45662 |
| T–34–OH–3154 | Marathon Stuebenville | 2B371 Kingsdale Road | Stuebenville | OH | 43952 |
| T–34–OH–3164 | UNO-VEN Tallmadge | 1595 Southeast Avenue | Tallmadge | OH | 44278 |
| T–34–OH–3147 | B P Oil Tiffin | 197 Wall Street | Tiffin | OH | 44883 |
| T–34–OH–3148 | B P Oil Toledo | 2450 Hill Avenue | Toledo | OH | 43607 |

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–34–OH–3161 | Sun Toledo | 1601 Woodvalle Road | Toledo | OH | 43605 |
| T–34–OH–3149 | Delta Fuels Toledo | 1820 South Front | Toledo | OH | 43605 |
| T–34–OH–3169 | Clark Rfg Toledo | 2844 Summit St | Toledo | OH | 43611 |
| T–34–OH–3155 | Marathon Youngstown | 1140 Bears Den Road | Youngstown | OH | 44511 |
| T–34–OH–3162 | Sun Youngstown | 6331 Southern Boulevard | Youngstown | OH | 44512 |
| T–73–OK–2600 | Total Petroleum Ardmore | Hwy 142 Bypass | Ardmore | OK | 73401 |
| T–73–OK–2613 | Williams Pipeline Co Okla City | 251 N Sunny Lane | Del City | OK | 73117 |
| T–73–OK–2604 | S T Services Drumright | Route One | Drumright | OK | 74030 |
| T–73–OK–2606 | Williams Pipeline Enid | 1401 North 30th Street | Enid | OK | 73701 |
| T–73–OK–2608 | Conoco Jenks | Route Two | Jenks | OK | 74037 |
| T–73–OK–2609 | Phillips 66 Laverne | U S 283 | Laverne | OK | 73848 |
| T–73–OK–2610 | Koch Fuels Medford | US 81 | Medford | OK | 73759 |
| T–73–OK–2612 | Conoco Oklahoma City | NE Tenth St Rt 4 | Oklahoma City | OK | 73111 |
| T–73–OK–2614 | Texaco Oklahoma City | 951 N Vickie | Oklahoma City | OK | 73117 |
| T–73–OK–2616 | Williams Pipeline Oklahoma Cty | 1250 South High Street | Oklahoma City | OK | 73129 |
| T–73–OK–2617 | Conoco Ponca City | South Highway 60 | Ponca City | OK | 74601 |
| T–73–OK–2618 | Sinclair Pipeline Shawnee | 2411 W MacArthur Road | Shawnee | OK | 74802 |
| T–73–OK–2619 | Barrett Refining Thomas Plant | Rt 1 Box 101 | Thomas | OK | 73669 |
| T–73–OK–2620 | Sinclair Pipeline Tulsa | 1307 West 35th Street | Tulsa | OK | 74107 |
| T–73–OK–2621 | Sun Tulsa | 1700 South Union | Tulsa | OK | 74102 |
| T–73–OK–2622 | Williams Pipeline Tulsa | 2120 S 33rd Ave | Tulsa | OK | 74107 |
| T–73–OK–2623 | Diamond Shamrock Turpin | Hwy 64 & Junction Rt 2 | Turpin | OK | 73950 |
| T–73–OK–2624 | Kerr-McGee Wynnewood | 906 South Powell | Wynnewood | OK | 73098 |
| T–93–OR–4453 | UNOCAL Coos Bay | 2640 North Bayshore | Coos Bay | OR | 97420 |
| T–93–OR–4454 | SFPP LP Eugene | 1765 Prairie Road | Eugene | OR | 97402 |
| T–93–OR–4451 | SFPP LP Albany | 3651 Northeast Cosner Road | Millersburg | OR | 97321 |
| T–93–OR–4456 | Chevron USA Portland | 5531 Northwest Doane Street | Portland | OR | 97210 |
| T–93–OR–4457 | GATX Terminals Portland | 11400 NW St Helen's Road | Portland | OR | 97283 |
| T–93–OR–4458 | McCall Oil Portland | 5480 NW Front Ave | Portland | OR | 97210 |
| T–93–OR–4459 | Mobil Portland | 9420 Northwest St Helen's Rd | Portland | OR | 97231 |
| T–93–OR–4460 | Shell Oil Portland | 5880 NW St Helen's Road | Portland | OR | 97210 |
| T–93–OR–4461 | Texaco Portland | 3800 Northwest St Helen's Road | Portland | OR | 97210 |
| T–93–OR–4462 | Time Oil Portland St Helens | 9100 NW St Helen's Road | Portland | OR | 97231 |
| T–93–OR–4463 | Time Oil Portland Burgard | 12005 North Burgard Street | Portland | OR | 97203 |
| T–93–OR–4464 | UNOCAL Portland | 5528 Northwest Doane | Portland | OR | 97210 |
| T–93–OR–4455 | ARCO Portland Terminal | 9930 NW St Helens Rd | Portland | OR | 97231 |
| T–93–OR–4452 | Tidewater Terminal Umatilla | 535 Port Avenue | Umatilla | OR | 97882 |
| T–25–PA–1785 | Gulf Oil Altoona | 6033 Sixth Avenue | Altoona | PA | 16602 |
| T–23–PA–1700 | Agway Petroleum Corp Macungie | Buckeye Road | Allentown | PA | 18062 |
| T–23–PA–1701 | Mobil Oil Allentown | 1134 North Quebec Street | Allentown | PA | 18103 |
| T–25–PA–1784 | Amoco Oil Altoona | Sixth Avenue Rd Canan Station | Altoona | PA | 16635 |
| T–25–PA–1788 | Sun Altoona | Route 764 Sugar Run Road | Altoona | PA | 16601 |
| T–25–PA–1767 | Petroleum Products Eldorado | Burns Avenue | Altoona | PA | 16602 |
| T–23–PA–1746 | Sun Twin Oaks | 4041 Market Street | Aston | PA | 19014 |
| T–23–PA–1703 | Gulf Oil Avoca | Box 403–A Suscon Rd | Avoca | PA | 18641 |
| T–23–PA–1706 | Agway Petroleum Corp Du Pont | Rd 2 Box 399K Suscon Rd | Avoca | PA | 18641 |
| T–23–PA–1707 | Petroleum Products Du Pont | Suscon Road | Avoca | PA | 18641 |
| T–25–PA–1790 | Guttman Oil Belle Vernon | 200 Speers Road | Belle Vernon | PA | 15012 |
| T–23–PA–1705 | Petron Oil Chester | One Ward Street | Chester | PA | 19013 |
| T–25–PA–1792 | B P Oil Coraopolis | Access State Route 51 | Coraopolis | PA | 15108 |
| T–25–PA–1760 | Buckeye Tank Term Coraopolis | 520 Narrows Run Road | Coraopolis | PA | 15108 |
| T–25–PA–1780 | Star Enterprise Pittsburgh | Nine Thorn Street | Coraopolis | PA | 15108 |
| T–25–PA–1761 | Sun Delmont | Route 66 North | Delmont | PA | 15626 |
| T–25–PA–1778 | Gulf Oil Pittsburgh/Delmont | Route 22 | Delmont | PA | 15626 |
| T–25–PA–1762 | Boswell Oil Co Dravosburg | 702 Washington Avenue | Dravosburg | PA | 15034 |
| T–25–PA–1764 | B P Oil Duncansville | Access US 220 | Duncansville | PA | 16635 |
| T–25–PA–1765 | Agway Petroleum East Freedom | Old Rte US 220 | East Freedom | PA | 16637 |
| T–23–PA–1720 | Sun Kingston | 60 S Wyoming Avenue | Edwardsville | PA | 18704 |
| T–23–PA–1710 | Sun Exton | 601 East Lincoln Hwy | Exton | PA | 19341 |
| T–25–PA–1768 | Ashland Floreffe | 204 Glass Glass House Road | Floreffe | PA | 15025 |
| T–23–PA–1718 | Mobil Oil Malvern | 8 South Malin Rd | Frazer | PA | 19406 |
| T–25–PA–1769 | B P Oil Greensburg | Rural Delivery 6 | Greensburg | PA | 15601 |
| T–23–PA–1713 | Mobil Oil Harrisburg | 5140 Paxton Street | Harrisburg | PA | 17111 |
| T–23–PA–1714 | Petroleum Products Harrisburg | 3300 Industrial Road | Harrisburg | PA | 17110 |
| T–23–PA–1751 | Sun Willow Grove | 3290 Sunset Lane | Hatboro | PA | 19040 |
| T–25–PA–1771 | American Refining Indianola | State Route 910 | Indianola | PA | 15051 |
| T–23–PA–1719 | Amoco Oil Kingston | 70 South Wyoming Avenue | Kingston | PA | 18704 |
| T–23–PA–1721 | Mobil Oil Lancaster | 1360 Manheim Pike | Lancaster | PA | 17604 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–23–PA–1702 | Star Enterprise Allentown | Buckeye Road | Macungie | PA | 18062 |
| T–23–PA–1704 | Carlos R Leffler Inc Macungie | 5088 Shippers Lane | Macungie | PA | 18062 |
| T–23–PA–1722 | Sun Malvern | Lincoln Hwy & Malin Road | Malvern | PA | 19355 |
| T–23–PA–1723 | B P Oil Marcus Hook | 428 Post Rd | Marcus Hook | PA | 19061 |
| T–23–PA–1712 | Amoco Oil Harrisburg | 5135 Simpson Ferry Road | Mechanicsburg | PA | 17055 |
| T–23–PA–1715 | Star Enterprise Harrisburg | RD #5 Texaco Drive | Mechanicsburg | PA | 17055 |
| T–23–PA–1724 | B P Oil Mechanicsburg | Sinclair Rd | Mechanicsburg | PA | 17055 |
| T–23–PA–1725 | Gulf Oil Mechanicsburg | 5125 Simpson Ferry Rd | Mechanicsburg | PA | 17055 |
| T–23–PA–1726 | Sun Mechanicsburg | 5145 Simpson Ferry Road | Mechanicsburg | PA | 17055 |
| T–23–PA–1716 | Petroleum Products Highspire | 900 Eisenhower Blvd | Middletown | PA | 17057 |
| T–23–PA–1709 | Montour Oil Service | 112 Broad St | Montoursville | PA | 17754 |
| T–23–PA–1754 | C R Leffler New Kingston | 236 Locust Pt Road | New Kingston | PA | 17702 |
| T–23–PA–1728 | Petroleum Prod Northumberland | Rt 11 North RD 1 | Northumberland | PA | 17857 |
| T–23–PA–1729 | Sun Northumberland | Rt 11 North Rd 1 | Northumberland | PA | 17857 |
| T–23–PA–1737 | Maritank Phila Inc | 67th & Schuylkill River | Philadalphia | PA | 19153 |
| T–23–PA–1730 | Amerada Hess Philadelphia | 1630 South 51st Street | Philadelphia | PA | 19143 |
| T–23–PA–1731 | Amoco Oil Philadelphia | 63rd & Passyunk Avenue | Philadelphia | PA | 19153 |
| T–23–PA–1732 | B P Oil Philadelphia | G Street & Hunting | Philadelphia | PA | 19124 |
| T–23–PA–1734 | Exxon USA Philadelphia | 6850 Essington Avenue | Philadelphia | PA | 19153 |
| T–23–PA–1736 | Sun Philadelphia | 2700 W Passyunk Avenue | Philadelphia | PA | 19145 |
| T–25–PA–1791 | Sun Blawnox | Freeport Road & Boyd Avenue | Pittsburgh | PA | 15238 |
| T–25–PA–1775 | Amoco Oil Pittsburgh | East Carson Street | Pittsburgh | PA | 15207 |
| T–25–PA–1776 | Exxon USA Pittsburgh | 2760 Neville Road | Pittsburgh | PA | 15201 |
| T–25–PA–1777 | Gulf Oil Pittsburgh | 400 Grand Ave | Pittsburgh | PA | 15225 |
| T–25–PA–1779 | Pennzoil Products Pittsburgh | 54th Street and AVRR | Pittsburgh | PA | 15201 |
| T–25–PA–1781 | Sun Pittsburgh | 5733 Butler Street | Pittsburgh | PA | 15201 |
| T–23–PA–1745 | C R Leffler Tuckerton | 4030 Pottsville Pike | Reading | PA | 19605 |
| T–25–PA–1782 | Pennzoil Products Rouseville | Two Main Street | Rouseville | PA | 16344 |
| T–23–PA–1727 | Sun Montello | Fritztown Road | Sinking Spring | PA | 19608 |
| T–23–PA–1742 | B P Oil Sinking Spring | Mountain Home Rd | Sinking Spring | PA | 19608 |
| T–23–PA–1708 | Carlos R Leffler Inc S Spring | Mountain Home Road | Sinking Spring | PA | 19608 |
| T–23–PA–1743 | Carlos R Leffler Inc | Sylvan Dell Road | South Williamsport | PA | 17701 |
| T–23–PA–1717 | Coastal Oil New York Inc | Sylvan Dell Rd | South Williamsport | PA | 17701 |
| T–23–PA–1744 | Sun Tamaqua | Tuscarora State Park Rd | Tamaqua | PA | 18252 |
| T–23–PA–1753 | Meenan Oil Co Tullytown | 113 Main Street | Tullytown | PA | 19007 |
| T–25–PA–1789 | Sun Vanport | Route 68 & Division Lane | Vanport | PA | 15009 |
| T–25–PA–1783 | United Refining Warren | 15 Bradley Street | Warren | PA | 16365 |
| T–23–PA–1711 | Sun Whitehall | 2480 Main St | Whitehall | PA | 18052 |
| T–23–PA–1748 | Gulf Oil Whitehall | 2451 Main Street | Whitehall | PA | 18052 |
| T–23–PA–1749 | Gulf Oil Williamsport | Sylvan Dell Rd | Williamsport | PA | 17703 |
| T–05–RI–1200 | Getty Terminal Providence | Dexter Rd & Massasoit Ave | East Providence | RI | 2914 |
| T–05–RI–1203 | Coastal Oil East Providence | 100 Dexter Road | East Providence | RI | 2914 |
| T–05–RI–1207 | Mobil Oil East Providence | 1001 Wampanoag Trail | East Providence | RI | 2915 |
| T–05–RI–1201 | Sprague Energy Providence | 144 Allens Avenue | Providence | RI | 2903 |
| T–05–RI–1202 | CITGO Petroleum Providence | 130 Terminal Road | Providence | RI | 2905 |
| T–05–RI–1204 | Northeast Petroleum | 170 Allens Avenue | Providence | RI | 2903 |
| T–05–RI–1205 | Star Enterprise Providence | 520 Allens Avenue | Providence | RI | 2905 |
| T–05–RI–1206 | Sun Providence | 35 Terminal Road | Providence | RI | 2905 |
| T–57–SC–2050 | Amerada Hess Belton | Highway 20 North | Belton | SC | 29627 |
| T–57–SC–2053 | Marathon Oil Belton | State Route 20 | Belton | SC | 29627 |
| T–57–SC–2051 | Louis Dreyfus Belton | Hwy 20 North | Belton | SC | 29627 |
| T–57–SC–2066 | Marathon North Charleston | 5165 Virginia Ave | Charleston | SC | 29406 |
| T–57–SC–2059 | Amoco Oil North Augusta | Sweet Water Road | North Augusta | SC | 29841 |
| T–57–SC–2060 | Charter Term Co North Augusta | 221 Laurel Lake Drive | North Augusta | SC | 29841 |
| T–57–SC–2061 | B P Oil North Augusta | Access Highway 36 | North Augusta | SC | 29841 |
| T–57–SC–2062 | Phillips Pipeline N Augusta | Highway 36 & Sweetwater | North Augusta | SC | 29841 |
| T–57–SC–2063 | Southern Facilities N Augusta | 222 Sweetwater Road | North Augusta | SC | 29841 |
| T–57–SC–2064 | Amerada Hess N Charleston | 5150 Virginia Ave | North Charleston | SC | 29406 |
| T–57–SC–2065 | Koch Refining N Charleston | 1003 East Montague | North Charleston | SC | 29406 |
| T–57–SC–2067 | Amerada Hess Spartanburg | Old Union Road | Spartanburg | SC | 29304 |
| T–57–SC–2068 | Amoco Oil Spartanburg | Old Union Rd Route 4 | Spartanburg | SC | 29304 |
| T–57–SC–2069 | Ashland Spartanburg | 75 Pine Ridge Road | Spartanburg | SC | 29302 |
| T–57–SC–2074 | Phillips Pipeline Spartanburg | 200 Nebo Street | Spartanburg | SC | 29302 |
| T–57–SC–2076 | Southern Facility Spartanburg | 2430 Pine Street Ext | Spartanburg | SC | 29302 |
| T–57–SC–2077 | Star Enterprise Spartanburg | 2590 Southport Road | Spartanburg | SC | 29302 |
| T–57–SC–2071 | Crown Central Spartansburg | PO Box 2442 | Spartansburg | SC | 29304 |
| T–57–SC–2075 | Shell Oil Spartanburg | 300 Delmar Road | Spartansburg | SC | 29302 |
| T–57–SC–2052 | Louis Dreyfus Spartenburg | 680 Dilmer Road | Spartenburg | SC | 29302 |
| T–46–SD–3550 | Kaneb Pipe Line Aberdeen | Hwy 281 | Aberdeen | SD | 57401 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

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| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–46–SD–3558 | Williams Pipe Line Canton | RR #1 Box 12 A | Canton | SD | 57013 |
| T–46–SD–3551 | Kaneb Pipe Line Mitchell | Hwy 38 | Mitchell | SD | 57301 |
| T–46–SD–3552 | WYCO Pipe Line Rapid City | 3225 Eglin Street | Rapid City | SD | 57701 |
| T–46–SD–3553 | Amoco Oil Sioux Falls | 3751 S Grange | Sioux Falls | SD | 57105 |
| T–46–SD–3554 | Williams Pipeline Sioux Falls | 5300 west 12th Street | Sioux Falls | SD | 57107 |
| T–46–SD–3555 | Williams Pipeline Watertown | 1000 17th Street S E | Watertown | SD | 57201 |
| T–46–SD–3556 | Kaneb Pipe Line Wolsey | US Hwy 14 & 281 | Wolsey | SD | 57384 |
| T–46–SD–3557 | Kaneb Pipe Line Yankton | Star Rte 50 | Yanton | SD | 57078 |
| T–62–TN–2200 | Amoco Oil Chattanooga | 4235 Jersey Pike | Chattanooga | TN | 37416 |
| T–62–TN–2201 | Chevron USA Chattanooga | 4716 Bonny Oaks Drive | Chattanooga | TN | 37416 |
| T–62–TN–2202 | CITGO Chattanooga | 4233 Jersey Pike | Chattanooga | TN | 37416 |
| T–62–TN–2205 | General Oils Chattanooga | 817 Pineville Road | Chattanooga | TN | 37405 |
| T–62–TN–2206 | Southeast Terminals | 5800 St Elmo Avenue | Chattanooga | TN | 37409 |
| T–62–TN–2208 | Southern Facility Chattanooga | 4326 Jersey Pike | Chattanooga | TN | 37416 |
| T–62–TN–2209 | Star Enterprise Chattanooga | 710 Manufacturers Road | Chattanooga | TN | 37405 |
| T–62–TN–2211 | Amoco Oil Knoxville | 5101 Middlebrook Pike NW | Knoxville | TN | 37921 |
| T–62–TN–2213 | CITGO Knoxville | 2409 Knott Road | Knoxville | TN | 37921 |
| T–62–TN–2214 | Cummins Terminals Knoxville | Third Creek Rd & Middlebrook | Knoxville | TN | 37912 |
| T–62–TN–2215 | Exxon USA Knoxville | 5009 Middlebrook Pike | Knoxville | TN | 37921 |
| T–62–TN–2216 | B P Oil Knoxville | 1908 Third Creek Road | Knoxville | TN | 37921 |
| T–62–TN–2217 | Marathon Oil Knoxville | 2601 Knott Road | Knoxville | TN | 37950 |
| T–62–TN–2218 | Shell Oil Knoxville | 5001 Middlebrook Pike NW | Knoxville | TN | 37921 |
| T–62–TN–2219 | Southern Facility Knoxville | 4801 Middlebrook Pike | Knoxville | TN | 37921 |
| T–62–TN–2221 | Louis Dreyfus Knoxville | 1720 Island Home Avenue | Knoxville | TN | 37920 |
| T–62–TN–2225 | Exxon USA Memphis | 454 Wisconsin Avenue | Memphis | TN | 38106 |
| T–62–TN–2226 | Lion Oil Memphis | 1023 Riverside | Memphis | TN | 38106 |
| T–62–TN–2227 | MAPCO Petroleum Memphis | | Memphis | TN | 38109 |
| T–62–TN–2228 | Petroleum Fuel Memphis | 1232 Riverside | Memphis | TN | 38106 |
| T–62–TN–2203 | Truman Arnold Memphis | 1237 Riverside | Memphis | TN | 38106 |
| T–62–TN–2231 | Amoco Oil Nashville | 1441 51st Avenue North | Nashville | TN | 37209 |
| T–62–TN–2232 | Ashland Nashville | Five Main Street | Nashville | TN | 37213 |
| T–62–TN–2233 | CITGO Nashville | 720 South Second Street | Nashville | TN | 37213 |
| T–62–TN–2234 | Cumberland Terminals Nashville | 7260 Centennial Boulevard | Nashville | TN | 37209 |
| T–62–TN–2236 | Exxon USA Nashville | 1741 Ed Temple Blvd | Nashville | TN | 37208 |
| T–62–TN–2237 | B P Oil Nashville | 1409 51st Ave | Nashville | TN | 37209 |
| T–62–TN–2238 | Marathon Oil Nashville | 2920 Old Hydes Ferry Road | Nashville | TN | 37218 |
| T–62–TN–2241 | Star Enterprise Nashville | 1717 61st & Centennial Bvld | Nashville | TN | 37209 |
| T–62–TN–2242 | Kerr-McGee Nashville | 180 Anthes Avenue | Nashville | TN | 37210 |
| T–62–TN–2204 | Lion Oil Nashville | 90 Van Buren St | Nashville | TN | 37208 |
| T–62–TN–2240 | Southern Facility Nashville | 1609 63rd Avenue North | Nashvilleue North | TN | 37209 |
| T–75–TX–2650 | Diamond Abernathy | Highway 54 | Abernathy | TX | 79311 |
| T–75–TX–2651 | Fina Oil Abilene | Highway 277 North | Abilene | TX | 79604 |
| T–75–TX–2652 | Pride Refining Abilene | Hwy 277 N Industrial Dist | Abilene | TX | 79604 |
| T–75–TX–2665 | Carswell Pipeline Aledo | I 20 in Willow Park | Aledo | TX | 76008 |
| T–75–TX–2653 | Diamond Amarillo | 4200 West Cliffside | Amarillo | TX | 79124 |
| T–75–TX–2654 | Phillips 66 Amarillo | 4300 Cliffside Dr | Amarillo | TX | 79142 |
| T–74–TX–2706 | Koch Refining Austin | 9011 Johnny Morris Rd | Austin | TX | 78724 |
| T–76–TX–2781 | Exxon USA Baytown | 3139 Decker Drive & Highway 10 | Baytown | TX | 77037 |
| T–76–TX–2783 | Chevron USA Port Arthur | 9406 West Port Arthur Rd | Beaumont | TX | 77705 |
| T–76–TX–2798 | Mobil Oil Beaumont | Route 4 | Beaumont | TX | 77705 |
| T–76–TX–2784 | Chevron USA Big Sandy | Highway 155 and Sabine River | Big Sandy | TX | 75755 |
| T–75–TX–2656 | Fina Oil Big Spring | East IS–20 & Refinery Rd | Big Spring | TX | 79721 |
| T–75–TX–2657 | Phillips 66 Borger | | Borger | TX | 79007 |
| T–74–TX–2709 | CITGO Brownsville | 11001 South Port Road | Brownsville | TX | 78520 |
| T–74–TX–2713 | CITGO Bryan | 1714 Finfeather Road | Bryan | TX | 77801 |
| T–75–TX–2659 | Truman Arnold Caddo Mills | | Caddo Mills | TX | 75505 |
| T–74–TX–2701 | Mobil Oil Center | US 87 South | Center | TX | 75692 |
| T–75–TX–2678 | CITGO Center | Hwy 87 South | Center | TX | 75935 |
| T–76–TX–2786 | Koch Refining Channelview | 16514 Dezavala Road | Channelview | TX | 77530 |
| T–76–TX–2791 | Howell Hydrocarbons & Chem | 1201 S Sheldon Road | Channelview | TX | 77530 |
| T–74–TX–2716 | CITGO Corpus Christi | 1308 Oak Park Street | Corpus Christi | TX | 78407 |
| T–74–TX–2718 | Coastal Oil Corpus Christi | 5441 UP River Road | Corpus Christi | TX | 78407 |
| T–74–TX–2719 | Diamond Corpus Christi | 2700 Texaco Road | Corpus Christi | TX | 78403 |
| T–74–TX–2720 | SW Refining Corpus Christi | 1700 Nueces Bay Boulevard | Corpus Christi | TX | 78469 |
| T–74–TX–2721 | Koch Refining Corpus Christi | Suntide Road | Corpus Christi | TX | 78403 |
| T–74–TX–2711 | CITGO Oil Corpus Christi | 2505 N Port Ave | Corpus Christi | TX | 78401 |
| T–75–TX–2661 | Mobil Oil Dallas | 4200 Singleton Boulevard | Dallas | TX | 75212 |
| T–75–TX–2662 | Star Enterprise Dallas | 3900 Singleton | Dallas | TX | 75212 |
| T–74–TX–2724 | Chevron USA El Paso | 6501 Trowbridge | El Paso | TX | 79905 |
| T–74–TX–2726 | Navajo Refining El Paso | 1000 Eastside Road | El Paso | TX | 79915 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

[July 1, 1995]

| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–74–TX–2710 | Shell Pipeline El Paso | 6767 Gateway West | El Paso | TX | 79926 |
| T–74–TX–2744 | S T Services Elmendorf | 20830 Lamm Rd | Elmendorf | TX | 75112 |
| T–75–TX–2655 | Phillips 66 Arlington | 12401 Calloway Cemetery Road . | Euless | TX | 76040 |
| T–75–TX–2664 | Koch Refining Euless | Highway 157 and Trinity Blvd | Euless | TX | 76040 |
| T–75–TX–2670 | Total Petroleum Ft Worth | 3520 Euless South Main | Euless | TX | 76040 |
| T–74–TX–2728 | Coastal Oil Falfurrias | Three Mi North on US Hwy 281 .. | Falfurrias | TX | 78355 |
| T–75–TX–2666 | Chevron USA Fort Worth | 2525 Brennan Street | Fort Worth | TX | 76106 |
| T–75–TX–2667 | CITGO Fort Worth | 301 Terminal Road | Fort Worth | TX | 76106 |
| T–75–TX–2668 | Mobil Oil Fort Worth | 3600 North Sylvania | Fort Worth | TX | 76111 |
| T–75–TX–2669 | Star Enterprise Ft Worth | 3200 Sylvania | Fort Worth | TX | 76111 |
| T–76–TX–2789 | Chevron USA Galena Park | 12523 American Petroleum Rd ... | Galena Park | TX | 77547 |
| T–76–TX–2788 | GATX Galena Park | 906 Clinton Drive | Galena Park | TX | 77547 |
| T–76–TX–2792 | Amerada Hess Galena Park | 12901 American Petroleum Rd ... | Galena Park | TX | 77547 |
| T–75–TX–2671 | Conoco Southlake | 3100 Highway 26 West | Grapevine | TX | 76051 |
| T–75–TX–2672 | Fina Oil Southlake | 3000 Highway 26 West | Grapevine | TX | 76051 |
| T–75–TX–2680 | Diamond Southlake | 1700 Hwy 26 | Grapevine | TX | 76051 |
| T–74–TX–2729 | Diamond Harlingen | 4.5 miles east on highway 106 | Harlingen | TX | 78550 |
| T–74–TX–2704 | Exxon USA Hearne | Highway Six | Hearne | TX | 77859 |
| T–75–TX–2658 | Mobil Oil Hearne | | Hearne | TX | 76705 |
| T–74–TX–2702 | Star Enterprise Hearne | Highway 6 South | Hearne | TX | 77859 |
| T–76–TX–2794 | CITGO Houston | 12325 North Fwy at Greens Rd .. | Houston | TX | 77060 |
| T–76–TX–2795 | Coastal Oil Houston | 11650 Almeda Road Loop 610 | Houston | TX | 77045 |
| T–76–TX–2799 | Jetera Fuels Houston | 17617 Aldine-Westfield Road | Houston | TX | 77073 |
| T–76–TX–2800 | Lyondell-CITGO Refining | 12000 Lawndale | Houston | TX | 77002 |
| T–76–TX–2803 | Star Enterprise Houston | 2661 Stevens Street | Houston | TX | 77226 |
| T–76–TX–2804 | Stolt Terminals Inc Houston | 15602 Jacinto Port Blvd | Houston | TX | 77213 |
| T–76–TX–2808 | Exxon USA North Houston | 8700 North Freeway | Houston | TX | 77037 |
| T–76–TX–2812 | Exxon USA South Houston | 10501 East Almeda | Houston | TX | 77051 |
| T–76–TX–2806 | Phibro Energy USA Houston | 9701 Manchester | Houston | TX | 77536 |
| T–75–TX–2660 | Exxon USA Dallas | 1201 East Airport Freeway | Irving | TX | 75062 |
| T–74–TX–2715 | Diamond Larado | 13380 South Unitec | Larado | TX | 78044 |
| T–75–TX–2674 | Phillips 66 Lubbock | Clovis Road and Flint Avenue | Lubbock | TX | 79408 |
| T–75–TX–2675 | Texaco Lubbock | Clovis Rd & Flint Ave Hwy 84 | Lubbock | TX | 79417 |
| T–74–TX–2730 | Coastal Oil Hidako | 7 Miles S at Hidalgo Box 3095 | McAllen | TX | 78501 |
| T–75–TX–2679 | Chevron USA Midland | 1100 North County Rd 1160 | Midland | TX. | |
| T–75–TX–2676 | Conoco Mount Pleasant | 1503 West Ferguson | Mount Pleasant | TX | 75455 |
| T–75–TX–2685 | Shell Oil Odessa | 2700 S Grandview | Odessa | TX | 79760 |
| T–76–TX–2782 | Shell Oil Pasadena | 1320 West Shaw St | Pasadena | TX | 77506 |
| T–76–TX–2809 | GATX Pasadena | 530 North Witter | Pasadena | TX | 77506 |
| T–76–TX–2811 | Phillips Pipeline Pasadena | 100 Jefferson Street | Pasadena | TX | 77501 |
| T–74–TX–2731 | Coastal Oil Placedo | 2 Mi S of Placedo Hwy 87 | Placedo | TX | 77977 |
| T–74–TX–2733 | Fina Oil Port Arthur Hwy 366 | Highway 366 and 32nd Street | Port Arthur | TX | 77640 |
| T–76–TX–2785 | Star Enterprise Port Arthur | 401 West 19th Street | Port Arthur | TX | 77640 |
| T–76–TX–2801 | Fina Oil Port Arthur 32nd | Hwy 366 & 32nd St | Port Arthur | TX | 77642 |
| T–75–TX–2686 | Pride San Angelo | 4008 U S Hwy 67N | San Angelo | TX | 76905 |
| T–74–TX–2737 | Chevron USA San Antonio | 4851 Emil Road | San Antonio | TX | 78219 |
| T–74–TX–2738 | Coastal Oil San Antonio | 4719 Corner Parkway #2 | San Antonio | TX | 78219 |
| T–74–TX–2739 | Diamond San Antonio | 10619 Highway 281 South | San Antonio | TX | 78221 |
| T–74–TX–2740 | Exxon USA San Antonio | 3214 North Pan Am Expressway | San Antonio | TX | 78219 |
| T–74–TX–2742 | Koch Refining San Antonio | I–10 and East Houston Street | San Antonio | TX | 78220 |
| T–74–TX–2745 | Star Enterprise San Antonio | 510 Petroleum Drive | San Antonio | TX | 78219 |
| T–76–TX–2780 | Petro-United Terminals Bayport .. | 11666 Port Road | Seabrook | TX | 77586 |
| T–75–TX–2682 | Diamond Sunray | 9 Mi NE of Dumas TX on FM 119 | Sunray | TX | 79086 |
| T–76–TX–2813 | Phillips 66 Sweeny | Hwys 35 & 36 at West Columbia | Sweeny | TX | 77480 |
| T–76–TX–2814 | S T Services Texas City | 1111 Main Dock Road | Texas City | TX | 77592 |
| T–74–TX–2747 | Diamond Three Rivers | 301 Leroy Street | Three Rivers | TX | 78071 |
| T–74–TX–2748 | Conoco Tye | I–20 West Exit 278 | Tye | TX | 79563 |
| T–75–TX–2681 | La Gloria Oil Tyler | 425 McMurry Drive | Tyler | TX | 75702 |
| T–74–TX–2703 | CITGO Victoria | 1708 North Ben Jordan Blvd | Victoria | TX | 77901 |
| T–74–TX–2749 | CITGO Waco | 1600 South Loop Dr | Waco | TX | 76705 |
| T–74–TX–2705 | Star Enterprise Waco | 420 South Lacy Drive | Waco | TX | 76705 |
| T–74–TX–2707 | Koch Refining Waco | 2017 Kendall Lane | Waco | TX | 76705 |
| T–74–TX–2708 | Mobil Oil Waco | 502 South Lacy Dr | Waco | TX | 76705 |
| T–75–TX–2687 | Star Enterprise Waskom | 9 South | Waskom | TX | 75692 |
| T–75–TX–2688 | Mobil Oil Waskom | 9 South | Waskom | TX | 75692 |
| T–75–TX–2683 | Fina Oil Wichita Falls | Old Charlie & Sinclair Blvd | Wichita Falls | TX | 76307 |
| T–75–TX–2684 | Conoco Wichita Falls | 1214 North Eastside Ave | Wichita Falls | TX | 76304 |
| T–87–UT–4200 | Flying J North Salt Lake | 333 West Center St | North Salt Lake | UT | 84054 |
| T–87–UT–4204 | Salt Lake Terminal Company | 245 East 1100 North | North Salt Lake City | UT | 84054 |
| T–87–UT–4201 | Penzoil Prod Co Roosevelt | P O Box 10–W Hwy 40 | Roosvelt | UT | 84066 |
| T–87–UT–4202 | Amoco Oil Salt Lake City | 474 West 900 N | Salt Lake City | UT | 84103 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

[July 1, 1995]

| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–87–UT–4203 | Chevron USA Salt Lake City | 2351 North Tenth West | Salt Lake City | UT | 84110 |
| T–87–UT–4205 | Crysen Refining Woods Cross | 2355 South 1100 West | Woods Cross | UT | 84087 |
| T–87–UT–4206 | Phillips 66 Woods Cross | 393 South 800 West | Woods Cross | UT | 84087 |
| T–54–VA–1652 | CITGO Chesapeake | 201 Freeman Street | Cheasapeake | VA | 23324 |
| T–54–VA–1650 | Amerada Hess Chesapeake | 4030 Buell Street | Chesapeake | VA | 23324 |
| T–54–VA–1651 | Amoco Oil Chesapeake | 428 Barnes Road | Chesapeake | VA | 23324 |
| T–54–VA–1653 | Conoco Chesapeake | 502 Hill Street | Chesapeake | VA | 23324 |
| T–54–VA–1654 | Exxon USA Chesapeake | 4115 Buell Street | Chesapeake | VA | 23324 |
| T–54–VA–1673 | Crown Central Norfolk | 801 Butt Street | Chesapeake | VA | 23324 |
| T–54–VA–1674 | Mobil Oil Norfolk | Halifax Lane | Chesapeake | VA | 23324 |
| T–54–VA–1656 | Louis Dreyfus Chesapeake | 7600 Halifax Lane | Chesapeake | VA | 23324 |
| T–54–VA–1658 | Steuart Petroleum Cockpit Pt | 1301 Cherry Hill Rd | Dumfries | VA | 22026 |
| T–54–VA–1659 | Amoco Oil Fairfax | 9601 Colonial Avenue | Fairfax | VA | 22030 |
| T–54–VA–1660 | Global Petroleum Fairfax | 3790 Pickett Road | Fairfax | VA | 22031 |
| T–54–VA–1661 | CITGO Fairfax | 9600 Colonial Avenue | Fairfax | VA | 22031 |
| T–54–VA–1662 | Star Enterprise Fairfax | 3800 Pickett Road | Fairfax | VA | 22030 |
| T–54–VA–1663 | Mobil Oil Manassas | 10315 Ballsford Road | Manassas | VA | 22110 |
| T–54–VA–1665 | Amoco Oil Montvale | US Route 460 & St Rt 892 | Montvale | VA | 24122 |
| T–54–VA–1666 | Chevron USA Montvale | U S 460 East | Montvale | VA | 24122 |
| T–54–VA–1668 | Southern Facilities Montvale | U S Highway 460 | Montvale | VA | 24122 |
| T–54–VA–1691 | Star Enterprise Roanoke | Route 460 | Montvale | VA | 24122 |
| T–54–VA–1664 | Amerada Hess Montvale | Route 460 | Monvale | VA | 24122 |
| T–54–VA–1670 | Crown Central Newington | 8211 Terminal Road | Newington | VA | 22122 |
| T–54–VA–1671 | Exxon USA Newington | 8200 Terminal Road | Newington | VA | 22122 |
| T–54–VA–1692 | Shell Oil Springfield | 8206 Terminal Road | Newington | VA | 22122 |
| T–54–VA–1669 | Koch Fuels Newport News | 801 Terminal Ave | Newport News | VA | 23607 |
| T–54–VA–1655 | Bagwell Oil Onancock | 33 Market | Onancock | VA | 23417 |
| T–54–VA–1677 | Amoco Oil Richmond | 1636 Commerce Road | Richmond | VA | 23224 |
| T–54–VA–1678 | Chevron USA Richmond | 700 Goodes Street | Richmond | VA | 23224 |
| T–54–VA–1679 | CITGO Richmond | Third & Maury Street | Richmond | VA | 23224 |
| T–54–VA–1680 | Crown Central Richmond | 4405 E Main | Richmond | VA | 23231 |
| T–54–VA–1681 | Exxon USA Richmond | 2000 Trenton Avenue | Richmond | VA | 23234 |
| T–54–VA–1682 | First Energy Corp Richmond | Second & Maury Streets | Richmond | VA | 23224 |
| T–54–VA–1683 | Koch Fuels Richmond | 4110 Deepwater Terminal Road | Richmond | VA | 23234 |
| T–54–VA–1684 | Southern Facility Richmond | 204 East First Avenue | Richmond | VA | 23224 |
| T–54–VA–1685 | Star Enterprise Richmond | 5801 Jefferson Davis Highway | Richmond | VA | 23234 |
| T–54–VA–1687 | Louis Dreyfus Richmond | 1314 Commerce Road | Richmond | VA | 23224 |
| T–54–VA–1657 | Primary Corp Deepwater | 3302 Deepwater Terminal Rd | Richmond | VA | 23234 |
| T–54–VA–1672 | Primary Corp Bickerstaff | 413 Bickerstaff Rd | Richmond | VA | 23231 |
| T–54–VA–1688 | Exxon USA Roanoke | 835 Hollins Road Northeast | Roanoke | VA | 24012 |
| T–54–VA–1689 | Marathon Oil Roanoke | 5287 Terminal Road | Roanoke | VA | 24014 |
| T–54–VA–1690 | Shell Oil Roanoke | 5280 Terminal Road Southwest | Roanoke | VA | 24014 |
| T–54–VA–1693 | S T Services Virginia Beach | 3925 North Landing Road | Virginia Beach | VA | 23456 |
| T–54–VA–1694 | Amoco Oil Yorktown | Route 73 East Entrance | Yorktown | VA | 23690 |
| T–03–VT–1100 | Mobil Oil Burlington | 2 Flynn Avenue | Burlington | VT | 5401 |
| T–91–WA–4400 | Texaco Anacortes | Marches Point | Anacortes | WA | 98221 |
| T–91–WA–4401 | Conoco Moses Lake | 3 miles north of Moses Lake | Moses Lake | WA | 98837 |
| T–91–WA–4423 | Tidewater Terminal Wilma | 2950 Wilma Drive | North Clarkston | WA | 99403 |
| T–91–WA–4402 | Northwest Terminaling Pasco | 3000 Sacajawea Park Road | Pasco | WA | 99301 |
| T–91–WA–4420 | Tidewater Snake River | Tank Farm Road | Pasco | WA | 99301 |
| T–91–WA–4405 | Wilkins Distributing Co | 134 Bay Street W | Port Orchard | WA | 98366 |
| T–91–WA–4404 | Tosco Northwest Renton | 2423 Lind Avenue Southwest | Renton | WA | 98055 |
| T–91–WA–4403 | Chevron USA Point Wells | 20500 Richmond Beach Drive N | Richmond Beach | WA | 98177 |
| T–91–WA–4406 | GATX Seattle | 1733 Alaskan Way South | Seattle | WA | 98134 |
| T–91–WA–4407 | Shell Oil Seattle | | Seattle | WA | 98124 |
| T–91–WA–4408 | Texaco Seattle | 2555 13th Ave S W | Seattle | WA | 98134 |
| T–91–WA–4409 | Time Oil Seattle | 2737 West Commodore Way | Seattle | WA | 98199 |
| T–91–WA–4424 | Pacific Northern Oil Corp | Pier 91 Bldg 19 | Seattle | WA | 98119 |
| T–91–WA–4425 | ARCO Seattle Terminal | 1652 SW Lander St | Seattle | WA | 95124 |
| T–91–WA–4410 | Conoco Spokane | 6317 East Sharp Avenue | Spokane | WA | 99206 |
| T–91–WA–4411 | Exxon USA Spokane | 6311 East Sharp Avenue | Spokane | WA | 99211 |
| T–91–WA–4412 | Tosco Northwest Spokane | 3225 East Lincoln Road | Spokane | WA | 99207 |
| T–91–WA–4413 | Tosco Northwest Tacoma | 520 E D Street | Tacoma | WA | 98421 |
| T–91–WA–4414 | Sound Refining Tacoma | 2628 Marine View Drive | Tacoma | WA | 98421 |
| T–91–WA–4415 | Superior Oil Tacoma | 250 East D Street | Tacoma | WA | 98401 |
| T–91–WA–4421 | US Oil Tacoma | 3001 Marshall Ave | Tacoma | WA | 98421 |
| T–91–WA–4422 | UNOCAL Tacoma | 516 East D Street | Tacoma | WA | 98421 |
| T–91–WA–4416 | Texaco Tumwate | 7370 Linderson Way S W | Tumwater | WA | 98501 |
| T–91–WA–4417 | CENEX Vancouver | 5420 Fruit Valley Road | Vancouver | WA | 98660 |
| T–91–WA–4419 | Tesoro Refining Mtg Vancouver | 2211 West 26th Street Ext | Vancouver | WA | 98660 |
| T–39–WI–3064 | CENEX Chippewa Falls | 2331 N Prairie View Rd | Chippewa Falls | WI | 54729 |

INTERNAL REVENUE SERVICE TERMINAL CONTROL LIST—CONTINUED

[July 1, 1995]

| TCN | Terminal name | Street address | City | State | Zip |
|---|---|---|---|---|---|
| T–39–WI–3082 | Kerr-McGee Chippewa Falls | 2553 North Prairie View Rd | Chippewa Falls | WI | 54729 |
| T–39–WI–3061 | Amoco Oil Green Bay | 1124 North Broadway | Green Bay | WI | 54303 |
| T–39–WI–3066 | CITGO Green Bay | 1391 Bylsby Avenue | Green Bay | WI | 54303 |
| T–39–WI–3075 | Green Bay Terminal | 1031 Hurlbut Street | Green Bay | WI | 54303 |
| T–39–WI–3077 | Mobil Oil Green Bay | 410 Prairie Ave | Green Bay | WI | 54303 |
| T–39–WI–3089 | U S Oil Green Bay West | 1075 Hurlbut Ct | Green Bay | WI | 54303 |
| T–39–WI–3078 | Clark Rfg Green Bay | 1445 Bylsby Ave | Green Bay | WI | 54303 |
| T–39–WI–3091 | U S Oil Green Bay East | 1910 N Quincy St | Green Bay | WI | 54302 |
| T–39–WI–3071 | Koch Junction City | Junction US 10 & 34N | Junction City | WI | 54443 |
| T–39–WI–3069 | Terminal Oil Madison | 3910 Terminal Road | Madison | WI | 53704 |
| T–39–WI–3088 | US Oil Madison | 4306 Terminal Dr | Madison | WI | 53558 |
| T–39–WI–3065 | CENEX McFarland | 4103 Triangle St | McFarland | WI | 53558 |
| T–39–WI–3067 | CITGO McFarland | 4606 Terminal Drive | McFarland | WI | 53558 |
| T–39–WI–3072 | Koch McFarland | 4505 Terminal Drive | McFarland | WI | 53558 |
| T–39–WI–3079 | Mobil Oil Madison | 4516 Sigglekow Road | McFarland | WI | 53558 |
| T–39–WI–3083 | Kerr-McGee McFarland | 4009 Triangle St Hwy 51 S | McFarland | WI | 53558 |
| T–39–WI–3085 | UNO-VEN McFarland | 4402 Terminal Drive | McFarland | WI | 53558 |
| T–39–WI–3062 | Amoco Oil Milwaukee | 9101 North 107th Street | Milwaukee | WI | 53201 |
| T–39–WI–3068 | CITGO Milwaukee | 9235 North 107th Street | Milwaukee | WI | 53224 |
| T–39–WI–3073 | Koch Milwaukee | 9343 North 107th Street | Milwaukee | WI | 53224 |
| T–39–WI–3076 | Marathon Milwaukee | 9125 North 107th St | Milwaukee | WI | 53224 |
| T–39–WI–3081 | S T Services Milwaukee | 1626 South Harbor Drive | Milwaukee | WI | 53207 |
| T–39–WI–3084 | US Oil Milwaukee | 9135 North 107th Street | Milwaukee | WI | 53224 |
| T–39–WI–3086 | UNO-VEN Milwaukee | 9521 North 107th Street | Milwaukee | WI | 53224 |
| T–39–WI–3090 | Clark Rfg Milwaukee | 9451 North 107th Street | Milwaukee | WI | 53224 |
| T–39–WI–3087 | Williams Pipe Line Mosinee | 2007 Old Highway 51 | Mosinee | WI | 54455 |
| T–39–WI–3063 | Amoco Oil Superior | 2904 Winter Street | Superior | WI | 54880 |
| T–39–WI–3080 | Murphy Oil Superior | 2407 Stinson Ave | Superior | WI | 54880 |
| T–39–WI–3074 | Koch Waupun | Route Two | Waupun | WI | 53963 |
| T–55–WV–3181 | Exxon USA Charleston | Standard St & MacCorkle Ave | Charleston | WV | 25314 |

*ReEngineering Excise Tax* with TECHNOLOGY.

[FR Doc. 95–16783 Filed 7–7–95; 8:45 am]

**BILLING CODE 4830–01–U**

# Sunshine Act Meetings

**Federal Register**

Vol. 60, No. 131

Monday, July 10, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ENERGY REGULATORY COMMISSION**

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

**DATE AND TIME:** July 12, 1995, 10:00 a.m.

**PLACE:** 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note.—**Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

**Consent Agenda—Hydro, 634th Meeting—July 12, 1995, Regular Meeting (10:00 A.M.)**

CAH–1.
Docket# P–553–024, City of Seattle, Washington
Other#S EL78–36–001, City of Seattle, Washington
CAH–2.
Docket# P–2735–043, Pacific Gas & Electric Company
CAH–3.
Docket# P–3913–002, Puget Sound Power & Light Company
Other#S P–10269–003, Washington Hydro Development Corporation
CAH–4.
Docket# P–2804–013, Goose River Hydro, Inc.
CAH–5.
Docket# P–3083–052, Oklahoma Municipal Power Authority
Other#S P–3083–058, Oklahoma Municipal Power Authority
P–3083–068, Oklahoma Municipal Power Authority
CAH–6.
Docket# P–2360–022, Minnesota Power & Light Company
CAH–7.
Docket# P–2363–007, Potlatch Corporation
CAH–8.
Docket# P–2506–002, Mead Corporation, Publishing Paper Division
CAH–9.
Docket# P–2607–001, Duke Power Company

**Consent Agenda—Electric**

CAE–1.
Docket# ER95–1084–000, Wisconsin Electric Power Company
Other#S EL95–61–000, Wisconsin Electric Power Company
ER94–1625–000, Wisconsin Electric Power Company
ER95–264–000, Wisconsin Electric Power Company
CAE–2.
Docket# EL95–4–000, Commonwealth Edison Company v. American Electric Power Service Corporation
CAE–3.
Docket# ER93–266–000, Boston Edison Company
CAE–4.
Docket# ER94–1062–000, Montaup Electric Company
Other#S EL94–64–000, Middleborough Gas and Electric Department and Pascoag Fire District v. Montaup and Eastern Edison Company
EL94–68–000, Montaup Electric Company and Newport Electric Corporation
CAE–5.
Docket# EC95–12–000, Century Power Corporation
CAE–6.
Docket# ER84–560–037, Union Electric Company
CAE–7.
Docket# FA92–9–002, Central Louisiana Electric Company, Inc.
CAE–8.
Docket# FA91–66–001, Indiana Michigan Power Company
CAE–9.
Docket# EL94–81–001, Oglethorpe Power Corp. v. Georgia Power Co. and Municipal Electric Authority of Georgia v. Georgia Power Co.
CAE–10.
Docket# ER94–950–002, Hermiston Generating Company, L.P.
CAE–11.
Docket# ER95–530–001, Ocean State Power II
Other#s ER95–533–001, Ocean State Power
CAE–12.
Docket# QF83–333–004, Cal Ban Corporation
CAE–13.
Docket# EL93–19–001, San Diego Gas & Electric Company v. Tucson Electric Power Company and Century Power Corporation
Other#s FA90–34–002, Tucson,Electric Power Company
CAE–14.
Docket# EL95–28–001, New York State Electric & Gas Corporation
CAE–15.
Docket# EG95–52–000, HIE Opco S.A.
CAE–16. Docket# EG95–53–000, HIE Argener S. A.
CAE–17.
Omitted
CAE–18.
Omitted
CAE–19.
Omitted
CAE–20.
Docket# EL94–75–000, The Cleveland Electric Illuminating Company v. The City of Cleveland, Ohio
Other#s EL94–80–000, The City of Cleveland, Ohio v. The Cleveland Electric Illuminating Company
EL94–86–000, The City of Cleveland, Ohio v. The Cleveland Electric Illuminating Company
CAE–21.
Docket# EL91–13–000, Northern States Power Company (Minnesota) v. Southern Minnesota Municipal Power Agency
CAE–22.
Docket# EL93–36–000, Southern California Edison Company

**Consent Agenda—Gas and Oil**

CAG–1.
Docket# PR95–5–000, Cranberry Pipeline Corporation
CAG–2.
Omitted
CAG–3.
Docket# RP95–347–000, CNG Transmission Corporation
CAG–4.
Docket# RP95–328–001, Northern Natural Gas Company
CAG–5.
Docket# RP94–16–000, Southern California Gas Company
Other#s RP94–16–002, Southern California Gas Company
SA95–2–000, Southern California Gas Company
SA95–2–001, Southern California Gas Company
CAG–6.
Docket# RP95–4–000, Arkansas Oklahoma Gas Corporation
CAG–7.
Docket# RP95–6–000, Utah Gas Service Company
CAG–8.
Docket# RP91–203–054, Tennessee Gas Pipeline Company
CAG–9.
Docket# RP94–219–005, Columbia Gulf Transmission Company
Other#s CP94–177–001, Columbia Gulf Transmission Company
RP94–219–003, Columbia Gulf Transmission Company
RP94–312–001, Columbia Gulf Transmission Company
RP94–312–002, Columbia Gulf Transmission Company
CAG–10.

Docket# RP95–314–000, Tennessee Gas Pipeline Company
CAG–11.
Omitted
CAG–12.
Docket# RP89–34–013, Williston Basin Interstate Pipeline Company
Other#s RP89–34–005, Williston Basin Interstate Pipeline Company
RP89–257–004, Williston Basin Interstate Pipeline Company
RP90–2–014, Williston Basin Interstate Pipeline Company
CAG–13.
Docket# RP95–185–000, Northern Natural Gas Company
CAG–14.
Docket# RP88–262–000, Panhandle Eastern Pipe Line Company
Other#s CP89–281–000, Panhandle Eastern Pipe Line Company
CP89–817–000, Panhandle Eastern Pipe Line Company
CP89–817–004, Panhandle Eastern Pipe Line Company
CP89–917–000, Panhandle Eastern Pipe Line Company
RP88–262–029, Panhandle Eastern Pipe Line Company
CAG–15.
Docket# RP92–163–000, Williston Basin Interstate Pipeline Company
Other#s RP92–170–000, Williston Basin Interstate Pipeline Company
RP92–236–000, Williston Basin Interstate Pipeline Company
CAG–16.
Omitted
CAG–17.
Omitted
CAG–18.
Docket# RP88–44–050, El Paso Natural Gas Company
Other#S RP88–44–051, El Paso Natural Gas Company
CAG–19.
Omitted
CAG–20.
Docket# RP93–14–024, Algonquin Gas Transmission Company
CAG–21.
Docket# RP94–149–002, Pacific Gas Transmission Company
CAG–22.
Omitted
CAG–23.
Omitted
CAG–24.
Docket# CP88–391–014, Transcontinental Gas Pipe Line Corporation
CAG–25.
Docket# RP95–246–000, Mississippi Valley Gas Company v. Southern Natural Gas Company
CAG–26.
Docket# OR95–6–000, Plantation Pipe Line Company
CAG–27.
Docket# MG88–30–003, Great Lakes Gas Transmission Limited Partnership
CAG–28.
Docket# PR95–11–000, Egan Hub Partners, L.P.
CAG–29.
Docket# CP88–105–003, Yukon Pacific Company L.P.
CAG–30.
Docket# CP90–1050–005, Panhandle Eastern Pipe Line Company
CAG–31.
Docket# CP94–806–001, Tennessee Gas Pipeline Company
CAG–32.
Docket# CP95–76–001, Texas Eastern Transmission Corporation
CAG–33.
Omitted
CAG–34.
Docket# CP94–775–001, Tennessee Gas Pipeline Company
CAG–35.
Docket# RP95–2–001, Williams Natural Gas Company
Other#S RP95–2–000, Williams Natural Gas Company
CAG–36.
Docket# CP95–545–000, Overthrust Pipeline Company
CAG–37.
Docket# CP95–251–000, Pacific Interstate Transmission Company

**Hydro Agenda**

H–1.
Omitted

**Electric Agenda**

E–1.
Reserved

**Oil and Gas Agenda**

*I. Pipeline Rate Matters*

PR–1.
Docket# RP91–143–027, Great Lakes Gas Transmission Limited Partnership
Order on Remand.

*II. Pipeline Certificate Matters*

PC–1.
Reserved

Dated: July 5, 1995.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–16914 Filed 7–6–95; 11:00 am]

BILLING CODE 6717–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:33 a.m. on Wednesday, July 5, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) administrative enforcement proceedings, and (2) a matter relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: July 5, 1995.

Federal Deposit Insurance Corporation.

**Patti C. Fox,**

*Assistant Executive Secretary.*

[FR Doc. 95–16954 Filed 7–6–95; 2:47 pm]

BILLING CODE 6714–01–M

## INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

**TIME AND DATE:** 10:00 a.m., Thursday, July 20, 1995.

**PLACE:** Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

**STATUS:** The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

**MATTERS TO BE DISCUSSED:**

Finance Docket No. 32549 *Burlington Northern Inc. And Burlington Northern Railroad Company—Control And Merger—Santa Fe Pacific Corporation And The Atchison, Topeka And Santa Fe Railway Company.*

**CONTACT PERSONS FOR MORE INFORMATION:** Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 95–16947 Filed 7–6–95; 2:47 pm]

BILLING CODE 7035–01–P

## DEPARTMENT OF JUSTICE

## UNITED STATES PAROLE COMMISSION

Record of Vote of Meeting Closure

(Public Law 94–409)

(5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at approximately two o'clock p.m. on

Tuesday, June 27, 1995 at the Commission's North Central Regional Office, 10220 North Executive Hills Blvd., North Point Tower, Suite 700, Kansas City, Missouri 64153. The purpose of the meeting was to decide nineteen appeals from National Commissioners' decisions pursuant to 28 C.F.R. Section 2.27. Six Commissioners were present, constituting a quorum when the vote to close the meeting was submitted. A second matter addressed at the closed meeting was the adoption of the Witness Security Manual.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., Vincent J. Fechtel, Jr., John R. Simpson, and Michael J. Gaines.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 3, 1995.

**Edward F. Reilly, Jr.,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 95–16982 Filed 7–6–95; 3:52 pm]

BILLING CODE 4410–01–M

# Corrections

**Federal Register**
Vol. 60, No. 131
Monday, July 10, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

### National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

*Correction*

In notice document 95–16272 beginning on page 34500, in the issue of Monday, July, 3, 1995, make the following correction:

On page 34501, in the third column under **School Breakfast Program Payments**, in the fifth line, ''69.45 cents'' should read ''69.75 cents''.

BILLING CODE 1505–01–D

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 575

**RIN 3206-AF86**

### Recruitment and Relocation Bonuses and Retention Allowances

*Correction*

In final rule document 95–15713 beginning on page 33323 in the issue of Wednesday, June 28, 1995, make the following corrections:

**§ 575.203 [Corrected]**

On page 33326, in §575.203, under the definition for *Employee*, in the next to last line ''community'' should read ''commuting''.

**§ 575.304 [Corrected]**

On page 33327, in §575.304(a), in the second column, in the second line ''by'' should read ''for''.

BILLING CODE 1505–01–D

Federal Register

Monday
July 10, 1995

Part II

# Securities and Exchange Commission

**17 CFR Parts 228, 229, et al.**

**Securities; Final Rule and Proposed Rules**

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 228, 229, 230, 239, 240 and 249

**[Release Nos. 33–7183; 34–35893; IC–21166; File No. S7–13–95]**

**RIN 3235–AG49**

## Use of Abbreviated Financial Statements in Documents Delivered to Investors Pursuant to the Securities Act of 1933 and Securities Exchange Act of 1934

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') today is soliciting comment on proposed amendments to allow the use of abbreviated financial statements in annual reports delivered to shareholders pursuant to the proxy rules. Comment is also solicited on additional approaches to streamlining annual reports to shareholders. Rule changes also are proposed to allow the use of abbreviated financial statements in other disclosure documents, including prospectuses, that are required to be delivered to investors. In order to encourage individual investor comments and suggestions, the Commission is including in the Release an Appendix directed to investors, which will be published separately and distributed to investors. In addition, during the comment period, the Commission intends to hold focus groups composed of investors to assess investors' views as to the utility of sample abbreviated financial statements, as compared with full financial statements.

**DATES:** Comments on the proposed amendments should be received on or before October 10, 1995.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–13–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Craig C. Olinger, Associate Chief Accountant, at (202) 942–2960, Kenneth T. Marceron, Staff Accountant, at (202) 942–1781, or Elizabeth M. Murphy or William B. Haseltine, Special Counsels, at (202) 942–2910, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 3–12, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing amendments to Forms S–1, S–2, S–3, S–4, S–6, S–8, S–11, SB–1, SB–2, F–1, F–2, F–3, F–4, F–7, F–8, F–9, F–10, F–80 and 1–A [1] and Regulation D [2] under the Securities Act of 1933 (''Securities Act''),[3] as well as Forms 10–K and 10–KSB [4], Rules 13e–3, 13e–4, 14a–3, 14c–3, 14d–1 and 14d–6 [5] and Schedules 13E–4F, 14A, 14C, 14D–1F, and 14D–9F [6] under the Securities Exchange Act of 1934 (''Exchange Act'').[7] Additionally, a new Item 305 would be added to Regulations S–B and S–K,[8] and new Securities Act Rule 435 and new Exchange Act Rules 14a–16 and 14c–8 would be created.

### I. Executive Summary and Background

The Commission today is publishing for comment proposals to streamline the financial information currently required to be delivered to investors in connection with the annual election of directors pursuant to the Commission's proxy regulations.[9] This initiative responds to concerns that the growing complexity and volume of financial information, particularly that required in notes to financial statements,[10] render the annual report less readable and useful to the general shareholder body.[11] Proponents of annual report simplification believe that streamlined annual reports will allow registrants both to communicate more effectively with shareholders in the annual report by being able to highlight key financial items and to reduce the costs of preparing and delivering the annual report. These commentators are of the view that a large segment of a company's shareholder body does not review and analyze the detailed information in the notes to the financial statements, particularly in determining whether to vote for director nominees, and companies therefore should not have to incur the cost of delivery of the full set of financial statements in the annual report.

Various approaches have been suggested to accomplish the streamlining. One, which is contained in rule amendments proposed today, would permit an eligible registrant to use financial statements with significantly abbreviated notes (''abbreviated financial statements'') in annual reports to shareholders. The annual report would prominently identify the financial statements as abbreviated and state that the registrant will provide upon request, and without charge, a copy of the full financial statements. The full financial statements would be required to be filed in the registrant's annual report on Form 10–K, 10–KSB or 20–F; [12] registrants are already required to advise shareholders in the proxy statement or annual report that the Form 10–K or 10–KSB will be provided upon request and without charge. This would continue under the proposed rules.

In summary, disclosure required in the notes to the abbreviated financial statements would include:

- the significant accounting policies of the registrant;
- certain matters materially affecting the comparability of amounts reported in the financial statements;
- circumstances identified in explanatory language added to the independent accountant's report, contingencies, loan defaults, and subsequent events; and
- related party transactions.

The abbreviated financial statements contemplated by the proposed rule would omit a significant number of notes to financial statements that are required under GAAP. Appendix A to this release summarizes the common disclosures that would be omitted from the abbreviated financial statements under the proposals. In general, the disclosures that would be omitted from

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[1] 17 CFR 239.11, 12, 13, 25, 16, 16b, 18, 9, 10, 31, 32, 33, 34, 37, 38, 39, 40, 41 and 90.

[2] 17 CFR 230.501–508.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 249.310 and 310b.

[5] 17 CFR 240.13e–3, 13e–4, 14a–3, 14c–3, 14d–1 and 14d–6.

[6] 17 CFR 240.13e–102, 14a–101, 14c–101, 14d–102, and 14d–103.

[7] 15 U.S.C. 78a *et seq.*

[8] 17 CFR Part 228 and 17 CFR Part 229.

[9] *See* Rules 14a–3 and 14c–3.

[10] Financial statements prepared in conformity with generally accepted accounting principles (''GAAP'') are required to include adequate disclosure of material matters (Statement on Auditing Standards (''SAS'') No. 32, *Adequacy of Disclosure in Financial Statements*). Disclosures in notes to the financial statements are intended to provide material information necessary to make the financial statements, in light of the circumstances under which they are made, not misleading (Rule 4–01(a) of Regulation S–X [17 CFR 210.4–01(a)]). In recent decades, numerous requirements have been adopted that specify in detail the content of disclosures required in the notes to the financial statements.

[11] *See, e.g.*, Groves, Ray J., ''Overload of Financial Disclosure Rules is Defeating the Purpose of the Exercise,'' *American Banker* (Jan. 3, 1995); Beresford, Dennis R. and Hepp, John A., *Financial Accounting Series: Status Report*, No. 149–B, ''Financial Statement Disclosures: Too Many or Too Few?'' (May 25, 1995); Deloitte & Touche LLP, *Summary Annual Reporting, Improving Shareholder Communications* (1995), at 3–4; Cook, Michael and Sutton, Michael H., ''Summary Annual Reporting: A Cure for Information Overload,'' *Fin. Executive* (Jan/Feb 1995).

[12] 17 CFR 249.220f.

the abbreviated financial statements contain quantitative detail and related explanatory information regarding amounts included in the financial statements. Detailed quantitative disclosures and related explanatory material regarding many off-balance sheet items also would be omitted. For example, disclosure enumerating the composition of inventories and fixed assets, the terms and conditions of borrowings, the components of income tax expense and related deferred taxes, the status of pension fund assets and obligations, the assets and operating results of business and geographic segments, the details of restructuring charges and the characteristics of on-balance sheet and off-balance sheet financial instruments (including derivative instruments), among other things, would be omitted.

Other approaches for streamlining the annual report to shareholders include the concept of a summary annual report, the subject of a 1983 research study prepared for the Financial Executives Research Foundation (''FERF'').[13] The summary annual report concept is discussed in this release, and comments are solicited on the approach. Comment is also being solicited as to whether the Commission should allow registrants total flexibility, subject to the requirements of state corporate law and trading market listing agreements, by rescinding the proxy requirements regarding delivery of the annual report to shareholders.

Similar concerns about the complexity and volume of financial information, particularly in the notes to the financial statements, as well as the use of the annual report to shareholders in the integrated disclosure system, underlie additional rule proposals that would allow the use of abbreviated financial statements in the full spectrum of other disclosure documents required to be delivered to investors, such as prospectuses and transactional proxy statements.[14] Use of abbreviated financial statements in these circumstances raises additional issues, including the extent to which those making investment decisions would be willing to rely on the abbreviated financial statements and the practicality of requiring delivery of full financial statements upon request in various transactional contexts. A number of Commission registration forms, most notably Forms S–3 and F–3, already use a model of incorporation by reference, and delivery of incorporated documents upon request. The Commission invites comment as to the appropriateness and utility of such approach for both investors and issuers generally, and specifically with respect to each class of disclosure document covered by the proposed rulemaking.

The Commission recognizes that the feasibility of this initiative requires the confidence of registrants that they will not be subject to liability for failure to deliver the full financial statements in the annual report or other mandated disclosure documents. The rules proposed today include a safe harbor from liability for non-delivery of the note disclosures allowed to be excluded from the abbreviated financial statements. The proposals would not change the disclosure currently required outside the company's financial statements in mandated disclosure documents.

This initiative is part of the Commission's overall efforts to improve the effectiveness and efficiency of its disclosure system.[15] Both the Commission and the Financial Accounting Standards Board (''FASB'') recognize that an important part of that effort is to evaluate current financial disclosures to assess their continued utility and cost effectiveness.[16]

## II. Proposed Amendments To Permit Use of Abbreviated Financial Statements

### *A. Content of Abbreviated Financial Statements*

The proposed rule amendments would permit eligible registrants to use abbreviated financial statements in specified disclosure documents delivered to shareholders and investors. The content of the abbreviated financial statements is set forth in proposed new Item 305(b) of Regulations S–K and S–B.[17]

The face of the abbreviated financial statements would have to include a prominent statement identifying them as such.[18] Abbreviated financial statements would include balance sheets, statements of income and cash flows, and statements of changes in stockholders' equity that conform with GAAP and Regulation S–X with respect to classifications, measurements and periods presented.[19] The notes to the abbreviated financial statements would be limited to the items specified in proposed Item 305. [20]

[13] ''Summary Reporting of Financial Information—Moving Toward More Readable Annual Reports,'' Deloitte, Haskins & Sells (1983) (''FERF Report'').

[14] These documents include: (1) prospectuses required to be delivered in connection with offerings of securities pursuant to the Securities Act; (2) proxy or information statements required to be furnished pursuant to Section 14 of the Exchange Act [15 U.S.C. 78n]; (3) documents furnished to investors in connection with tender offers or going private transactions; (4) offering circulars delivered in connection with Regulation A [17 CFR 230.251–263] offerings; and (5) disclosure required to be furnished in connection with Regulation D offerings. If the disclosure document is required to include financial statements of another entity, such as an acquired business, significant subsidiary, or guarantor, the registrant also could choose to deliver abbreviated financial statements of that entity to investors, provided that the eligibility criteria are met.

[15] *See, e.g.,* Securities Act Release No. 7053 (April 19, 1994) [59 FR 21644] and Securities Act Release Nos. 7117, 7118 and 7119 (December 1, 1994) [59 FR 65628, 65632, and 65637] adopting amendments to Form 20–F and Regulation S–X [17 CFR 210] designed to streamline the financial information and reconciliation requirements for both foreign and domestic companies.

[16] In response to the Financial Accounting Standards Advisory Council's 1994 Annual FASB Agenda Survey, survey respondents selected ''Comprehensive Review of Financial Statement Disclosures'' from a list of projects not currently on FASB's agenda and indicated that it should be given high priority by FASB. While FASB has not yet added a formal project to its agenda, the Chairman of FASB has indicated that FASB will be devoting significant resources to this issue. *See* Beresford, Dennis R. and Hepp, John A., *Financial Accounting Series: Status Report,* No. 149–B, ''Financial Statement Disclosures: Too Many or Too Few?'' at 7 (May 25, 1995).

[17] Proposed Item 305 of Regulations S–B and S–K. References throughout the release to provisions of proposed Item 305 of Regulation S–K should be read to include the comparable provisions in proposed Item 305 of Regulation S–B. The two items are identical in all substantive respects, except that all but one of the references to Regulation S–X in proposed Item 305 of Regulation S–K are omitted from proposed Item 305 of Regulation S–B or changed to refer to Item 310 of Regulation S–B [17 CFR 228.310] (there is a reference to Article 2 of Regulation S–X [17 CFR 210.2] regarding accountants' reports in both the proposed Regulation S–K and S–B Items).

[18] Proposed Item 305(b)(1) of Regulation S–K.

[19] Proposed Items 305(b) (1) and (2) of Regulation S–K. Updating requirements for the abbreviated financial statements in prospectuses and proxy statements would be consistent with the updating requirements for the full financial statements. Accordingly, domestic issuers would follow the requirements of Rule 3–12 of Regulation S–X [17 CFR 210.3–12], while foreign issuers would follow the requirements of Rule 3–19 of Regulation S–X [17 CFR 210.3–19]. *See* proposed Regulation S–K Items 305(c) and (f)(2). Pursuant to proposed Regulation S–B Item 305(c), small business issuers would update their abbreviated financial statements in accordance with Item 310(d) of Regulation S–B [17 CFR 228.310(d)].

[20] The abbreviated financial statement proposals do not affect other disclosure requirements, such as the registrant's description of business, legal proceedings discussions, supplementary financial information, or Management's Discussion & Analysis (''MD&A'') (Items 101, 103, 302, and 303 of Regulations S–B and S–K [17 CFR 228.101, 103, 302 and 303 and 229.101, 103, 302 and 303]). Registrants that currently cross-reference, but do not reiterate, data set forth in the notes to the financial statements in the MD&A section of their disclosure documents could not cross-reference notes omitted from the abbreviated financial statements. It is the current practice of many registrants to include supplementary financial information pursuant to Item 302 of Regulations S–K and S–B in an unaudited note to the financial

Continued

As proposed, the disclosures required in the notes to the abbreviated financial statements are intended to be an extraction of all disclosures included in the registrant's full financial statements that are responsive to the matters specified by Item 305.[21] Disclosures responsive to a particular matter may be located in several places in the notes to the full financial statements. Proposed Item 305 would require all disclosures included in the notes to the full financial statements that are responsive to a matter specified in Item 305 to be included in the notes to the abbreviated financial statements, regardless of the source of the underlying disclosure requirement or the location of the disclosure in the full financial statements. For example, requirements regarding the disclosure of accounting policies are primarily contained in Accounting Principles Board (''APB'') Opinion No. 22,[22] but various other FASB and AICPA pronouncements specifically require disclosure of accounting policies with respect to certain matters.[23] In practice, some registrants include all accounting policy disclosures in a single note, while others integrate certain accounting policy disclosures within the detailed disclosure of the matters to which the policies relate. Under the proposed requirements, registrants would have to identify and describe in the notes to the abbreviated financial statements all significant accounting policies used in the preparation of the financial statements, regardless of the particular manner in which they are presented in the notes to the full financial statements.

The specific matters proposed to be required in the notes to the abbreviated financial statements are as follows:[24]

1. *Basis of presentation.* A note to the abbreviated financial statements would explain that although such statements were prepared using GAAP for measurement and classification, substantially all of the notes necessary for a fair presentation in accordance with GAAP and Regulation S–X have been omitted.[25] The note also would state that the disclosures in the notes to the abbreviated financial statements are limited to those matters specified by Commission rules, and comply with Commission rules for presentation of abbreviated financial statements. The note would contain a reference to the complete note disclosures in the full financial statements.

2. *Accounting policies.* A description of all significant accounting policies used in the preparation of the financial statements, including a description of the accounting principles followed by the reporting entity and the methods of applying those principles that materially affect the determination of financial position, cash flows or results of operations, as specified by APB Opinion No. 22 and related pronouncements, would be provided.[26]

3. *Changes in accounting principle.* The nature of, and justification for, a change in accounting principle, and the effects of the change, as specified by APB Opinion No. 20[27] and related pronouncements, would be furnished.

4. *Restatements and reclassifications.* The nature and effects of a correction of an error in previously issued financial statements, as specified by APB Opinion No. 20 and related pronouncements, would be furnished. Also, the nature and reasons for a change in the reporting entity, and effects of the change, as specified by APB Opinion No. 20 and related pronouncements, would be furnished. Further, the nature and effects of reclassifications materially affecting amounts reported in previously issued financial statements would be explained.

5. *Changes in accounting estimate.* The nature and effects of changes in accounting estimate, as specified by APB Opinion No. 20 and related pronouncements, would be furnished.

6. *Business combinations.* The nature of business combinations during the most recent fiscal year and quantitative disclosures of the effects of the business combinations, as specified by APB Opinion No. 16[28] and related pronouncements, would be furnished.

7. *Discontinued operations.* The nature of business operations that were discontinued during the most recent fiscal year, and quantitative disclosures of the effects of the discontinuation, as specified by APB Opinion No. 30[29] and related pronouncements, would be furnished.

8. *Circumstances identified in explanatory language added to the independent accountant's standard report.* If the independent accountant's report on the entity's full financial statements includes explanatory language added to the standard report, a note would describe the circumstances identified in SAS No. 58[30] necessitating the explanatory language and would include all disclosure set forth in notes to the full financial statements that bears upon an understanding of those circumstances. Disclosure would also be provided for explanatory paragraphs that emphasize a matter regarding the financial statements.

9. *Loss contingencies.* If the entity is exposed to loss contingencies for which a loss exceeding the amount accrued in the financial statements is reasonably possible, a note would describe the nature of the loss and disclose either the amount or range of reasonably possible additional loss, or management's view that such amount or range of loss cannot be estimated, as specified by SFAS No. 5[31] and related pronouncements.

10. *Events of default under credit agreements.* As presently required by Regulation S–X,[32] the facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any material issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet date being filed and has not been subsequently cured, would be described. If a default or breach exists but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, the amount of the obligation and the period of the waiver would have to be stated.

11. *Related party transactions.* The nature of related party relationships, and a description of transactions, amounts and balances, as specified by

statements. Registrants using abbreviated financial statements would be required to disclose supplementary financial information outside of the financial statements elsewhere in the disclosure document.

[21] Proposed Item 305(b)(3) of Regulation S–K.

[22] *Disclosure of Accounting Policies.*

[23] Disclosures responsive to a particular matter may emanate from requirements in various accounting pronouncements. SAS No. 69, *The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles in the Independent Auditor's Report,* defines the sources of accounting principles generally accepted in the United States.

[24] Proposed Item 305(b)(3)(i)–(xiii) of Regulation S–K.

[25] The note to the abbreviated financial statements containing basis of presentation disclosures that is included by small business issuers in their delivery documents would refer only to GAAP since small business issuers are not required to comply with Regulation S–X.

[26] ''Related pronouncement'' as used throughout this section refers to a pronouncement constituting GAAP as defined in SAS No. 69 that requires disclosure regarding a matter that would have to be disclosed in the notes to the abbreviated financial statements under proposed Item 305 of Regulation S–K.

[27] *Accounting Changes.*

[28] *Business Combinations.*

[29] *Reporting the Results of Operations—the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions.*

[30] *Reports on Audited Financial Statements.*

[31] *Accounting for Contingencies.*

[32] Rule 4–08(c) of Regulation S–X [17 CFR 210.4–08(c)].

SFAS No. 57[33] and related pronouncements, would be furnished.

12. *Bankruptcies and quasi-reorganizations.* Entities entering into, operating under, or emerging from proceedings under the federal bankruptcy code during the most recent fiscal year would have to provide all the disclosures specified by AICPA Statement of Position No. 90–7.[34] As presently required by Regulation S–X and related interpretations,[35] entities effecting a quasi-reorganization during the most recent fiscal year would disclose the nature and effects of the quasi-reorganization.

13. *Subsequent events.* All events occurring subsequent to the date of the most recent balance sheet for which disclosure was required to be made in the full financial statements would be disclosed.

If none of the matters identified in Items 3 through 13 above apply to a registrant, the note disclosures included in abbreviated financial statements of that registrant would be limited to a description of the basis of presentation of the abbreviated financial statements and the registrant's accounting policies.

The types of disclosures commonly provided in full financial statements that would be omitted from the notes to the abbreviated financial statements are summarized in Appendix A to the release. Comment is requested as to whether any of the items specified for inclusion should not be deemed necessary in a presentation of abbreviated financial statements, or whether there are other specific items included in full financial statements that should be required disclosure in abbreviated financial statements in order to provide essential information to investors. For example, should the disclosures regarding the amounts, terms, risks, or fair values of financial instruments (including derivatives) specified by SFAS Nos. 105, 107, and 119,[36] or the information about stock options valuation to be required by the forthcoming FASB standard on stock compensation,[37] be required?

Proposed Item 305 specifies every matter that would require disclosure in the notes to the abbreviated financial statements; the Item does not provide for the discretionary addition by registrants of note disclosures regarding other matters. Comment is solicited as to whether the Item should allow for additional discretionary note disclosures. Commenters remarking on this issue are asked to address whether, if proposed Item 305 expressly permitted the discretionary note disclosures: (1) registrants would be more or less likely to use the abbreviated financial statement format; (2) the disclosures included in the notes to the abbreviated financial statements would be more or less useful to investors; and (3) whether registrants would feel compelled routinely to add note disclosures regarding discretionary matters similar to those included at the discretion of other registrants.

As an alternative to the disclosures specified in the proposed rules, comment is requested as to whether note disclosures in abbreviated financial statements should be limited to only those matters regarding the manner in which the full financial statements were prepared. For example, should disclosures be limited to a description of the registrant's significant accounting policies, changes in those policies, and material restatements and reclassifications of previously reported amounts? Should disclosures be further limited to only include changes in those matters, and to exclude descriptions of accounting policies that have not changed during the reporting period? Should the abbreviated financial statements also include a list of the notes that have been omitted?

### *B. Use of Abbreviated Financial Statements—Specified Disclosure Documents*

As discussed in the introduction to this release, the primary impetus to the abbreviated financial statement initiative has been suggestions to streamline the financial information required to be included in annual reports to shareholders, so as to make the reports more readable and useful to the general shareholder body. Underlying these suggestions is the premise that, at least in the case of voting on the election of directors, many, if not most, shareholders do not use the detailed information contained in the financial statement footnotes to make their voting decision.

The proposed amendments also would extend the abbreviated financial statement approach to other disclosure documents required to be delivered to investors, including those prospectuses currently required to include financial statements. While the transactional context of these documents and the use of the information as a basis for an investment decision present additional issues to those raised by the annual report, the Commission is interested in commenters' views as to whether the concept of allowing delivery of more summary information, while assuring that more extensive information is available in Commission filings and promptly upon request from the company, should be extended throughout the Commission's disclosure scheme. This model already currently exists in the distinction between the annual report required to be delivered to shareholders and the Form 10–K annual report required to be filed with the Commission. Registration on Form S–2 similarly uses this model.

The Commission also solicits comment as to the extent to which the availability of financial disclosure documents through electronic media warrants a reassessment of the regulatory framework that is based on delivery of disclosure documents in hard copy to investors.[38] By mid-1996, most registrants under the Securities Act, Exchange Act and Investment Company Act will be required to file their disclosure documents electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval (''EDGAR'') system.[39] Public access to these reports is currently available through a wide variety of private vendors, as well as through the Commission.[40] Today, it is estimated

[33] *Related Party Disclosures.*

[34] *Financial Reporting Entities and Reorganization Under the Bankruptcy Code.*

[35] Rule 5–02.31(b) of Regulation S–X [17 CFR 210.5–02.31(b)]. *See also* Accounting Series Release 25 and Staff Accounting Bulletins 78 and 86, *Quasi-Reorganizations.*

[36] *Disclosure of Information about Financial Instruments with Off-Balance Sheet Risk and Financial Instruments with Concentrations of Credit Risk, Disclosures about Fair Value of Financial Instruments, and Disclosure about Derivative Financial Instruments and Fair Value of Financial Instruments,* respectively.

[37] A draft of a Final Statement on stock compensation has been sent to the FASB's Stock Compensation Task Force and other interested persons for review and comment. FASB hopes to issue a Final Statement in July.

[38] In recognition of developments in electronic media, the staff issued an interpretive letter to facilitate the use of electronic transmission to satisfy prospectus delivery requirements. *Brown & Wood* (Feb. 17, 1995). The Division of Corporation Finance staff, in addition to issuing the *Brown & Wood* letter, is considering generally delivery under the Securities Act of prospectuses through other non-paper media (*e.g.,* audiotapes, videotapes, facsimile, directed electronic mail, and CD ROMs). The staff anticipates submitting to the Commission in the near future recommendations intended both to facilitate compliance with the Securities Act's prospectus delivery requirements and to encourage continued technological developments of non-paper delivery media.

[39] To date, 6,250 Exchange Act registrants are filing on EDGAR, and 2,500 under the Investment Company Act. The remaining domestic registrants will be required to file on EDGAR by May 1996. Foreign issuers may file on EDGAR on a voluntary basis.

[40] For example, EDGAR filings are available through Dow Jones and Lexis/Nexis. One of the subscribers to the EDGAR data base has made it available on the Internet.

that more than 16% of the public has access through home computers to this information.[41] These developments have changed and will continue to change how investors access information about public companies, and provide a significant opportunity to enhance the efficacy and efficiency of the disclosure process under the federal securities laws.[42]

The manner in which the abbreviated financial statements scheme would apply to specified disclosure documents varies according to the nature of the document, as described in this section. In all cases, the rules would provide that the full financial statements would be deemed a part of the related disclosure document, so that liability for this information would remain unchanged.[43] Comment is requested generally on whether the proposed system of delivering abbreviated financial statements to investors and filing the full financial statements would benefit the investing public. Comment also is solicited as to whether issuers should be permitted to include abbreviated financial statements in each type of disclosure document covered by the proposed amendments.

1. Annual Reports to Shareholders

a. Abbreviated Financial Statements. Companies that are subject to the proxy and information statement rules because they have a class of securities registered under Section 12 of the Exchange Act[44] must furnish shareholders an annual report containing specified information, including financial statements.[45] Under the proposal, registrants could choose to use abbreviated financial statements in their annual reports to shareholders. If the Form 10–K or 10–KSB containing the full financial statements was on file with the Commission, the copy of the annual report to shareholders would simply be submitted to the Commission, as is currently the case. If the Form 10–K or 10–KSB was not yet on file, the annual report to shareholders submitted to the Commission would have to be accompanied by a copy of the full financial statements. This is to assure the availability of the full financial statements in the Commission's public files at the time the annual report to shareholders with the abbreviated financial statements is being used.

Under the proposed rules, registrants using abbreviated financial statements in their annual report to shareholders would not be able to incorporate the financial statements from such annual report, but would have to file the full financial statements in their Form 10–K or 10–KSB report filed with the Commission. This would assure that investors would be able to easily access the complete financial statements in Commission filings.[46] Comment is requested as to whether registrants should be permitted to incorporate the abbreviated financial statements from the annual report to shareholders and include the additional information (*i.e.*, the omitted notes and the accountant's report on the full financial statements) in the Form 10–K or 10–KSB when filed.

b. Summary Annual Reports. Another alternative to simplifying the annual report requirements is the summary annual reporting concept that was the subject of the 1983 FERF Report. The summary annual report discussed in the FERF Report contemplated use of condensed financial statements without traditional financial statement notes. Certain information customarily contained in the notes, *e.g.* material accounting changes, significant acquisitions and dispositions, material contingencies, specified information on significant equity investees, would be included in the summary annual report under the Disclosure Guidelines outlined in the FERF Report. The summary report would not include the full MD&A, or the full stock price and dividend information and business description currently mandated by Rules 14a–3 or 14c–3.[47] Under the summary annual report approach, registrants would still be required to deliver financial information to shareholders annually. The rules could provide significantly greater flexibility as to the form and content of such reports and could expressly permit the use of condensed financial statements. The disclosure guidelines included in the FERF Report are set forth in Appendix B to this release.

c. Rescission of the Rules Governing the Annual Report to Shareholders. Rescission of the rules governing the annual report to shareholders would give registrants the most flexibility in determining how to communicate directly with their shareholders, subject to requirements of state corporate law and any trading market for the registrant's securities.[48]

The Exchange Act's periodic reporting provisions require the filing of annual and quarterly reports with the Commission. The requirement to deliver specified information, including audited financial statements, was implemented as part of the Commission's proxy rules. Registrants not subject to the Commission's proxy rules, such as foreign private issuers, registrants subject to Section 15(d)[49] reporting requirements, or registrants with only Section 12 registered debt securities, are not required to deliver annual reports to their investors.

In adopting the requirement to deliver audited financial statements and other specified information to shareholders prior to their voting in the annual election of directors, the Commission noted that existing common practice was to deliver this information. However, in formalizing the practice, it reaffirmed its belief that the information was important to enable investors ''to appraise the financial position and results of operations of the issuer.''[50]

Comment is requested as to whether the Commission should continue to require a registrant to deliver to its shareholders full financial statements, MD&A and the other information specified by Rules 14a–3 and 14c–3 in advance of the annual election of directors. If not, should the rules be amended to provide for a more streamlined disclosure using the model of abbreviated financial statements proposed today, the summary annual report concept outlined in the FERF report or some other simplification approach? Should the current requirement simply be rescinded and registrants permitted total discretion to determine the form and content of their annual report to shareholders, subject to the requirements of state corporate law

[41] Gates, Bill, ''In Praise of a Free Market Approach,'' *The Guardian* (June 22, 1995) at 7.

[42] *See* Langevoort, Donald C., ''Information Technology and the Structure of Securities Regulation, *Harvard Law Review* (February 1985), and Arnold, Jerry L., Greene, Edward F., and Keller, Earl C., ''The Impact of Electronic Technology at the S.E.C.: An Analysis of Policies Governing the Content and Dissemination of Corporate Disclosures'' (Financial Executives Institute and SEC and Financial Reporting Institute, 1987).

[43] Proposed Rules 435(c); 13e–3(e)(4)(iv); 13e–4(d)(1)(*i*); 14a–16; 14c–8 and 14d–1(b)(3)(iii).

[44] 15 U.S.C. 78*l*.

[45] Exchange Act Rules 14a–3 and 14c–3.

[46] As noted above, full, rather than abbreviated, financial statements would be required in Forms 10–K, 10–KSB, and 20–F. Technical revisions would be made to Forms 10–K and 10–KSB.

[47] A number of companies have used a variation of the summary annual report approach following staff interpretative letters issued in 1987. See *General Motors* (avail. January 20, 1987) and *McKesson Corp*. (avail. May 15, 1987). Under the interpretative guidance in the letters, a registrant may provide summary financial information in the annual report to shareholders, provided the full financial statements are otherwise delivered to shareholders, for example, as an attachment to the annual meeting proxy statement.

[48] Applicable state law and self-regulatory organization rules may require that certain specified financial information be furnished to security holders on an annual basis.

[49] 15 U.S.C. 78o(d).

[50] Exchange Act Release No. 8000 (Dec. 5, 1966) [31 FR 15750].

and stock exchange or NASDAQ listing requirements and antifraud prohibitions? If the requirements were rescinded, do commenters expect that registrants would discontinue delivery of annual reports if not subject to other requirements to do so? If the annual report rules were amended to allow use of abbreviated financial statements or summary annual reports or rescinded altogether, should the rules require registrants to provide a mechanism by which shareholders could make a standing request for the company to deliver annually a copy of the Form 10–K or 10–KSB report? If the annual report rules were rescinded, do commenters expect that those registrants delivering annual reports would include full financial statements, or would they provide summary financial data? Are there other alternatives to streamlining the annual report to shareholders?

2. Securities Act Disclosure Documents

Under the proposed amendments, the Part I item in each Securities Act registration form [51] requiring the registrant to include financial statements in the prospectus delivered to investors would be amended to provide eligible registrants with the option of including in the prospectus either full or abbreviated financial statements. Registrants choosing to include full financial statements in the prospectus would deliver to investors and file with the Commission the same information, in the same format, that they deliver and file under current requirements.

For registration statements on forms not permitting incorporation by reference of financial statements, registrants choosing to include abbreviated financial statements in the prospectus would put the information required by proposed Item 305 in Part I. The full financial statements would be filed in Part II of the registration statement,[52] but not delivered to investors except upon specific request. If requested, a copy of the full financial statements would have to be provided. Comment is requested as to whether, in order to avoid unnecessary duplication in filing, the proposal should permit a registrant either to file the full financial statements in their entirety in Part II, or to file only the remaining financial information—that is, the independent accountant's report on the full financial statements plus the notes omitted from the disclosure document, which, taken together with the abbreviated financial statements, would constitute the full financial statements meeting the requirements of GAAP and Regulation S–X. This latter option would be feasible only if the omitted notes were grouped so the presentation would be clear when the abbreviated financial statements were considered together with the omitted notes. If the option to file only the remaining financial information in Part II were adopted, should delivery of the remaining financial information suffice in the event of a request from a potential investor? Comment is solicited on whether the option to file only the remaining financial information would be useful to registrants, whether the presentation would be clear to members of the financial community obtaining and using this information, and whether such a presentation would be permitted by existing auditing standards.

In addition, comment is solicited on whether, rather than requiring full financial statements to be physically filed, in whole or in part, in Part II of the registration statement, incorporation by reference should be permitted. If the registrant had previously filed full financial statements for the same period as required in the related disclosure document, for example in a report on Form 10–K, would it be acceptable to provide this information by incorporation by reference, which is currently not permitted for any of the ''long form'' registration statements?

Registrants eligible to use short form registration statements providing for the incorporation by reference of previously filed documents [53] also could elect to use abbreviated financial statements.[54] In general, full financial statements would not be required to be filed in Part II of these forms, since these would be incorporated by reference from the registrant's periodic Exchange Act filings. Where restated financial statements of the registrant, or financial statements of businesses acquired or to be acquired, are not incorporated by reference from a previously filed report and therefore required to be included in a prospectus, abbreviated financial statements of those entities could be included in the prospectus and delivered to investors.[55] The full financial statements would be required to be filed with the Commission in Part II of the registration statement, and delivered to investors upon request.[56]

With respect to securities registered on Form S–4 or F–4, registrants and companies being acquired [57] would have the same options regarding delivery of abbreviated financial statements described above, depending on whether they furnish the Form S–1, S–2, or S–3 level of disclosure.[58] Comment is solicited on whether the use of abbreviated financial statements is appropriate in the context of a business combination. It appears that streamlining the financial information presented to investors would be particularly useful in this context, where the information for the registrant and other entities can grow quite voluminous. Comment also is solicited on whether the current requirement in Forms F–4 and S–4 that, if incorporation by reference is used, the prospectus must be sent to security holders no later than 20 business days prior to the meeting or the date on which action is to be taken should also

[51] Part I of Securities Act registration statements sets forth the information required in the prospectus.

[52] Part II of Securities Act registration statements sets forth the information not required in the prospectus. A new Part II Item would be added to each of the forms to require filing of the full financial statements with the Commission.

[53] Forms S–2, S–3, F–2, and F–3.

[54] Since Form S–3 and F–3 registrants generally incorporate their financial statements into the prospectus by reference from Exchange Act reports and are not required to deliver this information, they ordinarily would not use abbreviated financial statements, but the forms would be amended so this option would be available.

[55] Forms S–2, F–2, S–3, F–3, S–4 and F–4 require financial statements of the registrant to be restated if: (1) there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) where one or more business combinations accounted for by the pooling of interests method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) [17 CFR 210.11–01(b)]; or (3) in certain situations involving a material disposition of assets not in the ordinary course of business.

[56] With respect to Form S–2, in addition to the options currently available, a registrant not choosing to deliver its Form 10–K could elect to include abbreviated financial statements in the prospectus, or instead choose to deliver with the prospectus its latest annual report to security holders that included abbreviated financial statements. With respect to Form S–8, documents required to be delivered upon request, such as the annual report to security holders, could contain abbreviated financial statements. No financial statements are required in the prospectus or registration statement other than those incorporated by reference. Accordingly, this form would not be amended, except for a technical provision in Part II to assure that the full financial statements are incorporated by reference (proposed revision to Item 3(a) of Form S–8).

[57] *See* Part II.C below for further discussion of Forms S–4 and F–4.

[58] Pursuant to Item 17(b) of Form S–4, if the company being acquired is not subject to the reporting requirements of either Section 13(a) [15 U.S.C. 78m(a)] or 15(d) of the Exchange Act, or, because of Section 12(i) [15 U.S.C. 78*l*(i)] of the Exchange Act, has not furnished an annual report to security holders pursuant to Exchange Act Rule 14a–3 or 14c–3 for its latest fiscal year, the registrant would furnish financial statements as would have been required to be included in a Rule 14a–3 or 14c–3 annual report except that the financial statements need not be audited in certain circumstances.

apply when abbreviated financial statements are being used.[59]

The proposals would apply to filings relating to roll-up transactions, whether or not involving a Form F–4 or S–4.[60] Comment is solicited on whether abbreviated financial statements should be permissible in the roll-up context. Since roll-ups are subject to a 60 day solicitation period, investors desiring full financial statements would have the opportunity to send for them and consider them before making a voting or tendering decision.

Under the proposed amendments, abbreviated financial statements could be included by eligible issuers in offering statements on Form 1–A under Regulation A and furnished to purchasers of securities offered pursuant to Regulation D. Comment is solicited on whether it is appropriate to provide issuers conducting exempt offerings pursuant to Regulation A or D with the option to distribute abbreviated financial statements to investors, and whether such issuers would find this to be a useful option.

Since, under current requirements, Regulation D issuers are required to furnish financial statement information to purchasers, but are not required to file this information with the Commission, issuers opting to furnish abbreviated financial statements to purchasers would not be required to file the full financial statements with the Commission. They would, however, have to deliver the full financial statements to requesting purchasers. Comment is solicited as to whether Regulation D issuers choosing to distribute abbreviated financial statements to purchasers should have to file the full financial statements with the Commission, and if so, the method by which they should be filed. Specific consideration should be given to whether the fact that Regulation D issuers would not have to file the full financial statements with the Commission would impair the objectives of the proposed amendments.

3. Proxy and Information Statements

Registrants could use abbreviated financial statements in proxy and information statements requiring financial statements. The full financial statements would be appended to the proxy or information statement filed with the Commission and delivered to security holders only upon request.[61] It would not, however, be necessary to append the information if the full financial statements for the same period had previously been filed in the registrant's Form 10–K or 10–KSB and any Forms 10–Q or 10–QSB[62] necessary to provide interim financial disclosure. Proxy or information statements for mergers or other business combinations,[63] which permit incorporation by reference in a manner comparable to that in Form S–4 registration statements, could include abbreviated financial statements in the same manner as Form S–4.

4. Tender Offers and Going Private Transactions

Currently, the rules governing tender offers and going private transactions permit the delivery to investors of summary financial information, with full financial statements being filed with the Commission in the associated Schedule.[64] As proposed, abbreviated financial statements could be used for these transactions as well, whether financial statements are required in the disclosure document or included voluntarily. Comment is solicited on whether the eligibility requirements should vary depending on whether the financial statements involved are those of the bidder, the affiliate engaging in the transaction, or the subject company.

*C. Eligibility to Use Abbreviated Financial Statements*

As proposed, both reporting and non-reporting registrants would be permitted to include abbreviated financial statements in the specified disclosure documents delivered to investors, in lieu of full financial statements required by the applicable form, provided that two conditions are met. First, the report of the independent accountant on the full financial statements of the registrant must express an opinion that is unqualified as to scope of the audit and as to accounting principles used, and must not contain a disclaimer of opinion.[65] Second, a reporting registrant would have to be current in filing all of its Exchange Act reports at the time the abbreviated financial statements are delivered.[66] Comment is requested as to whether a further condition should be that an issuer filing reports under the Exchange Act must have timely filed all required reports during the most recent 12 months, or since becoming subject to the Exchange Act, whichever is shorter.

Comment also is requested as to whether use of the proposed rule should be limited to companies that are subject to Section 13(a) or 15(d) of the Exchange Act, precluding the use of abbreviated financial statements in initial public offerings. If so, should the rule contain a reporting history requirement, *e.g.*, 12 or 18 months? Comment also is requested as to whether other eligibility criteria should be established, such as size of the issuer or other condition. Comment is further requested on whether eligibility should be limited based on certain financial statement attributes.

In addition to financial statements of the registrant, disclosure documents may be required to include financial statements of other entities, such as a business acquired or to be acquired, 50 percent or less owned entity accounted for by the equity method, or guarantor.[67] The proposed rules would base eligibility for the use of abbreviated financial statements of such entities on a combination of: (1) the registrant's eligibility, *i.e.*, the registrant would have to have filed with its full financial statements an acceptable independent accountant's report and be current in its filing of Exchange Act reports;[68] and (2) the acceptability of the independent accountant's report on the other entity's full financial statements.[69] Whether the other entity had filed all required Exchange Act reports would not affect the registrant's ability to include abbreviated financial statements of that entity. The same criteria would apply to the use of abbreviated financial statements of the company being acquired in a registration statement on Form S–4 or F–4 or a merger proxy or information statement.

Comment is requested as to whether this eligibility standard is appropriate regarding financial statements of a company other than the registrant. Comment also is requested concerning

[59] General Instruction A.2 to both Forms F–4 and S–4.

[60] Item 901(c) of Regulation S–K [17 CFR 229.901(c)].

[61] This appended information would be publicly available unless the related proxy or information statement was the subject of a confidential treatment request.

[62] 17 CFR 249.308a, 249.308b.

[63] Item 14 of Schedule 14A.

[64] *See* Rules 13e–3, 13e–4, and 14d–6; Schedules 13E–3 [17 CFR 240.13e–100], 13E–4 [17 CFR 240.13e–101], and 14D–1 [17 CFR 240.14d–100].

[65] Proposed Item 305(a)(1) of Regulation S–K.

[66] Proposed Item 305(a)(2) of Regulation S–K.

[67] Rules 3–05, 3–09 and 3–10 of Regulation S–X [17 CFR 210.3–05, 3–09 and 3–10] and Item 310(c) of Regulation S–B [17 CFR 228.310(c)] require the financial statements of a business acquired or to be acquired, 50 percent or less owned entity accounted for by the equity method, or guarantor to be included in registrants' disclosure documents in certain circumstances.

[68] Proposed Item 305(a) of Regulation S–K.

[69] Proposed Item 305(d) of Regulation S–K. Financial statements of other entities may be included in Commission filings in certain circumstances other than those specified by Rules 3–05, 3–09 and 3–10 of Regulation S–X. The proposed rules also would permit the use of abbreviated financial statements of those entities, provided that all conditions for their use are otherwise met.

whether the ability of a registrant to include abbreviated financial statements of a third party should be based solely on the registrant's eligibility, or whether different or additional eligibility criteria should be established. For example, should a Form S–4 registrant be permitted to include abbreviated financial statements of a target company if the target company has an acceptable independent accountant's report on its full financial statements but the registrant does not satisfy the abbreviated financial statement eligibility criteria?

Investment companies registered under the Investment Company Act of 1940,[70] and business development companies, a type of investment company with securities registered under Section 12 of the Exchange Act, would not be eligible to use abbreviated financial statements. The Commission does not believe that it is necessary to extend the proposed amendments to these types of companies because they generally have fewer note disclosures. As proposed, the amendments would allow insurance companies that are the issuers of variable life insurance contracts and register on Form S–6 under the Securities Act to provide abbreviated financial statements in the prospectus for these types of securities. Insurance companies that issue variable annuity contracts and register on Forms N–3 [71] or N–4 [72] would continue to be required to provide their full financial statements, which currently are made available to investors only upon request in a Statement of Additional Information. The Commission requests comment on whether insurance companies should be permitted to use abbreviated financial statements in connection with the sale of variable annuity contracts.

*D. Foreign Issuers*

Pursuant to the proposed amendments, foreign issuers that meet the eligibility requirements would be able to elect to include abbreviated financial statements in delivered disclosure documents. This would include Canadian issuers using the multijurisdictional disclosure system (''MJDS'').[73] As is currently the case with full financial statements of foreign issuers, the informational content of the abbreviated financial statements of foreign issuers would have to be substantially similar to the abbreviated financial statements of domestic issuers [74] and would be provided for the periods specified by Rule 3–19 of Regulation S–X.[75]

As with full financial statements of foreign issuers, the abbreviated financial statements could be prepared either on the basis of U.S. GAAP or on a comprehensive body of accounting principles other than U.S. GAAP.[76] If the abbreviated financial statements were prepared on a basis other than U.S. GAAP, the required note disclosures would include the same matters as those required in the abbreviated financial statements of domestic issuers, and an additional note containing the quantitative reconciling information required by Item 17(c) or Item 18(c), as applicable, of Form 20–F also would be provided. However, a foreign issuer that follows Item 17 of Form 20–F in preparing its full financial statements would omit from the notes to the abbreviated financial statements any disclosures that are not required by Item 17, even if those disclosures otherwise would be required by proposed Item 305. Comment is solicited as to whether a more abbreviated or otherwise different reconciliation should be required.

*E. Use of Abbreviated Financial Statements to be at Registrant's Option*

Under the proposed amendments, a registrant would have the option whether or not to include abbreviated financial statements each time it prepared one of the specified disclosure documents for delivery to investors, provided that the registrant met the eligibility criteria for using abbreviated statements described above. For example, a registrant could elect to include abbreviated financial statements in its annual report to shareholders delivered to investors, but decide to include full financial statements in a Securities Act prospectus delivered a few months later, or vice versa. The registrant also might choose to include abbreviated financial statements relating to its existing business in a proxy statement and full financial statements relating to an acquired business in the same proxy statement, or vice versa.

However, with respect to a particular disclosure document, for purposes of comparability and consistency, the proposed rules would require the interim financial statements of a particular entity to be presented in the same manner as the annual financial statements of that entity. For example, if a prospectus included abbreviated annual financial statements of the registrant, the interim financial statements of the registrant included in the same prospectus also would have to be abbreviated.[77]

Comment is solicited as to whether registrants should be able to include abbreviated financial statements in some of the specified delivery documents and not others, or whether they should be required to make an election and consistently include abbreviated or full financial statements in their delivery documents. Comment also is solicited as to whether interim financial statements of a particular entity should be presented in the same manner as the entity's annual financial statements. Additional comment is requested on whether it would be appropriate for a registrant to select one option with respect to its own financial statements and a different one regarding the financial statements of another entity whose financial statements are required in the disclosure document.

*F. Report of the Independent Accountant on the Abbreviated Financial Statements*

Proposed Item 305 would require the abbreviated financial statements delivered to investors to be accompanied by a report of the independent accountant. The rule would specify that the report must contain: (1) a statement that the abbreviated financial statements were examined in connection with an audit of the registrant or other entity's full financial statements; (2) a complete description of the opinion rendered by the independent accountant on the full financial statements, including any explanatory language included in the report on the full financial statements;

[70] 15 U.S.C. 80a–1, *et seq.*

[71] 17 CFR 274.11b.

[72] 17 CFR 274.11c.

[73] In order to provide Canadian issuers using the MJDS with the same flexibility to deliver disclosure documents with abbreviated financial statements as all other issuers, the Commission proposes to amend the MJDS registration forms to permit eligible Canadian issuers to include abbreviated financial statements in MJDS disclosure documents delivered to U.S. investors, notwithstanding the Canadian requirements that would otherwise apply.

[74] *See* Items 17 and 18 of Form 20–F.

[75] 17 CFR 210.3–19. Proposed Item 305(f)(2) of Regulation S–K.

[76] Proposed Item 305(f)(1) of Regulation S–K.

[77] Proposed Item 305(b)(5)(i) of Regulation S–K. While interim financial statements prepared under existing rules (Article 10 of Regulation S–X) omit substantially all footnote disclosures required under GAAP, disclosures required to be included under Article 10 differ in certain respects from those proposed for annual abbreviated financial statements. For example, Article 10 calls for disclosure of material changes in the status of long-term contracts, while Item 305(b)(3) does not. If issuers were not required to conform the basis of presentation of annual and interim financial statements, certain matters required to be disclosed in interim financial statements would be included in a disclosure document that would not have been disclosed in the abbreviated annual financial statements, had the matter occurred during the most recently completed fiscal year.

and (3) a statement of the independent accountant's opinion that the content of the abbreviated financial statements complies with Item 305.[78] It is contemplated that an independent accountant's report satisfying the requirements of proposed Item 305 would fall within the auditing guidance contained in SAS No. 62,[79] which governs reporting on financial statements prepared on a basis of accounting prescribed in a regulatory provision that results in an incomplete presentation but one that is otherwise in conformity with GAAP. Comment is solicited as to whether a report in the form prescribed by proposed Item 305 is appropriate and sufficient, or whether additional or different statements or explanations would be desirable. Also, comment is requested as to whether auditing guidance other than SAS No. 62 would be applicable to a report on abbreviated financial statements, or whether the reporting objectives under the proposed rule would require the accounting profession to develop new guidance governing the form of such report and procedures necessary to its issuance.

*G. Abbreviated Interim Financial Statements*

Proposed Item 305 also would state that, like full financial statements, abbreviated financial statements required with respect to an interim period should be prepared in conformity with GAAP and Regulation S–X,[80] except that note disclosures to the abbreviated interim financial statements would be limited only to any of the thirteen items set forth above not previously disclosed in the abbreviated annual financial statements. As currently required in interim financial statements, loss contingencies would have to be disclosed even though a significant change since year end may not have occurred.[81]

*H. Delivery of Full Financial Statements to Requesting Investors*

Registrants choosing to include abbreviated financial statements in disclosure documents delivered to investors would have to furnish the full audited financial statements and the independent accountant's report thereon to any person making a written or oral request, at no cost to the person making the request.[82] Comment is solicited on whether registrants should be permitted to send only the remaining financial information rather than the complete full financial statements. Which format would be more useful to investors? Comment also is solicited on whether a means should be provided that would enable security holders who receive abbreviated financial statements in an annual report and request delivery of the full financial information also to indicate that they would like to receive automatically full financial information or the entire Form 10–K or 10–KSB in future years.

As proposed, if Form 10–K (and/or Form 10–Q) financial statements were delivered to investors in compliance with the delivery requirement, registrants could deliver only the portion of those reports that contain the financial statements.[83] The delivered information would have to be for the same periods covered by the abbreviated financial statements.[84]

A statement setting forth the registrant's obligation to furnish the full financial statements and the name, address and telephone number of the person designated by the registrant to receive requests would have to be included in the disclosure document.[85]

The registrant would be required to deliver the requested information by a means reasonably calculated to result in the information reaching the requesting investor within five business days from the date the request is received. Comment is solicited as to whether a delivery period should be specified in the rule, and if so, whether the proposed time period is appropriate, both from an investor's and registrant's perspective, or should it be shorter or longer. Should the rule simply require prompt delivery, with promptness being determined according to the context? Comment also is solicited as to whether the delivery period should be shorter than five business days when the abbreviated financial statements are delivered to investors in connection with certain types of transactions, *e.g.*, mergers and exchange offers, where the investor does not initiate the transaction, has no control over the timing of the transaction, and will be affected financially by the transaction even if the investor does not act. Commenters also should address whether the delivery period should be longer when the requested delivery is not in connection with any specific transaction.

Further comment is solicited on whether the rule should specify the appropriate means of delivery, and, if so, the means that should be specified. Finally, comment is requested as to whether availability of the full financial statements by public filing at the Commission, and from the registrant upon investor request, is sufficiently practical, timely and effective for meeting investor requirements.

*I. Safe Harbor Provisions*

The Commission recognizes that the utility of the abbreviated financial statement proposal will depend on companies' perception of their vulnerability to liability for the omission of certain financial statement notes pursuant to the provisions of proposed Item 305.[86] The proposed rules, therefore, include a safe harbor provision stating that disclosure contained in disclosure documents will not be materially misleading or omit to state a material fact on the basis of the exclusion from the abbreviated financial statements of the information permitted to be excluded from the financial statement notes pursuant to proposed Item 305. The safe harbor would cover cases where, for example, an investor claimed that the information included in the abbreviated financial statements in the delivered document failed to include information that was in the full financial statements included in the filed document. Comment is requested as to both the efficacy of the proposed safe harbor provisions and their appropriateness.

As discussed above in Part II.A, proposed Item 305 would not provide for inclusion of note disclosures regarding matters other than those specified by the Item,[87] although comment is solicited on whether registrants should be permitted to add discretionary note disclosures. As proposed, the safe harbor would not be available to issuers that included additional notes. Commenters are asked to address whether the protection of the safe harbor provisions should be available to registrants who add

[78] Proposed Item 305(b)(4) of Regulation S–K.

[79] *Special Reports.*

[80] Article 10 of Regulation S–X specifies the content of interim financial statements.

[81] Proposed Item 305(b)(5)(ii) of Regulation S–K.

[82] Proposed Item 305(e) of Regulation S–K.

[83] *Id.*

[84] *Id.*

[85] With respect to delivery of annual reports or proxy or information statements that include abbreviated financial statements, in addition to setting forth this statement, registrants would continue to be required to provide the Rule 14a–3(b)(10) [17 CFR 240.14a–3(b)(10)] undertaking to provide persons from whom proxy authority is solicited with a Form 10–K or 10–KSB upon written request.

[86] Safe harbors with respect to the omission of notes from abbreviated financial statements would be provided in proposed Securities Act Rule 435 and Exchange Act Rules 13e–3, 13e–4, 14a–16, 14c–8 and 14d–1. These rules also would provide that the omitted information is deemed part of the disclosure document.

[87] This would not preclude the registrant from discussing such information in the delivered disclosure document, but only cause that discussion to be set forth outside of the abbreviated financial statements.

discretionary note disclosures, and if so, should the protection extend only to the note disclosures specified by Item 305, or to the voluntarily included notes as well?

### III. Request for Comment

Any interested person wishing to submit written comments on the proposed amendments that would permit abbreviated financial statements to be included in disclosure documents, as well as other matters that might have an impact on the proposed amendments, is requested to do so. Comment is solicited from the point of view of investors, registrants, accountants and financial analysts. Comment is specifically requested on the extent to which the information currently contained in notes to the financial statements is used by investors to conduct a thorough analysis of a registrant's financial condition and future prospects. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse impact on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[88]

### IV. Cost-Benefit Analysis

To evaluate fully the costs and benefits associated with the proposals, the Commission requests commenters to provide views and empirical data as to the costs and benefits associated therewith. The proposals are expected to benefit registrants by allowing more flexibility in accounting and lowering costs associated with printing and mandated across the board delivery of information that may be used directly only by a portion of investors. Full financial statements of these entities will continue to be required in Commission filings. Furthermore, the proposals are expected to make financial statement note disclosures more useful and meaningful to the individual investor.

### V. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the proposed amendments are intended to respond to concerns regarding the increasing volume and complexity of financial information that is included in prospectuses and other documents delivered to investors. The proposed amendments are intended to make the financial information presented to investors more readable and understandable by streamlining the note disclosure and focusing on matters of particular significance to investors.

As discussed more fully in the analysis, some of the registrants that the proposed amendments would affect are small entities, as defined by the Commission's rules. The proposed amendments would decrease the cost for all issuers choosing to rely on them, including small businesses.

The analysis discusses several possible alternatives to the proposed amendments including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. Given the fact that small business issuers would receive a favorable impact from the proposed rules and that use of the proposed rules would be at the issuer's option, the Commission does not believe that any of the alternatives are preferable at this time.

Comments are encouraged on any aspect of this analysis. A copy of the analysis may be obtained by contacting William B. Haseltine, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

### VI. Statutory Basis

The amendments to Forms 1–A, S–1, S–2, S–3, S–4, S–6, S–8, S–11, SB–1, SB–2, F–1, F–2, F–3, F–4, F–7, F–8, F–9, F–10 and F–80 and new Rule 435 are being proposed pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act. The amendments to Rules 13e–3, 13e–4, 14a–3, 14c–3, 14d–1 and 14d–6, Schedules 13E–4F, 14A, 14C, 14D–1F and 14D–9F and Forms 10–K and 10–KSB and new Rules 14a–16 and 14c–8 are being proposed pursuant to Sections 12, 13, 14 and 23(a) of the Exchange Act.

### List of Subjects in 17 CFR 228, 229, 230, 239, 240 and 249

Accountants, Accounting, Reporting and recordkeeping requirements, and Securities.

### Text of the Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending Part 228 by adding § 228.305 to read as follows:

### § 228.305 (Item 305) Abbreviated financial statements.

**Note:** The term *full financial statements* as used throughout this Item refers to financial statements filed with the Commission meeting the requirements of Item 310 of Regulation S–B (§ 228.310).

(a) *Eligibility.* A small business issuer, other than an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] or a business development company under that Act, that meets the following conditions may furnish abbreviated financial statements in a document to be furnished to investors or security holders, as permitted by the Form or Schedule governing the requirements of that document:

(1) The small business issuer has filed with its full financial statements an independent accountant's report that complies with the requirements of Article 2 of Regulation S–X (17 CFR 210.2) and does not contain a qualification as to scope of audit, or as to accounting principles used, or a disclaimer of opinion. However, if the full financial statements of the small business issuer filed with the Commission are not required to be audited, neither this condition nor the requirement to provide an independent accountant's report pursuant to paragraph (b)(4) of this Item shall apply; and

(2) If the small business issuer is a reporting company, all reports due must have been filed.

(b) *Information to be included in abbreviated financial statements.* Abbreviated financial statements shall include the following information:

(1) A balance sheet as of the end of the most recent fiscal year and statements of income and cash flows for each of the two most recent fiscal years prepared in conformity with accounting principles generally accepted in the United States (''U.S. GAAP''), except that note disclosures specified by U.S. GAAP shall not be included unless specified in paragraph (b)(3) of this Item. The face of the financial statements shall include a prominent

[88] 15 U.S.C. 78w(a).

statement identifying them as ''abbreviated financial statements.''

(2) A statement of changes in stockholders' equity prepared in conformity with Item 310(a) of Regulation S–B (§ 228.310(a)) for each of the two most recent fiscal years.

(3) *Notes to the financial statements.* The disclosures required in the notes to the abbreviated financial statements shall be an extraction of all note disclosures included in the small business issuer's full financial statements that are responsive to the matters specified in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item. To facilitate the extraction of all disclosures responsive to the specified matters, the primary authoritative pronouncements concerning the specified matters are identified in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item. The term ''related pronouncements'' as used in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item refers to pronouncements constituting U.S. GAAP as defined in Statement of Auditing Standards (''SAS'') No. 69 that requires disclosure regarding the matter specified for disclosure in the abbreviated financial statements. The notes shall disclose the following:

(i) *Basis of presentation.* The small business issuer shall state that the abbreviated financial statements have been prepared using U.S. GAAP for measurement and classification. The registrant also shall state that substantially all note disclosures necessary for a fair presentation under U.S. GAAP have been omitted, and that the note disclosures are limited to those matters specified by Commission rules for inclusion in abbreviated financial statements. Additionally, the small business issuer shall state that the note disclosures comply with Commission rules for presentation of abbreviated financial statements. A reference to the complete disclosures in the full financial statements shall be provided.

(ii) *Accounting policies.* The small business issuer shall provide a description of all significant accounting policies used in the preparation of the financial statements. Disclosure of accounting policies shall identify and describe the accounting principles followed by the reporting entity and the methods of applying those principles that materially affect the determination of financial position, cash flows or results of operations, as specified by Accounting Principles Board (''APB'') Opinion No. 22 and related pronouncements.

(iii) *Changes in accounting principle.* The small business issuer shall disclose the nature of, and justification for, a change in accounting principle, and the effects of the change, as specified by APB Opinion No. 20 and related pronouncements.

(iv) *Restatements and reclassifications.* The small business issuer shall disclose the following matters:

(A) The nature and effects of a correction of an error in previously issued financial statements, as specified by APB Opinion No. 20 and related pronouncements.

(B) The nature and reasons for a change in the reporting entity, and effects of the change, as specified by APB Opinion No. 20 and related pronouncements. Combinations of entities under common control and similar reorganizations described in APB Opinion No. 16 and related pronouncements shall be considered changes in the reporting entity for purposes of this item.

(C) The nature and effects of reclassifications materially affecting amounts reported in previously issued financial statements.

(v) *Changes in accounting estimate.* The small business issuer shall disclose the nature and effects of a change in accounting estimate, as specified by APB Opinion No. 20 and related pronouncements.

(vi) *Business combinations.* The small business issuer shall disclose the following with respect to business combinations:

(A) The nature of business combinations accounted for as a pooling of interests and the disclosures of the effects of the business combinations, as specified by APB Opinion No. 16 and related pronouncements.

(B) The nature of business combinations accounted for as a purchase and the disclosures specified by APB Opinion No. 16 and related pronouncements.

(vii) *Discontinued operations.* The small business issuer shall disclose the nature of discontinued operations and provide the quantitative disclosures of the effects of the discontinued operations, as specified by APB Opinion No. 30 and related pronouncements.

(viii) *Circumstances identified in explanatory language added to the independent accountant's standard report.* The small business issuer shall disclose the nature and effects of circumstances for which the independent accountant's report on the full financial statements includes explanatory language. These circumstances are identified in paragraph 11 of SAS No. 58. The notes shall include all disclosures regarding the matter considered necessary by the independent accountant in rendering an opinion on the full financial statements unqualified as to adequacy of disclosure. However, disclosure need not be provided where the explanatory language merely reports that the independent accountant's opinion is based in part on the work of another independent accountant. Disclosure shall be provided for explanatory paragraphs that emphasize a matter regarding the financial statements.

(ix) *Loss contingencies.* The small business issuer shall disclose the nature of loss contingencies and estimated amount or range of reasonably possible loss in excess of amounts accrued in the financial statements, as specified by Statement of Financial Accounting Standards (''SFAS'') No. 5 and related pronouncements. A statement that the amount or range of probable or reasonably possible loss cannot be reasonably estimated shall be included if applicable.

(x) *Events of default under credit agreements.* The small business issuer shall disclose the facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any material issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured. If a default or breach exists but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, the small business issuer shall state the amount of the obligation and the period of the waiver.

(xi) *Related party transactions.* The small business issuer shall disclose the nature of related party relationships, and a description of transactions, amounts and balances as specified by SFAS No. 57 and related pronouncements.

(xii) *Bankruptcies and quasi-reorganizations.* (A) *Bankruptcies.* Small business issuers entering into, operating under, or emerging from proceedings under the federal bankruptcy code during the most recent fiscal year shall provide all of the disclosures required by AICPA Statement of Position No. 90–7.

(B) *Quasi-reorganizations.* Small business issuers effecting a quasi-reorganization during the most recent fiscal year shall disclose the nature and effects of the quasi-reorganization.

(xiii) *Subsequent events.* The small business issuer shall disclose all events occurring subsequent to the date of the

most recent balance sheet for which disclosure was required in the full financial statements.

(4) *An independent accountant's report.* The report shall state that the abbreviated annual financial statements have been examined in connection with the audit of the full financial statements. The report shall state clearly the opinion of the independent accountant that the abbreviated financial statements comply with the requirements in paragraph (b) of this Item for presentation of abbreviated financial statements. The report shall describe the opinion rendered by the independent accountant on the full financial statements, including any explanatory language.

(5) *Abbreviated interim financial statements.* (i) Where interim financial statements of the registrant are required in a document that includes abbreviated annual financial statements of the registrant, those interim financial statements shall be abbreviated. Where interim financial statements of the registrant are required in a document that includes full annual financial statements of the registrant, those interim financial statements shall not be abbreviated.

(ii) Abbreviated interim financial statements shall be furnished for the same periods as prescribed by Item 310(b) of Regulation S–B (§ 228.310(b)). The abbreviated interim financial statements shall be prepared in conformity with generally accepted accounting principles, except that note disclosures required by generally accepted accounting principles shall not be included unless specified in paragraph (b)(3) of this Item. However, disclosures that would substantially duplicate the disclosure contained in the most recent annual abbreviated financial statements may be omitted, except that contingencies shall be disclosed pursuant to paragraph (b)(3)(ix) of this Item even though a significant change since year end may not have occurred. The abbreviated interim financial statements shall comply with all requirements of Item 310(b) of Regulation S–B governing classification of items on the face of the balance sheet, statement of income, and statement of cash flows.

(c) *Age of abbreviated financial statements at effective date of registration statement or mailing date of proxy statement.* Small business issuers shall update the abbreviated financial statements to cover the same periods as required pursuant to Item 310(g) of Regulation S–B (§ 228.310(g)).

(d) *Abbreviated financial statements of entities other than the registrant.* In those instances where full financial statements of businesses acquired or to be acquired are required by Item 310(c) of Regulation S–B (§ 228.310(c)), or full financial statements of other entities are required to be included in a small business issuer's filing with the Commission on a form that permits the abbreviation of financial statements, abbreviated financial statements may be furnished for those entities provided that the small business issuer meets the conditions in paragraph (a) of this Item and those entities meet the condition in paragraph (a)(1) of this Item. Abbreviated financial statements of businesses acquired or to be acquired shall be prepared in accordance with this Item for the respective periods specified by Item 310(c) of Regulation S–B. Where abbreviated financial statements of entities other than the small business issuer are furnished, full financial statements shall also be filed with the Commission as provided in the respective form requirements.

(e) *Delivery of full financial statements to requesting investors.* Small business issuers including abbreviated financial statements in disclosure documents shall deliver without charge to each person to whom the document is furnished, upon the written or oral request of such person and by a means reasonably calculated to result in the information reaching the requesting person within five business days from the date of the request, a copy of the small business issuer's full financial statements and the independent accountant's report thereon filed with the Commission for the same periods covered by the abbreviated financial statements. The small business issuer shall include a statement in bold face or otherwise reasonably prominent type in the disclosure document that the small business issuer will provide a copy of its full financial statements and the independent accountant's report thereon without charge to each person to whom the document is furnished, upon the written or oral request by such person, and shall state the name, address, and telephone number of the person (including title and department) to whom the request for full financial statements should be directed. If Form 10–KSB (17 CFR 249.310b) and/or Form 10–QSB (17 CFR 249.308b) financial statements are permitted to be furnished to requesting persons in satisfaction of the delivery requirement, only the portion of those reports containing the financial statements, and the independent accountant's report thereon, need be delivered.

(f) *Special provisions as to abbreviated financial statements for foreign private issuers.* (1) The abbreviated financial statements may be prepared according to U.S. GAAP, except that note disclosures shall be limited to those specified in paragraph (b)(3) of this item. Alternatively, such abbreviated financial statements may be prepared according to a comprehensive body of accounting principles other than U.S. GAAP. Where the abbreviated financial statements are prepared according to a comprehensive body of accounting principles other than U.S. GAAP, the disclosures specified by Item 18(c) of Form 20–F (17 CFR 249.220f) shall be furnished, except that note disclosures shall be limited to those specified in paragraph (b)(3) of this item. However, foreign private issuers that comply with Item 17 of Form 20–F rather than Item 18 may furnish the disclosure specified by Item 17(c) in the notes to the abbreviated financial statements. Where Item 17(c) permits the omission of a disclosure from the notes to the full financial statements, that disclosure shall not be included in the notes to the abbreviated financial statements even if specified for disclosure by paragraph (b)(3) of this Item.

(2) Abbreviated financial statements shall be provided for the periods specified by Rule 3–19 of Regulation S–X.

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. By amending Part 229 by adding § 229.305 to read as follows:

### § 229.305 (Item 305) Abbreviated financial statements.

**Note:** The term *full financial statements* as used throughout this Item refers to financial statements filed with the Commission meeting the requirements of Regulation S–X (17 CFR part 210).

(a) *Eligibility.* A registrant, other than an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*], or a business development company under

that Act, that meets the following conditions may furnish abbreviated financial statements in a document to be furnished to investors or security holders, as permitted by the Form or Schedule governing the requirements of that document:

(1) The registrant has filed with its full financial statements an independent accountant's report that complies with the requirements of Article 2 of Regulation S–X (17 CFR 210.2) and does not contain a qualification as to scope of audit or as to accounting principles used, or a disclaimer of opinion.

However, if the full financial statements of the registrant filed with the Commission are not required to be audited, neither this condition nor the requirement to provide an independent accountant's report pursuant to paragraph (b)(4) of this Item shall apply; and

(2) If the registrant is subject to the requirement to file reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)), it has filed all reports and other materials required to be filed by such requirements.

(b) *Information to be included in abbreviated financial statements.* Abbreviated financial statements shall include the following information:

(1) Balance sheets as of the end of each of the two most recent fiscal years and statements of income and cash flows for each of the three most recent fiscal years prepared in conformity with accounting principles generally accepted in the United States (''U.S. GAAP'') and Regulation S–X (17 CFR 210), except that note disclosures specified by U.S. GAAP and Articles 4, 5, 7, and 9 of Regulation S–X (17 CFR 210.4, 210.5, 210.7 and 210.9) shall not be included unless specified in paragraph (b)(3) of this Item. The abbreviated annual financial statements shall comply with all requirements of Regulation S–X governing classification of items on the face of the balance sheet, statement of income, and statement of cash flows, and shall include all disclosures required by Regulation S–X to be included on the face of the balance sheet, statement of income, and statement of cash flows. The face of the financial statements shall include a prominent statement identifying them as ''abbreviated financial statements.''

(2) A statement of changes in stockholders' equity prepared in conformity with Rule 3–04 of Regulation S–X (17 CFR 210.3–04) for each of the registrant's three most recent fiscal years.

(3) *Notes to the financial statements.* The disclosures required in the notes to the abbreviated financial statements shall be an extraction of all note disclosures included in the registrant's full financial statements that are responsive to the matters specified in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item. To facilitate the extraction of all disclosures responsive to the specified matters, the primary authoritative pronouncements concerning the specified matters are identified in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item. The term ''related pronouncements'' as used in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item refers to pronouncements constituting U.S. GAAP as defined in Statement of Auditing Standards (''SAS'') No. 69 that require disclosure regarding the matter specified for disclosure in the abbreviated financial statements. The notes shall disclose the following:

(i) *Basis of presentation.* The registrant shall state that the abbreviated financial statements have been prepared using U.S. GAAP for measurement and classification. The registrant also shall state that substantially all note disclosures necessary for a fair presentation under U.S. GAAP and Regulation S–X (17 CFR 210) have been omitted, and that the note disclosures are limited to those specified by Commission rules for inclusion in abbreviated financial statements. Additionally, the registrant shall state that the note disclosures comply with Commission rules for presentation of abbreviated financial statements. A reference to the complete disclosures in the full financial statements shall be provided.

(ii) *Accounting policies.* The registrant shall provide a description of all significant accounting policies used in the preparation of the financial statements. Disclosure of accounting policies shall identify and describe the accounting principles followed by the reporting entity and the methods of applying those principles that materially affect the determination of financial position, cash flows or results of operations, as specified by Accounting Principles Board (''APB'') Opinion No. 22 and related pronouncements.

(iii) *Changes in accounting principle.* The registrant shall disclose the nature of, and justification for, a change in accounting principle, and the effects of the change, as specified by APB Opinion No. 20 and related pronouncements.

(iv) *Restatements and reclassifications.* The registrant shall disclose the following matters:

(A) The nature and effects of a correction of an error in previously issued financial statements, as specified by APB Opinion No. 20 and related pronouncements.

(B) The nature and reasons for a change in the reporting entity, and effects of the change, as specified by APB Opinion No. 20 and related pronouncements. Combinations of entities under common control and similar reorganizations described in APB Opinion No. 16 and related pronouncements shall be considered changes in the reporting entity for purposes of this Item.

(C) The nature and effects of reclassifications materially affecting amounts reported in previously issued financial statements.

(v) *Changes in accounting estimate.* The registrant shall disclose the nature and effects of a change in accounting estimate, as specified by APB Opinion No. 20 and related pronouncements.

(vi) *Business combinations.* The registrant shall disclose the following with respect to business combinations:

(A) The nature of business combinations accounted for as a pooling of interests and the disclosures of the effects of the business combinations, as specified by APB Opinion No. 16 and related pronouncements.

(B) The nature of business combinations accounted for as a purchase and the disclosures specified by APB Opinion No. 16 and related pronouncements.

(vii) *Discontinued operations.* The registrant shall disclose the nature of discontinued operations and provide the quantitative disclosures of the effects of the discontinued operations, as specified by APB Opinion No. 30 and related pronouncements.

(viii) *Circumstances identified in explanatory language added to the independent accountant's standard report.* The registrant shall disclose the nature and effects of circumstances for which the independent accountant's report on the full financial statements includes explanatory language. These circumstances are identified in paragraph 11 of SAS No. 58. The notes shall include all disclosures regarding the matter considered necessary by the independent accountant in rendering an opinion on the full financial statements unqualified as to adequacy of disclosure. However, disclosure need not be provided where the explanatory language merely reports that the independent accountant's opinion is based in part on the work of another independent accountant. Disclosure shall be provided for explanatory

paragraphs that emphasize a matter regarding the financial statements.

(ix) *Loss contingencies.* The registrant shall disclose the nature of loss contingencies and estimated amount or range of reasonably possible loss in excess of amounts accrued in the financial statements, as specified by Statement of Financial Accounting Standards (''SFAS'') No. 5 and related pronouncements. A statement that the amount or range of probable or reasonably possible loss cannot be reasonably estimated should be included if applicable.

(x) *Events of default under credit agreements.* The registrant shall disclose the facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any material issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured. If a default or breach exists but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, the registrant shall state the amount of the obligation and the period of the waiver.

(xi) *Related party transactions.* The registrant shall disclose the nature of related party relationships, and a description of transactions, amounts and balances as specified by SFAS No. 57 and related pronouncements.

(xii) *Bankruptcies and quasi-reorganizations.* (A) *Bankruptcies.* Registrants entering into, operating under, or emerging from proceedings under the federal bankruptcy code during the most recent fiscal year shall provide all of the disclosures required by AICPA Statement of Position No. 90–7.

(B) *Quasi-reorganizations.* Registrants effecting a quasi-reorganization during the most recent fiscal year shall disclose the nature and effects of the quasi-reorganization.

(xiii) *Subsequent events.* The registrant shall disclose all events occurring subsequent to the date of the most recent balance sheet for which disclosure was required in the full financial statements.

(4) *An independent accountant's report.* The report shall state that the abbreviated annual financial statements have been examined in connection with the audit of the full financial statements. The report shall state clearly the opinion of the independent accountant that the abbreviated financial statements comply with the requirements in paragraph (b) of this Item for presentation of abbreviated financial statements. The report shall describe the opinion rendered by the independent accountant on the full financial statements, including any explanatory language.

(5) *Abbreviated interim financial statements.* (i) Where interim financial statements of the registrant are required in a document that includes abbreviated annual financial statements of the registrant, those interim financial statements shall be abbreviated. Where interim financial statements of the registrant are required in a document that includes full annual financial statements of the registrant, those interim financial statements shall not be abbreviated.

(ii) Abbreviated interim financial statements shall be furnished for the same periods as prescribed by Rules 3–01 and 3–02 of Regulation S–X (17 CFR 210.3–01 and 210.3–02). The abbreviated interim financial statements shall be prepared in conformity with generally accepted accounting principles and Article 10 of Regulation S–X (17 CFR 210.10), except that note disclosures specified by generally accepted accounting principles and Regulation S–X shall not be included unless specified in paragraph (b)(3) of this Item. However, disclosures that would substantially duplicate the disclosure contained in the most recent annual abbreviated financial statements may be omitted, except that contingencies shall be disclosed pursuant to (b)(3)(ix) of this Item even though a significant change since year end may not have occurred. The abbreviated interim financial statements shall comply with all requirements of Article 10 of Regulation S–X governing classification of items on the face of the balance sheet, statement of income, and statement of cash flows.

(c) *Age of abbreviated financial statements at effective date of registration statement or at mailing date of proxy statement.* Registrants shall update the abbreviated financial statements to cover the same periods as required pursuant to Rule 3–12 of Regulation S–X (17 CFR 210.3–12).

(d) *Abbreviated financial statements of entities other than the registrant.* In those instances where full financial statements of entities other than the registrant are required by Rule 3–05, 3–09 or 3–10 of Regulation S–X (17 CFR 210.3–05, 210.3–09, or 210.3–10), or are otherwise required to be included in a registrant's filing with the Commission on a form that permits the abbreviation of financial statements, abbreviated financial statements may be furnished for those other entities provided that the registrant meets the conditions in paragraph (a) of this Item and those other entities meet the condition in paragraph (a)(1) of this Item. Abbreviated financial statements of entities other than the registrant shall be prepared in accordance with this Item for the respective periods specified by Rule 3–05, 3–09 or 3–10 of Regulation S–X. Where abbreviated financial statements of entities other than the registrant are furnished, full financial statements shall also be filed with the Commission as provided in the respective form requirements.

(e) *Delivery of full financial statements to requesting investors.* Registrants including abbreviated financial statements in a disclosure document shall deliver without charge to each person to whom the document is furnished, upon the written or oral request of such person and by a means reasonably calculated to result in the information reaching the requesting person within five business days from the date of the request, a copy of the full financial statements and the independent accountant's report thereon filed with the Commission for the same periods covered by the abbreviated financial statements. The registrant shall include a statement in bold face or otherwise reasonably prominent type in the disclosure document that the registrant will provide a copy of its full financial statements and the independent accountant's report thereon without charge to each person to whom the document is furnished, upon the written or oral request of such person, and shall state the name, address, and telephone number of the person (including title and department) to whom the request for full financial statements should be directed. If Form 10–K (17 CFR 249.310) and/or Form 10–Q (17 CFR 249.308a) financial statements are permitted to be furnished to requesting persons in satisfaction of the delivery requirement, only the portion of those reports containing the financial statements, and the independent accountant's report thereon, need be delivered.

(f) *Special provisions as to abbreviated financial statements for foreign private issuers.* (1) The abbreviated financial statements may be prepared according to U.S. GAAP, except that note disclosures shall be limited to those specified in paragraph (b)(3) of this Item. Alternatively, such abbreviated financial statements may be prepared according to a comprehensive body of accounting principles other than U.S. GAAP. Where the abbreviated financial statements are prepared

according to a comprehensive body of accounting principles other than U.S. GAAP, the disclosures specified by Item 18(c) of Form 20–F (17 CFR 249.220f) shall be furnished, except that note disclosures shall be limited to those specified in paragraph (b)(3) of this Item. However, foreign private issuers that comply with Item 17 of Form 20–F rather than Item 18 may furnish the disclosure specified by Item 17(c) in the notes to the abbreviated financial statements. Where Item 17(c) permits the omission of a disclosure from the notes to the full financial statements, that disclosure shall not be included in the notes to the abbreviated financial statements even if specified for disclosure by paragraph (b)(3) of this Item.

(2) Abbreviated financial statements shall be provided for the periods specified by Rule 3–19 of Regulation S–X (17 CFR 210.3–19).

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

5. The authority citation for Part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

6. By amending Part 230 by adding § 230.435 to read as follows:

### § 230.435 Abbreviated financial statements.

(a) For purposes of this section:

(1) The term *full financial statements* shall mean financial statements filed with the Commission meeting the requirements of Regulation S–X (17 CFR 210), or, for small business issuers, Item 310 of Regulation S–B (§ 228.310 of this chapter).

(2) The term *abbreviated financial statements* shall mean financial statements that include the information specified in Item 305(b) of Regulation S–B (§ 228.305(b) of this chapter) or Item 305(b) of Regulation S–K (§ 229.305(b) of this chapter).

(b) A prospectus containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the prospectus within the meaning of the federal securities laws based on the omission from the prospectus of those financial statement footnotes permitted by Item 305 of Regulation S–B (§ 228.305 of this chapter) or Item 305 of Regulation S–K (§ 229.305 of this chapter) deemed a part of the prospectus, provided the registrant has complied with Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(c) The full financial statements that are omitted from a prospectus shall be deemed to be part of the prospectus.

7. By amending § 230.502 of Regulation D by adding a sentence at the end of paragraph (b)(2)(i)(B)(*1*) to read as follows:

### § 230.502 General conditions to be met.

* * * * *

(b) *Information requirements.* * * *

(2) *Type of information to be furnished.* * * *

(i) * * *

(B) *Financial statement information.* * * *

(*1*) *Offerings up to $2,000,000.* * * * If the issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter), the issuer may provide the abbreviated financial statements required by Item 305 of Regulation S–B (§ 228.305 of this chapter) rather than the information required in Item 310 of Regulation S–B (§ 228.310 of this chapter).

* * * * *

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The authority citation for part 239 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 791, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

9. By amending Form SB–1 (referenced in § 239.9) by revising Part F/S and adding Item 7 to Part II to read as follows:

**Note**—The text of Form SB–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form SB–1

Registration Statement Under the Securities Act of 1933

* * * * *

Part F/S—Financial Information Required in Prospectus

Furnish either: (1) the full financial statements required by Item 310 of Regulation S–B (§ 228.310 of this chapter); or (2) the abbreviated financial statements required by Item 305 of Regulation S–B (§ 228.305 of this chapter). The option to furnish abbreviated financial statements is available only to registrants satisfying the eligibility criteria in Item 305(a) of Regulation S–B.

*Instruction to Part F/S*

Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–B may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Item 310(c) of Regulation S–B. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–B.

* * * * *

Part II—Information Not Required in Prospectus

* * * * *

Item 7. Financial Statements

If abbreviated financial statements are furnished in the prospectus pursuant to Part F/S of this Form SB–1, furnish the full financial statements required by Item 310 of Regulation S–B and the independent accountant's report thereon.

* * * * *

10. By amending Form SB–2 (referenced in § 239.10) by revising Item 22 to Part I and adding Item 29 to Part II to read as follows:

**Note**—The text of Form SB–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form SB–2

Registration Statement Under the Securities Act of 1933

* * * * *

Item 22. Financial Statements

Furnish either: (a) the full financial statements required by Item 310 of Regulation S–B (§ 228.310 of this chapter); or (b) the abbreviated financial statements required by Item 305 of Regulation S–B (§ 228.305 of this chapter). The option to furnish abbreviated financial statements is available only to registrants satisfying the eligibility criteria in Item 305(a) of Regulation S–B.

*Instruction to Item 22*

Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–B may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Item 310(c) of Regulation S–B. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–B.

* * * * *

Part II—Information Not Required in Prospectus

* * * * *

Item 29. Financial Statements

If abbreviated financial statements are furnished pursuant to Item 22(b), furnish the full financial statements required by Item 310 of Regulation S–B and the independent accountant's report thereon.

* * * * *

11. By amending Form S–1 (referenced in § 239.11) by revising Item 11(e), adding an Instruction to Item 11(e), removing the words ''and Financial Statement Schedules'' from the caption to Item 16, removing

paragraph (b) of Item 16, and adding Item 18 to read as follows:

**Note**—The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–1

Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Information with Respect to the Registrant

* * * * *

(e) Full financial statements meeting the requirements of Regulation S–X (17 CFR Part 210) (Schedules required under Regulation S–X shall be filed pursuant to Item 18 ''Financial Statements and Schedules,'' of this Form) as well as any financial information required by Rule 3–05 and Article 11 of Regulation S–X; or abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K shall be filed, as well as any financial information required by Rule 3–05 and Article 11 of Regulation S–X. The option to furnish abbreviated financial statements is available only to registrants satisfying the eligibility criteria in Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter).

*Instruction to Item 11(e)*

Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X (§ 210.3–05 of this chapter). This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

* * * * *

Part II—Information Not Required in Prospectus

* * * * *

Item 18. Financial Statements and Schedules

(a) If abbreviated financial statements are furnished pursuant to Item 11(e) of this Form, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

(b) Regardless of whether full or abbreviated financial statements are furnished pursuant to Item 11(e) of this Form, furnish the financial statement schedules required by Regulation S–X. These schedules shall be lettered or numbered in the manner described for exhibits in Item 601 of Regulation S–K (§ 229.601 of this chapter).

* * * * *

12. By amending Form S–2 (referenced in § 239.12) by revising the last sentence in General Instruction II.C, adding paragraph (iv) to Item 11(a)(2), adding a sentence at the end of Item 11(a)(3), adding paragraphs (A), (B), and (C) to Item 11(b)(2), adding instructions to Item 11(a)(2), (a)(3), and Item 11(b)(2), and adding Item 18 to read as follows:

**Note**—The text of Form S–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–2

Registration Statement under the Securities Act of 1933

* * * * *

*General Instructions*

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. * * * If, however, the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter), the small business issuer may provide the abbreviated financial statements required by Item 305 of Regulation S–B rather than the financial information in Item 310 of Regulation S–B (§ 228.310 of this chapter).

* * * * *

Item 11. Information with Respect to the Registrant

(a) * * *

(2) * * *

(iv) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated interim financial statements of the registrant meeting the requirements of Item 305(b)(5) of Regulation S–K may be furnished pursuant to paragraphs (a)(2)(i) or (a)(2)(iii) of this Item.

(3) * * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X (§ 210.3–05 of this chapter). This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

* * * * *

(b) * * *

(2) Include either: financial * * *

(A) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated interim financial statements meeting the requirements of Item 305(b)(5) of Regulation S–K may be furnished pursuant to paragraph (b)(2)(i) of this Item.

(B) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(C) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (b)(2) of this Item with respect to restated financial statements of the registrant required by this Item.

* * * * *

*Instruction to Item 11(a)(2), (a)(3) and (b)(2)*

Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 18. Financial Statements and Schedules

If abbreviated financial statements are furnished pursuant to Item 11(a)(3) or (b)(2)(B) with respect to businesses acquired or to be acquired, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 11(b)(2)(C) with respect to restated financial statements of the registrant, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

* * * * *

13. By amending Form S–3 (referenced in § 239.13) by revising the last sentence of General Instruction II.C, adding Item 11(c) and Item 18 to read as follows:

**Note**—The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

*General Instructions*

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. * * * If, however, the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter), the small business issuer may provide the abbreviated financial statements required by Item 305 of Regulation S–B rather than the financial information in Item 310 of Regulation S–B (§ 228.310 of this chapter).

* * * * *

Item 11. Material Changes

* * * * *

(c) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K:

(1) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to Item 11(b)(i) with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies

the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(2) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to Items 11(b)(ii), 11(b)(iii) and 11(b)(iv) with respect to restated financial statements of the registrant.

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 18. Financial Statements and Schedules

If abbreviated financial statements are furnished pursuant to Item 11(c)(1) with respect to businesses acquired or to be acquired, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 11(c)(2) with respect to restated financial statements of the registrant, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

* * * * *

14. By amending Form S–6 (referenced in § 239.16) by designating the undesignated paragraph following paragraph (c)(2) of Instruction 1 of Instructions as to the Prospectus as paragraph (c)(3) and adding paragraph (c)(4) and by adding paragraph 6 to the Instructions as to Exhibits to read as follows:

**Note**—The text of Form S–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–6

For Registration Under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2

* * * * *

Instructions as to the Prospectus

Instruction 1. Information to be Contained in Prospectus

* * * * *

(c) * * *

(4) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K (§ 229.305 of this chapter) may be included in the prospectus in lieu of the financial statements required by paragraphs (c)(1) and (2) above. The option to include abbreviated financial statements is available only to registrants satisfying the eligibility criteria in Item 305(a) of Regulation S–K.

* * * * *

Instructions as to Exhibits

* * * * *

6. If abbreviated financial statements are furnished pursuant to Instruction 1(c)(4) of the Instructions as to the Prospectus, furnish the full financial statements required by Instructions 1(c)(1) and (2) of the Instructions as to the Prospectus and the independent accountant's report thereon.

15. By amending Form S–8 (referenced in § 239.16b) by adding an Instruction to Item 3(a) to read as follows:

**Note**—The text of Form S–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–8

Registration Statement Under the Securities Act of 1933

* * * * *

PART II—INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

* * * * *

(a) * * *

*Instruction to Item 3(a).* If the registrant's latest prospectus filed pursuant to Rule 424(b) under the Act contains abbreviated financial statements, the registrant shall not incorporate such prospectus by reference into the Form S–8. In lieu thereof, the registrant shall incorporate its latest effective registration statement filed under the Act that contains audited full financial statements for the registrant's latest fiscal year for which such statements have been filed.

* * * * *

16. By amending Form S–11 (referenced in § 239.18) by revising Item 27 and adding paragraph (c) to Item 35 to read as follows:

**Note**—The text of Form S–11 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–11

For Registration Under the Securities Act of 1933 of Securities of Certain Real Estate Companies

* * * * *

Item 27. Financial Statements and Information

Include in the prospectus either full financial statements meeting the requirements of Regulation S–X (17 CFR 210) or abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K (§ 229.305 of this chapter). The option to furnish abbreviated financial statements is available only to registrants satisfying the eligibility criteria in Item 305(a) of Regulation S–K. In addition, include the supplementary financial information required by Item 302 of Regulation S–K (§ 229.302 of this chapter) and the information concerning changes in and disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K (§ 229.304 of this chapter). Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12–12, 12–28 and 12–29 of the Regulation may be omitted from the prospectus.

* * * * *

INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 35. Financial statements and Exhibits

* * * * *

(c) If abbreviated financial statements are furnished pursuant to Item 27 of this Form, file the full financial statements meeting the requirements of Regulation S–X and the independent accountant's report thereon.

* * * * *

17. By amending Form S–4 (referenced in § 239.25) by revising the last sentence of General Instruction D.3; adding Item 10(b)(5), paragraph (iv) to Item 12(a)(2), a sentence at the end of Item 12(a)(3); revising Item 14(e), adding a sentence at the end of Items 15, 16(a), 17(a) and 17(b)(8); removing the words ''and Financial Statement Schedules'' from the caption to Item 21; removing Item 21(b), and redesignating Item 21(c) as Item 21(b); and adding Item 23 to read as follows:

**Note**—The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–4

Registration Statement Under the Securities Act of 1933

* * * * *

*General Instructions*

* * * * *

D. Application of General Rules and Regulations

* * * * *

3. * * * Small business issuers shall provide or incorporate by reference the information called for by Item 310 of Regulation S–B (§ 228.310 of this chapter), or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter), the abbreviated information in Item 305 of Regulation S–B.

* * * * *

Item 10. Information with Respect to S–3 Registrants

* * * * *

(b) * * *

(5) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K:

(i) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (b)(1) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X (§ 210.3–05 of this chapter). This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(ii) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraphs (b)(2), (b)(3) and (b)(4) of this Item

with respect to restated financial statements of the registrant.

* * * * *

Item 12. Information With Respect to S–2 or S–3 Registrants

* * * * *

(a) * * *

(2) * * *

(iv) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated interim financial statements of the registrant meeting the requirements of Item 305(b)(5) of Regulation S–K may be furnished pursuant to paragraphs (a)(2)(i) or (a)(2)(iii) of this Item.

(3) * * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to the businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

* * * * *

(b) * * *

(2) * * *

(vi) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated interim financial statements of the registrant meeting the requirements of Item 305(b)(5) of Regulation S–K may be furnished pursuant to paragraph (b)(2)(i) of this Item.

(vii) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (b)(2)(ii) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(viii) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraphs (b)(2)(iii), (iv) and (v) of this Item with respect to restated financial statements of the registrant required by this Item.

* * * * *

Item 14. Information with Respect to Registrants Other than S–2 or S–3 Registrants

* * * * *

(e) Financial statements required by either paragraph (e)(1) or (e)(2) of this Item:

(1) Financial statements of the registrant meeting the requirements of Regulation S–X (17 CFR Part 210) (Schedules required under Regulation S–X shall be filed pursuant to Item 23 ''Financial Statements and Schedules,'' of this Form) as well as any financial information required by Rule 3–05 and Article 11 of Regulation S–X; or

(2) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K, as well as any financial information required by Rule 3–05 and Article 11 of Regulation S–X.

(3) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraphs (1) and (2) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

* * * * *

Item 15. Information with Respect to S–3 Companies

* * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished for the company being acquired pursuant to Items 10 and 11 of this Form if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K.

Item 16. Information with Respect to S–2 or S–3 Companies

(a) * * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished for the company being acquired pursuant to Items 12 and 13 of this Form if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K.

* * * * *

Item 17. Information With Respect to Companies Other Than S–2 or S–3 Companies

* * * * *

(a) * * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished for the company being acquired pursuant to Item 14 of this Form if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K.

(b) * * *

(8) * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated interim financial statements of the company being acquired meeting the requirements of Item 305(b)(5) of Regulation S–K may be furnished pursuant to this paragraph.

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 23. Financial Statements

(a) *S–3 Registrants.* If abbreviated financial statements are furnished pursuant to Item 10(b)(5)(i) with respect to the businesses acquired or to be acquired, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 10(b)(5)(ii) with respect to the restated financial statements of the registrant, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

(b) *S–2 or S–3 Registrants.* If abbreviated financial statements are furnished pursuant to Item 12(a)(3) or 12(b)(2)(vii) with respect to the businesses acquired or to be acquired, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 12(b)(2)(viii) with respect to the restated financial statements of the registrant, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

(c) *Registrants Other Than S–2 or S–3 Registrants.* If abbreviated financial statements are furnished pursuant to Item 14(e)(2) with respect to the financial statements of the registrant, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 14(e)(3) with respect to the businesses acquired or to be acquired, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

(d) *S–3 Companies.* If abbreviated financial statements of the company being acquired are furnished pursuant to Item 15, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

(e) *S–2 or S–3 Companies.* If abbreviated financial statements of the company being acquired are furnished pursuant to Item 16, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

(f) *Companies Other Than S–2 or S–3 Companies.* If abbreviated financial statements of the company being acquired are furnished pursuant to Item 17(a), furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 17(a) with respect to the other businesses acquired or to be acquired, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 17(b)(7) with respect to the company being acquired, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

(g) Furnish the financial statement schedules required by Regulation S–X (17 CFR Part 210) and Item 14(e), Item 17(a), or Item 17(b)(9) of this Form. These schedules should be lettered or numbered in the manner described for exhibits in paragraph (a) of Item 21.

* * * * *

18. By amending Form F–1 (referenced in § 239.31) by revising Items 11(b) and (c), removing the words ''and Financial Statement Schedules'' from the caption to Item 16, removing paragraph (b) of Item 16, and adding Item 18 to read as follows:

**Note**—The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–1

Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Information with respect to the Registrant

Furnish the following information with respect to the Registrant:

* * * * *

(b) Information required by either paragraph (b)(1) or (b)(2) of this Item:

(1) Information required by Item 18 of Form 20–F (Schedules required under Regulation S–X shall be filed pursuant to Item 18 ''Financial Statements and Schedules,'' of this Form) as well as any information required by Rule 3–05 and Article 11 of Regulation S–X (§ 210 of this chapter), except as provided by paragraph (c) of this Item; or

(2) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K, as well as any information required by Rule 3–05 and Article 11 of Regulation S–X.

(3) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(c) Information required by either paragraph (1) or (2) of this Item:

(1) Information required by Item 17 of Form 20–F may be furnished in lieu of the information specified by Item 18 thereof if the only securities to be issued pursuant to this registration statement are non-convertible securities that are ''investment grade securities,'' as defined below, or the only securities to be issued hereunder are to be offered: (1) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; or (2) pursuant to a dividend or interest reinvestment plan; or (3) upon the conversion of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer; or

(2) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K, as well as any information required by Rule 3–05 and Article 11 of Regulation S–X.

(3) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

* * * * *

Item 18. Financial Statements and Schedules

(a) If abbreviated financial statements are furnished pursuant to Items 11 (b)(2) or (3) of this Form, furnish the full financial statements required by Item 18 of Form 20–F and the independent accountant's report thereon.

(b) If abbreviated financial statements are furnished pursuant to Items 11 (c)(2) or (3) of this Form, furnish the full financial statements required by Item 17 of Form 20–F and the independent accountant's report thereon.

* * * * *

19. By amending Form F–2 (referenced in § 239.32) by amending General Instructions I.D and I.G by adding a sentence at the end of each Instruction, adding paragraphs (b)(1)(A)–(C) to Item 11, adding a sentence at the end of paragraph (b)(2) of Item 11, revising Item 12, revising Instruction 4 to Item 12, and adding Item 18 to read as follows:

**Note**—The text of Form F–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–2

Registration Statement Under the Securities Act of 1933

* * * * *

*General Instructions*

I. Eligibility Requirements for Use of Form F–2

* * * * *

D. * * * This instruction does not apply to any abbreviated financial statements included in the prospectus pursuant to Item 11(b) or 12(b) of this Form.

* * * * *

G. * * * If the subsidiary satisfies the eligibility criteria in Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished as specified in Form S–2.

* * * * *

Item 11. Material Changes

(b) * * *

(1) * * *

(A) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to the businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(B) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraphs (b)(1)(ii), (iii) or (iv) above with respect to restated financial statements of the registrant required by these paragraphs.

(2) * * *

If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated interim financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (b)(2)(i) above.

Item 12. Information with Respect to the Registrant

The registrant shall incorporate by reference the latest Form 20–F, Form 40–F or Form 10–K filed pursuant to the Exchange Act that contains certified financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 40–F or Form 10–K was required to have been filed and any report on Form 10–Q or Form 8–K filed since the end of the fiscal year covered by such annual report. The registrant may incorporate by reference any other Form 10–Q or Form 8–K, and any Form 6–K containing information meeting the requirements of this Form. The registrant shall deliver with the prospectus the information required by paragraph (a) or (b) of this Item, except that only registrants satisfying the eligibility criteria in Item 305(a) of Regulation S–K may choose to deliver the information in paragraph (b).

(a) The latest Form 20–F, Form 40–F or Form 10–K and any report on Form 10–Q or Form 8–K required to be incorporated by reference into this Form, along with any other Form 10–Q, Form 8–K or Form 6–K incorporated by reference into this Form at the registrant's option.

(b) The information required by Part I of Form 20–F and abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K, as well as any information required by Rule 3–05 and Article 11 of Regulation S–X. Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K. The registrant also shall deliver any Form 10–Q, Form 8–K or Form 6–K incorporated by reference into this Form at the registrant's option.

*Instructions*

* * * * *

4. If the registrant elects to comply with paragraph (a) of this Item, the Form 20–F, Form 40–F or Form 10–K shall be delivered with the preliminary prospectus but need not be redelivered with the final prospectus to a recipient that had previously received the Form 20–F, Form 40–F or Form 10–K with the preliminary prospectus.

* * * * *

Item 18. Financial Statements and Schedules

If abbreviated financial statements are furnished pursuant to Item 11(b)(1)(A) or

Item 12(b) with respect to businesses acquired or to be acquired, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 11(b)(1)(B) with respect to restated financial statements of the registrant, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

20. By amending Form F–3 (referenced in § 239.33) by adding a sentence to the end of the note to General Instruction I.A.5, by adding a sentence to the end of General Instruction I.B.1, I.B.2, I.B.3 and I.B.4, adding Item 11(c), and Item 18 to read as follows:

**Note**—The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–3

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–3

* * * * *

A. *Registrant Requirements* * * *

5. *Majority-owned subsidiaries* * * *

**Note:** * * * If such subsidiary satisfies the eligibility criteria in Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished as specified in Form S–3.

B. *Transaction Requirements*

1. * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to this Instruction.

* * * * *

2. * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to this Instruction.

3. * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to this Instruction.

4. * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to this Instruction.

* * * * *

Item 11. Material Changes

(b)(1) * * *

(A) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to the businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(B) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraphs (b)(ii), (iii) or (iv) above with respect to restated financial statements of the registrant required by these paragraphs.

(2) * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated interim financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (i) above.

* * * * *

Item 18. Financial Statements and Schedules

If abbreviated financial statements are furnished pursuant to paragraph (i) of Item 11(b) with respect to businesses acquired or to be acquired, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to paragraph (ii), (iii) or (iv) of Item 11(b) with respect to restated financial statements of the registrant, furnish the full financial statements required by Regulation S–X and the independent accountant's report thereon.

* * * * *

21. By amending Form F–4 (referenced in § 239.34) by adding Item 10(c)(5), paragraph (iv) to Item 12(a)(2), a sentence at the end of Item 12(a)(3), a sentence at the end of Item 12(a)(5), redesignating paragraph (h) of Item 14 as paragraph (h)(1) of Item 14, adding paragraph (h)(2) to Item 14, redesignating current Item 15 as paragraph (a) to Item 15, adding paragraph (b) to Item 15, redesignating current Item 16 as paragraph (a) to Item 16, adding paragraph (b) to Item 16, adding paragraph (c) to Item 17, removing the words ''and Financial Statement Schedules'' from the caption to Item 21, removing paragraph (b) from Item 21, redesignating paragraph (c) of Item 21 as paragraph (b) of Item 21, and adding Item 23 to read as follows:

**Note**—The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–4

Registration Statement Under the Securities Act of 1933

* * * * *

Item 10. Information With Respect to F–3 Companies * * *

(c) * * *

(5) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K:

(i) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (c)(1) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(ii) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraphs (c)(2), (3) and (4) of this Item with respect to restated financial statements of the registrant.

* * * * *

Item 12. Information With Respect to F–2 or F–3 Registrants

* * * * *

(a) * * *

(2) * * *

(iv) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated interim financial statements of the registrant meeting the requirements of Item 305(b)(5) of Regulation S–K may be furnished pursuant to paragraph (a)(2)(i) of this Item.

(3) * * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to the businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

* * * * *

(b) * * *

(2) * * *

(vi) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated interim financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (i) above.

(vii) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (b)(2)(ii) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(viii) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraphs (b)(2)(iii), (iv) and (v) of this Item with respect to restated financial statements of the registrant required by this Item.

(3) * * *

(ix) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (3)(vii) of this Item. If

the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (3)(vii) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

* * * * *

Item 14. Information With Respect to Foreign Registrants Other Than F–2 or F–3 Registrants

(h) Financial statements required by either paragraph (1) or (2) of this Item:

(1) * * *

(2) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K may be furnished with respect to paragraph (h)(1) of this Item. Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K also may be furnished with respect to businesses acquired or to be acquired if such businesses satisfy the eligibility criteria in Item 305(a)(1) of Regulation S–K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X.

* * * * *

Item 15. Information With Respect to F–3 Companies

(a) * * *

(b) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K of the company being acquired may be furnished pursuant to Items 10 and 11 of this Form if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K.

* * * * *

Item 16. Information With Respect to F–2 or F–3 Companies

(a) * * *

(b) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished for the company being acquired pursuant to Items 12 and 13 of this Form if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K.

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F–2 or F–3 Companies

* * * * *

(c) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished for the company being acquired pursuant to paragraph (a) of this Item if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K.

* * * * *

Item 23. Financial Statements and Schedules

If abbreviated financial statements are furnished pursuant to paragraph (b)(3)(ix) of Item 12, paragraph (h)(2) of Item 14, paragraph (b) of Item 15, paragraph (b) of Item 16, or paragraph (c) of Item 17 of this Item, furnish full financial statements meeting the requirements of Item 17 or 18 of Form 20–F, whichever is applicable. If abbreviated financial statements are furnished pursuant to paragraph (c)(5)(i) of Item 10, paragraph (a)(3) of Item 12, or paragraph (b)(2)(vii) of Item 12 of this Item, furnish full financial statements meeting the requirements of Regulation S–X with respect to businesses acquired or to be acquired. If abbreviated financial statements are furnished pursuant to paragraph (c)(5)(ii) of Item 10 or paragraph (b)(2)(viii) of Item 12 above, furnish restated full financial statements of the registrant meeting the requirements of Regulation S–X. If abbreviated financial statements are furnished pursuant to paragraph (a)(2)(iv) or paragraph (b)(2)(vi) of Item 12 above, furnish interim financial statements meeting the requirements of Regulation S–X.

22. By amending Form F–7 (referenced in § 239.37) by adding a paragraph to the end of Item 1 to read as follows:

**Note**—The text of Form F–7 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–7

Registration Statement Under the Securities Act of 1933

* * * * *

Item 1. Home Jurisdiction Documents

* * * * *

Notwithstanding the foregoing, the prospectus may contain, in lieu of any financial statements required in any Canadian jurisdiction, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation.

* * * * *

23. By amending Form F–8 (referenced in § 239.38) by adding a paragraph to the end of Item 1 to read as follows:

**Note**—The text of Form F–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–8

Registration Statement Under the Securities Act of 1933

* * * * *

Item 1. Home Jurisdiction Documents

* * * * *

Notwithstanding the foregoing, the prospectus may contain, in lieu of any financial statements required in any Canadian jurisdiction, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation.

* * * * *

24. By amending Form F–9 (referenced in § 239.39) by adding a paragraph to the end of Item 1 to read as follows:

**Note**—The text of Form F–9 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–9

Registration Statement Under the Securities Act of 1933

* * * * *

Item 1. Home Jurisdiction Documents

* * * * *

Notwithstanding the foregoing, the prospectus may contain, in lieu of any financial statements required in any Canadian jurisdiction, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation.

* * * * *

25. By amending Form F–10 (referenced in § 239.40) by adding a paragraph to the end of Item 1 to read as follows:

**Note**—The text of Form F–10 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–10

Registration Statement Under the Securities Act of 1933

* * * * *

Item 1. Home Jurisdiction Documents

* * * * *

Notwithstanding the foregoing, the prospectus may contain, in lieu of any financial statements required in any Canadian jurisdiction, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation.

* * * * *

26. By amending Form F–80 (referenced in § 239.41) by adding a paragraph to the end of Item 1 to read as follows:

**Note**—The text of Form F–80 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–80

Registration Statement Under the Securities Act of 1933

* * * * *

Item 1. Home Jurisdiction Documents

* * * * *

Notwithstanding the foregoing, the prospectus may contain, in lieu of any financial statements required in any Canadian jurisdiction, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation.

* * * * *

27. By amending Form 1–A (referenced in § 239.90) by revising Part F/S, by adding a sentence to the end of section (2), paragraph (f) to section (3) and paragraph (11) to Item 2 of Part III to read as follows:

**Note**—The text of Form 1–A does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 1–A

Regulation A Offering Statement Under the Securities Act of 1933

* * * * *

PART F/S

* * * * *

(2) Statements of income, cash flows, and other stockholders equity—* * * If the issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B, the issuer may furnish abbreviated financial statements in accordance with Item 305 of Regulation S–B, except that the information shall be furnished for the periods specified in paragraphs (1) and (2) above, in lieu of full financial statements.

* * * * *

(3) Financial Statements of Businesses Acquired or to be Acquired.

* * * * *

(f) If the issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B, the issuer may furnish abbreviated financial statements of the business acquired or to be acquired in accordance with Item 305 of Regulation S–B, except that the information shall be furnished for the periods specified under paragraph (c) above, in lieu of full financial statements. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–B.

* * * * *

PART III—EXHIBITS

* * * * *

Item 2. Description of Exhibits

* * * * *

(11) *Financial statements*—If abbreviated financial statements are furnished pursuant to Part F/S of this Form, furnish the full financial statements. If the full financial statements furnished pursuant to this paragraph are audited, furnish the independent accountant's report on the full financial statements.

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

28. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

29. By amending § 240.13e–3 by adding paragraph (e)(4) to read as follows:

**§ 240.13e–3 Going private transactions by certain issuers or their affiliates.**

* * * * *

(e) *Disclosure of certain information.*

* * * * *

(4) In lieu of the information required by paragraph (e)(1) of this section regarding information contained in Item 14 of Schedule 13E–3 (§ 240.13e–3), or a fair and adequate summary thereof, the information set forth in this paragraph (e)(4) may be disclosed.

(i) If the issuer or affiliate satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

(ii) *Abbreviated Financial Statements.* For purposes of this section:

(A) The term *full financial statements* shall mean financial statements filed with the Commission pursuant to Item 14 of Schedule 13E–3.

(B) The term *abbreviated financial statements* shall mean financial statements that meet the requirements of Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(iii) A disclosure document containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the disclosure document within the meaning of the federal securities laws based on the omission from the disclosure document of those financial statement footnotes permitted by Item 305 of Regulation S–B (§ 228.305 of this chapter) or Item 305 of Regulation S–K (§ 229.305 of this chapter) deemed a part of the disclosure document, provided the issuer or affiliate has complied with Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(iv) The full financial statements that are omitted from a disclosure document pursuant to this paragraph (e)(4) shall be deemed to be part of the disclosure document.

30. By amending § 240.13e–4 by adding paragraphs (d)(1)(v) and (i) to read as follows:

**§ 240.13e–4 Tender offers by issuers.**

* * * * *

(d) *Disclosure of certain information.*

(1) * * *

(v) In lieu of the information required by paragraph (d)(1)(iv) of this section regarding information contained in Item 7 of Schedule 13E–4 (§ 240.13e–4), or a fair and adequate summary thereof, if the issuer or affiliate satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

* * * * *

(i) *Abbreviated Financial Statements.*

(1) For purposes of this section 13e–4:

(i) The term *full financial statements* shall mean financial statements filed with the Commission pursuant to Item 7 of Schedule 13E–4 or Item 1(a) of Schedule 13E–4F.

(ii) The term *abbreviated financial statements* shall mean financial statements that meet the requirements of Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(2) A disclosure document containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the disclosure document within the meaning of the federal securities laws based on the omission from the disclosure document of those financial statement footnotes permitted by Item 305 of Regulation S–B (§ 228.305 of this chapter) or Item 305 of Regulation S–K (§ 229.305 of this chapter) deemed a part of the disclosure document, provided the issuer or affiliate has complied with Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(3) The full financial statements that are omitted from a disclosure document pursuant to paragraph (d)(1)(v) of this section or Item 1 of Schedule 13E–4F shall be deemed to be part of the disclosure document.

31. By amending § 240.13e–102 by redesignating paragraph (a) of Item 1 as paragraph (a)(1), adding a sentence at the beginning of paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

**§ 240.13e–102 Schedule 13E–4F. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.**

* * * * *

Item 1. Home Jurisdiction Documents

(a) (1) Furnish the information required by paragraph (a)(1) of this item to the Commission. Either the information required by paragraph (a)(1) or that required by paragraph (a)(2) of this Item shall be furnished to shareholders. If information is delivered to shareholders pursuant to paragraph (a)(2) of this Item, such information shall be furnished to the Commission. * * *

(2) Furnish the information required by paragraph (a)(1) of this Item, *provided* that in lieu of financial statements included in such information, if the issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

* * * * *

32. By amending § 240.14a–3 by revising the third sentence in the ''Note to Small Business Issuers''; by revising paragraph (b)(1); following the paragraph (b)(1), redesignating Notes 1 and 2 as Notes 2 and 3, and adding Note 1 to read as follows:

**§ 240.14a–3 Information to be furnished to security holders.**

* * * * *

(b) * * *

*Note to Small Business Issuers.* * * * A small business issuer shall provide the information in Item 310(a) of Regulation S–B, or, provided that the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B, the abbreviated financial statements required by Item 305 of Regulation S–B, in lieu of the financial information required by § 240.14a–3(b)(1)). * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, either:

(i) Audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and cash flows for each of the three most recent fiscal years prepared in accordance with Regulation S–X (Part 210 of this chapter), except that the provisions of Article 3 (other than § 210.3–03(e), 210.3–04 and 210.3–20) and Article 11 shall not apply; or

(ii) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements for the registrant and its subsidiaries consolidated prepared in accordance with Item 305 of Regulation S–K for the same periods specified in § 240.14a–3(b)(1)(i). If abbreviated financial statements are included in the annual report to security holders, the registrant shall append the full financial statements required by Regulation S–X and the independent accountant's report thereon to the copies of the report mailed to the Commission pursuant to paragraph (c) of this section. If, however, the registrant has filed with the Commission an annual report on Form 10–K for the same fiscal year on or before the date that the annual report required by this section is delivered to security holders, the registrant does not have to append full financial statements to the copies of the report mailed to the Commission, and the registrant may furnish the Form 10–K financial statements to requesting persons in satisfaction of the delivery requirement set forth in Item 305(e) of Regulation S–K.

**Note 1.** Any financial statement schedules or exhibits or separate financial statements that may otherwise be required in filings with the Commission may be omitted. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph (b) may be unaudited.

* * * * *

33. By adding § 240.14a–16 to read as follows:

**§ 240.14a–16 Abbreviated financial statements.**

(a) For purposes of this section:

(1) The term *full financial statements* shall mean financial statements filed with the Commission meeting the requirements of Regulation S–X (Part 210 of this chapter), or, for small business issuers, Item 310 of Regulation S–B (§ 228.310 of this chapter).

(2) The term *abbreviated financial statements* shall mean financial statements that include the information specified in Item 305(b) of Regulation S–B (§ 228.305(b) of this chapter) or Item 305(b) of Regulation S–K (§ 229.305(b) of this chapter).

(b) A report furnished pursuant to § 240.14a–3(b) containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the report within the meaning of the federal securities laws based on the omission from the report of those financial statement footnotes permitted by Item 305 of Regulation S–B (§ 228.305 of this chapter) or Item 305 of Regulation S–K (§ 229.305 of this chapter) deemed a part of the report, provided the issuer has complied with Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(c) A proxy statement containing abbreviated financial statements pursuant to Item 13 or 14 of Schedule 14A (§ 240.14a–101 of this chapter) shall not be deemed materially misleading or omitting material facts from the proxy statement within the meaning of the federal securities laws based on the omission from the proxy statement of those financial statement footnotes permitted by Item 305 of Regulation S–B (§ 228.305 of this chapter) or Item 305 of Regulation S–K (§ 229.305 of this chapter) deemed a part of the proxy statement, provided the issuer has complied with Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(d) The full financial statements that are omitted from a report or proxy statement shall be deemed to be part of the report or proxy statement.

34. By amending Schedule 14A (§ 240.14a–101) by revising the last sentence in Note F, by revising paragraph (2) of Note G, by revising paragraph (3)(f) of Note G, by adding paragraph (a)(6) and Instruction 6 to Item 13 and by adding paragraphs (b)(1)(ii)(E), (b)(2)(i)(A)(*5*), (b)(2)(i)(B)(*2*)(*vi*), (b)(3)(i)(J) and (b)(3)(ii)(F) and Instruction 8 to Item 14 to read as follows:

**§ 240.14a–101 Schedule 14A. Information required in proxy statement.**

* * * * *

Notes.

* * * * *

F. *Note to Small Business Issuers*—* * * Small business issuers shall provide the financial information in Item 310 of Regulation S–B or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B, the abbreviated financial statements required by Item 305 of Regulation S–B, in lieu of the financial statements required in Schedule 14A.

G. *Special Note for Small Business Issuers.*

* * * * *

(2) Registrants and acquirees which relied upon Alternative 1 in their most recent Form 10–KSB may provide the following information (Question numbers are in reference to Model A of Form 1–A): (a) Questions 37 and 38 instead of Item 6(d); (b) Question 43 instead of Item 7(a); (c) Questions 29–36 and 39 instead of Item 7(b); (d) Questions 40–42 instead of Item 8; (e) Questions 40–42 instead of Item 10; (f) the information required in Part F/S of Form 10–SB, or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B, the abbreviated financial statements required by Item 305 of Regulation S–B, instead of the financial statement requirements of Items 13 or 14 (abbreviated financial statements may be furnished for a business acquired or to be acquired if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B and the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–B); (g)

Questions 4, 11 and 47–50 instead of Item 13(a)(1)(3); (h) Question 3 instead of Item 14(b)(3)(i)(A) and (B); and (i) Questions 4, 11 and 47–50 instead of Item 14(b)(3)(i)(H).

* * * * *

(3) * * *

(f) the information required in Part F/S of Form 10–SB, or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B, the abbreviated financial statements required by Item 305 of Regulation S–B, instead of the financial statement requirements of Items 13 or 14 of Schedule 14A (abbreviated financial statements may be furnished for a business acquired or to be acquired if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B and the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–B);

*Item 13. Financial and Other Information.* * * *

(a) Information required. * * *

* * * * *

(6) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (a)(1) of this Item. If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (a)(1) above with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

* * * * *

*Instructions to Item 13.* * * *

6. If abbreviated financial statements are included pursuant to paragraph (a)(6) of this Item, the registrant shall append the full financial statements required by Regulation S–X and the independent accountant's report thereon to the copies of the proxy statement filed with the Commission pursuant to Rule 14a–6 (17 CFR 240.14a–6). If, however, the registrant previously has filed with the Commission full financial statements and the independent accountant's report thereon for the same period in an annual report on Form 10–K and any quarterly reports on Form 10–Q necessary to provide interim financial disclosure, the registrant does not have to append full financial statements to the copies of the proxy statement filed with the Commission, and the registrant may furnish the Form 10–K and 10–Q financial statements and the independent accountant's report thereon to requesting persons in satisfaction of the delivery requirement set forth in Item 305(e) of Regulation S–K.

*Item 14. Mergers, consolidations, acquisitions and similar matters*

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(E) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (b)(1)(ii)(A) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K. If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraphs (b)(1)(ii)(B), (C) or (D) of this Item.

* * * * *

(2) *Information with respect to S–2 or S–3 registrants.*

* * * * *

(i) * * *

(A) * * *

(*5*) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (b)(2)(i)(A)(*3*) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(B) * * *

(*2*) * * *

(*vi*) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (b)(2)(i)(B)(*2*)(*i*) of this Item with respect to interim financial information of the registrant, paragraph (b)(2)(i)(B)(*2*)(*ii*) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X, paragraphs (b)(2)(i)(B)(*2*) (*iii*) and (*iv*) of this Item with respect to restated financial statements of the registrant, and paragraph (b)(2)(i)(B)(*2*)(*v*) of this Item with respect to financial information required because of a material disposition of assets outside of the normal course of business. The option to furnish abbreviated financial statements with respect to businesses acquired or to be acquired is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

* * * * *

(3) *Information with respect to registrants other than S–2 or S–3 registrants.* * * *

(i) * * *

(J) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (b)(3)(i)(E) of this Item. If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraph (E) above with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3–05 of Regulation S–X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S–K.

(ii) * * *

(F) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S–K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S–K may be furnished pursuant to paragraphs (b)(3)(ii) (A) and (B) of this Item.

* * * * *

*Instructions to Item 14.* * * *

8. If abbreviated financial statements are included pursuant to paragraphs (b)(1)(ii)(E), (b)(2)(i)(A)(5), (b)(2)(i)(B)(2)(vi), (B)(3)(i)(J), or (b)(3)(ii)(F) of this Item, the registrant shall append the full financial statements required by Regulation S–X and the independent accountant's report thereon to the copies of the proxy statement filed with the Commission pursuant to Rule 14a–6 [17 CFR 240.14a–6]. If, however, the registrant previously has filed with the Commission full financial statements and the independent accountant's report thereon for the same period in an annual report on Form 10–K and any quarterly reports on Form 10–Q necessary to provide interim financial disclosure, the registrant does not have to append full financial statements to the copies of the proxy statement filed with the Commission, and the registrant may furnish the Form 10–K and 10–Q financial statements and the independent accountant's report thereon to requesting persons in satisfaction of the delivery requirement set forth in Item 305(e) of Regulation S–K.

* * * * *

35. By amending § 240.14c–3 by adding two sentences at the end of paragraph (a)(1) and revising the third sentence in the ''Note to Small Business Issuers'' to read as follows:

**§ 240.14c–3 Annual report to be furnished security holders.**

(a) * * *

(1) * * * If abbreviated financial statements are included in the annual report to security holders, the registrant shall append the full financial statements required by Regulation S–X and the independent accountant's report thereon to the copies of the report mailed to the Commission pursuant to paragraph (c) of this rule. If, however, the registrant has filed with the Commission an annual report on Form 10–K on or before the date that the annual report required by this rule is delivered to security holders, the registrant does not have to append full

financial statements to the copies of the report mailed to the Commission, and the registrant may furnish the Form 10–K financial statements to requesting persons in satisfaction of the delivery requirement set forth in Item 305(e) of Regulation S–K.

(2) * * *

*Note to Small Business Issuers.* * * * A small business issuer shall provide the information in Item 310(a) of Regulation S–B, or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B, the abbreviated financial statements required by Item 305 of Regulation S–B, in lieu of the financial information required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1)).

* * * * *

36. By adding § 240.14c–8 to read as follows:

**§ 240.14c–8 Abbreviated financial statements.**

(a) For purposes of this rule:

(1) The term ''full financial statements'' shall mean financial statements filed with the Commission meeting the requirements of Regulation S–X (§ 210 of this chapter), or, for small business issuers, Item 310 of Regulation S–B (§ 228.310 of this chapter).

(2) The term ''abbreviated financial statements'' shall mean financial statements that include the information specified in Item 305(b) of Regulation S–B (§ 228.305(b) of this chapter) or Item 305(b) of Regulation S–K (§ 229.305(b) of this chapter).

(b) A report furnished pursuant to § 240.14c–3 containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the report within the meaning of the federal securities laws based on the omission from the report of those financial statement footnotes permitted by Item 305 of Regulation S–B (§ 228.305 of this chapter) or Item 305 of Regulation S–K (§ 229.305 of this chapter) deemed a part of the report, provided the issuer has complied with Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(c) An information statement containing abbreviated financial statements pursuant to Item 1 of Schedule 14C (§ 240.14c–101 of this chapter) shall not be deemed materially misleading or omitting material facts from the information statement within the meaning of the federal securities laws based on the omission from the information statement of those financial statement footnotes permitted by Item 305 of Regulation S–B (§ 228.305 of this chapter) or Item 305 of Regulation S–K (§ 229.305 of this chapter) deemed a part of the information statement, provided the issuer has complied with Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(d) The full financial statements that are omitted from a report or information statement shall be deemed to be part of the report or information statement.

37. By amending Schedule 14C (§ 240.14c–101) by revising the last sentence in the Note to read as follows:

* * * * *

**Note:** * * * Small business issuers shall provide the financial information in Item 310 of Regulation S–B or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S–B, the abbreviated financial statements required by Item 305 of Regulation S–B, in lieu of any financial statements required by Item 1 of § 240.14c–101.

* * * * *

38. By amending § 240.14d–1 by adding paragraph (b)(3) to read as follows:

**§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.**

* * * * *

(b) * * *

(3) *Abbreviated Financial Statements*

(i) For purposes of this rule:

(A) The term ''full financial statements'' shall mean financial statements filed with the Commission pursuant to Item 9 of Schedule 14D–1, Item 1(a) of Schedule 14D–1F or Item 1(a) of Schedule 14D–9F.

(B) The term ''abbreviated financial statements'' shall mean financial statements that meet the requirements of Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(ii) A disclosure document containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the disclosure document within the meaning of the federal securities laws based on the omission from the disclosure document of those financial statement footnotes permitted by Item 305 of Regulation S–B (§ 228.305 of this chapter) or Item 305 of Regulation S–K (§ 229.305 of this chapter) deemed a part of the disclosure document, provided the bidder or other filer has complied with Item 305 of Regulation S–B or Item 305 of Regulation S–K.

(iii) The full financial statements that are omitted from a disclosure document pursuant to paragraph (e)(1)(x) of Rule 14d–6, Item 1(a) of Schedule 14D–1F or Item 1(a) of Schedule 14D–9F shall be deemed to be part of the disclosure document.

39. By amending § 240.14d–6 by adding paragraph (e)(1)(x) to read as follows:

**§ 240.14d–6 Disclosure requirements with respect to tender offers.**

* * * * *

(e) *Information to be included*

(1) * * *

(x) In lieu of the information required by paragraph (e)(1)(viii) above regarding information contained in Item 9 of Schedule 14D–1, or a fair and adequate summary thereof, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

40. By amending § 240.14d–102 by redesignating paragraph (a) of Item 1 as paragraph (a)(1), adding a new paragraph (a) introductory text and adding paragraph (a)(2) to read as follows:

**§ 240.14d–102 Schedule 14D–1F. Tender offer statement pursuant to rule 14d–1(b) under the Securities Exchange Act of 1934.**

* * * * *

Item 1. Home Jurisdiction Documents

(a) Furnish the information required by paragraph (a)(1) of this item to the Commission. Either the information required by paragraph (a)(1) or that required by paragraph (a)(2) of this item shall be furnished to shareholders. If information is delivered to shareholders pursuant to paragraph (a)(2) of this item, such information shall be furnished to the Commission.

(1) * * *

(2) Furnish the information required by paragraph (a)(1) above, *provided* that in lieu of financial statements included in such information, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

41. By amending § 240.14d–103 by redesignating paragraph (a) of Item 1 as paragraph (a)(1), adding a new paragraph (a) introductory text and adding paragraph (a)(2) to read as follows:

**§ 240.14d–103 Schedule 14D–9F. Solicitation/recommendation statement pursuant to section 14(d)(4) of the Securities Exchange Act of 1934 and rules 14d–1(b) and 14e–2(c) thereunder.**

* * * * *

Item 1. Home Jurisdiction Documents.

(a) Furnish the information required by paragraph (a)(1) of this item to the Commission. Either the information required by paragraph (a)(1) or that required by paragraph (a)(2) of this item shall be furnished to shareholders. If information is delivered to shareholders pursuant to

paragraph (a)(2) of this item, such information shall be furnished to the Commission.

(1) * * *

(2) Furnish the information required by paragraph (a)(1) above, *provided* that in lieu of financial statements included in such information, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S–B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S–K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

* * * * *

42. The authority for Part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

43. By amending Form 10–K (referenced in § 249.310) by deleting the second sentence in Item 8, and adding a sentence at the end of Note 1 to General Instruction G to read as follows:

**Note**—The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

G. Information to be Incorporated by Reference.

* * * * *

**Note 1**. * * * In addition, if abbreviated financial statements are included in the registrant's annual report that is incorporated by reference, then full financial statements meeting the requirements of Regulation S–X shall be filed under Item 8.

44. By amending Form 10–KSB (referenced in § 249.310b) by adding paragraph 2(c) to the General Instructions to read as follows:

**Note**—The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

General Instructions

* * * * *

E. Information to be Incorporated by Reference.

* * * * *

2. * * *

* * * * *

(c) If abbreviated financial statements are included in the registrant's annual report that is incorporated by reference, then full financial statements meeting the requirements of Regulation S–B shall be filed under Item 7.

By the Commission.

Dated: June 27, 1995.

**Margaret H. McFarland,**

*Deputy Secretary.*

BILLING CODE 8010–01–P

**Note:** The following appendices will not appear in the Code of Federal Regulations.

**Appendix A—Summary of Common Footnote Disclosures That Would Be Omitted From Abbreviated Financial Statements**

The proposed rules for abbreviated financial statements would omit footnote disclosure included in the full financial statements, except with respect to a limited number of specified matters. Those specified matters are discussed in the proposing release. The following is a summary of the major types of disclosures that would typically be omitted from abbreviated financial statements of commercial and industrial companies. It may be useful in evaluating the general extent to which the volume of footnote disclosures would be reduced. The listing is not intended to include every specific disclosure that would be omitted, nor is it intended to define what disclosures would be omitted under the proposed rules. The listing does not specifically address additional footnote disclosures that may be required in full financial statements of registrants in specialized industries. However, such disclosures would be omitted from the notes to the abbreviated financial statements unless their inclusion is required in response to a matter specified for disclosure under the proposed rules. Certain information regarding the financial statement captions listed below is required to be shown on the face of the full financial statements, and that information also is required on the face of the abbreviated financial statements.

*Omitted Disclosures by Major Financial Statement Caption*

Cash
- Restrictions, compensating balances

Inventories
- Amounts by major classes, LIFO information, long term contract terms and conditions, billed and unbilled amounts

Investment securities
- Types, maturities, realized and unrealized gains or losses, sales and transfers

Loan impairment information

Depreciable assets
- Amounts by major classes, depreciation expense, depreciable lives

Intangible assets
- Amounts by major classes, amount and reasons for significant additions, deletions and writeoffs, amortization periods

Investments accounted for under the equity method
- Nature of investment, percentage ownership, market value, summarized financial information of investee

Amount of assets subject to lien

Lease information
- Operating leases
  - Amounts expensed, commitments, future minimum lease payments, contingent rentals, terms and effects of sale-leaseback transactions
- Capital leases
  - Assets subject to capital lease, interest portion of obligation, future minimum lease payments

Long-term obligations
- Terms, maturities, sinking fund requirements, security interests, covenants, nature and terms of extinguishments, terms and effects of troubled debt restructurings, capitalized interest amounts, rates used to discount certain liabilities

On-balance sheet and off-balance sheet financial instruments
- Financial instruments
  - Terms and characteristics of both on-balance sheet and off-balance sheet financial instruments, notional or contract amounts, concentrations of credit risk, amount of possible accounting loss on off balance sheet instruments
- Hedging activities
  - Nature of activities and offsetting amounts, risks
- Derivatives
  - Nature, terms and objectives, characteristics by category, notional or contract amounts
- Fair value disclosures

Pension, post-employment, and post-retirement benefit plan information
- Description of plan, details of the expense, plan assets, plan benefit obligations, net asset or liability recognized, assumptions regarding weighted-average assumed discount rate, rate of compensation increase used to measure the projected benefit, weighted-average expected long-term rate of return on plan assets, and health care cost trend rate, nature and gain or loss on curtailment of settlement of plan

Income taxes
- Components of tax expense, components of deferred tax assets/liabilities and any valuation allowance, reconciliation of the effective income tax rate, carryforward information, nature and amounts of deferred taxes not recognized due to special exceptions to SFAS 109

Redeemable preferred stock
- Details of preferences, redemption terms and amounts

Stockholders equity
- Details of preferences, redemption terms, conversion features, voting rights, restrictions on net assets or payments of dividends, details of sales of stock by subsidiaries

Stock options and warrants
- Amounts granted, exercised, terminated and exercisable, changes in terms or exercise prices

Employee stock ownership plans (ESOPs)
- Details of plan, compensation expense during the period, number of share allocated and committed to be released, fair value of unearned ESOP shares and the existence of any obligation to

repurchase shares including the fair value of such shares
Commitments
Purchase, sale, delivery, guarantees etc.
Gain contingencies
Nonmonetary transactions
Transfers of receivable with recourse
Earnings per share
Supplementary earnings per share reflecting recent conversions or issuances of debt or equity securities
Cash flows
Interest and taxes paid, noncash transactions, sales, purchases, and maturities of investment securities

Research and development costs

Restructuring changes
Nature and basis for the charge, description of major restructuring actions, amounts expensed by category, description and number of employees to be terminated, nature and extent to which actual restructuring action differed from original plan
Segment, geographic and currency translation information
Business segment information
Revenues, operating profit or loss, identifiable assets, depreciation and capital expenditures
Revenue from major customers
Foreign operations
Reveues, operating profit or loss, identifiable assets
Currency translation
Balances, nature of foreign currency translated, exchange gains or losses included in net income
Foreign exchange contracts
Contract amounts and nature of foreign currency
Certain Risks and Uncertainties as defined by AICPA SOP 94–6

*Disclosures specified by recently issued or proposed FASB standards that would be omitted from abbreviated financial statements*

Accounting for the impairment of long-lived assets and for long-lived assets to be disposed of (SFAS 121)
A description of impaired assets and facts and circumstances leading to impairment
The amount of the impairment loss and how fair value was determined
The caption in the income statement in which the impairment loss is recognized
The business segment affected (if applicable)
Accounting for stock options
Any additional disclosures that may be required by the proposed FASB statement with respect to disclosure of stock option compensation.

**Appendix B—Disclosure Guidelines From the 1983 Study**

The following disclosure guidelines are reproduced from Summary Reporting of Financial Information, published in 1983 by the Financial Executives Research Foundation. The Guidelines were developed by the companies participating in the 1983 FERF study subsequent to the preparation of their prototype summary annual reports.

These guidelines are based on the accounting and disclosure standards in effect in 1983. They have not been updated for changes since then.

*General Guidelines*

SEC Rule. The guidelines presume that the summary report would not be materially misleading. This is implicit in SEC Rule 10(b)(5) and was among the instructions given to the nineteen companies that prepared mock summary reports.

Format. No specific guidelines are recommended for the format of summary reports. Companies should have flexibility to make the most meaningful presentation of their individual circumstances.

Narrative Financial Review. A summary report should include a narrative financial review. The authors believe that the summary reports that communicated most effectively were those that contained a narrative financial review in which management presented the company's financial results in layman's language. In addition, the financial review serves as a place to include all significant financial information, so as to avoid the duplication which occurs in many of today's annual reports. Also, the financial review provides a place where material now contained in the notes to the financial statements in technical terms can be explained in everyday language.

The reporting on various aspects of the results of operations, of financial position, and of changes in financial position in a narrative financial review should be on an exception basis. For example, companies that are not incurring any liquidity problems or that do not lack resources would not be required to include ''boilerplate'' language covering these matters.

There should be total flexibility as to format and location of a narrative financial review. For example, a company could present such a discussion in an expanded letter to shareholders, if it wishes.

Basic Financial Statements. A summary report should include a balance sheet and an income statement covering a minimum of two years. These could be condensed from those presented in the Form 10–K.

Funds flow information should be presented and should indicate the principal sources and uses of funds for a minimum of two years. This may be a condensed statement of changes in financial position, or any suitable alternative, such as a table or graph with a narrative explanation.

**Notes.** The style and placement of footnote-type disclosures, when required by the summary reporting guidelines, are optional. The traditional footnote format is acceptable but not required.

*Guidelines for Specific Disclosures*

Segment Data. A summary annual report should disclose industry and geographic segment data if necessary to give the reader an understanding of the company's business.

Industry segment data should include a description of the segments, sales by segment and some meaningful measure of segment earnings (e.g., operating income or net earnings).

Disclosure of identifiable assets, capital expenditures and depreciation expense by industry segment may be necessary if they would indicate a relationship among industry segments that is different from that which a reader might presume from observing sales and income.

Encouraged disclosure. Companies are encouraged to provide additional information to aid readers in understanding the company's lines of business. Disclosures, such as rate of return on investment by segment, would be helpful in analyzing operations by segment.

Companies are encouraged to disclose major operations outside the United States, especially when such operations are in countries that are politically or economically unstable.

In addition, disclosing major customer information is encouraged.

Accounting Policies and Accounting Changes. A company's accounting policies should be disclosed if:

- The policies are unique to the industry.
- There are acceptable alternative accounting principles that could be used and the choice would result in significantly different reported financial results.

Factors to consider in determining whether or not to disclose an accounting policy include how much impact the policy may have on the financial statements and whether a reader would expect the policy to be disclosed.

In addition, any material accounting changes should be disclosed, along with the effects of the changes on financial position or operating results.

Contingencies and Uncertainties. Summary reports should disclose specific contingencies that could, on resolution, have a material effect on financial position or operation results.

Acquisition and Dispositions. Summary reports should disclose significant acquisitions and dispositions of businesses, so the reader can more easily compare year-to-year reported financial results.

Encourgaged disclosure. A company is encouraged to disclose the business reasons for an acquisition or disposition if that information might aid the reader in understanding the event and its importance.

Long-term Debt. The total amount of long-term debt at the latest balance sheet date should be disclosed, including capitalized lease obligations. Scheduled maturities of this debt for each of the five years subsequent to the latest balance sheet date should be disclosed if it is anticipated that the maturities may cause or contribute to liquidity problems.

Restrictive loan covenants (e.g., dividend restrictions, working capital requirements, interest coverage ratios) should be disclosed if the company is in or near violation of a covenant at the balance sheet date, or the restrictions significantly impede the flow of funds from subsidiaries to the parent company or from the company to the shareholders.

Encouraged disclosure. Disclosure is also encouraged for larger than usual annual debt maturities, unusual financing and abnormal interest rates.

Financial information on Unconsolidated Subsidiaries and Equity Investees. The

entities should be identified and the percentages of ownership disclosed. In addition, aggregate totals of the following should be disclosed:

- Amount of the company's equity in earnings.
- Dividends received.
- Condensed balance sheet information.

Short-term Debt. The total amount of short-term debt and the amount of unused lines of credit at the latest balance sheet date should be disclosed.

Income Taxes. Companies should explain why the effective tax rate differs from the statutory tax rate, if there is a significant difference. Current guidance used by public companies would continue to apply in a summary report to determine materiality thresholds for disclosure. Such an explanation could be in the form of a reconciliation or be accomplished via narrative discussion.

The amount of any significant operating loss or investment tax credit carryforwards that the company expects to use should be disclosed.

Changing Prices Information. No minimum guidelines are proposed.

*Encouraged disclosure.* Companies are encouraged to include whatever quantitative inflation-adjusted data they consider appropriate and to provide a narrative discussion of the effects of inflation on reported financial results.

Quarterly Data. No minimum guidelines are proposed.

Market Price Data. No minimum guidelines are proposed.

*Encouraged disclosure.* Disclosure of the market price of the company's common stock is encouraged. This information could be on a monthly, quarterly or annual basis, indicating the highs, lows or averages for the period. The degree of detail would depend on the volatility of the stock's price.

Selected Five-year Data. Both income statement and balance sheet data for a period of least five years should be presented. At a minimum, this disclosure should include the items required by the SEC's selected financial data rule—revenues, income from continuing operations, income per share from continuing operations, total assets, long-term obligations and cash dividends declared per common share.

*Encouraged disclosure.* Companies are encouraged to disclose trend information, such as rate of return on investment, that would help the reader evaluate long-term performance and trends in financial position.

Pension and Employee Benefit Plans. No minimum guidelines are proposed, pending the forthcoming guidance from the FASB's current pension accounting project.

Detail of Inventory and Property. No minimum guidelines are proposed.

Leases. Five-year maturities of capitalized lease obligations should be disclosed if the maturities may be the cause of or contribute to liquidity problems. Such disclosure would typically be included with long-term debt maturity information.

Companies that have significant leases as a lessor should disclose information on their activities as a lessor, so the average reader can understand the business. Also, significant commitments for noncancelable operating leases should be disclosed.

*Encouraged disclosure.* Disclosure of significant leasing transactions and other types of financing arrangements is encouraged.

Shareholders' Equity. Minimum disclosure includes:

- The number of common shares outstanding at the latest balance sheet date.
- The components of shareholders' equity in the balance sheet at a minimum, a breakdown of retained earnings, total preferred stock and the total of common stock accounts.
- Total dividends declared.
- Restrictions on the payment of dividends due to loan or other covenants in cases where future dividend payments may be in jeopardy because the company is in or near violation of these covenants.

Extraordinary Items. Extraordinary items merit ample explanation to help the average reader understand the significant items that affect the comparability of reported financial results. Both the nature of the items and effect on the financial statements should be disclosed.

Other Income and Expense Data. Significant components of other income and expense should be disclosed if they would assist the average reader in understanding the comparability of reported financial results.

Other Specific Expenses. No minimum guidelines are proposed for depreciation, research and development, interest and advertising expenses.

*Encouraged disclosure.* Companies are encouraged to disclose these expenses when they are significant.

Capitalized Interest. No minimum guidelines are proposed.

Capital Expenditures and Firm Purchase Commitments. Companies should disclose current year capital expenditures. No minimum guidelines are proposed for firm purchase commitments that are in the ordinary course of business.

*Encouraged disclosure.* Disclosure is encouraged of planned capital expenditures for the next year and beyond, if significant, as well as significant commitments and any plans for major new capital projects.

Related Party Disclosures. Disclosure should include related party transactions or relationships where it is necessary for the reader to understand their present or potential future effects on results of operations or financial position.

Prior Period Adjustments. Any adjustment of prior period financial statements should be disclosed, along with reasons, to inform the reader that comparative financial information is different from that previously issued.

Ratios (Other Than Earnings Per Share). No minimum guidelines are proposed.

*Encouraged disclosure.* Companies are encouraged to show ratios that would be meaningful indicators of the results of operations, funds flow and financial position.

Earnings Per Share. Earnings per share amounts should be disclosed. In addition, fully diluted earnings per share should be disclosed if it is significantly different from primary earnings per share.

Treasury Stock. Significant amounts of common stock held in the treasury should be disclosed. It is presumed that significant acquisitions of treasury shares would be disclosed in the funds flow data.

Preferred stock. Significant types of preferred stock should be disclosed as separate line items in the balance sheet. Any scheduled maturities of preferred stock with mandatory redemption features should be disclosed if they may cause or contribute to liquidity problems.

*Reports on Financial Statements*

Report of Management. Companies are encouraged to include a management report. It could explain the basis on which the financial information is prepared and management's objectives in simplifying the presentation of financial information to shareholders and state that the Form 10–K is available upon request.

Report of Independent Accountants. A summary report should state, at a minimum, that the audited financial statements, including the independent accountants' report, are available in the Form 10–K. In addition, if the independent accountants' report is qualified for a matter other than consistency due to a change in accounting, such qualification should be mentioned in the summary report.

**Illustration of Independent Auditors' Report**

Report on condensed Financial Statements of a Public Entity Included in a Summary Annual Report

*Independent Auditors' Report*

Blank Company

We have audited the consolidated balance sheets of Blank Company and subsidiaries as of December 31, 19x5 and 19x4 and the related consolidated statements of income, stockholders' equity, and cash flows for the years then ended. Such consolidated financial statements and our report thereon dated March 15, 19x6, expressing an unqualified opinion (which are not presented herein) are included in Appendix A to the proxy statement for the 19x6 annual meeting of stockholders. The accompanying condensed consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on such condensed consolidated financial statements in relation to the complete consolidated financial statements.

In our opinion, the information set forth in the accompanying condensed consolidated balance sheets as of December 31, 19x5 and 19x4 and the related condensed consolidated statements of income, stockholders' equity and cash flows for the years then ended is fairly stated in all material respects in relation to the basic consolidated financial statements from which it has been derived.

**Appendix C—SEC Request for Investor Suggestions on How to Improve the Financial Information Provided in Annual Reports and Other Disclosure Documents Sent to Shareholders**

The U.S. Securities and Exchange Commission (''the SEC''), the federal government agency that oversees disclosure of information about companies to investors, wants to hear from investors about how they

use the annual report to shareholders that the SEC requires most companies to send their shareholders every year. These annual reports are required to contain financial statements, including notes to the financial statements, as well as other information about the company.

The SEC is proposing changes to its rules that would affect annual reports and other disclosure documents, such as prospectuses, containing financial statements that the SEC requires to be sent to investors. Some people have suggested that the information now required is too long and complex, and could discourage investors from examining the financial information they receive. Streamlining this information could highlight what is most important to investors. In addition, companies and their shareholders might be able to save substantial printing, mailing and other costs if the information were streamlined.

The proposed changes to the SEC rules would allow companies to include ''abbreviated financial statements'' in their annual reports and other documents sent to investors. Abbreviated financial statements would be the same as the financial statements now required, except that most of the notes could be omitted. The complete financial statements, with all of the notes, would still be filed with the SEC, and companies would have to send this information to investors promptly if they requested it.

The SEC also is asking questions about other approaches to streamlining the information given to investors. For example, should it allow companies to give their shareholders a ''summary annual report'' that includes financial information that is more condensed than abbreviated financial statements? Should it totally rescind the requirement that companies send their shareholders an annual report, and leave it up to the companies to decide when and what to communicate to shareholders?

The SEC would like information about how investors use the financial information they receive, and whether the proposed rule changes would be helpful to them. Since many people now have computers, the SEC would like to hear whether investors prefer to receive information about companies in which they invest in electronic format or in paper.

In addition, the SEC is proposing changes to its rules that would streamline disclosures about executive and director compensation in companies' annual proxy statements. Some of the information now required could be put into the company's Form 10–K report instead of the proxy statement. The Form 10–K is required to be filed with the SEC and provided to shareholders by the company upon request. The proposed rules also would require some of the director compensation information to be put in tabular form.

Here is a series of questions. We urge you to respond, whether you answer one question or all, or just have general comments. Feel free to use this form or write a separate letter marked ''File No. S7–13–95.''

Please mail your comments to the SEC so they arrive no later than October 10, 1995. Directions for sending your comments to the SEC are provided at the end of this document. The SEC will make your comments and other comments received by the SEC available to the public. In addition to receiving written comments, the SEC intends to hold focus groups composed of investors to assess investors' views as to the usefulness of sample abbreviated financial statements, as compared with full financial statements.

1. Do you read notes to the financial statements?

Yes ____ No ____

Do you find notes to the financial statements useful in making financial decisions?

Yes ____ No ____

Please add any comments you like about why the notes are or are not useful.

_____

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2. The SEC proposes to allow companies to send investors ''abbreviated financial statements'' that are the same as full financial statements except for limiting the number of notes. Notes would be limited to those covering the following matters:

1. Basis of presentation of the abbreviated financial statements.
2. Accounting policies.
3. Changes in accounting principle.
4. Restatements and reclassifications.
5. Changes in accounting estimate.
6. Business combinations.
7. Discontinued operations.
8. Circumstances identified in explanatory language added to the independent accountant's standard report.
9. Loss contingencies.
10. Events of default under credit agreements.
11. Related party transactions.
12. Bankruptcies and quasi-reorganizations.
13. Subsequent events.

All other financial statement notes would be available from the company on request and would be on file with the SEC. Are there some notes you would always want to see that are not set forth above?

Yes ____ No ____

If yes, please identify which notes you would want to see.

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Are there notes listed above that you feel could be omitted?

Yes ____ No ____

If yes, please identify which notes could be omitted.

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3. What information is the most useful in the annual report to shareholders—financial statements or other information?

Financial statements most useful ____
Other information most useful ____

If you think it is other information, please describe the type of other information that you find the most useful.

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4. Would you like to receive shorter documents, with less financial information, if you could still get the more detailed information by asking the company for it?

Yes ____ No ____

Please explain:

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5. Should the SEC continue to require that companies send shareholders annual reports?

Yes____ No ____

If the SEC does continue to require annual reports, should it continue to tell companies what information should go into those reports, instead of leaving it up to the company?

Yes____ No ____

Please explain:

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6. Financial statements are also in many prospectuses. Do you examine the financial statements in prospectuses?

Yes____ No ____

Would you be more likely to read the financial statements in a prospectus if they were shorter, with fewer notes?

Yes____ No ____

Please explain:

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7. Do you have easy access to a computer with a modem?

Yes____ No ____

If yes, do you use the computer to get information about companies in which you are a shareholder or are considering investing?

Yes____ No ____

Would you like to continue to get financial and other information from companies in paper even if you can get it electronically?

Yes____ No ____

Please explain or comment. If you do use the computer to get information about

companies, describe what kind of information you get, and what database you get it from.

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8. The SEC proposes to allow companies to provide some information about executive and director compensation in the Form 10–K rather than the annual proxy statement. The proposed rule changes still would require the following information to remain in the proxy statement:

1. Summary Compensation Table
2. Option Grants
3. Director Compensation
4. Compensation Committee Interlocks
5. Compensation Committee Report on Executive Compensation
6. Graph of the Company's Shareholder Returns

The SEC proposes to allow companies to move the following information to the Form 10–K:

7. Option Exercises and Value of Options Held
8. Long-Term Incentive Plan Awards
9. Pension Plans
10. Employment Contracts and Arrangements
11. Repricing of Options

Please state which of these items you find most useful, and give any explanation you wish to add:

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Of the items proposed to be moved, are there any that you would like to continue to have in the proxy statement?

Yes ____ No ____

If yes, which ones? Add any comments you wish.

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Of the items proposed to be retained in the proxy statement, are there any that you feel could be moved to the Form 10–K?

Yes ____ No ____

If yes, which ones? Add any comments you wish.

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9. Would you like to receive shorter annual proxy statements, with less information about the details of executive compensation, if you could still get the more detailed information by asking the company for it?

Yes ____ No ____

Please explain:

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*How to Mail Your Ideas and Suggestions to the SEC:*

- This form can be mailed to the SEC by folding it in half, with the return address showing. Please staple or tape this form closed. No postage is necessary.
- If you do not wish to use this form, you can write a letter directly to the SEC. Mark your letter ''File No. S7–13–95,'' and send it to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.
- Remember to send your ideas and suggestions in time to arrive by October 10, 1995.

*Do You Want Further Information About What the SEC is Considering?*

- If you would like a copy of the complete SEC releases that describe what the SEC is considering, write to Office of Consumer Affairs, Securities and Exchange Commission, Attn: Jonathan M. Gottsegen, Mail Stop 2–6, 450 Fifth Street, N.W., Washington, D.C. 20549. Please state whether you are asking for the release proposing ''abbreviated financial statesments'' or the release proposing changes to information about executive and director compensation, or both.

*Thank You For Responding.*

Your Name _____

Street Address _____

City_____ State _____ Zip _____

[FR Doc. 95–16389 Filed 7–7–95; 8:45 am]

BILLING CODE 8010–01–M

## 17 CFR Parts 228, 229, 240 and 249

**[Release Nos. 33–7184; 34–35894; File No. S7–14–95]**

**RIN 3235–AG50**

## Streamlining and Consolidation of Executive and Director Compensation Disclosure

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed Rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') today is proposing amendments that would permit registrants to provide in the Form 10–K some of the executive compensation disclosure that is currently required in the proxy statement furnished to shareholders. In addition, amendments to the format of disclosure regarding director compensation are being proposed in order to improve the presentation.

**DATES:** Comments on the proposed amendments should be received on or before September 8, 1995.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters should refer to File No. S7–14–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth M. Murphy or William B. Haseltine, Special Counsels, at (202) 942–2910, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 3–12, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing amendments to Item 402 of Regulations S–B and S–K[1] and to Forms 10–K and 10–KSB[2] and Schedule 14A[3] under the Securities Exchange Act of 1934 (''Exchange Act'').[4] The annual proxy and information statement[5] would be streamlined by allowing some of the more detailed compensation disclosure required by Item 402 of Regulations S–B and S–K to be provided in the annual report on Form 10–K[6] filed with the Commission rather than included in the proxy or information statement furnished to shareholders. The proposals also would affect director compensation disclosure, which would remain in the proxy statement, by consolidating certain elements of that disclosure into an easier-to-read tabular format that provides information for each director.[7]

### I. Discussion of Proposals

*A. Annual Proxy Statement Streamlining—Location of Compensation Disclosure*

Under the proposal, registrants could reduce the detailed executive

[1] 17 CFR 228.402 and 229.402.

[2] 17 CFR 249.310 and 249.310b.

[3] 17 CFR 240.14a–101.

[4] 15 U.S.C. 78a *et seq.*

[5] Throughout this release, references to proxy statements include information statements.

[6] The discussion of Form 10–K in this release also includes Form 10–KSB.

[7] In order to encourage individual investor comments and suggestions, a ''plain English'' solicitation of comment is included in another release issued today (33–7183), relating to proposals for abbreviated financial statements. This ''plain English'' solicitation of comment also solicits investor comment on the proposed changes to the executive compensation disclosure requirements; a copy may be obtained by calling 1–800–SEC–0330.

compensation information provided in the proxy statement by instead furnishing that information in the Form 10–K. The proxy or information statement could include only the following items:[8]

- Summary Compensation Table.
- Option/SAR Grants Table.
- Compensation of Directors (as proposed to be revised).
- Additional Information with Respect to Compensation Committee Interlocks and Insider Participation in Compensation Decisions.
- Board Compensation Committee Report on Executive Compensation.
- Performance Graph.[9]

Some have suggested that this information is that upon which most investors focus, and that provision of all of the other executive compensation disclosures required by Item 402 (the ''remaining disclosures'') may actually detract from a full understanding of the disclosure items listed above, or reduce the likelihood that investors will focus on these disclosure items. The remaining disclosures would be reported in Item 11 of Part III of Form 10–K. Pursuant to Rule 14a–3(b)(10),[10] registrants must include an undertaking in either their proxy statements or their annual reports to security holders to provide without charge, upon written request, a copy of the Form 10–K for the most recent fiscal year. Therefore, the remaining executive compensation disclosure would be available to security holders upon request.

Comment is solicited on whether registrants should be permitted to move the specified disclosure items to the Form 10–K only if the Form 10–K containing these items is filed prior to or at the same time as the proxy or information statement is first sent to shareholders. Comment is also solicited on whether registrants should have to provide the Form 10–K containing the remaining executive compensation disclosure upon security holders' oral request.

The following information would be moved from the annual proxy or information statement to the Form 10–K:

- Aggregated Option/SAR Exercises and Fiscal Year-End Option/SAR Value Table.
- Long-Term Incentive Plan Awards Table.
- Defined Benefit or Actuarial Plan Disclosure.
- Employment Contracts and Termination of Employment and Change-in-Control Arrangements.
- Report on Repricing of Options/SARs.[11]

Comment is requested as to the appropriateness of the proposed move of the disclosure to the Form 10–K for each of the above items.[12] Should any or all of the items remain in the annual proxy or information statement because they are generally of interest to all shareholders in voting on director candidates, and thus warrant an annual delivery requirement in connection with the election of directors? Are any of the items proposed to be moved necessary or helpful to a shareholder understanding of the disclosure provided in the Summary Compensation Table or Board Compensation Committee Report? Should the Option/SAR Grants Table be kept together with the Aggregated Option/SAR Exercises and Fiscal Year-End Option/SAR Value Table, and if so, would it be more appropriate to require this information in the proxy statement or the Form 10–K?

The streamlined executive compensation disclosure would apply only to proxy statements involving the annual election of directors, but not to those involving approval of compensation or retirement plans or option grants.[13] Comment is solicited on whether the items remaining in the proxy statement are the most pertinent ones for shareholders considering the election of directors, and whether the proposed streamlined disclosure should also apply to proxy statements involving the approval of compensation or retirement plans or option grants.[14] Are there any other types of proxy solicitations or shareholder meetings for which any or all of such items should be included in the proxy statement? Is it appropriate to retain the proxy statement disclosure requirement for the items proposed to be retained in the proxy statement?

Should the company be given the choice of including the performance graph in the annual report to security holders delivered to investors,[15] where it would be placed in the context of the company's financial statements, Management's Discussion and Analysis,[16] and other matters relating to the company's performance, rather than in the proxy statement? In that case, if the company chooses to include some graphic presentation of performance in the annual proxy or information statement, should it be required to include the mandated performance graph as well? Should the performance graph be required to be included in the annual report to security holders, where, as noted, it would be placed in context, even if it is also presented in the proxy statement?

*B. Format of Director Compensation Disclosure*

The Commission proposes to make the presentation of several common elements of director compensation disclosure that lend themselves to a tabular presentation, *e.g.*, annual retainer fees, meeting fees, and stock and option awards, clearer and more concise by replacing the current narrative disclosure of such compensation with a new table that would be entitled, ''Director Compensation for Last Fiscal Year.'' [17] The elements of director compensation that do not as readily lend themselves to a tabular presentation, *e.g.*, retirement benefits and legacy programs, as well as mandated or voluntary explanations of amounts presented in the table, would be discussed in notes or narrative immediately following the table. Disclosure of director compensation would remain a proxy statement requirement in order for shareholders to

[8] This is the information required by Item 402(b), (c), (g), (j), (k), and (l) of Regulation S–K [17 CFR 229.402(b), (c), (g), (j), (k) and (l)]. Small business issuers are not required to provide interlocks information, the Board Compensation Committee Report, or the Performance Graph. Thus, under the proposal, their proxy statements would include only the Summary Compensation Table, the Option/SAR Grants table, and disclosure of director compensation.

[9] Comment is specifically solicited on whether the performance graph should be moved to the annual report to shareholders. *See* text below at n. 15.

[10] 17 CFR 240.14a–3(b)(10).

[11] Currently, the Repricing Report is required only in an annual election of directors proxy or information statement. Under the proposal, this would instead appear in the Form 10–K, with the retained proviso that this information is not deemed to be incorporated by reference into any other Securities Act or Exchange Act filing.

[12] This is the information required by Item 402(d), (e), (f), (h) and (i) of Regulation S–K [17 CFR 229.402(d), (e), (f), (h) and (i)].

[13] *See* Item 8(b)–(d) of Schedule 14A.

[14] Such proxy statements include information required by Item 10 of Schedule 14A, which is related to and builds upon the Item 402 information.

[15] *See* Rule 14a–3(b) [17 CFR 240.14a–3(b)].

[16] Item 303 of Regulation S–B and S–K [17 CFR 228.303 and 229.303].

[17] Suggestions have been made that disclosure of director compensation should be enhanced in order to assist shareholders who rely on board oversight as an accountability mechanism. *See* ''Report of the NACD Blue Ribbon Commission on Director Compensation,'' National Association of Corporate Directors (''NACD''), June 19, 1995. The amendments regarding the presentation of director compensation disclosure proposed in this release are intended to assist shareholders by making the disclosure more readable and easily understood, but are not being proposed in response to the recently issued NACD report. Upon a thorough review of the report and further study of the issues raised by the NACD, the Commission will determine whether additional revisions to director compensation disclosure should be proposed.

have this information in considering their vote for the election of directors.

As proposed to be revised, Item 402(g) of Regulation S–K [18] would contain essentially the same disclosure as currently required, but the new table would require individual information for the last fiscal year to be given for each director who was not named in the Summary Compensation Table. The new table would exclude information about directors who also are executive officers named in the Summary Compensation Table to avoid repetitive disclosure, since any compensation such individuals receive in their capacity as directors would be included in the Summary Compensation Table. Comment is solicited on whether it would be appropriate to require a description of standard arrangements, such as directors' fees, for directors named in the Summary Compensation Table, by means of a note to the Director Compensation Table.[19]

For each director not named in the Summary Compensation Table, the new table would require disclosure of both cash and stock compensation provided to the director for services rendered during the registrant's last fiscal year. The table would consist of six columns requiring disclosure of:

- The director's name.
- The amount of any annual retainer fees paid to the director for service on the Board and Board Committees.
- The amount of any separate fees paid for attendance at Board and Committee meetings.
- The amount of any consulting fees, special assignment fees or other special compensatory fees.
- The number of any shares of stock granted.
- The number of securities underlying any stock options/SARs granted.

As is the case with other Item 402 tables, a column could be omitted from the table if there was no disclosure required under that caption.[20] The amounts of annual retainer fees and meeting fees set forth in the table would include any premium paid to a director for serving as a committee chairperson. With respect to these amounts, registrants would have the option of either setting forth the actual amount of the annual retainer fee and meeting fees paid to each director for services during the last completed fiscal year or simply describing any standard compensatory arrangements established by the registrant regarding payment of annual retainer and meeting fees, similar to the disclosure that currently is required in narrative form.

For example, if a director received the registrant's standard annual retainer fee of $10,000 and standard committee chair fee of $5000, the annual retainer column could state either ''$10,000 annual retainer and $5000 committee chair fee,'' or state only ''$15,000.'' Similarly, if a director received the registrant's standard $1000 per board meeting fee and $500 per committee meeting fee, resulting in aggregate meeting fee payments of $7500 for the year, the meeting fee column could state either ''$1000 per board meeting fee and $500 per committee meeting fee,'' or state only ''$7500.'' Comment is solicited on whether the Commission should require, in each column, disclosure of the actual aggregate dollar amount compensation paid to each director during the last fiscal year, rather than standard compensatory arrangements, and if so, whether a note to the table should briefly describe the arrangements pursuant to which the compensation was given.

In cases where some, but not all, of the registrant's directors listed in the table received compensation pursuant to standard arrangements, the standard fees could be reflected in the table only for the directors receiving such fees. The actual amounts of any non-standard fees would have to be set forth in the table for the directors receiving the non-standard fees.

The following types of compensatory arrangements, whether standard or non-standard arrangements, generally would not lend themselves as readily to a tabular presentation and would therefore continue to be presented in narrative:

- Retirement and pension benefits.
- Death benefits to the director's heirs.
- Insurance benefits.
- Legacy and other charitable programs.
- Other non-cash and non-stock benefits.

Consistent with current requirements, the material terms of any non-standard compensatory arrangement would have to be disclosed, as well as the amount paid.[21] With respect to consulting contracts and other non-standard arrangements for which amounts are presented in the new table, the material terms of these arrangements could be set forth either in a note to the table or narrative immediately following the table.

Comment is solicited as to whether there are any elements of director compensation proposed to be presented in the new table that should be discussed narratively, and vice versa. Could any of the compensatory items proposed to be described in narrative form be readily measured in current dollars (*e.g.*, because they involve current cash or stock allocations) and therefore be easily and efficiently reported in tabular form?

Furthermore, as proposed, disclosure would not have to be provided regarding the grant date market value of any stock provided to directors in consideration for their service on the board, nor would the exercise price of any options/SARs granted to directors, or other terms of such grants, have to be disclosed. Comment is solicited on whether this disclosure should be required. The proposed table also does not include information required by Item 404 of Regulations S–B and S–K (Certain Relationships and Related Transactions),[22] except to the extent it is also compensation information required by Item 402(g). Comment is solicited on whether it would be useful to consolidate Item 404 information with respect to directors into the Director Compensation Table.[23]

## II. Request for Comment

Any interested person wishing to submit written comments on the proposed amendments to executive and director compensation disclosure, as well as other matters that might have an impact on the proposed amendments, is requested to do so. Comment is solicited from the point of view of registrants, shareholders, and other users of information about the compensation of executives and directors. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse impact on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[24]

[18] 17 CFR 229.402(g). Item 402(f) is the analogous provision in Regulation S–B [17 CFR 228.402(f)].

[19] This is the information currently required by Item 402(g)(1) of Regulation S–K [17 CFR 229.402(g)(1)].

[20] Current Item 402(a)(6) of Regulation S–K [17 CFR 229.402(a)(6)] and Item 402(a)(5) of Regulation S–B [17 CFR 228.402(a)(5)] would be revised to permit the omission of the table or column.

[21] This is the information currently required by Item 402(g)(2) of Regulation S–K [17 CFR 240.402(g)(2)].

[22] 17 CFR 228.404 and 229.404.

[23] The consolidated table would be entitled, ''Director Compensation and Transactions for Last Fiscal Year.''

[24] 15 U.S.C. 78w(a).

### III. Cost-Benefit Analysis

To evaluate fully the costs and benefits associated with the proposals, the Commission requests commenters to provide views and data as to the costs and benefits associated therewith. The proposal to permit certain information to be provided in Form 10–K rather than the proxy statement is expected to benefit registrants by lowering costs associated with printing and mailing of information currently required to be furnished to shareholders. The proposal to revise the format of director compensation disclosure should not appreciably affect costs to the registrants preparing such information.

### IV. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the proposed amendments are intended to reduce the information regarding executive compensation included in proxy or information statements, while keeping in mind the Commission's goal of providing useful information to investors at a reasonable cost to companies.

As discussed more fully in the analysis, some of the registrants that the proposed amendments would affect are small entities, as defined by the Commission's rules. The proposed amendments would decrease the cost for all issuers, including small businesses.

The analysis discusses possible alternatives to the proposed amendments including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. Given the fact that small business issuers will receive a favorable impact from the proposed rules, the Commission does not believe that any of the alternatives are preferable at this time.

Comments are encouraged on any aspect of this analysis. A copy of the analysis may be obtained by contacting William B. Haseltine, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

### V. Statutory Basis

The amendments to Item 402 of Regulations S–B and S–K are being proposed pursuant to Sections 3(b), 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act, and Sections 8, 20, 24, 30 and 38 of the Investment Company Act of 1940.

### List of Subjects in 17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, and Securities.

### Text of the Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.402 by revising paragraphs (a)(5), (a)(7) and (f) to read as follows:

**§ 228.402 (Item 402) Executive compensation.**

(a) * * *

(5) *Omission of table or column.* A table or column may be omitted, if there has been no compensation awarded to, earned by or paid to any of the named executives or directors required to be reported in that table or column in any fiscal year covered by that table.

* * * * *

(7) *Location of specified information.* The information required by paragraphs (d), (e), (g) and (h) of this item need not be provided in a proxy or information statement pursuant to Item 8(a) of Schedule 14A (§ 240.14a–101 of this chapter), but may instead be provided in the registrant's Form 10–KSB (§ 249.310b of this chapter). The information required by paragraph (h) of this item will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

* * * * *

(f) *Compensation of directors.* (1) The information specified in paragraph (f)(2) of this item, regarding certain types of compensation paid or provided in the last completed fiscal year to each director of the registrant, except a director who is a named executive officer, shall be disclosed in the tabular format specified below:

DIRECTOR COMPENSATION FOR LAST FISCAL YEAR

| Name | Cash compensation | | | Security grants | |
|---|---|---|---|---|---|
| | Annual retainer fees ($) | Meeting fees ($) | Consulting fees/other fees ($) | Number of shares (#) | Number of securities underlying options/ SARs (#) |
| (a) | (b) | (c) | (d) | (e) | (f) |
| Director A<br>Director B<br>Director C | | | | | |

(2) The Table shall include:

(i) The name of the director (column (a));

(ii) Cash and Cash-Equivalent Compensation paid or provided to the director (columns (b), (c) and (d)), including:

(A) The dollar value (cash and non-cash) of any annual retainer fees for service on the Board and any Board Committees, including any premium for chairing a committee (column (b));

(B) The aggregate dollar value (cash and non-cash) of any fees for attendance at Board and Committee meetings, including any premium for chairing a committee (column (c)); and

(C) The aggregate dollar value (cash and non-cash) of any consulting fees paid or provided to the director pursuant to a consulting contract

entered into in consideration of the director's service on the board, as well as any special assignment fees and any other non-stock compensation paid or provided to the director in consideration of the director's service on the board; and

**Instructions to Item 402(f)(2)(ii)**

1. Amounts deferred at the election of a director, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], or otherwise, shall be included in columns (b), (c), or (d) as appropriate. The fact that the amounts have been deferred may be explained in a note to the table.

2. For any form of non-cash compensation, disclose the fair market value at the time the compensation is provided.

3. In lieu of stating the dollar value of any annual retainer fee (column (b)), or aggregate dollar value of any meeting fees (column (c)), actually paid or provided to each director for services during the last completed fiscal year, the standard compensatory arrangement for each individual director receiving the registrant's standard fees may be described. For example, if Director A received a registrant's standard annual retainer fee of $10,000 and standard meeting fees of $1000 per board meeting and $500 per committee meeting, ''$10,000'' would be set forth in column (b) and ''$1000 per board meeting and $500 per committee meeting'' would be set forth in column (c). If Director B received the registrant's standard annual retainer fee of $10,000 plus a $5000 standard premium for serving as a committee chairperson, ''$15,000'' would be set forth in column (b). If Director C received non-standard retainer and/or meeting fees, the actual amount of the fees paid or provided to Director C would have to be set forth in columns (b) and/or (c).

(iii) Any grant of securities to the director for any service provided as a director, including:

(A) the number of any shares granted (column (e)); and

(B) the number of securities underlying any stock options or SARs granted (column (f)).

**Instruction to Items 402(f)(2)(ii) and (iii)**

The material terms of any non-standard arrangements, including consulting contracts, pursuant to which any of the directors named in the table was compensated for any service provided as a director during the registrant's last completed fiscal year shall be provided in a note to the table or in narrative following the table.

(3) Describe the material terms of any arrangements, standard or otherwise, pursuant to which any director of the registrant was compensated for services during the last fiscal year for services as a director, that are not required to be disclosed in the table required by paragraphs (f)(1) and (2) of this Item. Such arrangements include, *e.g.*, retirement and pension benefits, insurance benefits, death benefits to the director's heirs, legacy and other charitable award program benefits. With respect to each arrangement described, state the name of the director that received compensation pursuant to the arrangement and state any amount paid during the last completed fiscal year.

* * * * *

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

4. By amending § 229.402 by revising paragraphs (a)(6), (a)(8) and (g) to read as follows:

**§ 229.402 (Item 402) Executive compensation.**

(a) * * *

(6) *Omission of table or column.* A table or column may be omitted, if there has been no compensation awarded to, earned by or paid to any of the named executives or directors required to be reported in that table or column in any fiscal year covered by that table.

* * * * *

(8) *Location of specified information.* The information required by paragraphs (k) and (*l*) of this item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). The information required by paragraphs (d), (e), (f), (h), and (i) of this item need not be provided in a proxy or information statement pursuant to Item 8(a) of Schedule 14A (§ 240.14a–101 of this chapter), but may instead be provided in the registrant's Form 10–K (§ 249.310 of this chapter). The information required by paragraphs (i), (k) and (*l*) of this item will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

* * * * *

(g) *Compensation of directors.* (1) The information specified in paragraph (g)(2) of this item, regarding certain types of compensation paid or provided for the director's service in the last completed fiscal year to each director of the registrant, except a director who is a named executive officer, shall be disclosed in the tabular format specified below:

DIRECTOR COMPENSATION FOR LAST FISCAL YEAR

| Name | Cash compensation | | | Security grants | |
|---|---|---|---|---|---|
| | Annual retainer fees ($) | Meeting fees ($) | Consulting fees/other fees ($) | Number of shares (#) | Number of Securities underlying options/ SARs (#) |
| (a) | (b) | (c) | (d) | (e) | (f) |
| Director A | | | | | |
| Director B | | | | | |
| Director C | | | | | |

(2) The Table shall include:

(i) The name of the director (column (a));

(ii) Cash and Cash-Equivalent Compensation paid or provided to the director (columns (b), (c) and (d)), including:

(A) The dollar value (cash and non-cash) of any annual retainer fees for service on the Board and any Board Committees, including any premium for chairing a committee (column (b));

(B) The aggregate dollar value (cash and non-cash) of any fees for attendance at Board and Committee meetings, including any premium for chairing a committee (column (c)); and

(C) The aggregate dollar value (cash and non-cash) of any consulting fees paid or provided to the director pursuant to a consulting contract entered into in consideration of the director's service on the board, as well as any special assignment fees and any other non-stock compensation paid or provided to the director in consideration of the director's service on the board; and

**Instructions to Item 402(g)(2)(ii)**

1. Amounts deferred at the election of a director, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], or otherwise, shall be included in columns (b), (c), or (d) as appropriate. The fact that the amounts have been deferred may be explained in a note to the table.

2. For any form of non-cash compensation, disclose the fair market value at the time the compensation is provided.

3. In lieu of stating the dollar value of any annual retainer fee (column (b)), or aggregate dollar value of any meeting fees (column (c)), actually paid or provided to each director for services during the last completed fiscal year, the standard compensatory arrangement for each individual director receiving the registrant's standard fees may be described. For example, if Director A received a registrant's standard annual retainer fee of $10,000 and standard meeting fees of $1000 per board meeting and $500 per committee meeting, ''$10,000'' would be set forth in column (b) and ''$1000 per board meeting and $500 per committee meeting'' would be set forth in column (c). If Director B received the registrant's standard annual retainer fee of $10,000 plus a $5000 standard premium for serving as a committee chairperson, ''$15,000'' would be set forth in column (b). If Director C received non-standard retainer and/or meeting fees, the actual amount of the fees paid or provided to Director C would have to be set forth in columns (b) and/or (c).

(iii) Any grant of securities to the director for any service provided as a director, including:

(A) the number of any shares granted (column (e)); and

(B) the number of securities underlying any stock options or SARs granted (column (f)).

**Instruction to Items 402(g)(2) (ii) and (iii)**

The material terms of any non-standard arrangements, including consulting contracts, pursuant to which any of the directors named in the table was compensated for any service provided as a director during the registrant's last completed fiscal year shall be provided in a note to the table or in narrative following the table.

(3) Describe the material terms of any arrangements, standard or otherwise, pursuant to which any director of the registrant was compensated for services during the last fiscal year for services as a director, that are not required to be disclosed in the table required by paragraphs (g)(1) and (2) of this Item. Such arrangements include, *e.g.*, retirement and pension benefits, insurance benefits, death benefits to the director's heirs, legacy and other charitable award program benefits. With respect to each arrangement described, state the name of the director that received compensation pursuant to the arrangement and state any amount paid during the last completed fiscal year.

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

6. By amending § 240.14a–101 by designating the existing Instruction to Item 8 as Instruction 1 and adding Instruction 2 to read as follows:

**§ 240.14a–101 Schedule 14A. Information required in proxy statement.**

* * * * *

Item 8. Compensation of directors and executive officers.

* * * * *

*Instructions.*

* * * * *

2. If action is to be taken with regard to Item 8(a), but not with regard to Item 8(b), (c) or (d), only the disclosure specified by Item 402(a)(8) of Regulation S–K (§ 229.402(a)(8) of this chapter) (or, if applicable, Item 402(a)(7) of Regulation S–B (§ 228.402(a)(7) of this chapter)) need be provided in response to this Item.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

* * * * *

7. The authority for Part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

8. By amending Form 10–K (referenced in § 249.310) by adding a sentence at the end of Item 11 read as follows:

**Note**—The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form 10–K**

**Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

* * * * *

Item 11. Executive Compensation. * * * If the registrant's definitive proxy or information statement is incorporated by reference pursuant to General Instruction G.3, and does not include all of the information required by Item 402 of Regulation S–K (§ 229.402 of this chapter), as permitted by Item 402(a)(8) of Regulation S–K, then the remaining Item 402 information shall be included in the annual report on Form 10–K.

* * * * *

9. By amending Form 10–KSB (referenced in § 249.310b) by adding a sentence at the end of Item 10 to read as follows:

**Note**—The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form 10–KSB**

* * * * *

Item 10. Executive Compensation. * * * If the small business issuer's definitive proxy or information statement is incorporated by reference pursuant to General Instruction E.3, and does not include all of the information required by Item 402 of Regulation S–B (§ 228.402 of this chapter), as permitted by Item 402(a)(7) of Regulation S–B, then the remaining Item 402 information shall be included in the annual report on Form 10–KSB.

* * * * *

Dated: June 27, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–16386 Filed 7–7–95; 8:45 am]

**BILLING CODE 8010–01–P**

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## 17 CFR Part 230

**[Release No. 33–7185; File No. S7–15–95]**

**RIN 3235–AG51**

## Exemption for Certain California Limited Issues

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In order to reduce regulatory burdens associated with certain offers and sales of securities, the Commission today is proposing a new exemption from its registration requirements for limited offerings of up to $5 million that are exempt from qualification under recently enacted California state securities law. In addition, public comment is solicited on whether the prohibition against general solicitation in certain Regulation D offerings should be reconsidered.

**DATES:** Comments should be submitted to the Commission on or before September 8, 1995.

**ADDRESSES:** All comments concerning the proposed rules should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington D.C. 20549 and should refer to File Number S7–15–95. Comment letters will be available for inspection and copying in the Commission's public reference room at the same address.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950 or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

**SUPPLEMENTARY INFORMATION:** The Commission today is proposing a new Rule 1001[1] under Section 3(b)[2] of the Securities Act of 1933 (the ''Securities Act'').[3] The new rule would exempt from the registration requirements of the Securities Act offers and sales up to $5 million that are exempt from state qualification under paragraph (n) of Section 25102 of the California Corporations Code.[4] Rule 144[5] also would be amended to include securities issued in reliance upon Rule 1001 in the definition of ''restricted securities.''

## I. Introduction

Since the inception of the Securities Act, Congress has delegated to the Commission the authority to exempt small issues from Securities Act registration provisions when such action is consistent with the public interest and the protection of investors. Soon after its creation, the Commission exercised this authority to provide an exemption for small offerings,[6] and since then, has adopted other rules from time to time, including exemptive rules under Section 3(b), to assist small businesses' capital raising ability, where consistent with investor protection.[7]

Today's proposal would provide a federal exemption for offerings of up to $5 million[8] that meet the qualifications of a new California exemption designed to assist small business capital formation.[9] The new California law provides an exemption from state law registration for offerings made to specified classes of qualified purchasers that are similar, but not the same as, accredited investors under Regulation D. Unlike Regulation D, various methods of general solicitations are permitted under the California law. The Commission believes that the California exemption facilitates small business capital raising with adequate protections to investors and therefore proposes to exercise its exemptive authority in Section 3(b) to provide a parallel federal exemption.

## II. The California Exemption

On September 26, 1994, a new exemption from the issuer transactions qualification provisions of the California Corporations Code became effective.[10] The provision was specifically designed ''to facilitate the ability of small companies to raise capital to finance their growth.''[11]

The exemption generally is limited to issuers that are California corporations or any other form of business entity organized in that state, including partnerships and trusts. In addition, non-California organized businesses may use the exemption if they can attribute more than 50 percent of property, payroll and sales to California and if more than 50 percent of outstanding voting securities of the issuer are held of record by persons having addresses in California. It is not available for offerings relating to a rollup transaction, nor may it be used by ''blind pool'' issuers or investment companies subject to the Investment Company Act of 1940 (the ''Investment Company Act'').[12]

Sales under the exemption must be effected only to qualified purchasers who buy for investment purposes and not for redistribution. A qualified purchaser is defined as:

- Designated professional or institutional purchasers or persons affiliated with the issuer;[13]
- Certain relatives residing with qualified purchasers;
- Promoters;
- Any person purchasing more than $150,000 of securities in the offering;[14]
- Entities whose equity owners are limited to officers, directors and any affiliate of the issuer;
- Reporting companies under the Securities Exchange Act of 1934 (the ''Exchange Act''),[15] if the transaction involves the acquisition of all of an issuer's capital stock for investment;
- A natural person whose net worth exceeds $500,000, or a natural person whose net worth exceeds $250,000 if such purchaser's annual income exceeds $100,000—in either case the transaction must involve

(a) only a one-class voting stock (or preferred establishing the same voting rights),

(b) an amount limited to no more than 10 percent of the purchaser's net worth, and

(c) a purchaser able to protect his or her own interests (alone or with the help of a professional advisor);[16]

- Pension and profit sharing trusts, as well as 401(k) plans[17] and Individual

[1] The proposed rule would be added as Regulation CA, 17 CFR 230.1001.

[2] 15 U.S.C. 77c(b).

[3] 15 U.S.C. 77a *et seq.*

[4] Cal. Corporations Code § 25102(n).

[5] 17 CFR 230.144.

[6] See Release Nos. 33–158, 159 (April 27, 1934).

[7] See, e.g., Regulation A [17 CFR 230.251–230.263] and Rule 504 [17 CFR 230.504] in Regulation D [17 CFR 230.501–230.508].

[8] This is the maximum dollar amount permitted under the Commission's Section 3(b) exemptive authority.

[9] The Commission has established the Advisory Committee on the Capital Formation and Regulatory Processes (''the Advisory Committee''), chaired by Commissioner Steven M.H. Wallman. The Advisory Committee is considering fundamental issues relating to the regulatory framework governing the capital formation process, including whether the current system of registering securities offerings should be replaced with a company registration system. The Advisory Committee may make recommendations that, if endorsed by the Commission, may result in rule proposals or legislative recommendations that could address the matters discussed in this release.

[10] Chapter 828, Statutes of 1994 (Senate Bill 1951—Killea), adding subdivision (n) to Corporations Code Section 25102.

[11] Section 3, Senate Bill 1951.

[12] 15 U.S.C. 80a–1 *et seq.*

[13] Officers and directors of corporate issuers (or persons performing similar duties), general partners and trustees where the issuer is a partnership or a trust, small business investment companies, business development companies subject to the Investment Company Act, private venture capital companies exempted from the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*], certain natural persons, entities comprised of accredited investors, banks, savings and loan associations, insurance companies, Investment Company Act companies, non-issuer pension or profit-sharing trusts, organizations described in Section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], business entities (corporations, business trusts or partnerships) with assets of more than $5 million. All these persons would qualify as ''accredited investors'' under Rule 501(a) [17 CFR 230.501(a)].

[14] Under the California provision, $150,000 purchasers and natural persons meeting a $1 million net worth or $250,000 annual income test must also satisfy one of the following additional suitability standards: (1) they must have, alone or with the assistance of a professional advisor, the capacity to protect their own interests; (2) they must have the ability to bear the economic risk of the investment; or (3) the investment must not exceed 10 percent of the person's net worth.

[15] 15 U.S.C. 78a *et seq.*

[16] This provision states that each such natural person, by reason of his or her business or financial experience, or the business or financial experience of his or her professional advisor (who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer), can be reasonably assumed to have the capacity to protect his or her interests in connection with the transaction. The California Department of Corporations has indicated that qualified investors under this rubric must have business or financial experience or rely on a professional advisor. Release No. 94–C (September 27, 1994).

[17] 26 U.S.C. 401(k).

Retirement Accounts of individual qualified purchasers.

Issuers must provide certain purchasers who are natural persons [18] a disclosure document as specified in Rule 502 of Regulation D [19] five days prior to any sale or commitment to purchase.

Offers, oral or written, are generally limited to qualified purchasers. However, the law does permit general announcements of a proposed offering to be widely published and circulated, so long as they contain only specified information. [20] This general announcement process is modeled on the ''test the waters'' concept being used by several of the states [21] and by the Commission in connection with Regulation A.

A notice must be filed with the California Corporations Commissioner at the initial offer of securities or with the publication of a general announcement of proposed offering, whichever comes first, accompanied by a $600 filing fee. A second filing is required within 10 business days after the close or abandonment of the offering, and in no case later than 210 days after the filing of the initial notice.

Because the new California exemption combines a form of general solicitation using a ''test the waters'' concept with a qualified purchaser concept in part derived from the Uniform Limited Offering Exemption (''ULOE''), [22] it does not fit well within any current federal exemption, other than Rule 504, [23] which is limited to $1 million, or potentially the intrastate offering exemption. [24] Rules 505 of 506 of Regulation D prohibit general solicitations; moreover, California's definition of qualified purchasers is broader than Regulation D's. The intrastate offering exemption is available only for those offerings by issuers incorporated and doing business in California.

The Commission does not believe that these differences need to be an impediment to the ability of small businesses to take full advantage of the California exemption. While the qualified purchaser definition differs somewhat from the accredited investor definition for individuals, the California law includes additional suitability standards. Moreover, the general announcement of proposed offering is subject to significant limitation, thereby protecting against abuse of the procedure. The provisions of the California law are consistent with investor protection and the public interest, and therefore warrant the Commission's full exercise of its exemptive authority under Section 3(b).

## III. Proposed Regulation CA and Rule 1001

### *A. The Exemption*

Proposed Rule 1001 would provide that offers and sales of securities, in amounts of up to $5 million, that are exempt from registration under the California securities law pursuant to paragraph (n) of § 25102 of the California Corporations Code are exempt from the registration requirements of Section 5 of the Securities Act, pursuant to Section 3(b) of that Act. [25] The proposal would allow reliance on Rule 1001 by all issuers that qualify for the state exemption. [26] Issuers would look to the state of California for interpretations relating to who qualifies for the exemption, since any person who lawfully relies on the state exemption also could rely on its federal counterpart. Comment is requested as to whether proposed Rule 1001 should include additional eligibility criteria, for example, non-reporting status under the Exchange Act or small business issuer status under federal securities laws, as defined in Securities Act Rule 405. [27]

As proposed, the rule would not require issuers to notify the Commission when they rely on the California exemption in view of the notification provisions of the California law. Comment is solicited as to whether a notice of reliance, similar to that used in connection with Regulation D offerings, should be required.

### *B. Computation of $5 Million Amount*

Proposed Rule 1001 exempts offerings up to $5 million, the maximum allowed under Section 3(b). The $5 million limit would apply on an offering by offering basis. [28] This approach differs from that applied in other Section 3(b) rules, where an annual dollar limit for the aggregate of various Section 3(b) offers has been used. [29] Rule 1001's offering by offering approach is proposed to more closely parallel the California exemptive provision. Comment is requested as to whether the proposed approach is appropriate, or whether the more traditional Section 3(b) annual aggregated offering approach should be used. If commenters prefer that the amount allowed be reduced by other Section 3(b) offerings in the previous 12-month period, which offerings should reduce the amount? [30]

### *C. Resale Limitations*

The proposed exemption would provide that purchasers in the exempt transaction receive ''restricted securities.'' [31] Consequently, purchasers would have to either register subsequent resales of the securities or have an exemption for such sales. Categorizing the securities offered and sold pursuant to the proposed exemption as ''restricted'' is consistent with the California exemption, since it requires an investment intent on the part of purchasers in the offering, and such shares could not be resold under California law without qualification or some other exemption under such law. In addition, the treatment is consistent with other federal exemptions, the availability of which depends on the

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[18] This delivery requirement is limited to those natural persons designated as qualified purchasers because their net worth exceeds $500,000, or whose net worth exceeds $250,000 where there is an annual income of $100,000.

[19] *See* 17 CFR 230.502(b)(2).

[20] The California provision limits the content of the general announcement to the following items: the issuer's identity; the full title of the securities being offered; the suitability standards of prospective investors; a statement that no money is being sought or will be accepted, that an indication of interest involves no commitment to purchase and that under certain circumstances a disclosure document will be provided prior to purchase; and the name, address and telephone number of a person who can provide further information about the offering. Only the following additional information may be included at the issuer's option: a brief description of the business, its geographical location and the offering price or method of determination.

[21] *See* CCH NASAA Reports ¶ 7036. Colorado, Kansas, Massachusetts, Oklahoma, Oregon, Pennsylvania, Vermont, Virginia and Washington are participating in a pilot program in this regard.

[22] CCH NASAA Reports ¶ 6201.

[23] 17 CFR 230.504.

[24] Securities Act Section 3(a)(11) [15 U.S.C. 77c(a)(11)] and Rule 147 [17 CFR 230.147].

[25] Proposed Rule 1001(a). While the transactions would not be subject to registration under Section 5, the antifraud provisions of the federal securities laws would continue to be applicable to all exempt transactions. *See* preliminary note 1 to proposed Rule 1001.

Proposed Rule 1001 would provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

[26] As noted above, California law precludes reliance on the exemption in connection with investment company, blind pool or roll-up offerings; thus, the proposed Rule 1001 exemption also would be unavailable in those cases.

[27] 17 CFR 230.405.

[28] Standard integration analysis concepts would apply. *See* Release No. 33–4552 (November 7, 1962) [27 FR 11316].

[29] *See, e.g.*, Rule 251(b) [17 CFR 230.251(b)], Rule 504(b)(2) [17 CFR 230.504(b)(2)] and Rule 505(b)(2)(i) [17 CFR 230.505(b)(2)(i)].

[30] Where a transaction involves non-cash consideration, the amount of the offering would be calculated as provided under California law.

[31] Proposed Rule 1001(c) and proposed amendment to Rule 144.

sophistication, wealth or institutional character of the investor.[32]

## IV. Similar Exemptions Adopted by Other States

While the exemption being proposed today is based on a California statute, the Commission is proposing also to provide the same exemption for each state that enacts a transaction exemption incorporating the same standards used by California.[33] This would be done either at such time as the Commission may determine to adopt Rule 1001, or if a state adopts such exemption later, the Commission will adopt a coordinated exemption upon notification by the state. The Commission requests comment on whether this proposed approach to adopting the Rule 1001 exemption for any state exemptions with the same requirements as the California exemption is appropriate. Where states determine to provide comparable exemptions that vary from the specific details of the California law, the Commission would expect to propose for comment an exemption comparable to that provided in Rule 1001.

## V. General Solicitation Under Regulation D and ULOE

The California exemption permits broad dissemination of information about a proposed offering—called the ''general announcement''—including specific information about the offering, such as the price of the securities to be offered. This ability to reach out to a broad audience to find possible interest, while formally offering and selling only to qualified purchasers that may be found through that process, appears to have the potential to significantly enhance the usefulness of an exemption that limits sales to specified classes of purchasers.

As noted, however, this public dissemination is one of the features of the California exemption that makes it difficult to fit within the Regulation D exemption, since Regulation D prohibits general solicitations, other than under the Rule 504 seed capital rule. Similarly, ULOE, an official policy guideline of the North American Securities Administrators Association, Inc. (''NASAA'')[34] that was adopted in coordination with the Commission's adoption of Regulation D, also prohibits general solicitations in these offerings.[35] The inability to reach out broadly to find possible qualified investors for Regulation D exempt offerings hampers the utility of the exemption and may raise the costs to companies of trying to do these exempt offerings; California's new exemption demonstrates the potential benefits of reexamining the costs and benefits of such prohibition.

Against the backdrop of this new approach in California, the Commission is considering whether amendments to Regulation D should be proposed that would similarly facilitate better use of the exemptions and lower the costs for companies by revising or eliminating the prohibition against general solicitation for Rule 505 and 506 offerings.

Comment is requested on whether the Commission should explore with NASAA the possibility of proposing such a change to Regulation D and ULOE. If NASAA will not follow this approach, would it still be worthwhile for the Commission to implement the change even if there were not significant state uniformity?

If the Commission makes proposals to permit some form of general solicitation in Rule 505 and 506 exempt offerings, a number of approaches could be considered. For example, a limited approach similar to the one adopted in California could be implemented. This allows a written communication to be broadly disseminated, but specifically limits the information allowed to be included. Would this approach be sufficiently helpful in allowing companies to locate potential investors for a private offering, or are the limitations overly restrictive? Other approaches would permit more extensive communications to be disseminated, including more extensive written and oral communications,[36] but could include some limitations, such as on the methods of dissemination or the classes of issuers entitled to use the provision. For example, would dissemination methods that are designed to reach only accredited investors be workable? Should any issuers be entitled to disseminate broadly to locate potential investors, or should this be limited to specific classes of companies, such as only non-reporting issuers, only small business issuers, or only reporting issuers? Are there other approaches that the Commission should consider?

Comment generally is requested on whether the Commission should consider altering the general solicitation prohibition. Given that all purchasers must continue to meet the requirements of Regulation D, and all information required by the regulation must be provided prior to purchase, would the ability to broadly disseminate to locate potential investors compromise investor protection interests?

Finally, the Commission requests comment as to whether the question of general solicitation in Regulation D or other private offerings should be addressed through legislative changes to the Securities Act rather than through Commission rulemaking. For example, should the Commission seek specific authority under the Securities Act to exempt private offerings that include general solicitations, provided that sales are made only to qualified purchasers? More generally, should the Commission recommend general exemptive legislation that would allow it greater flexibility to address these or even broader kinds of issues?

## VI. General Request for Comment

Any interested persons wishing to submit written comments on the proposed Section 3(b) exemption as explained in this release, or the questions regarding general solicitation, are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment is requested from the point of view of the public interest, the states, and the companies that would be affected; comments should address any possible effects on investor protection resulting from the proposed exemption. The Commission further requests comment on any competitive burdens that might result from the adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act[37] and Section 23 of the Exchange Act.[38] Comment letters should refer to File Number S7–15–95. All comments received will be available for public inspection and copying in the

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[32] *See, e.g.*, Section 4(6) of the Exchange Act [15 U.S.C. 78d(6)], Securities Act Rule 506 [17 CFR 230.506], and Securities Act Rule 701 [17 CFR 230.701].

[33] Several states currently are considering enacting exemptions comparable to the California law, but the Commission is unaware of any that have been adopted as of the date of this release.

[34] NASAA is an association of securities commissioners from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and several of the Canadian provinces.

[35] State statutes and rules based on NASAA's ULOE exempt offers or sales of securities made in compliance with Rules 501–503, 505 and/or 506 of Regulation D [17 CFR 230.501–230.503, 230.505 and 230.506 respectively], including the prohibition of general solicitations found in Rule 502(c).

[36] *See, e.g.*, Release No. 33–7188, a companion release proposing to permit ''test the waters'' activity in anticipation of a registered initial public offering, and Rule 254 of Regulation A [17 CFR 230.254].

[37] 15 U.S.C. 77s(a).

[38] 15 U.S.C. 78w(a).

Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

**VII. Cost-Benefit Analysis**

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed exemption discussed in this release, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. It is expected that compliance burdens will decrease with respect to issuers who qualify for the proposed exemption, inasmuch as they would be able to raise up to $5 million in capital without the burden and expense of compliance with the registration and reporting requirements of the federal securities laws.

**VIII. Summary of Initial Regulatory Flexibility Analysis**

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed Rule 1001 exemption and the proposed amendment to Rule 144. The analysis notes that the purpose of the proposals is to relieve small businesses of federal registration requirements where the transaction is exempt from qualification under paragraph (n) of Section 25102 of the California Corporations Code.

As discussed more fully in the analysis, the changes would affect persons that are small entities, as defined by the Commission's rules. It is anticipated that small businesses that qualify for the proposed exemption would experience a reduction in reporting, recordkeeping and compliance burdens. The analysis also indicates that there are no current rules that duplicate, overlap or conflict with the proposed exemption.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposals. The Commission believes that there is no need for special small business alternatives, since the purpose of the proposed rulemaking is to reduce burdens for small business. The fact that larger entities also could take advantage of the rule should not detract from that purpose.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposals are adopted. A copy of the analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

**IX. Statutory Basis for the Proposal**

Regulation CA, Rule 1001 and the amendment to Rule 144 are proposed pursuant to Sections 3(b) and 19 of the Securities Act.

**List of Subjects in 17 CFR Part 230**

Registration requirements, Securities.

**Text of the Proposed Exemption**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for Part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 89a–29, 80a–30, and 89a–37, unless otherwise noted.

* * * * *

2. By amending § 230.144 by removing the period at the end of paragraph (a)(3)(iv) and adding ''; or'' in its place and by adding paragraph (a)(3)(v), to read as follows:

**§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.**

* * * * *

(a) * * *

(3) * * *

(v) Securities acquired from the issuer that are subject to the resale limitations of Regulation CA (§ 230.1001).

* * * * *

3. By adding a new undesignated center heading and § 230.1001, to read as follows:

**Regulation CA—Exemption for Certain Issues of Securities Exempt Under State Law**

**§ 230.1001 Exemption for transactions exempt from qualification under § 25102(n) of the California Corporations Code.**

**Preliminary Notes:** (1) Nothing in this section is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors necessary to satisfy the antifraud provisions of the federal securities laws. This section only provides an exemption from the registration requirements of the Securities Act of 1933 (''the Act'') [15 U.S.C. 77a *et seq.*].

(2) Nothing in this section obviates the need to comply with any applicable state law relating to the offer and sales of securities.

(3) Attempted compliance with this section does not act as an exclusive election; the issuer also can claim the availability of any other applicable exemption.

(4) This exemption is not available to any issuer for any transaction which, while in technical compliance with the provision of this section, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions of paragraph (n) of § 25102 of the California Corporations Code, and paragraph (b) of this section, shall be exempt from the provisions of Section 5 of the Securities Act of 1933 by virtue of Section 3(b) of that Act.

(b) *Limitation on and computation of offering price.* The sum of all cash and other consideration to be received for the securities shall not exceed $5,000,000, less the aggregate offering price for all other securities sold in the same offering of securities, whether pursuant to this or another exemption.

(c) *Resale limitations.* Securities issued pursuant to this § 230.1001 are deemed to be ''restricted securities'' as defined in Securities Act Rule 144 [§ 230.144]. Resales of such securities must be made in compliance with the registration requirements of the Act or an exemption therefrom.

Dated: June 27, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–16387 Filed 7–7–95; 8:45 am]

BILLING CODE 8010–01–P

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## 17 CFR Parts 230, 240, 249 and 260

**[Release Nos. 33–7186; 34–35895; 39–2333; File No. S7–16–95]**

**RIN Number 3235–AG48**

## Relief From Reporting by Small Issuers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is publishing proposals designed to reduce burdens on small business by doubling the asset threshold that subjects companies to registration and periodic reporting under the Securities Exchange Act of 1934 (the ''Exchange Act'') from $5 million to $10 million.

**DATES:** Comments should be submitted to the Commission on or before September 8, 1995.

**ADDRESSES:** All comments concerning the proposed rules should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and should refer to File Number S7–16–95. Comment letters will be available for inspection and copying in the Commission public reference room at the same address.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, (202) 942–2950.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing for comment proposed amendments to Rules 12g–1, 12g–4 and 12h–3 [1] under the Exchange Act.[2] These amendments would increase the total asset threshold for Exchange Act registration and reporting from $5 million to $10 million. The Commission also is proposing conforming amendments to the description of Form 15 [3] and to certain of the Commission's definitions of the term ''small entity'' [4] under the Regulatory Flexibility Act.[5]

## I. Current Requirements and Proposed Revisions

Under the current rules, an issuer that has 500 or more record holders of a class of equity securities and total assets of $5 million or more must register its securities under the Exchange Act.[6] Issuers that must register are required to comply with the periodic reporting and other provisions applicable to public companies contained in the Exchange Act.[7] The asset threshold was originally set at $1 million in Section 12(g) of the Exchange Act. The Commission has increased the amount on two occasions: from $1 million to $3 million in 1982,[8] and from $3 million to the current $5 million in 1986.[9] As a part of its continuing efforts to reduce regulatory burdens on smaller companies, the Commission is now proposing to raise this asset threshold to $10 million.

Under the proposed revision to Rule 12g–1, an issuer would not be required to register under Section 12(g) until it has 500 or more record holders of a class of equity securities and total assets of $10 million or more.[10] This revision would not change requirements that securities traded on national exchanges [11] or the National Association of Securities Dealers Automated Quotation System (''NASDAQ'') [12] be registered pursuant to Section 12 of the Exchange Act. In addition, a company that conducts a public offering registered under the Securities Act of 1933 (the ''Securities Act'') [13] would continue to be subject to reporting pursuant to Section 15(d) of the Exchange Act unless the company becomes eligible to suspend such reporting. The proposals also would raise the asset threshold for termination of Section 12(g) registration and suspension of Section 15(d) reporting from $5 million to $10 million, but would not change the other tests for such termination and suspension.[14]

The Commission has long recognized that the cost of compliance with Exchange Act reporting requirements is relatively greater for small companies than for larger ones; [15] similarly, the Commission continuously examines and refines its securities registration exemptions under the Securities Act in an effort to lower the cost of raising capital for small business.[16] For example, in 1992 as a part of the Commission's Small Business Initiatives the Commission used the full amount of its Securities Act Section 3(b) [17] exemptive authority to increase the amount that may be raised in a Regulation A [18] exempt small offering from $1.5 million to $5 million. However, under the current Section 12(g) threshold, a company that is not traded on an exchange or NASDAQ, and has not conducted a registered public offering, can nevertheless become subject to the Exchange Act registration and reporting expense even though the company has conducted only one, or a limited number of, exempt small offerings. For example, a company that conducts an exempt Regulation A offering and raises the full $5 million permitted under the rule would likely be required to register under Section 12(g) under the current $5 million asset test (assuming it has the requisite number of shareholders). This is so even though a principal benefit of the Regulation A exemption is that, unlike a Securities Act registered transaction, it does not give rise to an Exchange Act reporting obligation. This burden appears to significantly reduce the utility of the small offering exemptions for small companies. The increase to $10 million in the Section 12(g) threshold proposed today should better enable companies to use the small offering exemptions without becoming subject to Exchange Act reporting.[19]

There currently are approximately 670 issuers with between $5 million and $10 million in total assets that report with the Commission.[20] Had the proposed increase in the asset threshold been in effect, these companies would not have been required to register and report with the Commission, unless they had voluntarily decided to do so, either because their securities are traded on a national securities exchange or NASDAQ, or because they chose to conduct a Securities Act registered offering. Of the 670, approximately 550 are traded on an exchange or NASDAQ.[21] A number of these

[1] 17 CFR 240.12g–1, 240.12g–4 and 240.12h–3.

[2] 15 U.S.C 78a *et seq.*

[3] 17 CFR 249.323. Form 15 is filed by an issuer to notify the Commission that it is terminating its registration under Section 12(g) of the Exchange Act [15 U.S.C. 78*l*(g)] or suspending its reporting under Section 15(d) [15 U.S.C. 78o(d)].

[4] The definitions are found at 17 CFR 230.157; 17 CFR 240.0–10; and 17 CFR 260.0–7.

[5] 5 U.S.C. 601 *et seq.*

[6] *See* Exchange Act Section 12(g) [15 U.S.C. 78l(g)] and Rule 12g–1.

[7] *E.g.*, the proxy requirements of Section 14, the Williams Act and the short-swing profit provisions of Section 16 of the Exchange Act.

[8] Release No. 34–18647 (April 15, 1982) [47 FR 17046].

[9] Release No. 34–23406 (July 8, 1986) [51 FR 25360].

[10] The proposed modification to Rule 12g–1 would retain the standard with respect to foreign private issuers providing that if a foreign private issuer has securities quoted in an automated interdealer quotation system it would remain subject to registration under Section 12(g).

[11] Securities traded on a national securities exchange must be registered under the Exchange Act pursuant to Section 12(b) [15 U.S.C. 78*l*(b)] of that Act.

[12] Pursuant to Schedule D to the NASD's By-Laws, securities traded on the NASDAQ system must be registered pursuant to Section 12 of the Exchange Act, CCH NASD Manual para. 1803.

[13] 15 U.S.C. 77a *et seq.*

[14] Rules 12g–4 and 12h–3 currently allow for termination of registration of a class of securities under Section 12(g) and suspension of the duty to file reports under Section 15(d) when the class of securities is held of record by less than 300 persons, or by less than 500 persons where the total assets of the issuer have not exceeded $5 million on the last day of each of the issuer's three most recent fiscal years. Also, the Section 15(d) reporting obligation cannot be suspended under Rule 12h–3 for fiscal year in which a Securities Act registration statement relating to the class of securities becomes effective. The proposals would amend Rules 12g–4 and 12h–3 to change the asset test from $5 million to $10 million.

[15] *See* Securities Act Release 6605 (September 30, 1985) [50 FR 41162].

[16] The Commission's Small Business Initiatives and Additional Small Business Initiatives adopted in 1992 and 1993 were designed to reduce both Securities Act and Exchange Act compliance burdens for small business. Release Nos. 33–6949 (July 30, 1992) [57 FR 36442] and 6996 (April 28, 1993) [58 FR 26509].

[17] 15 U.S.C. 77c(b).

[18] 17 CFR 230.251–230.263.

[19] In 1992, the Commission requested Congress to raise the ceiling for its small offering exemptive authority under Section 3(b) of the Securities Act to $10 million. *See* S. 2518, 102d Cong., 2d Sess. (1992).

[20] At present, approximately 1,670 reporting issuers have less than $10 million in assets.

[21] At present, approximately 975 of the approximately 1,670 reporting issuers that have less

Continued

companies would become eligible to terminate registration and reporting if the proposals are adopted, if they chose to do so, assuming the number of shareholders does not exceed the applicable limits for termination.[22] Of course, many of these companies may continue to report by choice in order to retain their ability to trade on an exchange or NASDAQ or as a result of additional registered public offerings, so the Commission cannot predict with any certainty the number of issuers whose Exchange Act registration and reporting requirements that may terminate as a result of the increase in the total assets criterion from $5 million to $10 million.

Comment is requested on whether the proposed increase in the Section 12(g) asset threshold is appropriate and useful for small businesses. Is $10 million in assets the appropriate level for subjecting companies that have not otherwise voluntarily entered the reporting system to this system? Should the increase be smaller than that proposed, *e.g.*, $7.5 million, or greater, *e.g.*, $15 million. Commenters are asked to specifically discuss their reasons for any suggested amount.

## II. Proposed Revisions to Regulatory Flexibility Act Definitions

The Commission is simultaneously proposing technical conforming amendments to the definition of a small entity for purposes of the Regulatory Flexibility Act. A small entity is currently defined as an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less, where the entity is not an investment company. Under the proposals the total assets criterion would be increased to $10 million to conform with the total asset criterion proposal for purposes of entering into or exiting from Exchange Act registration and reporting requirements.[23]

## III. Request for Comment

Any interested persons wishing to submit written comments on the proposed increase in the reporting threshold as explained in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment is requested from the point of view of the public interest and the issuers that would be affected; comments should address any possible effects on investor protection resulting from the proposed increase in the threshold. The Commission further requests comments on any competitive burdens that might result from the adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act and Section 23 of the Exchange Act. Comment letters should refer to File Number S7–16–95. All comments received will be available for public inspection and copying in the Commission's public reference room, 450 Fifth Street NW., Washington, DC 20549.

## IV. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed increase in the threshold discussed in this release, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. It is expected that compliance burdens will decrease with respect to issuers who qualify for the proposed higher threshold, inasmuch as issuers below the threshold will not have to register and report pursuant to the requirements of the Exchange Act and issuers that are currently reporting but who would otherwise now be below the threshold may choose to opt out of their reporting requirements.

## V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an initial regulatory flexibility analysis in accordance with 5 U.S.C. 603 regarding the changes to Exchange Act Rules 12g–1, 12g–4, and 12h–3 and the description of Form 15, as well as to Regulatory Flexibility Act definitions of ''small entity.'' Among other things, the analysis notes that these proposals are intended to reduce the cost of compliance with the Exchange Act reporting requirements, which is relatively greater for small companies than for larger issuers.

The proposals would not increase the Exchange Act reporting burden for any issuer and no additional recordkeeping or reporting will be required except a certification/notification to the Commission of the termination of any issuer's reporting duties under cover of Form 15. Such a filing may require the skills of a professional familiar with the securities laws, and some services by management, but does not require any recordkeeping or reporting beyond that already required by the Exchange Act.

The analysis indicates that a number of alternatives were considered in crafting the proposals, including the establishment of differing compliance or reporting requirements for small businesses, the clarification, consolidation or simplification of rules for small entities, the use of performance rather than design standards, and exemption from coverage of Commission rules for small entities. As more fully explained in the analysis, there is no better alternative to simplify, consolidate or better accommodate small business entities than the chosen approach, which is specifically designed to reduce regulatory burdens on small issuers.

A copy of the initial regulatory flexibility analysis may be obtained by contacting Twanna M. Young, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 at (202) 942–2950.

## VI. Statutory Basis

The amendments to the Commission's rules and form are being proposed by the Commission pursuant to Section 19 of the Securities Act; Sections 12, 13, 15 and 23(a) of the Securities Exchange Act; and Section 319 of the Trust Indenture Act of 1939.

Section 12(h) of the Exchange Act authorizes the Commission to exempt any issuer, or class of issuers, from Section 12(g) upon a finding that, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The proposal today recognizes that the relatively higher cost of reporting for small issuers must be weighed against the need for reporting.

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than $10 million in assets have securities that are traded either on an exchange or NASDAQ.

[22] Companies that take steps to reduce the number of shareholders in order to deregister, or otherwise engage in a Rule 13e–3 transaction [17 CFR 240.13e–3] with a view to deregistration, are reminded of the need to comply with the ''going private'' regulations.

[23] Release Nos. 33–6380, 34–18452, 35–22371, 39–639, 1C–12194 and 1A–791, (January 28, 1982) [47 FR 5215]. The proposals would thus continue the parity that exists between the definition of a small entity for purposes of the Regulatory Flexibility Act and the concept of a small issuer for purposes of Exchange Act reporting and registration requirements. Rule 157(a) under the Securities Act, Rule 0–10(a) under the Exchange Act and Rule 0–7 under the Trust Indenture Act of 1939 would be affected by the proposed conforming modifications to the definition of a small entity for purposes of the Regulatory Flexibility Act. The proposed modifications would not affect the definition of a small entity for purposes of the Regulatory Flexibility Act found in Rule 0–10 under the Investment Company Act of 1940, Rule 0–7 under the Investment Advisers Act of 1940, or Rule 110 under the Public Utility Holding Company Act of 1935, as such Acts contain definitions of a small entity for purposes of the Regulatory Flexibility Act that do not relate to a total asset criterion.

The Commission historically has focused on the importance of continuous reporting when there is a trading market, where investors have an expectation that companies will provide continuous reports under the Commission's continuous reporting system, and has found the absence of such a market support for the conclusion that small companies should be given the opportunity to avoid the cost of continuous reporting.[24] Today's proposal is consistent with this approach since companies with securities traded on an exchange or NASDAQ would continue to be subject to Section 12 registration and reporting, and the expectation of investors in companies traded in such markets that these companies will continue to be subject to periodic reporting would not be altered. In addition, the proposal furthers the policies of Section 3(b) of the Securities Act to allow small offerings to be conducted without subjecting the issuer to registration under Section 12 of the Exchange Act.

**List of Subjects in 17 CFR Parts 230, 240, 249 and 260**

Reporting and recordkeeping requirements, Securities.

**Text of Proposals**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

## PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

1. The authority citation for Part 230 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

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2. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

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3. The authority citation for Part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

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4. The authority citation for Part 260 continues to read as follows:

**Authority:** 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

**Parts 230, 240, 249, and 260 [Amended]**

5. 17 CFR Parts 230, 240, 249 and 260 are amended by removing the reference to ''$5 million'' and adding in its place ''$10 million'' in the following sections:

(a) 17 CFR 230.157(a)
(b) 17 CFR 240.0–10(a)
(c) 17 CFR 240.12g–1
(d) 17 CFR 240.12g–4(a)(1)(ii)
(e) 17 CFR 240.12g–4(a)(2)(ii)
(f) 17 CFR 240.12h–3(b)(1)(ii)
(g) 17 CFR 240.12h–3(b)(2)(ii)
(h) 17 CFR 249.323(a)
(i) 17 CFR 260.0–7

Dated: June 27, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–16388 Filed 7–7–95; 8:45 am]

BILLING CODE 8010–01–P

[24] *See* Release 33–6605 (September 30, 1985) [50 FR 41162].

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## 17 CFR Part 230

**[Release Nos. 33–7187; 34–35896; File No. S7–17–95]**

**RIN 3235–AG53**

## Revision of Holding Period Requirements in Rule 144; Section 16(a) Reporting of Equity Swaps and Other Derivative Securities

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is proposing to amend the holding period requirements contained in Rule 144 (d) and (k) to permit resales of ''restricted'' securities after a one-year, rather than a two-year, holding period, if the sale complies with all of the other provisions of Rule 144. Securities held by non-affiliated shareholders could be resold without restriction after a holding period of two, rather than three years. In addition, the Commission is requesting comment on whether Rule 144 should be revised to address new trading strategies, such as equity swaps, and is reminding persons subject to reporting under Section 16 of the Securities Exchange Act of 1934 (the ''Exchange Act'') that reporting of these transactions is required under the current rules.

**DATES:** Comments must be submitted on or before September 8, 1995.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comment letters should refer to File No. S7–17–95 and will be available for public inspection and copying in the Commission's Public Reference Room.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance at (202) 942–2950.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing to shorten the holding periods in Securities Act of 1933 (the ''Securities Act'')[1] Rule 144,[2] the non-exclusive safe harbor for resales of ''restricted'' securities[3] and securities held by affiliates of the issuer. Under the proposal, the holding period for resales of limited amounts of securities by any person would be reduced from two years to one year, and the holding period for resales by non-affiliates without compliance with any provisions of the rule would be reduced from three years to two years.[4] This release also includes a discussion of whether Rule 144 should be amended to reflect new trading strategies, such as equity swaps, and a reminder to persons subject to reporting under Section 16 of the Exchange Act[5] that reporting of these transactions is required under the current rules.

[1] 15 U.S.C. 77a *et seq.*

[2] 17 CFR 230.144.

[3] ''Restricted securities'' are defined in Rule 144(a)(3). *See infra* Note 7.

[4] The Commission has established the Advisory Committee on the Capital Formation and Regulatory Processes (the ''Advisory Committee''), chaired by Commissioner Steven M.H. Wallman. The Advisory Committee is considering fundamental issues relating to the regulatory framework governing the capital formation process, including whether the current system of registering securities offerings should be replaced with a company registration system. The recommendations of the Advisory Committee may result in rule proposals or legislative recommendations that, if endorsed by the Commission, ultimately may address the matters discussed in this release. Under some of the company registration models now being considered by the Advisory Committee, many of the legal distinctions between publicly offered and privately placed securities would be eliminated, including the concept of restricted securities. Securities issued by a company registered with the Commission would be freely tradeable, regardless of the public or private character of the transaction.

[5] 15 U.S.C. 78p.

## I. Background and Proposal

The Commission adopted Rule 144 in 1972[6] to provide an objectively determinable safe harbor for resales of ''restricted'' securities and ''control'' securities. ''Restricted'' securities generally are securities issued in private placements;[7] ''control'' securities are securities owned by affiliates of the issuer. The rule provides that a person that complies with its terms and conditions will not be engaged in a distribution of securities and, thus, not be an underwriter[8] for purposes of the Section 4(1) exemption from Securities Act registration for ordinary trading transactions.[9]

The rule includes holding periods for ''restricted'' securities to establish that the holder did not purchase with a view to an unregistered public distribution. Under the rule, all ''restricted'' securities must be held at least two years before any can be resold, measured from the time the securities were purchased from the issuer or an affiliate. For ''restricted'' securities held between two and three years, other provisions of the rule require that the issuer be providing certain current information about itself, that limited amounts of securities are resold, that the resales are effected in ordinary brokerage transactions or directly with a market-maker, and that a notification of the resale is filed with the Commission. After a three-year holding period, ''restricted'' securities may be resold by non-affiliates without compliance with any of these provisions.

The length of the holding period for ''restricted'' securities significantly impacts the costs of raising capital in private placements since investors require that the price of the securities be discounted commensurate with the market risk during the holding period. In each of the past four years, the small business community has asked the Commission through the annual Government-Business Forums on Small Business Capital Formation to consider shortening the Rule 144 holding period.[10] The two-year holding period has been in place since the rule was adopted in 1972; the concept of ''free'' resales for non-affiliates after three years was adopted in 1981.[11] In 1990, the rule was revised[12] to permit the holding period to be measured from the time that the securities were purchased from the issuer or an affiliate, so that holders may tack each other's holding periods, rather than requiring the entire holding period for each holder.

Based on the Commission's experience with Rule 144 in the 20 years since adoption, the Commission believes that it is appropriate to enhance the utility of the safe harbor, and reduce costs for private capital formation, by shortening the holding periods. Consequently, the Commission is proposing that the holding period applicable to limited Rule 144 resales be reduced from two years to one[13] and the holding period for ''free'' resales by non-affiliates reduced from three years to two. The Commission believes that these proposed holding periods are sufficiently long to establish that the securities were not purchased with a view to a public unregistered distribution.

Comment is requested as to whether the proposed revisions to the holding period are appropriate. Are these periods sufficient to assure that persons relying upon Rule 144 are not engaged in a public distribution of securities inconsistent with the Section 4(1) ordinary trading transaction exemption? Should the periods be retained, or should the proposed periods be changed to be shorter or longer? If other holding periods are suggested, the basis for the selected holding period should be indicated.

## II. Equity Swaps and Other Like Investment Strategies

### *A. Treatment Under Rule 144*

In 1990 when the Commission amended Rule 144 to allow tacking of the holding period between investors, the Commission also deleted the provision that previously tolled the holding period if the holder engaged in short sales, puts or other options to sell securities.[14] The intervening 5-year period since implementation of the holding period revisions has evidenced the growth of a variety of investment strategies associated with separating the bundle of rights that make up a security: strategies that are used in both the private and public securities markets. Through the use of equity swaps, forward contracts, derivatives and other financial tools, holders of restricted and control shares are selling interests in such shares while retaining legal title to the ''underlying'' security. Today, record or beneficial ownership does not necessarily reflect who holds the voting, investment or income interests of a security.[15]

The Commission is examining whether it may be appropriate to revise Rule 144 to reflect the economic realities of these transactions. For example, is it appropriate to treat securities as ''held'' in the private markets if the economic risk of the investment has been shifted to the public markets? If not, should this be addressed through reintroducing holding period tolling concepts for periods when the holder is not at risk, or should the rule be revised to require compliance with the rule when the risk shifting transaction to the public markets occurs? If Rule 144 were to be revised to address these questions, what changes would best ensure that the economic benefits and risks of investment are not shifted during the prescribed holding period? Also, should any possible revisions distinguish between companies that are and are not widely followed in the market and, if so, why? In addressing the question generally, commenters should provide their views as to the need to have a fungibility doctrine underlie Rule 144 to assure that the safe harbor in fact protects resales that are not part of the distribution and that are consistent with investment intent.

### *B. Reminder of Requirement To File Section 16 Reports*

Questions are being raised as to the adequacy of information to the markets about the securities transactions effected through equity swaps and similar

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[6] Release No. 33–5223 (January 11, 1972) [37 FR 591].

[7] ''Restricted'' securities include those acquired from the issuer or an affiliate in a transaction or chain of transactions not involving a public offering; those acquired from the issuer and subject to resale limitations under Regulation D, 17 CFR 230.501–508 or Rule 701, 17 CFR 230.701; those subject to the Regulation D resale limitations and acquired in a transaction or chain of transactions not involving a public offering; and those acquired in a transaction or chain of transactions meeting the requirements of Rule 144A, 17 CFR 230.144A.

[8] *See* Section 2(11) of the Securities Act.

[9] Section 4(1) exempts transactions by persons that are not issuers, underwriters or dealers.

[10] Final Reports of the SEC Government-Business Forum On Small Business Capital Formation (June 1992) (June 1993) (June 1994) (February 1995). The Small Business Investment Incentive Act of 1980 directs the Commission to host this annual meeting for the purpose of reviewing ''the current status of problems and programs relating to small business capital formation.'' Pub. L. No. 96–477, Section 503, 94 Stat. 2275, 2292–93 (1980).

[11] Release No. 33–6286 (February 6, 1981) [46 FR 12195].

[12] Release No. 33–6862 (April 23, 1990) [55 FR 17933].

[13] Conforming changes also are proposed to be made in paragraph (e)(3) relating to determining the limitations on the amounts resalable by pledgees, donees and trusts, reducing the period from two years after the event of pledge default, donation or trust acquisition, to one year.

[14] In 1990, the Commission rescinded former subdivision (d)(3) of Rule 144, which generally tolled the holding period while a holder had a short position in or an option to sell securities of the same class as the restricted securities.

[15] *See* Release No. 33–7190, which addresses other issues relating to equity swaps and similar transactions.

strategies.[16] In August 1994, the Commission's release proposing revisions to rules under Section 16 of the Exchange Act[17] included a discussion of reporting obligations arising from equity swaps and similar risk-shifting transactions. In that release, the Commission stated that Section 16 insiders must report equity swaps and similar transactions in equity securities of the issuer,[18] unless the swap relates solely to interests in securities comprising part of specified market baskets or indices of stocks.[19]

The release provided the following example of an equity swap required to be reported. An insider agrees to pay to the counterparty for a period of three years the value of dividend payments on 100,000 shares of issuer common stock, in exchange for payment of a fixed interest rate based on the market value of the 100,000 shares of stock at the commencement of the swap term. The parties also agree that at the end of the swap term, the insider will pay to the counterparty the cash value of any appreciation on the shares during the term, or, conversely, the counterparty will pay to the insider the cash value of any depreciation. The insider retains title to and any voting rights in the securities.

The release suggested a method of reporting entering into and closing out the swap using stock appreciation and depreciation rights and deemed acquisitions and dispositions of the underlying securities. In setting forth this analysis, the Commission specially noted in the release that it was not suggesting that previously filed forms reporting swap transactions in another manner needed to be revised, or that swap transactions reported differently would be subject to disclosure pursuant to Item 405 of Regulations S–B or S–K.[20] The release solicited comment on whether the Commission's approach reflects economic reality and whether a separate reporting code for equity swaps is needed. The Commission wishes to remind Section 16 insiders that reporting at the time these transactions are entered into and when they are closed out is required.[21]

## III. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an initial regulatory flexibility analysis in accordance with the Regulatory Flexibility Act.[22] The analysis notes that the amendments to Rule 144 are being proposed as a result of recommendations developed at the SEC Government-Business Forums on Small Business Capital Formation. The purpose of the revisions is to remove unnecessary restrictions in the resale of securities while maintaining important protections to the investing public.

A copy of the initial regulatory flexibility analysis may be obtained from Twanna M. Young, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 7–8, Washington, DC 20549, (202) 942–2950.

## IV. Statutory Basis, Text of Proposal and Authority

The amendment to the Commission's rule is being proposed pursuant to sections 2(11), 4(1), 4(4) and 19(a) of the Securities Act.

### List of Subjects in 17 CFR Part 230

Reporting and recordkeeping. Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for Part 230 continues to read in part, as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.144 is amended by revising paragraphs (d)(1), (e)(3)(ii), (e)(3)(iii), (e)(3)(iv) and (k) to read as follows:

**§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.**

* * * * *

(d) *Holding period for restricted securities.* * * *

(1) *General rule.* A minimum of one year must elapse between the later of the date of the acquisition of the securities from the issuer or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities, and if the acquiror takes the securities by purchase, the one-year period shall not begin until the full purchase price or other consideration is paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer.

* * * * *

(e) *Limitation on amount of securities sold.* * * *

* * * * *

(3) *Determination of amount.* * * *

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(ii) The amount of securities sold for the account of a pledgee thereof, or for the account of a purchaser of the pledged securities, during any period of three months within one year after a default in the obligation secured by the pledge, and the amount of securities sold during the same three-month period for the account of the pledgor shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable;

(iii) The amount of securities sold for the account of a donee thereof during any period of three months within one year after the donation, and the amount of securities sold during the same three-month period for the account of the donor, shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable;

(iv) Where securities were acquired by a trust from the settlor of the trust, the amount of such securities sold for the account of the trust during any period of three months within one year after the acquisition of the securities by the trust, and the amount of securities sold during the same three-month period for the account of the settlor, shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable;

* * * * *

(k) *Termination of certain restrictions on sales of restricted securities by persons other than affiliates.* The requirements of paragraphs (c), (e), (f) and (h) of this section shall not apply to

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[16] *See* Rocker, ''Short Interest: No More Bullish Bellow,'' Barron's, May 1, 1995.

[17] Release No. 34–34514 (August 10, 1994) [59 FR 42449].

[18] The term ''insider'' as used in this release refers to officers, directors and holders of more than ten percent of a class of equity securities who are subject to Section 16.

[19] 59 FR 42449, 42457, footnote 101 and accompanying text. No Section 16 consequences would flow from a swap transaction to the extent the swap relates solely to interests in securities comprising part of a broad-based, publicly traded market basket or index of stocks, approved for trading by the appropriate federal governmental authority, that are deemed not to confer beneficial ownership for purposes of Section 16 pursuant to Rule 16a–1(a)(5)(iii) [17 CFR 240.16a–1(a)(5)(iii)] and/or are excluded from the definition of ''derivative securities'' pursuant to Rule 16a–1(c)(4) [17 CFR 240.16a–1(c)(4)].

[20] 17 CFR 228.405 and 229.405.

[21] To the extent settlement of the parties obligations occurs on an interim basis during the term of the swap, such as quarterly, the insider's Section 16 obligations would arise with respect to each settlement.

[22] 5 U.S.C. 603.

restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided a period of at least two years has elapsed since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer. In computing the two-year period for purposes of this provision, reference should be made to paragraph (d) of this section.

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Dated: June 27, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secreatary.*

[FR Doc. 95–16390 Filed 7–7–95; 8:45 am]

**BILLING CODE 8010–01–P**

## 17 CFR Parts 230 and 232

**[Release No. 33–7188; File No. S7–18–95]**

**RIN 3235–AG52**

## Solicitations of Interest Prior to an Initial Public Offering

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is publishing for comment a proposed rule that would allow issuers contemplating initial public offerings to solicit indications of investor interest in their companies prior to the filing of a registration statement under the Securities Act of 1933. The proposed rule would allow an issuer to assess potential investor interest in the company before incurring possibly significant costs associated with the preparation of offering disclosure documents. The proposals are intended to reduce the regulatory impediments and cost of accessing public markets consistent with investor protection interests.

**DATES:** Comments must be submitted on or before September 8, 1995.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters should refer to File No. S7–18–95. All comments received will be available for public inspection and copying in the Commission's public reference room, 450 Fifth Street, N.W., Washington, D.C., 20549.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950 or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing for comment a rule [1] that would permit an issuer prior to its initial public offering (''IPO'') to solicit indications of interest in the company's securities before filing a registration statement under the Securities Act of 1933 (the ''Securities Act'').[2] The Commission also is proposing to amend the ''test the waters'' provision [3] under Regulation A [4] to permit issuers that ''test the waters'' under Regulation A and decide to have a registered offering instead to do so without a 30 day waiting period, as well as permitting issuers to use Regulation A if, after ''testing the waters'' under the proposed new rule, they determine to go forward with a Regulation A offering instead of a registered offering.[5] In addition, Securities Act Rule 100 [6] would be amended to add a definition of direct participation investment program for purposes of the new rule, and Regulation S–T [7] would be amended to provide that the ''test the waters'' document for registered offerings may be submitted to the Commission in electronic format via the EDGAR system, at the option of the issuer.

### I. Background

In 1992, as part of its Small Business Initiatives, the Commission introduced new procedures into Regulation A that allow issuers considering whether to undertake a public offering to ''test the waters'' for potential investor interest before undertaking a full-scale offering that requires the preparation, Commission filing and delivery to investors of the mandated offering documentation.[8] The initiative was intended to provide a cost-effective means for an issuer, with no established market for its securities, to determine whether there is any investor interest in its securities before undertaking an offering and incurring the full costs of compliance with the applicable disclosure requirements. If, after the solicitation, the issuer concludes there is insufficient or no investor interest, it can avoid significant, unnecessary compliance costs. If the issuer determines to proceed with the offering, it is required to provide potential investors with the full mandated disclosure documents. Since adoption of the ''test the waters'' procedures, 61 issuers have submitted solicitations to the Commission, 26 of which have proceeded to file Regulation A or registered offerings.

In 1993, the North American Securities Administrators Association, Inc. (''NASAA'')[9] undertook a two-year pilot program to consider and evaluate ''test the waters'' approach under state securities laws.[10] Nine states [11] have been participating in the pilot. The NASAA pilot procedures differ from those adopted under Regulation A in several respects, the most significant of which are: (a) a pre-use filing requirement; (b) more mandated information in the solicitation document; [12] (c) a requirement that the written solicitation document be delivered to those directly contacted; and (d) delivery of the prospectus at least seven days prior to sale. Several classes of issuers are disqualified from using the NASAA pilot ''test the waters'' procedures.

Various commenters have suggested that the Commission explore extending the benefits of the ''test the waters'' process beyond Regulation A.[13] Most recently, the Subcouncil on Capital Allocation of the Competitiveness

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[1] Proposed Rule 135d.

[2] 15 U.S.C. 77a *et seq.*

[3] Securities Act Rule 254 [17 CFR 230.254].

[4] 17 CFR 230.251–230.263.

[5] Proposed amendments to Rule 254(d) [17 CFR 230.254(d)] and Rule 254(b)(4) [17 CFR 230.254(b)(4)].

[6] 17 CFR 230.100.

[7] 17 CFR Part 232.

[8] Release No. 33–6949 (July 30, 1992) [57 FR 36442]; Release No. 33–6996 (April 28, 1993) [58 FR 26509].

[9] NASAA is an association of securities commissioners from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and several of the Canadian provinces.

[10] *See* NASAA's Proposed Statement of Policy on Solicitation of Interest (Test the Waters)(''NASAA's Statement'') which is set forth in an Appendix to this release.

[11] Colorado, Kansas, Massachusetts, Oklahoma, Oregon, Pennsylvania, Vermont, Virginia, and Washington.

[12] The NASAA Statement requires, in addition to the information set forth in Rule 254, (1) the date of the issuer's organization as well as a statement of its stage of development; (2) a more specific description of the issuer's business, products and services and the manner in which the issuer intends to carry out its activities; (3) a general indication of the manner of using proposed proceeds from the offering; and (4) a complete listing of the issuer's officers and directors, their locations, employment history and educational background. *See* Solicitation of Interest Form in the NASAA Statement in the Appendix to this release.

[13] The comment letter prepared by members of the Committee on Federal Regulation of Securities, the Committee on State Regulation of Securities and the Small Business Committee of the Section of Business Law of the American Bar Association on the Small Business Initiatives suggested in 1992 that the Commission explore extending use of ''test the waters'' beyond the Regulation A context to other offerings. *See* letter dated July 8, 1992 in response to request for comment on the Small Business Initiatives (Release No. 33–6924 (March 12, 1992) [57 FR 9768]).

Policy Council [14] recommended that in the interest of facilitating small business capital raising, these issuers be permitted to ''test the waters'' in advance of undertaking a registered IPO.

Experience under Regulation A suggests that the ''test the waters'' initiative provides issuers of small offerings a useful and cost-effective means of assessing whether there is sufficient potential interest in the company as an investment to proceed with a Regulation A offering. To date, these solicitations do not appear to have raised significant investor protection concerns. Accordingly, the Commission today is soliciting comment on the appropriateness of providing a similar ''test the waters'' option for registered IPOs. [15]

In considering whether to provide a ''test the waters'' process for registered IPO's, the Commission is committed to assuring that the interests of investors are not compromised. The release solicits comment on a number of limitations or conditions that go beyond those currently required in connection with Regulation A offerings. These comments are intended to provide a basis for the Commission to assess the need for any or all of these provisions to assure that investors have the full opportunity to review and consider the information mandated by the Securities Act in making their investment decision, and that the solicitation of interest communications are not such as to cause investors to overlook the mandated disclosures. [16]

The IPO market is one of the great strengths of the U.S. capital markets, and its breadth and depth is unique. [17] In the first five years of the 1990's, $114.8 billion have been raised in the common equity IPO market. [18] Continued investor confidence is key to maintaining the strength and vitality of this market, and any ''test the waters'' process implemented by the Commission will have to be consistent with maintaining this confidence.

## II. Proposals

### *A. Description of proposed Rule 135d*

Under the proposal, an eligible issuer considering a registered IPO would be permitted to solicit indications of interest prior to filing a registration statement under the Securities Act, subject to the conditions and limitations of proposed new Rule 135d. While assuring that investors receive information mandated by the Securities Act before making an investment, the proposed rule would allow companies to gauge investor interest before incurring the significant expense required in the preparation of IPO disclosure documents. If market interest is not reflected by the response to the solicitation, companies may turn to other capital-raising plans. [19]

Under the current system, this would only be determined after preparation of all required compliance materials, which may involve significant expense. The efficiency of the capital markets, and the fiscal health of developing enterprises, is not benefited by issuers' finding out later rather than sooner that the public markets are not the most appropriate forums for their capital raising. On the contrary, the efficiency of the capital raising process is enhanced when issuers that spend the large sums required for an IPO have some indication as to how an offering will be received. The proposal would allow issuers to structure their offerings with consideration for their particular needs as well as the needs of investors, since issuers would be able to receive indications from potential investors concerning what offering structure may be of interest, and could then use that information in structuring their offerings.

Communications meeting the requirements of the proposed rule would not be deemed to offer any security for sale [20] for purposes of Section 5 of the Securities Act. [21] As proposed, those eligible to use the new rule would include any issuer not reporting under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the ''Exchange Act''), [22] but not: [23]

(a) Issuers of asset-backed offerings; [24]

(b) Partnerships, limited liability companies and other direct participation investment programs; [25]

(c) Investment companies registered or required to be registered under the Investment Company Act of 1940; [26] or

(d) Blank check or penny stock issuers. [27]

The first three exclusions apply to those issuers that appear unsuited to a ''test the waters'' concept, given the complex and contractual nature of the issuer. Blank check and penny stock issuers are excluded because of the substantial abuses that have arisen in such offerings. Comment is requested as to the appropriateness of the proposed exclusions. Are there any issuers proposed to be excluded that should be provided the benefits of the ''test the waters'' process? Are there additional classes of issuers that should be excluded either because of the nature of the investment vehicle or potential for abuse? Should any of the exclusions in the NASAA draft policy statement be specifically incorporated into the proposal? [28] Should the rule be limited to small business issuers? [29]

As in the case of Regulation A, the proposed IPO ''test the waters'' solicitation may include both oral and written solicitations, provided that a written solicitation document is submitted to the Commission at or prior to the time the solicitation is first

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[14] See Forthcoming Report to be used by the Subcouncil on Capital Allocation of the Competitiveness Policy Council, March 31, 1995.

[15] The Commission has established the Advisory Committee on the Capital Formation and Regulatory Processes (the ''Advisory Committee''), chaired by Commissioner Steven M.H. Wallman. The Advisory Committee is considering fundamental issues relating to the regulatory framework governing the capital formation process, including whether the current system of registering securities offerings should be replaced with a company registration system. The recommendations of the Advisory Committee may result in rule proposals or legislative recommendations that, if implemented, may also address the matters discussed in this release. While some of the company registration models under consideration generally would not change the requirements by which a company that was not filing reports with the SEC conducts an IPO, certain company registration models could facilitate solicitations of interest by registered companies with respect to repeat offerings, by eliminating the requirement for registering each public offering of securities.

[16] A discussion of the legal basis for the proposed rule is in Section C of the release; comment is specifically solicited on this issue.

[17] *See, e.g. Foreign Firms Flock to U.S. for IPOs*, Wall Street Journal, June 23, 1995, at C1.

[18] Securities Data Company. This includes foreign companies' first common equity offerings in the U.S.; it does not include asset-backed securities.

[19] Limitations on general solicitation under Regulation D [17 CFR 230.501–230.508] and case law under Section 4(2) of the Securities Act [15 U.S.C.77d(2)] may limit companies' flexibility in pursuing such alternatives. Comment is requested in the discussion hereinafter as to what steps the Commission should take to address these issues. In a companion release published today, the Commission is soliciting comment on various possible approaches to allowing general solicitations in some form in Regulation D offerings. See Release No. 33–7185.

[20] Proposed Rule 135d(a). This provision would be similar to that contained in Rule 135 [17 CFR 230.135].

[21] 15 U.S.C. 77e.

[22] 15 U.S.C. 78m(a) and 15 U.S.C. 78o(d).

[23] Proposed Rule 135d(a)(1).

[24] ''Asset-backed securities'' is defined in General Instruction I.B.5 of Form S–3 [17 CFR 239.13].

[25] ''Direct participation investment program'' would be defined in a proposed amendment to Rule 100. Comment is requested as to whether the scope of the proposed definition is appropriate or whether an alternative definition would meet the goals of the exclusion.

[26] 15 U.S.C. 80a–1 *et seq.*

[27] A ''blank check'' company is defined at Securities Act Rule 419(a)(2) [17 CFR 230.419(a)(2)]; and ''penny stock'' is defined at Exchange Act Rule 3a51–1 [17 CFR 240.3a51–1].

[28] *See* Section 1 of NASAA Statement in the Appendix to this release.

[29] ''Small business issuer'' is defined in Securities Act Rule 405 [17 CFR 230.405].

made.[30] Unlike Regulation A, however, the submission of the ''test the waters'' written materials would be a condition to reliance on the rule. Comment is requested as to whether the rule should require that the written ''test the waters'' solicitation material be submitted and subject to Commission staff review prior to use. Comment also is requested as to whether submission should be a condition to reliance upon the rule.

Any written solicitation or broadcast would be required to include the following:

- A statement that the solicitation is not an offering of securities for sale, and that any public offering to be made will be made by means of a prospectus that may be obtained from the issuer and that will contain detailed information about the company and management, as well as financial statements;
- A statement that no money is being solicited, or will be accepted;
- A statement that no sales will be made or commitments to purchase securities will be accepted until a registration statement is filed with the Commission and becomes effective or an appropriate exemption from registration is available and utilized;
- A statement that indications of interest involve no obligation or commitment of any kind; and
- An identification of the issuer's chief executive officer and a brief and general description of its business and products.[31]

Comment is solicited as to whether each of the specified disclosure items is needed in the IPO context. Should any additional information be required under the proposed rule? Comment is requested as to whether additional information should be required in the soliciting material, such as that required by the NASAA draft policy.[32] Should the rule limit the amount of information includable about financing plans such as the type and amounts of securities that might be offered for sale, as well as possible underwriting arrangements? Should the mandated information be required in any oral solicitation?

Subject to the prescribed disclosure, the proposed rule would permit other information to be included. This information specifically could include the type, amount, and price of the securities to be offered, financial information (including unaudited financial statements, and projections or other forward-looking statements). All such information, of course, would be subject to antifraud prohibitions. Comment is requested as to whether information with this level of specificity about the possible offering should be permitted, or, instead, whether the information should be more limited, such as to information about the company generally and its intention to conduct an initial public offering.

The issuer would be permitted to include a coupon that could be returned to the company indicating interest and requesting a prospectus in the event the company determines to undertake a public offering.[33] The coupon would be required to state clearly and separately that the indication of interest is not binding and that no money should be sent. Under the proposed rule, issuers would not be permitted to include questions in the coupon soliciting information about the investors' financial profile, such as income, assets and investment history. Comment is requested as to whether this limitation is appropriate.[34]

Under the rule as proposed, there is no restriction on the means of dissemination of the ''test the waters'' solicitation.[35] Thus, the issuer could send the solicitation material to prospective investors, or publish it in a newspaper or other print media. Use of broadcast media, whether radio or television, would be permitted, as would electronic dissemination through such media as the Internet or other data networks. To come within the protection of the proposed safe harbor, the mandated disclosure provisions would have to be met with respect to each publication or transmission. Comment is requested as to whether there should be restrictions on this type of solicitation. While unsolicited telephoning of investors could be conducted, should such telephoning be prohibited by the issuer, by broker/dealers, and other non-issuer personnel altogether? Should the rule require that any person directly contacted be given a copy of the written solicitation material required to be submitted to the Commission? Should the rule contain additional limitations on the statements allowed? Should the rule prescribe what information is permitted to be included?

Should oral solicitations be limited or precluded? For example, should oral solicitations be limited to certain statements, or limited to the information set forth in the written solicitation material? Should oral solicitations be limited to accredited investors[36] or qualified institutional buyers?[37]

The proposed rule also would require that the writing or script be submitted to the Commission. Unlike the current Regulation A ''test the waters'' provision, however, the submission would be made only at the Commission's Washington, D. C. headquarters.[38] Also, as noted above, unlike the current Regulation A ''test the waters'' provision, this submission would be a condition to reliance upon the rule.[39] Following the submission of the written document or script of the broadcast, oral communications with prospective investors and other broadcasts would be permitted. All communications would be subject to the antifraud provisions of the federal securities laws.[40] As is the case with Regulation A,[41] the proposed rule could not be relied upon after the filing of a registration statement.[42] Thus, under the proposal, all ''test the waters'' solicitations, written or oral, must terminate at the time a registration statement for the offering is filed. Also, the proposal would, like Regulation A,[43] require that 20 days elapse between the last publication or delivery of the solicitation document or broadcast and any sales of securities.[44] Should this apply to oral ''test the waters'' solicitations as well?

Finally, the proposed rule, like Regulation A,[45] would deem ''test the

[30] Proposed Rule 135d(a)(3) and (4).

[31] Proposed Rule 135d(a)(2).

[32] *See* Solicitation of Interest Form in the NASAA Statement in the Appendix to this release.

[33] Proposed Rule 135d(b).

[34] Rule 254 of Regulation A does not prohibit requests for such information in the coupon.

[35] If an issuer wants to maintain full flexibility to proceed with an offering under Regulation D and Section 4(2) of the Securities Act, the means of dissemination of the ''test the waters'' solicitation would have to be consistent with the limitations under the regulation and statute. *See* the companion release issued today, soliciting comment on the use of general solicitation in Regulation D offerings. Release No. 33–7185.

[36] *See* Rule 501(d) of Regulation D [17 CFR 230.501(d)].

[37] *See* Rule 144A(a)(1) [17 CFR 230.144A(a)(1)].

[38] Proposed Rule 135d(a)(3). Under the proposed rule, the document would be submitted to the Commission, but not officially filed, and, like Rule 254 material, would be available for public inspection. The ''test the waters'' submission could be submitted either in paper or via the Commission's EDGAR system. *See* proposed amendment to Rule 101(b) of Regulation S-T [17 CFR 232.101(b)].

The proposed rule would contain a note stating that only solicitation of interest material that contains substantive changes from or additions to previously submitted material need be submitted.

[39] Rule 254 of Regulation A provides that submission of the materials to the Commission is not a condition to the exemption.

[40] Proposed note to proposed Rule 135d(a)(4).

[41] Rule 254(b)(3) [17 CFR 230.254(b)(3)].

[42] Proposed Rule 135d(a)(5).

[43] Rule 254(b)(4) [17 CFR 230.254(b)(4)].

[44] Proposed Rule 135d(a)(6).

[45] The Commission amended Rule 254 to provide that a written ''test the waters'' solicitation document complying with Regulation A will not constitute a ''prospectus'' as defined in Section 2(10) of the Securities Act [15 U.S.C. 77b(10)]. *See*

waters'' material submitted to the Commission and otherwise in compliance with the rule not to be a ''prospectus'' as defined in Section 2(10) of the Securities Act,[46] and therefore not subject to Section 12(2) of the Securities Act.[47] Comment is requested as to the appropriateness of removing these materials from Section 12(2) liabilities. Should ''test the waters'' soliciting material be required to be filed as part of the registration statement for the IPO and subjected to Sections 11[48] and 12(2) liabilities if the registered offering is conducted within a specified time period of the solicitation, *e.g.* 2, 6 or 12 months?

In *Gustafson* v. *Alloyd Co., Inc.,*[49] the Supreme Court concluded that the written instruments there at issue did not constitute a ''prospectus'' as that term is used in Section 12(2) of the Securities Act, notwithstanding the broad coverage of the statutory definition of the term ''prospectus'' in Section 2(10) of the Securities Act. The Commission believes that its determination that written documents of the type referred to in proposed Rule 135d should *not* be deemed a prospectus, or part of a prospectus, is an appropriate use of its authority both under Sections 2(10) and 19(a). It also believes that its proposal to limit the breadth of the term ''prospectus'' is not inconsistent with the Supreme Court's decision in *Gustafson*.

As noted above, the proposed rule requires that no sales of securities occur until at least 20 days after the last publication or delivery of the solicitation document or broadcast.[50] Comment is requested as to whether or not pre-confirmation prospectus delivery requirements[51] should be revised to permit investors a longer period of time than they have currently, *e.g.*, seven days (instead of the current 48 hours) to consider prospectus information where the ''test the waters'' process has been used. Comment is requested as to the need for additional procedures to assure investors a sufficient opportunity following a ''test the waters'' solicitation to review and assess the full information about the issuer, its management, the securities and the offering provided by the registration statement and prospectus. Comment also is requested as to whether or not there is a need to require that all ''test the waters'' solicitations, written or oral, cease at some period of time prior to the filing of a registration statement for an IPO. Given the purpose of the proposed rule, allowing issuers to determine whether to undertake a registered IPO before incurring the costs of complying with the disclosure and other related requirements, would such a cooling-off period be consistent with financing schedules? Due diligence and preparation of documents typically takes 60 to 90 days.[52] Comment is requested as to the need for a cooling-off period prior to the commencement of a registered offering, and the period of time that would be appropriate, *e.g.* 30 days or 60 days.

Under Regulation A, failure to comply with the terms and conditions of the ''test the waters'' procedures can result in a Commission order suspending a Regulation A exemption. Under proposed Rule 135d, just as with Rule 135, full compliance with the terms and conditions of the rule is required to come within the safe harbor provisions of the rule. Comment is requested as to whether there should be a provision addressing failures to comply with the provisions that would provide adequate protection to investors, preclude undue conditioning of the market, allow timely oversight of the contents of the written solicitation material, and avoid loss of the safe harbor for technical, immaterial deviations from the specific requirements of the safe harbor.

With respect to investor protection, today's proposals would not alter the type and amount of information available to investors in connection with an IPO. Issuers making use of the proposed ''test the waters'' procedure would continue to be subject to all the current IPO disclosure requirements, and IPO registration statements would continue to be subject to Commission staff review if the issuer determined to proceed with a registered offering after soliciting investor interest.

Comment is requested generally on whether the proposed ''test the waters'' rule is appropriate and in investors' interest in the context of registered IPOs. Will the proposed process effectively accomplish the Commission's goal of allowing businesses to assess the capital market's potential interest in their businesses on a cost-effective basis, without causing investors to overlook the full disclosures mandated by the federal securities laws?

### *B. Relationship of Exempt Offerings to ''Test the Waters'' Activity*

After an issuer has engaged in a ''test the waters'' procedure under the proposed rule, it might conclude that, rather than having a registered offering, it would be desirable to raise capital by means of a Regulation A, private[53] or Regulation D offering. In order to accommodate the issuer's flexibility to use Regulation A, that Regulation's ''test the waters'' rule would be amended to make it clear that ''testing the waters'' under the proposed new rule could be followed by a Regulation A offering,[54] just as an issuer that ''tests the waters'' under Regulation A could ultimately determine to have a registered offering instead.[55] Comment is solicited on whether proposed Rule 135d should be used for ''testing the waters'' with a view to either a registered or a Regulation A offering, thus replacing Rule 254.

With respect to offerings relying on an exemption other than Regulation A, it is noted that under Rule 502(c) of Regulation D,[56] any form of general solicitation or general advertising would preclude availability of the exemptions provided by Rules 505 and 506.[57] Thus, if the issuer's ''test the waters'' activity was done in a way that involved general advertising or other activities constituting general solicitation,[58] it could not proceed directly to an offering relying on an exemption that precluded general solicitation, even if the parties expected to purchase in the exempt

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Release No. 33–6996 (April 28, 1993) [58 FR 26509]. The antifraud provisions of the federal securities laws (Section 17(a) of the Securities Act [15 U.S.C. 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)]), however, continue to apply to any Regulation A ''test the waters'' material.

[46] 15 U.S.C. 77b(10).

[47] 15 U.S.C. 77*l*(2).

[48] 15 U.S.C. 77k.

[49] _____ U.S. _____, 115 S. Ct. 1061, 131 L. Ed. 2d 1 (1995).

[50] Of course, if the issuer were to comply with both proposed Rule 135d and Rule 505 (or 506) of Regulation D, [17 CFR 230.505 and 230.506, respectively] and it were decided not to proceed with an IPO, it could sell immediately under Rule 505 (506). Similarly, if an issuer were to comply with both Rule 135d and Rule 504 [17 CFR 230.504] (which does permit general solicitation), sales could proceed immediately without waiting 20 days in the event the issuer determines not to go the IPO route.

[51] *See* Rule 15c2–8 [17 CFR 240.15c2–8].

[52] C. Schneider, J. Manko, and R. Kant, *Going Public: Practice, Procedure and Consequences,* 36 (1995).

[53] Section 4(2) of the Securities Act [15 U.S.C. 77d(2)].

[54] Proposed Rule 254(b)(4).

[55] *See* Rule 254(d). This provision would be amended to eliminate the 30 day waiting period currently required before filing a registration statement.

[56] 17 CFR 230.502(c).

[57] Because public offerings are permitted under Rule 504, the following discussion about ''general solicitation'' would not apply to transactions pursuant to that exemption.

[58] This would depend upon the manner and scope of the dissemination of the ''test the waters'' communication. The determination as to whether the activities constituted a general solicitation would hinge upon the particular facts and circumstances of individual situations.

offering were accredited investors.[59] Just as with any other party relying on such an exemption, the issuer would have to ensure that the exempt offering would not be integrated with the ''test the waters'' activity,[60] either by relying on the safe harbor afforded for transactions occurring more than six months before and after the Regulation D transaction,[61] or by otherwise ensuring that the transactions were distinct enough so that they would not be integrated under the five-factors test.[62] This is comparable to the treatment of Regulation A ''test the waters'' activity.[63]

The Commission recognizes that the possibility of integrating ''test the waters'' activity with private or Regulation D offerings could impair the usefulness of proposed Rule 135d. In a companion release that proposes a new exemption from registration for offerings made in compliance with a recently enacted California exemption,[64] the Commission is soliciting public comment on a variety of approaches to general solicitation, including whether the prohibition against general solicitation for Rules 505 and 506 offerings should be rescinded, whether it would be feasible to reduce restrictions but limit the information allowed to be disseminated or the manner of dissemination, and other approaches. Would another approach be to provide a special integration safe harbor for private placements following a Rule 135d ''test the waters'' solicitation?

For example, would the 20 day period proposed between the last ''test the waters'' document or broadcast and any sale be an appropriate safe harbor for non-integration of a sale to accredited investors following a ''test the waters'' solicitation?

### *C. Communications That Are Not ''Offers''*

As noted, proposed Rule 135d would provide that any communication meeting the conditions of the rule, as described above, is not deemed to offer any securities for sale, for purposes only of Section 5 of the Securities Act. Thus, ''test the waters'' activity could take place without the filing of a Securities Act registration statement or an available exemption from registration.

The Commission is cognizant that rulemaking in this area is circumscribed by the statute's prohibition of conduct constituting an ''offer'' prior to the filing of a registration statement.[65] The application of this definition to differing forms of pre-filing communications will, of course, vary. In proposing Rule 135d for comment, it is the Commission's intention to examine further the elements of the types of pre-filing activity that would be most constructive for IPOs and investors, as well as the appropriate limitations or parameters of such activity.

The Commission has previously had occasion to consider the application of the statute to other types of public communications made prior to the filing of a registration statement, both in rules and in interpretive positions.[66] The Commission has also cautioned that certain publicity efforts in advance of a proposed public offering, although not couched in terms of an express offer, may raise questions under the statute if they contribute to conditioning the public market or arousing public interest in an issuer or its securities before a registration statement is filed.[67] In the context of exempt public offerings for small businesses under Section 3(b) and Regulation A, the Commission has indicated that ''test the waters'' activities pursuant to Rule 254 are considered offers for purposes of Section 2(3).[68] The Commission intends to examine these and other interpretations of the relevant statutory provisions in considering the historical scope of permissible ''test the waters'' activities and the appropriateness of the provisions of proposed Rule 135d.

Recognizing these statutory limitations, the Commission requests comment as to whether alternative means are available to permit issuers to gather data efficiently to assist them in assessing the likelihood that a contemplated offering will be successful. For example, could a simplified registration procedure be adopted in which ''test the waters'' practices are made pursuant to a filed, but extremely simplified, registration statement, with normal, extensive information to be filed by amendment if an offering proceeds? Would this approach be consistent with Sections 7 and 10 of the Securities Act,[69] which allow the Commission to define the contents of a registration statement and a prospectus, respectively? Would the modest additional burden of filing ''test the waters'' materials as a technical registration statement render the procedure substantially less useful for issuers? Would issuers use a process that requires the inclusion of the ''test the waters'' materials in a registration statement subject to Section 11 or a prospectus subject to Section 12(2) of the Securities Act?

## III. Request for Comment

Any interested persons wishing to submit written comments on the proposed expansion of the ''test the waters'' procedure to IPOs, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. Comments are requested on the impact of the proposals on issuers, investors, and others. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse impact on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Act.

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[59] 17 CFR 230.501(a).

[60] *See* Rule 502(a) of Regulation D [17 CFR 230.502(a)], which enumerates factors to be considered in determining whether offers and sales should be integrated for purposes of the exemptions under Regulation D.

[61] Rule 502(a).

[62] The five-factors integration test is set forth in Securities Act Release No. 4552 (November 6, 1962)[27 FR 11316].

[63] *See* Release No. 33–6949, Part II.B.

[64] Release No. 33–7185.

[65] Section 2(3) [15 U.S.C. 77b(3)] provides, in pertinent part:

The term ''offer to sell'', ''offer for sale'', or ''offer'' shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value.

[66] The Commission has indicated that the Securities Act allows the following public communications, among others, prior to the filing of a registration statement:

- Rule 135 [17 CFR 230.135] (notice given by an issuer that it proposes to make a registered public offering of securities, if the notice states that the offering will be made only by means of a prospectus and contains only specified information).
- Rule 135a [17 CFR 230.135a] (certain generic investment company advertising).
- Rule 135b [17 CFR 230.135b] (certain standardized options disclosure materials).
- Rule 135c [17 CFR 230.135c] (notice by an issuer that it proposes to make, is making, or has made an offering of securities not registered or required to be registered under the Securities Act, provided that the notice is not for the purposes of conditioning the U.S. securities market, the notice states that the securities may not be offered or sold in the U.S. absent registration or an exemption, and the notice contains only specified information).
- Rules 137 [17 CFR 230.137], 138 [17 CFR 230.138], and 139 [17 CFR 230.139] (certain broker-dealer research reports).
- Rule 145(b)(1) [17 CFR 230.145(b)(1)] (certain communications regarding Rule 145(a) transactions).
- Release 33–5927 (April 24, 1978) [42 FR 18163]; United Technologies Corporation (April 24, 1978) (interpretive release and letter, permitting disclosure by a bidder in a cash tender offer of information required by the Williams Act about previous negotiations or agreements with the subject company regarding a merger without a registration statement being on file).

[67] *See, e.g.*, Release No. 33–3844 (Oct. 8, 1957) [22 FR 8359] (discussing publication of information prior to and after the effective date).

[68] *See* Release No. 33–6996 (April 28, 1993) [58 FR 26509]. The Commission is considering the extent to which the rationale underlying Rule 254 should guide its present inquiry.

[69] 15 U.S.C. 77g and 77j, respectively.

Comments will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[70] Comment letters should refer to File No. S7–18–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

## IV. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposals, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. The proposals, which are intended to reduce complexity and potentially significant costs to an issuer in connection with the planning for an IPO, while not sacrificing investor protection, are expected to reduce the costs associated with IPOs. The Commission is not proposing to increase the burdens on any issuer that chooses to engage in an IPO. Use of the proposed ''test the waters'' procedure would be optional. Further, any cost associated with the preparation of the proposed ''test the waters'' document would be offset by the significant benefits that issuers would receive in the reduction of costs. Those benefits also include a higher degree of assurance that a particular offering will find a receptive market.

## V. Summary of the Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed new rule and amendments. The analysis notes that the amendments are intended to reduce costs associated with IPOs.

As discussed more fully in the analysis, the proposals would affect persons that are small entities, as defined by the Commission's rules, but would affect small entities in the same manner as other registrants. The proposed rule and amendments, however, are designed to decrease potential costs to all issuers, including small businesses.

A copy of the analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, Mail Stop 3–12, 450 Fifth Street, N.W., Washington, D.C. 20549.

[70] 15 U.S.C. 78w(a).

## VI. Statutory Basis for Rules

The amendments to the Securities Act rules, Regulation A and Regulation S–T are being proposed pursuant to Sections 2, 3, 4, 5, and 19 of the Securities Act, as amended.[71]

The amendment to Regulation S–T also is being proposed pursuant to Sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act, as amended,[72] Sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Holding Company Act of 1935, as amended,[73] Section 319 of the Trust Indenture Act of 1939, as amended,[74] and Sections 8, 30, 31 and 38 of the Investment Company Act of 1940, as amended.[75]

## List of Subjects in 17 CFR Parts 230 and 232

Reporting and recordkeeping requirements, Securities

## Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for Part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

2. By adding a paragraph (a)(8) to § 230.100 to read as follows:

**§ 230.100 Definition of terms used in the rules and regulations.**

(a) * * *

(8) The term *direct participation investment program* means any program (other than an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*)) that provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution, including, but not limited to, partnerships, limited partnerships, real estate investment trusts as defined in I.R.C. § 856, and limited liability companies.

* * * * *

[71] 15 U.S.C. 77b, 77c, 77d, 77e, and 77s.

[72] 15 U.S.C. 78c, 78l, 78m, 78n, 78o(d), 78w(a) and 78*ll*.

[73] 15 U.S.C. 79c, 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q and 79t.

[74] 15 U.S.C. 77sss.

[75] 15 U.S.C. 80a-8, 80a-29, 80a-30 and 80a-37.

3. By adding § 230.135d to read as follows:

**§ 230.135d Solicitation of interest document for use prior to an initial public offering.**

(a) For purposes only of section 5 of the Act, a written or oral communication, or the making of scripted radio or television broadcasts, to determine whether there is any interest in the issuer's initial public offering of securities shall not be deemed to offer any securities for sale if:

(1) The issuer of the securities:

(i) Is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78a *et seq.*) immediately before the submission of solicitation material pursuant to this section;

(ii) Is not a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge within an unidentified company or companies;

(iii) Is not an issuer of penny stock as defined in Section 3(a)(51) and Rule 3a51–1 under the Exchange Act;

(iv) Is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*);

(v) Is not an issuer of asset-backed securities; and

(vi) Is not an issuer that after its initial public offering would be a direct participation investment program;

(2) The written document or script of the broadcast:

(i) States that the solicitation is not an offering of securities for sale, and that any public offering to be made will be made by means of a prospectus that may be obtained from the issuer and that will contain detailed information about the company and management, as well as financial statements;

(ii) States that no money or other consideration is being solicited, and if sent in response, will not be accepted;

(iii) States that no sales of the securities will be made or commitment to purchase accepted until a registration statement is filed with the Commission and becomes effective, or an appropriate exemption from registration is available and utilized;

(iv) States that an indication of interest made by a prospective investor involves no obligation or commitment of any kind; and

(v) Identifies the chief executive officer of the issuer and briefly and in general its business and products;

(3) On or before the date of its first use, the issuer shall submit a copy of

any written document or the script of any broadcast to be used in reliance upon this section to the Commission's main office in Washington, D.C. (Attention: Office of Small Business Policy). The document or broadcast script shall either contain or be accompanied by the name and telephone number of a person able to answer questions about the document or the broadcast.

**Note:** Only solicitation of interest material that contains substantive changes from or additions to previously submitted material need be submitted.

(4) Oral communications with prospective investors and other broadcasts are not made until after submission of the written document or script of the broadcast to the Commission as provided in subparagraph (a)(3) of this section; there is no solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any prospective investor in reliance upon this section; and no sale is made until a registration statement is effective pursuant to Section 8 of the Act with respect to the securities offering, or an appropriate exemption from registration is available and utilized;

**Note:** The written documents, broadcasts and oral communications are each subject to the antifraud provisions of the federal securities laws.

(5) Solicitations of interest in reliance upon the provisions of this section are not made after the filing of a registration statement under the Act; provided, however, that receipt by the issuer after the filing of a registration statement of a coupon from a potential investor provided to such potential investor pursuant to paragraph (b) of this section prior to the filing of a registration statement is consistent with this subparagraph; and

(6) Sales pursuant to a registration statement are not made until 20 calendar days after the last publication or delivery of the document or radio or television broadcast.

(b) Any written document used in reliance upon this section may include a coupon, returnable to the issuer, indicating interest in a potential registered offering, revealing the name, address and telephone number of the prospective investor, and stating clearly and separately that the indication of interest is not binding and that no money should be sent. Such coupon may not request information about the financial profile of the investor, such as income, assets or investment history.

(c) Written solicitation of interest materials used in reliance upon this section submitted to the Commission as provided in paragraph (a)(3) of this section, and otherwise in compliance with this section shall not be deemed to be a prospectus as defined in Section 2(10) of the Act.

4. By amending § 230.254 by revising paragraph (b)(4), to read as follows:

**§ 230.254 Solicitation of interest document for use prior to an offered statement.**

* * * * *

(b) * * *

(4) Sales pursuant to an offering circular or registration statement may not be made until 20 calendar days after the last publication or delivery of the document or radio or television broadcast pursuant to this rule or pursuant to § 230.135d.

* * * * *

5. By amending paragraph (d) of § 230.254 by removing the phrase: ‘‘, if at least 30 calendar days have elapsed between the last solicitation of interest and the filing of the registration statement with the Commission,’’.

## PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

6. The authority citation for Part 232 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 8a–30 and 80a–37.

7. By amending § 232.101 by removing the word ‘‘and’’ following the semicolon in paragraph (b)(4), by removing the period at the end of (b)(5) and adding in its place ‘‘; and’’, and by adding paragraph (b)(6) to read as follows:

**§ 232.101 Mandated electronic submissions and exceptions.**

(b) * * *

(6) Solicitation of interest documents or broadcast scripts submitted to the Commission pursuant to Rule 135d (§ 230.135d of this chapter).

* * * * *

Dated: June 27, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**Appendix To Release**

**Title: Resolution of the North American Securities Administrators Association, Inc., Regarding the Testing-the-Waters Exemption**

Whereas, NASAA recognizes the policy objectives underlying the testing-the-waters exemption drafted by its working group, but has substantial concerns as to whether it can adequately ensure that investors are protected,

Therefore, be it resolved that NASAA will take no formal action with regard to the proposal so that a two year pilot program may be undertaken by those jurisdictions electing to do so and the results of the program may be carefully considered.

Adopted by the membership of the North American Securities Administrators Association on April 25, 1993 at its Spring Meeting in Washington, D.C.

**Proposed Statement of Policy on Solicitation of Interest (Test the Waters)**

**Note:** This proposed rule has not been adopted by the NASAA membership by a resolution adopted April 25, 1993, the membership voted to take no action on the proposal pending a study of its effect in those jurisdictions that choose to adopt its use on an experimental basis. It is being published solely to provide a uniform basis for this pilot project that will attempt to determine if such an exemptive rule can be implemented without jeopardizing investor protection.

Solicitations of Interest prior to the Filing of the Registration Statement:

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from section [301] of the Act if all of the following conditions are satisfied:

(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a ‘‘blind pool’’ offering or other offering for which the specific business or properties cannot now be described.

(b) The offerer intends to register the security in this state and conduct its offering pursuant to either Regulation A or Rule 504 of Regulation D, as promulgated by the Securities and Exchange Commission.

(c) Ten (10) business days prior to the initial solicitation of interest under this rule, the offerer files with the [Administrator] a Solicitation of Interest Form along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published.

(d) Five (5) business days prior to usage, the offerer files with the [Administrator] any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree.

(e) No Solicitation of Interest Form, script, advertisement or other material which the offerer has been notified by the [Administrator] not to distribute is used to solicit indications of interest.

(f) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is

provided with the most current Solicitation of Interest Form at or before the time of the communication or within five (5) days from the communication.

(g) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities.

(h) No sale is made until seven (7) days after delivery to the purchaser of a prospectus. [Alternative: No sale is made until seven (7) days after delivery to the purchaser of a final prospectus, or in those instances in which delivery of a preliminary prospectus is allowed hereunder, a preliminary prospectus.] [1]

(i) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form.

2. Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

3. Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found.

4. Is subject to any federal or state administrative enforcement order or judgement which prohibits, denies, or revokes the use of any exemption from registration connection with the offer, purchase or sale of securities.

5. Is currently subject of any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such party is licensed or registered in this state and the Form B–D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(2) A failure to comply with any condition of section (1) of this rule will not result in the loss of the exemption from the requirements of section [301] of this Act for any offer to a particular individual or entity if the offerer shows:

(a) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity; and

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable conditions of section (1).

Where an exemption is established only through reliance upon this section (2), the failure to comply shall nonetheless be actionable as a violation of the Act by the [Administrator] under section [408] of the Act and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(3) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of section [301] of this Act, but shall be a violation of the Act, be actionable by the [Administrator] under section [408] of the Act, and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products and the following legends:

1. No money or other consideration is being solicited and none will be accepted;

2. No sales of the securities will be made or commitment to purchase accepted until delivery of an offering circular that includes complete information about the issuer and the offering;

3. An indication of interest made by a prospective investor involves no obligation or commitment of any kind; and

4. This offer is being made pursuant to an exemption from registration under the federal and state securities laws. No sale may be made until the offering statement is qualified by the SEC and is registered in this state.

(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least twenty (20) calendar days after the last communication made in reliance on this rule.

[(c) A preliminary prospectus (or its equivalent) may only be used in connection with an offering for which indications of interest have been solicited under this rule if the offering is conducted by a registered broker-dealer.] [2]

(4) The [Administrator] may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the [Administrator] with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the [Administrator] of the availability of this rule.

(5) Offers made in reliance on this rule will not result in a violation of Section 301 of the Act by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(6) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on section[s] [private placement exemption] [3] until [six (6)] [4] months after the last communication with a prospective investor made pursuant to this rule.

*Comments*

1. All communications made in reliance on this rule are subject to the anti-fraud provisions of this Act.

2. The [Administrator] may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

3. Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Section [410] of the Act. Likewise any misrepresentation or omission may give rise to civil liability. Under the Uniform Securities Act a subsequent registration of the security for the sale of the security does not ''cure'' the previous unlawful offer. Only a rescission offer made in accordance with the provisions of the Act can accomplish such a ''cure.'' See commentary under Section 410.

**Note to Users:** The following form sets forth the minimum informational requirement for soliciting indications of interest under federal and state securities laws. You may include additional information if you think it necessary or desirable. Remember that any discussion in this document is subject to the anti-fraud provisions of the federal and state securities laws and must thereby be complete. Also, any discussion of potential rewards of the proposed investment must be balanced by a

[1] The bracketed subsection should only be used in those jurisdictions that have or intend to adopt an applicable ''red herring'' exemption. The ''red herring'' exemption should cross-reference this rule to avoid confusion.

[2] See footnote 1.

[3] Each jurisdiction should review its exemptions to determine which ones should be denied if contaminated by public solicitation.

[4] Some jurisdictions may choose a twelve month period because the private placement exemptions already in their statutes use this time frame.

discussion of possible risks. You may alter the graphic presentation of the form in any way as long as the minimum information is clearly presented.

**Solicitation of Interest Form**

_____

Name of Company

Street Address of Principal Office:
Company Telephone Number:
Date of Organization:

Amount of the Proposed Offering: _____

Name of Chief Executive Officer: _____

This is a solicitation of interest only. No money or other consideration is being solicited and none will be accepted.

No sales of the securities will be made or commitment to purchase accepted until the delivery of a final offering circular that includes complete information about the issuer and the offering.

An indication of interest made by a prospective investor involves no obligation or commitment of any kind.

This offer is being made pursuant to an exemption from registration under the federal and state securities laws. No sale may be made until the offering statement is qualified by the SEC and is registered in this state.

This Company

( ) Has never conducted business operations.
( ) Is in the development stage.
( ) Is currently conducting operations.
( ) Has shown a profit for the last fiscal year.
( ) Other (specify) _____

*Business*

1. Describe in general what business the company does or proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

2. Describe in general how these products or services are to be produced or rendered and how and when the company intends to carry out its activities.

*Offering Proceeds*

3. Describe in general how the company intends to use the proceeds of the proposed offering.

*Key Personnel of the Company*

4. Provide the following information for all officers and directors or persons occupying similar positions:

Name, Title, Office Street Address, Telephone Number, Employment History (Employers, titles and dates of positions held during the past five years), and Education (degrees, schools and dates).

(end of form)

[FR Doc. 95–16391 Filed 7–7–95; 8:45 am]

BILLING CODE 8010–01–P

## 17 CFR Parts 210, 228, 239 and 249

**[Release Nos. 33–7189; 34–35897; International Series No. 820; File No. S7–19–95]**

**RIN 3235–AG47**

## Streamlining Disclosure Requirements Relating to Significant Business Acquisitions and Requiring Quarterly Reporting of Unregistered Equity Sales

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules and forms.

**SUMMARY:** In connection with its review of problematic practices relating to Regulation S, the Commission is publishing for comment rule revisions that reduce the need for reliance on Regulation S by eliminating certain impediments to registered offerings of securities under the Securities Act of 1933 by streamlining requirements with respect to financial statements of significant acquisitions. Also, rule revisions are proposed that would require registrants to report on a quarterly basis recent sales of equity securities that have not been registered under the Securities Act of 1933.

**DATES:** Comments should be received on or before September 8, 1995.

**ADDRESSES:** Comment letters should refer to File number S7–19–95 and should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

**FOR FURTHER INFORMATION CONTACT:** Annemarie Tierney, (202) 942–2990, Office of International Corporate Finance, or Douglas Tanner, (202) 942–2960, Office of Chief Accountant, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing for comment proposed amendments to the following rules and forms under the Securities Act of 1933 (the ''Securities Act'')[1] and the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] concerning financial statements of acquired (or to be acquired) businesses and quarterly reporting of unregistered equity offerings: Rule 3–05 of Regulation S–X,[3] Rule 310 of Regulation S–B,[4] Item 17 of Form S–4,[5] Item 17 of Form F–4,[6] Item 7 of Form 8–K,[7] Item 2 of Form 10–Q,[8] Item 2 of Form 10–QSB,[9] Item 5 of Form 10–K,[10] and Item 5 of Form 10–KSB.[11]

### I. Introduction

The Commission adopted Regulation S[12] in April 1990 in order to clarify the extraterritorial application of the registration requirements of the Securities Act.[13] Since adoption, a number of problematic practices have developed involving unregistered sales of equity securities of domestic reporting companies purportedly in reliance upon Regulation S. In a companion release,[14] the Commission is publishing its views concerning problematic practices under Regulation S and is requesting comment as to whether Regulation S also should be amended to impose additional restrictions on its use.

Commenters have suggested that companies may be compelled to sell securities offshore, rather than in registered transactions, because of registration disclosure requirements relating to significant acquisitions. The Commission is proposing to streamline these requirements to reduce regulatory impediments to the use of registered offerings. Also, in response to commenters' suggestions that investors need information about private or offshore placements of equity securities that is not currently disclosed, the Commission is proposing to require quarterly reporting of unregistered equity offerings. Commenters have suggested this public reporting may also have the ancillary benefit of deterring abuses of Regulation S.

### II. Proposed Simplification of Registration Disclosure of Significant Acquisitions

Domestic companies subject to the reporting requirements of the Exchange Act are required to report significant acquisitions on Form 8–K within 15 days after consummation of the transaction; a grace period of up to 60 days from the filing due date is given for filing the required audited financial statements.[15] On the other hand, a

[1] 15 U.S.C. 77a *et seq.*
[2] 15 U.S.C. 78a *et seq.*
[3] 17 CFR 210.3–05.
[4] 17 CFR 228.310.
[5] 17 CFR 239.25.
[6] 17 CFR 239.34.
[7] 17 CFR 249.308.
[8] 17 CFR 249.308a.
[9] 17 CFR 249.308b.
[10] 17 CFR 249.310.
[11] 17 CFR 249.310b.
[12] 17 CFR 230.901–904.
[13] Release No. 33–6863 (Apr. 24, 1990) [55 FR 18306] (the ''Adopting Release'').
[14] Release No. 33–7190.
[15] *See* Item 2 and Item 7 of Form 8–K [17 CFR 249.308].

company that registers securities under the Securities Act must provide information in the registration statement about significant acquisitions, including audited financial statements, from such time as the acquisition is probable.[16] One, two or three years of audited financial statements may be required, depending on the relative significance of the acquired business.[17] If the registrant is unable to obtain such financial statements from the potential acquiree for inclusion in the registration statement, the issuer would have to resort to alternative financings. Thus, reporting companies, including those with shelf registrations of securities, may be compelled to forgo public offerings and to undertake private or offshore offerings. The rules proposed today are intended generally to allow companies to provide information about significant acquisitions in Securities Act registration statements on the same time schedule as for Exchange Act reporting.[18]

In addition, the Commission is proposing to provide an automatic waiver of the earliest year of required audited financial statements otherwise required to be provided for a consummated business acquisition in filings made under either the Securities Act or the Exchange Act if those financial statements are not readily available. A similar waiver provision was previously adopted for small business issuers and has proved quite useful in addressing significant practical problems for issuers engaged in acquisitions.[19]

*A. Elimination of Required Financial Statements for Pending Acquisitions and Waiver of Financial Statements for Recently Completed Acquisitions*

The Commission proposes to eliminate the requirement to provide audited financial statements for pending business acquisitions in Securities Act registration statements, other than registrations by ''blank check companies.'' [20] In addition, the proposed rules would automatically waive the required financial statements for significant acquisitions completed within 75 days of a registered offering, if such audited financial statements are not readily available at the time the offer commences.[21] However, other than financial statements and pro forma information presented pursuant to Rules 3–05 and Article 11 of Regulation S–X and Item 310 of Regulation S–B, the proposed rule changes do not change information required with respect to significant acquisitions.

Although financial statements of acquirees may be omitted under the proposed amendments, pro forma financial information required by Article 11 of Regulation S–X and Item 310 of Regulation S–B would continue to be required when financial statements of the acquiree are furnished.[22] In any case, likely effects of a probable or recently consummated business combination are required to be discussed in Management's Discussion and Analysis, to the extent material.[23]

Comments are requested concerning whether the accommodations proposed today should only be available with respect to acquisitions below a particular level of significance compared to the assets and pre-tax income of the registrant. If a significance test is appropriate, should it be, for example, 75%, 60%, 50%, 40%, 30% or 20%? Comment is requested whether other classes of issuers, in addition to ''blank check companies,'' should be excluded from the provisions of the proposed amendments. Is it appropriate to provide the same grace period for offering documents as for Form 8–K reports? Should the grace period be shorter, e.g. 15 days? Further, comment is requested regarding whether such relief should be available to all registrants (including new registrants) or whether minimum reporting history or public float requirements should be established. Comment is requested as to whether audited financial statements with respect to significant business combinations that have not been consummated but are probable should be required to be furnished in the prospectus if the financial statements are readily available. Comment is requested as to whether unaudited financial statements with respect to probable or recently consummated business combinations should be required if they are readily available.

Although a domestic company may proceed with a registered offering of securities without financial statements of a recent or probable acquiree in the circumstances described above, it will be required to file financial statements of each significant acquired business on Form 8–K within 75 days of consummation of the acquisition. The proposed revisions would apply to offerings of domestic and foreign issuers alike. However, foreign private issuers are not subject to quarterly or Form 8–K reporting rules, and are not required currently to furnish financial statements of acquired businesses in the absence of a registered offering of securities. Comment is requested as to whether the rule should therefore include, as a condition for omission of the financial statements in a registration statement, that the foreign private issuer undertake in the registration statement to provide on Form 6–K the audited financial statements of the acquired business within 75 days of consummation of the business combination.

The amendments proposed today would also eliminate the significance threshold that triggers the requirement to provide in registration statements audited financial statements of acquired businesses that, in the aggregate, but not individually, are significant.[24] Comment

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[16] *See* Rule 3–05 of Regulation S–X and Item 310(c) of Regulation S–B [17 CFR 210.3–05 and 17 CFR 228.310(c)].

Registered offerings that are not primarily of a capital raising nature are permitted to go forward without those financial statements until 75 days following the acquisition, as permitted by Form 8–K. Specifically, the restriction on offerings registered under the Securities Act does not apply to (a) offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights; (b) dividend or interest reinvestment plans; (c) employee benefit plans; (d) transactions involving secondary offerings; or (e) sales of securities pursuant to Rule 144. The restriction also applies to certain unregistered offerings as well. *See* Instruction 2 to Item 7 of Form 8–K.

[17] The significance of an acquired business is evaluated based on (i) the amount of the issuer's investment in the acquired business; (ii) the total assets of the acquired business; and (iii) the pre-tax income of the acquired business, all as compared to the registrant's most recent comparable financial items.

[18] The amendments would also permit certain private placements under Rules 505 and 506 of Regulation D under the Securities Act [17 CFR 230.505 and 506] to go forward under the same conditions as a registered offering.

[19] The Commission has established the Advisory Committee on the Capital Formation and Regulatory Processes (the ''Advisory Committee''), chaired by Commissioner Steven M.H. Wallman. The Advisory Committee is considering fundamental issues relating to the regulatory framework governing the capital formation process, including whether the current system of registering securities offerings should be replaced with a company registration system. The recommendations of the Advisory Committee may result in rule proposals or legislative recommendations that, if endorsed by the Commission, ultimately may address the matters discussed in this release. Because most financing transactions that would be undertaken within the framework of several of the company registration models now being considered by the Advisory Committee could be conducted primarily on the basis of disclosure provided in a registered company's filed periodic and current reports, business acquisition reporting generally would be rendered consistent in both the public offering and periodic reporting contexts.

[20] A ''blank check company'' is defined in § 230.419 of Regulation C [17 CFR 230.419(a)].

[21] The date of an offering will be deemed to be the date of a final prospectus or prospectus supplement relating to the offering as filed with the Commission pursuant to Rule 424(b) [17 CFR 230.424(b)] under the Securities Act.

[22] 17 CFR 210.11–01 to 11–03.

[23] *See* Item 303 of Regulation S–K and S–B [17 CFR 229.303 and 228.303].

[24] In such case, the issuer must furnish audited financial statements of the most recent fiscal year

Continued

is requested as to whether elimination of the requirement is appropriate or whether a significance level applicable to aggregations of individually insignificant businesses should be maintained at the current threshold of 20%, or increased to 40%, 50%, 60% or 75%.

No change is proposed with respect to current rules governing financial statements required for acquired operating real estate properties. The Commission has previously addressed the issue of financial statements for operating real estate properties. Rule 3–14 of Regulation S–X reflects conclusions reached regarding the appropriate form of financial information and the number of periods for which the financial information should be furnished.[25] Comment is requested on whether relief proposed under the proposed amendments should also be available for operating real estate properties acquired or to be acquired by the registrant.

Where securities are being registered in an offering to acquire a business, audited financial statements of the business to be acquired will still be required as provided under the current rules.[26] The proposed amendments do not cover these situations. The registrant may rely on the proposed rules with respect to other pending or recently completed acquisitions.

Likewise, the proposed new rules would not change the financial statement requirements of the business to be acquired for proxy statements in which financial statements of such business are required to be provided pursuant to Item 14 of Schedule 14A.[27] Comment is requested as to whether the relief afforded under the proposed amendments should be available for a company being acquired if that acquisition transaction is the subject of the registration statement or proxy statement.

*B. Automatic Waiver of Certain Unavailable Acquiree Financial Statements*

When audited financial statements of an acquired business are required in filings made under the Exchange Act or the Securities Act, the number of years for which statements are mandated varies depending on the level of significance of the acquisition relative to the assets and income of the registrant.[28] In 1992, as part of its Small Business Initiatives,[29] the Commission provided certain relief in cases where the acquiree's audited financial statements are not readily available. This automatic waiver is proposed to be extended to all issuers. As proposed to be amended, Rule 3–05 would provide that, where an acquiree's audited financial statements are not readily available, the requirement for furnishing them would be automatically waived if the significance of the acquired business does not exceed 20%, and the earlier of the two years of the required financial statements would be automatically waived where significance does not exceed 40%.[30]

Comment is requested as to the appropriateness of this automatic waiver provision. Should the Commission eliminate altogether the requirement for financial statements of any acquisition below the 20% significance level? Should financial statements that are not readily available be waived automatically unless the acquisition exceeds the 50% level of significance? Comment is requested also as to whether unaudited financial statements should be required to be filed if audited financial statements are omitted pursuant to the automatic waiver granted under the proposed rule.

## III. Quarterly Reporting of Unregistered Equity Sales

Concerns have been raised by some commenters that while unregistered offshore or private placements of common stock may have a material effect on the issuer and may result in significant dilution of existing shareholders, they frequently are not publicly disclosed.

Recognizing the market need for such information, the Commission last year adopted Rule 135c [31] to remove any regulatory impediment to such disclosure. The rule provides a safe harbor under Section 5 for public announcement of unregistered offerings. Some have suggested that mandated reporting of unregistered equity placements would assure investors are provided with material information about such transactions and have the additional benefit of spotlighting abuses of Regulation S. The SEC Government-Business Forum on Small Business Capital Formation included a recommendation that reporting of Regulation S offerings on Form 8–K be required.[32]

In response to these concerns and suggestions, the Commission is proposing amendments to its annual and quarterly report forms for domestic issuers that would require the disclosure of unregistered sales of equity securities [33] during the previous fiscal quarter, whether pursuant to a private placement, a Regulation S offering or otherwise. This information would be provided in an issuer's Quarterly Report on Form 10–Q or 10–QSB for sales during the issuer's first three fiscal quarters and in the Annual Report on Form 10–K or 10–KSB for offerings during the final fiscal quarter.

The disclosure proposed [34] is that currently set forth in Items 701 of Regulation S–K [35] and Regulation S–B,[36] and includes:

- The title and amount of securities sold, and the date of the transaction.
- Underwriter or placement agent.
- The consideration received.[37]

for a majority of the individually insignificant businesses. See Rule 3–05(b)(i) of Regulation S–X.

[25] Audited income statements of significant acquired or to be acquired operating real estate properties are required to be furnished pursuant to Rule 3–14 of Regulation S–X and Item 310(e) of Regulation S-B [17 CFR 210.3–14 and 228.310(e)]. The income statements are required to be presented only for the most recent fiscal year, regardless of significance, if the property is not acquired from a related party and the registrant is not aware of any material factors relating to the specific property that would cause the reported financial information not to be necessarily indicative of future operating results. The income statements may exclude items not comparable to the proposed future operation of the property, such as mortgage interest, leasehold rental, depreciation, corporate expenses and federal and state income taxes.

[26] Forms S–4 and F–4 do provide certain accommodations with respect to acquirees that are not reporting companies under the Exchange Act. See Item 17 in each Form [17 CFR 239.25 and 33].

[27] Financial statements of an acquired business are required pursuant to Item 14 if action is to be taken with respect to mergers, consolidations, acquisitions and similar matters [17 CFR 240.14a-101.14].

[28] The number of years for which audited financial statements are required depends on the level of significance: one year at 10%, two years at 20%, and three years at 40%. See Rule 3–05(b)(1) of Regulation S–X.

[29] Release No. 33–6949 (July 30, 1992) [57 FR 36442]; Release No. 33–6996 (April 28, 1993) [58 FR 26509].

[30] If a registrant omits financial statements in reliance on the proposed amendments, the pro forma financial information included in a Form 8–K relating to the acquisition could not be used as the basis for measuring the significance of subsequent acquisitions as otherwise permitted by Rule 3–05(b)(1) of Regulation S–X. See proposed amendments to Rule 3–05(b)(1) of Regulation S–X.

[31] 17 CFR 230.135c, adopted in Release No. 33–7053 (Apr. 26, 1994) [59 FR 21644].

[32] Final Report of the SEC Government-Small Business Capital Formation (February 1995).

[33] The term ''equity security'' would include convertible and exchangeable securities, warrants, options and other types of equity-related securities, as provided under Rule 3a11–1 [17 CFR 240.3a–11–1] under the Exchange Act.

[34] This information is currently required in registration statements on Forms S–1, S–11 and F–1.

[35] 17 CFR 229.701.

[36] 17 CFR 228.701.

[37] As to consideration, Item 701 requires: ''As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or

• Persons or classes of persons to whom the securities were sold.

• The exemption from registration claimed.

Comment is requested on investors' need for such information. Comment is also requested as to whether the information will be sufficiently timely, or instead, should be provided in a filing at an earlier date, such as a mandatory Current Report on Form 8–K, or a notice of sale similar to that used for Regulation D. Should notice be required prior to or at the time of the sale? Some have suggested that earlier reporting should be required unless the Regulation S restricted period is lengthened so that a report must be filed before the end of the restricted period. Comment also is requested as to the adequacy of the information required; is there additional information that would be helpful to investors; are there items that are not necessary?

The proposed requirement is limited to unregistered sales of common equity securities (and common equity equivalents) because of the significant market impact the issuance of such securities often has and the current lack of public information about such sales. Comment is requested as to whether a reporting requirement should be extended to other types of securities or registered offerings, e.g., takedowns off a shelf registration statement, and if so why?

## IV. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed changes to disclosure requirements contained in this release, commenters are requested to provide views and data relating to any costs and benefits associated with the proposals. It is expected that the proposals relating to financial statements of acquired businesses will decrease registrants' costs and compliance burdens. It is expected that the proposals to disclose sales of unregistered equity securities on a quarterly basis will modestly increase registrants' costs and compliance burdens. This requirement should not significantly increase the burden on company resources, since most registrants are required to gather such information in connection with the preparation of audited and unaudited financial statements. To the extent this requirement results in any additional expense, it may be justified in view of the material information that would be available to investors.

## V. Request for Comments

Any interested person wishing to submit written comments on any aspect of the amendments to forms and rules that are subject to this release are requested to do so. Comments should be submitted in triplicate to Jonathan G. Katz, secretary, U.S. Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549 and should refer to file number S7–19–95.

## VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis pursuant to the requirements of the Regulatory Flexibility Act,[38] regarding the proposed amendments to Rule 3–05 of Regulation S-X, Item 310 of Regulation S–B, Form S–4 and Form F–4 and Forms 10–Q, 10–QSB, 10–K and 10–KSB. The analysis notes that these proposed amendments relating to financial statement requirements for acquired businesses would provide issuers greater flexibility and efficiency in accessing the public securities markets. The proposed amendments with respect to disclosure of recent sales of unregistered securities are intended to provide investors with more information regarding changes in outstanding securities of public companies.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. It is expected that the changes primarily would decrease reporting, recordkeeping and compliance burdens, although the requirement to report unregistered sales would modestly increase such burdens. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the revised disclosure provisions.

As stated in the analysis, several possible significant alternatives to the disclosure proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As more fully discussed in the analysis, the alternatives were either addressed in the proposals, inconsistent with the purposes of the federal securities laws, or otherwise without justification.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed revisions are adopted. A copy of the analysis may be obtained by contacting Annemarie Tierney, Office of International Corporate Finance, Division of Corporation Finance at (202) 942–2990, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

## VII. Statutory Bases

The amendments to the Commission's rules and forms are being proposed pursuant to sections 2, 3, 4 and 19 of the Securities Act of 1933 and 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act of 1934.

## Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–X

1. The authority citation for Part 210 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37a, unless otherwise noted.

2. Section 210.3–05 is amending by revising paragraph (b) to read as follows:

### § 210.3–05 Financial statements of businesses acquired or to be acquired.

(a) ***

(b) Periods to be presented. (1)(i) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3–01 and 210.3–02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form N–14, S–4 or F–4. In all other cases, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph or such shorter period as the business has been in existence. The financial statements covering fiscal years shall be audited except as provided in Item 14 of Schedule 14A, (§ 240.14a–101 of this chapter) with respect to certain proxy statements or in

commissions. As to any securities sold otherwise than for cash, state the nature of the transactions and the nature and aggregate amount of consideration received by the registrant.''

[38] 5 U.S.C. 603 (1988).

registration statements filed on Forms N–14, S–4 or F–4 (§ 239.23, 25 or 34 of this chapter). The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in § 210.1–02(w) as follows:

(A) If none of the conditions exceeds 10 percent, financial statements are not required.

(B) If any of the conditions exceeds 10 percent, but none exceed 20 percent, financial statements shall be furnished for at least the most recent fiscal year and any interim periods specified in §§ 210.3–01 and 210.3–02.

(C) If any of the conditions exceeds 20 percent, but none exceed 40 percent, financial statements shall be furnished for at least the two most recent fiscal years and any interim periods specified in §§ 210.3–01 and 210.3–02.

(D) If any of the conditions exceeds 40 percent, the full financial statements specified in §§ 210.3–01 and 210.3–02 shall be furnished.

(ii) The determination shall be made by comparing the most recent annual financial statements of each such business to the registrant's most recent annual consolidated financial statements filed at or prior to the date of the acquisition. However, if the registrant made a significant acquisition subsequent to the latest fiscal year-end and filed a report on Form 8–K which included audited financial statements of such acquired business for the periods required by this section and the pro forma financial information required by § 210.11, such determination may be made by using the pro forma amounts for the latest fiscal year in the report on Form 8–K rather than by using the historical amounts for the latest fiscal year of the registrant. The tests may not be made by ''annualizing'' data. However, if a Form 8–K was filed to report a significant acquisition but audited financial statements were not furnished pursuant to the provisions of paragraph (b)(2)(i) of this section, the determination of significance may not be made using the pro forma amounts for the latest fiscal year.

(2) Notwithstanding the requirements in paragraph (b)(1) of this section:

(i) If none of the conditions specified in the definition of significant subsidiary in paragraph (b)(1) of this section exceeds 20 percent and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions specified in the definition of significant subsidiary in paragraph (b)(1) of this section exceeds 40 percent and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year.

(ii)(A) Separate financial statements of the acquired or to be acquired business need not be presented in a proxy statement or registration statement pursuant to this rule, if either:

(*1*) The consummation of the acquisition has not yet occurred; or

(*2*) The acquisition was consummated within 75 days of the date of the offering under the Securities Act of 1933 [15 U.S.C. §§ 77a *et seq.*], or mailing date in the case of a proxy statement, and the required audited financial statements of the acquired business are not readily available at the date of the final prospectus or mailing of the proxy.

(B) *Except that* the provisions of this paragraph are not applicable to registration statements for securities issued to acquire the business or registrations statements subject to the provisions of § 419 of Regulation C [17 CFR 230.419].

(iii) Separate financial statements of the acquired business need not be presented once the operating results of the acquired business have been reflected in the audited consolidated financial statements of the registrant for a complete fiscal year unless such financial statements have not been previously filed or unless the acquired business is of such significance to the registrant that omission of such financial statements would materially impair an investor's ability to understand the historical financial results of the registrant. For example, if, at the date of acquisition, the acquired business met at least one of the conditions in the definition of significant subsidiary in § 210.1–02 at the 80 percent level the income statements of the acquired business should normally continue to be furnished for such periods prior to the purchase as may be necessary when added to the time for which audited income statements after the purchase are filed to cover the equivalent of the period specified in § 210.3–02.

(iv) A separate audited balance sheet of the acquired business is not required when the registrant's most recent audited balance sheet required by § 210.3–01 is for a date after the date the acquisition was consummated.

* * * * *

3. Section 210.11–01 is amended by revising paragraph (e) to read as follows:

**§ 210.11–01 Pro forma financial information.**

* * * * *

(e) This rule does not apply to transactions between a parent company and its totally held subsidiary or to a transaction for which financial statements of an acquired or to be acquired business are not presented pursuant to § 210.3–05(b)(i) and § 210.3–05(b)(ii).

## PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. The authority citation for Part 228 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

5. By amending § 228.310 by adding paragraph (c)(3)(iv), removing paragraph (c)(4), redesignating paragraph (c)(5) as paragraph (c)(4), and revising paragraph (d)(2) to read as follows:

**§ 228.310 (Item 310) financial statements.**

* * * * *

(c) * * *

(3) * * *

(iv) Notwithstanding the requirements in paragraphs (c)(3)(i) and (c)(3)(ii) of this Item, separate financial statements of the acquired or to be acquired business need not be presented in a proxy statement or registration statement pursuant to this rule, if either:

(A) The consummation of the acquisition has not yet occurred; or

(B) The acquisition was consummated within 75 days of the date of the offering under the Securities Act of 1933 [15 U.S.C. §§ 77a *et seq.*], or mailing date in the case of a proxy statement, and the required audited financial statements of the acquired business are not readily available at the date of the final prospectus or mailing of the proxy.

*Except that* the provisions of this paragraph are not applicable to registration statements for securities issued to acquire the business or registrations statements subject to the provisions of § 419 of Regulation C [17 CFR 230.419].

(4) * * *

(d) * * *

(2) The provisions of paragraph (c)(2) of this Item apply to paragraph (d) of this Item. However, paragraph (d) of this Item does not apply to a transaction for which financial statements of an acquired or to be acquired business are not presented pursuant to paragraph (c)(3)(iv) of this Item.

* * * * *

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1993

6. The authority citation for Part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l* ,79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

7. By revising paragraph (b)(7) of Item 17 of Form S–4 (referenced in § 239.25) to read as follows:

**Note:** Form S–4 does not and these amendments will not appear in the Code of Federal Regulations.

**Form S–4**

* * * * *

Item 17. Information with Respect to Companies Other Than S–3 or S–2 Companies.

* * * * *

(b) * * *

(7) Financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rules 14a–3(b)(1) and (b)(2) (§ 240.14a–3 of this chapter) or Rules 14c–3(a)(1) and (a)(2) (§ 240.14c–3 of this chapter), had the company being acquired been required to prepare such a report; *Provided, however,* that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resales to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c) (§ 230.145(c) of this chapter), the financial statements of such companies must be audited for the periods required to be presented pursuant to paragraphs (b)(1) and (b)(2)(i) of Rule 3–05 of Regulation S–X (17 CFR 210.3–05).

* * * * *

8. By revising paragraph (b)(5) of Item 17 of Form F–4 to read as follows:

**Note:** Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

**Form F–4**

* * * * *

Item 17. Information with Respect to Foreign Companies Other Than F–3 or F–2 Companies.

* * * * *

(b) * * *

(5) Financial statements as would have been required to be included in an annual report on Form 20–F (17 CFR 249.220f) had the company being acquired been required to prepare such a report; *Provided, however,* that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resales to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c) (§ 230.145(c) of this chapter), the financial statements of such companies must be audited for the periods required to be presented pursuant to paragraphs (b)(1) and (b)(2)(i) of Rule 3–05 of Regulation S–X (17 CFR 210.3–05).

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for Part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a *et seq.*, unless otherwise noted;

* * * * *

10. By amending Form 8–K (referenced in § 249.308) by revising Instruction 2 of Item 7 to read as follows:

**Note:** Form 8–K does not and these amendments will not appear in the Code of Federal Regulations

**Form 8–K**

* * * * *

Item 7. Financial Statements and Exhibits.

* * * * *

*Instructions.* * * *

2. During the pendency of an extension pursuant to this paragraph, registrants will be deemed current for purposes of their reporting obligations under Section 13(a) or 15(d) of the Securities Exchange Act of 1934. With respect to filings under the Securities Act of 1933, however, registration statements will not be declared effective and post-effective amendments to registration statements will not be declared effective. In addition, offerings should not be made pursuant to effective registration statements, or pursuant to Rules 505 and 506 of Regulation D (§§ 230.501 through 506 of this chapter), where any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the required audited financial statements are filed; *Provided, however,* that the above restriction shall not apply during the pendency period of an extension pursuant to this Item if the required audited financial statements of the acquired business are not readily available. Further, the following offerings or sales of securities shall not be affected by this restriction:

(a) Offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;

(b) Dividend or interest reinvestment plans;

(c) Employee benefit plans;

(d) Transactions involving secondary offerings; or

(e) Sales of securities pursuant to Rule 144 (§ 230.144 of this chapter).

* * * * *

11. By amending Form 10–Q (referenced in § 249.308a) by adding paragraph (c) to Item 2 of Part II prior to the Instruction to read as follows:

**Note:** Form 10–Q does not and these amendments will not appear in the Code of Federal Regulations

**Form 10–Q**

* * * * *

*Part II*

Item 2. Changes in Securities.

* * * * *

(c) Furnish the information required by Item 701 of Regulation S–K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act.

* * * * *

12. By amending Form 10–QSB (referenced in § 249.308b) by adding paragraph (c) to Item 2 of Part II prior to the Instruction to read as follows:

**Note:** Form 10–QSB does not and these amendments will not appear in the Code of Federal Regulations

**Form 10–QSB**

* * * * *

*Part II*

* * * * *

Item 2. Changes in Securities.

* * * * *

(c) Furnish the information required by Item 701 of Regulation S–B (§ 228.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act.

* * * * *

13. By amending Form 10–K (referenced in § 249.310) by revising Item 5 of Part II as follows:

**Note:** Form 10–K does not and these amendments will not appear in the Code of Federal Regulations

**Form 10–K**

* * * * *

*Part II*

* * * * *

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters.

Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter) and Item 701 of Regulation S–K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act; *provided* that information that has previously been included in a Quarterly Report on Form 10–Q or 10–QSB (§ 249.308a or 249.308b of this chapter) need not be provided.

* * * * *

14. By amending Form 10–KSB (referenced in § 249.310b) by revising Item 5 of Part II to read as follows:

**Note:** Form 10–K does not and these amendments will not appear in the Code of Federal Regulations

**Form 10–KSB**

* * * * *

*Part II*

* * * * *

Item 5. Market for Common Equity and Related Stockholder Matters.

Furnish the information required by Item 201 of Regulation S–B and Item 701 of Regulation S–B as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act; *provided* that information that has previously been included in a Quarterly Report on Form 10–Q or 10–QSB need not be provided.

* * * * *

By the Commission.

Dated: June 27, 1995.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–16392 Filed 7–7–95; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 231

**[Release No. 33–7190; International Series No. 821; File No. S7–20–95]**

## Problematic Practices Under Regulation S

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interpretive Release; Request for Comments.

**SUMMARY:** The Commission is publishing its views concerning problematic practices under Regulation S and is requesting comment as to whether Regulation S should be amended to limit its vulnerability to abuse. The Commission will study the comments received in response to this release and will determine whether rulemaking or other action is necessary or appropriate.

**DATES:** This interpretation is effective July 10, 1995. Comments should be received on or before September 8, 1995.

**ADDRESSES:** Comment letters should refer to File number S7–20–95 and should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

**FOR FURTHER INFORMATION CONTACT:** Paul Dudek or Annemarie Tierney, (202) 942–2990, Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is stating its views with respect to certain problematic practices in connection with offers and sales under Regulation S,[1] the safe harbor under the Securities Act of 1933 (the ''Securities Act'')[2] for offshore offerings or resales, and is requesting comment as to whether specific amendments to Regulation S are necessary to curtail Regulation S abuses.

In addition, in a companion release,[3] the Commission is publishing for comment rule revisions that would eliminate certain impediments to registered offerings of securities under the Securities Act by streamlining requirements with respect to financial statements of significant acquisitions. Also in the companion release, rule revisions are proposed that would require registrants to report on a quarterly basis recent sales of equity securities that have not been registered under the Securities Act.

### I. Introduction

The Commission adopted Regulation S in April 1990 in order to clarify the extraterritorial application of the registration requirements of the Securities Act.[4] Since adoption, a number of problematic practices have developed involving unregistered sales of equity securities of domestic reporting companies purportedly in reliance upon Regulation S. In this release, the Commission states its views concerning these problematic practices and is requesting comment as to whether Regulation S also should be amended to impose additional restrictions on its use to impede attempts to use the Regulation to evade the registration requirements of the Securities Act.

Commenters have suggested that companies may be compelled to sell securities offshore, rather than in registered transactions, because of the registration disclosure requirements relating to significant acquisitions. In a companion release, the Commission is proposing to streamline these requirements to reduce regulatory impediments to the use of registered offerings. Also, in response to commenters' suggestions that investors need information about private or offshore placements of equity securities that is not currently required to be disclosed, the Commission is proposing to require quarterly reporting of unregistered equity offerings. Commenters have suggested this public reporting may also have the ancillary benefit of deterring abuses of Regulation S. The Commission in this release is soliciting comment as to other regulatory burdens that may cause issuers to resort to offshore offerings rather than registered public offerings.

### II. Interpretive Guidance on Regulation S Practices

Regulation S contains a general statement providing that Section 5 of the Securities Act[5] shall be deemed not to apply to offers or sales of securities that occur outside the United States[6] and two non-exclusive safe harbors.[7] However, neither of the safe harbors nor the general statement is available for a transaction or series of transactions that, although in technical compliance with the regulation, is part of a plan or scheme to evade the registration requirements of the Securities Act.[8]

Preliminary Note 2 to Regulation S states that ''* * * Regulation S is not available with respect to any transaction or series of transactions that, although in technical compliance with these rules, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.'' This release pertains only to violations of Section 5 in connection with Regulation S offerings and does not address issues dealing with the antifraud provisions of the federal securities laws.

The safe harbors provide specific guidance to issuers and other market participants as to conditions under which a transaction will be deemed to occur outside the United States. One safe harbor applies to offers and sales by issuers, underwriters and other persons involved in the distribution process pursuant to contract (defined as ''distributors'') and any person acting on behalf of the foregoing (the ''issuer safe harbor'').[9] The other safe harbor applies to resales by persons other than the issuer, distributors, their respective affiliates (except certain officers and directors) and persons acting on behalf of the foregoing (the ''resale safe harbor'').[10] An offer and sale of securities that satisfies all conditions of the applicable safe harbor is deemed to be outside the United States and thus is not subject to the registration requirements of Section 5, *provided that* it is not part of a plan or scheme to evade registration.[11]

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[1] 17 CFR 230.901–904.

[2] 15 U.S.C. 77a *et seq.*

[3] Securities Act Release No. 7189.

[4] Securities Act Release No. 6863 (April 24, 1990) [55 FR 18306] (the ''Adopting Release'').

[5] 15 U.S.C. 77(e).

[6] *See* Rule 901. Whether a transaction occurs outside the United States within the meaning of Rule 901 is a question of the facts and circumstances of the transaction. See the Adopting Release at footnote 18 and accompanying text.

[7] *See* Rules 903 and 904.

[8] *See* Preliminary Note 2 to Regulation S.

[9] *See* Rule 903. The issuer safe harbor distinguishes three categories of securities offerings, based upon factors such as the nationality and reporting status of the issuer and the degree of U.S. market interest in the issuer's securities. Under the issuer safe harbor, varying procedural safeguards are imposed with the intent of having the securities offered come to rest offshore.

[10] *See* Rule 904.

[11] Section 5 of the Securities Act prohibits any person, directly or indirectly, from using instrumentalities of interstate commerce or the mails to offer or sell a security unless a registration statement has been filed or is in effect as to such security. Exemptions from the registration provisions are set forth in Sections 3 and 4 of the statute, and the related rules promulgated under the Securities Act. A person who offers or sells a security in reliance upon an exemption from the registration requirements of Section 5 has the

Continued

Since the adoption of Regulation S, it has come to the Commission's attention that some market participants are conducting placements of securities purportedly offshore under Regulation S under circumstances that indicate that such securities are in essence being placed offshore temporarily to evade registration requirements with the result that the incidence of ownership of the securities never leaves the U.S. market, or that a substantial portion of the economic risk relating thereto is left in or is returned to the U.S. market during the restricted period, or that the transaction is such that there was no reasonable expectation that the securities could be viewed as actually coming to rest abroad. These transactions are the types of activities that run afoul of Preliminary Note 2, would not be covered by the safe harbors and would be found not to be an offer and sale outside the United States for purposes of the general statement under Rule 901.[12]

The practices described below generally have involved equity securities of U.S. companies whose securities are traded principally, and typically solely, in the United States.

There have been a variety of schemes involving parking securities with offshore affiliates of the issuer or a distributor. In these transactions, Regulation S is claimed as the basis to sell securities to offshore shell entities formed by the issuer or a distributor (or, in some cases, persons closely associated with the issuer or distributor) to purchase the securities. The entities hold the securities for the restricted period; at the end of that period, proceeds from the U.S. sale make their way, directly or indirectly, to the issuer or distributor. These transactions do not qualify for either the Regulation S safe harbor or the Rule 901 general statement since they are nothing more than sham offshore transactions structured to evade the Securities Act registration requirements.

Troubling issues also have arisen under the resale safe harbor provisions of Rule 904. Rule 904 cannot be used for the purpose of ''washing off'' resale restrictions, such as the holding period requirement for restricted securities in Rule 144.[13] Likewise, the restricted status of securities is not affected by a prearranged transaction by or on behalf of the seller conducted offshore. If a person with restricted securities sold the securities in an offshore transaction and replaced them with a repurchase of fungible unrestricted securities, the replacement securities would be subject to the same restrictions as those replaced.

As noted, the Commission has become aware of a number of instances where the total mix of factors raises the concerns described above. These factors, any one of which may serve to indicate that the economic or investment risk never shifted to the offshore purchaser, and that the securities—as a matter of substance as opposed to form—never left the United States or remained offshore for less than the restricted period, have included the use of: (i) non-recourse promissory notes (notes where the purchaser never is at risk in connection with the purchase of the securities) for all or almost all of the purchase price, where the expectation of repayment stems from the resale of the securities into the U.S. market, (ii) recourse notes where the entity providing the notes is unknown to the seller of the securities or the entity has no, or minimal, assets where, again, the expectation of repayment stems from the resale of the securities into the U.S. market, (iii) fees paid to the purchaser of the securities to hold the securities for the restricted period, whether paid directly or as more frequently seems to be done through significant[14] discounts to the U.S. market price for the issuer's stock, where the fees or discounts are such to indicate that the transaction was intended to create a parking scheme or other scheme where the securities were merely being held offshore to evade the registration requirements, and (iv) short selling and other hedging transactions such as option writing, equity swaps or other types of derivative transactions,[15] where purchasers transfer the benefits and burdens of ownership back to the United States market during the restricted period.[16]

In these cases it appears the transaction is nothing more than a delayed sale by the seller in the United States, with the purported offshore purchaser serving as a statutory underwriter.[17]

### III. Request for Comments

In addition to taking enforcement action against those who seek to evade the registration requirements of the Securities Act under the color of compliance with Regulation S,[18] the Commission is considering whether it is necessary to amend the regulation to deter these abuses and requests comment as to the need for revision of Regulation S. A number of proposed revisions have been suggested by commentators.[19] These suggestions are

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burden of establishing the availability of the exemption. *Securities & Exchange Commission v. Murphy*, 626 F.2d 633, 645 (9th Cir. 1980). Such exemptions are construed narrowly. *Id.* at 641.

[12] In addition, a purported Regulation S offering that involves a distribution in the United States may raise issues under Rule 10b–6 under the Securities Exchange Act of 1934. *See, e.g., R.A. Holman & Co., Inc. v. Securities & Exchange Commission*, 366 F.2d. 446, at 449, (2d Cir. 1966) (a distribution of securities is not deemed to be completed until the securities come to rest in the hands of the investing public).

[13] *See* Rule 144(d).

[14] Of course, some discounts may well be warranted in order to compensate for the length of the restricted period, historic volatility of the stock, financial condition of the issuer, the dilution represented by the newly issued shares, current market condition, availability of current information as to the issuer, information the issuer may have had that was disclosed to the purchaser but not otherwise disclosed to the market, or other factors. Nevertheless, some discounts have been so unrelated to the economics of the transaction that the only justification that can be ascertained is that they are part of a parking or holding scheme where the offshore purchaser is simply being used as a conduit for what is in reality an onshore financing.

[15] *See* Securities Act Release No. 7187, Part II.A, which addresses equity swaps and other like investment strategies in different contexts.

Securities would not be deemed to have come to rest abroad during the restricted period if the securities were pledged as collateral, either in a margin account or otherwise, where the expectation was that the collateralization would shift the benefits and burdens of ownership to the lender as opposed to the purchaser and the lender was not offshore.

[16] Since the market for the securities is in the United States, the short-selling or other hedging transaction occurs in the United States markets. If the short-selling or other hedging transaction occurred solely by or among parties offshore, and the purchaser engaged in the transaction could reasonably expect that the economic risk of ownership would remain abroad, then the transaction could satisfy the requirements of the rule if the other provisions of Regulation S were satisfied.

[17] Public resales in the United States by persons that would be deemed underwriters under Section 2(11) of the Securities Act [15 U.S.C. 77b(11)] would not be permissible without registration or an exemption from registration. Footnote 110 of the Adopting Release, which addresses the restricted periods, should not be read to provide otherwise.

Section 4(1) of the Securities Act [15 U.S.C. 77d(1)] exempts ''transactions by any person other than an issuer, underwriter, or dealer.'' Section 2(11) defines the term ''underwriter'' as:

Any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking. . . . As used in this paragraph the term ''issuer'' shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

Accordingly, any distributions by a statutory ''underwriter'' must be registered pursuant to Section 5. *United States v. Wolfson*, 405 F.2d 779, 782 (2d Cir. 1968), cert. denied, 394 U.S. 946 (1969).

[18] *See*, for example, *United States v. Sung and Feher*, Litigation Release No. 14500 (May 15, 1995); *Securities and Exchange Commission v. Softpoint, Inc., et al.*, Litigation Release No. 14480 (April 27, 1995).

[19] *See* Ajhar, ''Foreign Stock Sales: Don't Get Blindsided,'' Worth p. 37 (March 1994); The Corporate Counsel, March-April 1995; E. Greene, ''Recent Problems Under Regulation S,'' Insights

being considered by the Commission and comment is requested on each of the proposals that follow. Commentators' proposals have generally focused on common stock placements by domestic issuers. Is there a comparable need for such restrictions in the case of foreign issuers' equity for which the United States is the sole or principal market, or for any other class of securities?

1. *Extend the Restricted Period.* Currently, the restricted period under the category 2 safe harbor [20] for offerings of securities of domestic companies that are reporting under the Securities Exchange Act of 1934 (the ''Exchange Act'') [21] is 40 days. Some have suggested extending the restricted period, for example, to one year in the case of equity securities of domestic issuers. One commentator has suggested that such offerings should be subject to the more restrictive conditions of the category 3 safe harbor,[22] which are currently generally applicable to offshore offerings by non-reporting domestic issuers. This would not only extend the restricted period to one year but also require legending of share certificates and an express agreement by the purchaser to resell the securities only in accordance with an available exemption from registration.

2. *Exclude certain discounted offers from the safe harbor.* Another possible revision would be to limit use of the category 2 safe harbor by domestic issuers offering common stock to those offerings sold at the market price or with a specified minimal discount. Those selling at a disqualifying discount could proceed under Rule 901 if the facts and circumstances established that the placement was truly an offshore offer and sale and not part of a plan or scheme to evade the registration requirements of the Securities Act. Alternatively, rather than exclude some or all discounted offerings from the issuer safe harbors, should instead a longer restricted period or all of the category 3 procedures apply to discounted offers?

3. *Restrict risk shifting transactions during the restricted period.* Should the safe harbor require selling restrictions that limit purchasers' ability during the restricted period to sell short or otherwise take a short position with respect to, or otherwise hedge the risk of holding common equity securities?

4. *Prohibit payment with certain types of non-recourse or other types of promissory notes where the expectation of repayment derives solely from the resale of securities.* Should the category 2 or 3 safe harbor be amended to prohibit (or limit through tolling of the restricted period) payment for common equity securities with certain types of non-recourse or other types of promissory notes where the expectation of repayment derives solely (or primarily) from the proceeds of resale of the securities?

## IV. The Role of Regulation S in Companies' Capital Raising Plans

The Commission, when it adopted Regulation S, understood and intended that legitimate offshore transactions whereby the issuer intended that its securities would be sold and placed offshore would be covered by Regulation S. Regulation S clarified and simplified procedures for offshore placement of securities and was intended to provide U.S. issuers with an efficient capital raising alternative. The Commission understands, in part due to its participation in the Government-Business Forum on Small Business Capital Formation, that there are issuers, particularly those ineligible to use shelf registration, that view offshore offerings as an important financing alternative. The Commission is soliciting comments as to the types of companies that are using Regulation S, how are they using it, and what mechanisms can be used to prevent abuse without unduly deterring legitimate offshore capital raising activities.

Reportedly, many small business issuers consider Regulation S offerings an important financing tool. Is this due to the increased pool of potential investors, or to the process involved in accomplishing a Regulation S offering versus a registered offering, or both? The Commission also recognizes that issuers may be compelled to sell securities offshore, rather than in registered transactions, because of registration disclosure requirements relating to significant acquisitions. As noted above, in a companion release, the Commission is addressing this concern through rule proposals to streamline these disclosure requirements. The Commission is seeking comments as to what other impediments in the current system may lead to problematic Regulation S offerings, and what commenters suggest should be done to alleviate these problems so that resorting to problematic Regulation S practices can be eliminated.[23]

Further, the Commission requests that commenters address the benefits and costs and other burdens to investors, issuers, and other market participants that would result from any of the suggested changes to Regulation S noted in Section III above.

## V. Cost-Benefit Analysis

The Commission requests views and data relating to the costs and benefits associated with the proposals relating to additional restrictions for offerings under Regulation S. It is expected that such restrictions would not directly impose additional burdens on companies, although there may be indirect costs incurred by companies.

## VI. Request for Comments

Any interested person wishing to submit written comments on any aspect of the amendments to forms and rules that are subject to this release are requested to do so. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549 and should refer to file number S7–20–95.

## List of Subjects in 17 CFR Part 231

Securities.

## Amendment of the Code of Federal Regulations

For the reasons set out in the preamble, Title 17 Chapter II of the Code of Federal Regulations is amended as set forth below:

(August 1994); ''Rule Permitting Offshore Stock Sales Yields Deals that Spark SEC Concerns'', Wall Street Journal, at C1, April 26, 1994.

[20] Rule 903(c)(2).

[21] 15 U.S.C. 78a *et seq.*

[22] Rule 903(c)(3).

[23] The Commission has established the Advisory Committee on the Capital Formation and Regulatory Processes (the ''Advisory Committee''), chaired by Commissioner Steven M.H. Wallman. The Advisory Committee is considering fundamental issues relating to the regulatory framework governing the capital formation process, including whether the current system of registering securities offerings should be replaced with a company registration system. The recommendations of the Advisory Committee may result in rule proposals or legislative recommendations that, if endorsed by the Commission, ultimately may address the matters discussed in this release. Under some of the company registration models being considered by the Advisory Committee, the need to draw legal distinctions between securities issued by registered companies in public offerings conducted domestically and offshore would be significantly reduced. All securities issued by companies registered with the Commission would be freely tradable in this country, regardless of the public or private, or domestic or offshore, nature of that offering.

## PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 231 is amended by adding Release No. 33–7190 and the release date of June 27, 1995 to the list of interpretive releases.

Dated: June 27, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–16393 Filed 7–7–95; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Monday
July 10, 1995

## Part III

# Department of Defense

**48 CFR Part 219 and 252**

**Defense Federal Acquisition Regulation Supplement; Comprehensive Small Business Subcontracting Plans; Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans; Final Rule and Notice**

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 219 and 252**

## Defense Federal Acquisition Regulation Supplement; Comprehensive Small Business Subcontracting Plans

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to extend the time period for conducting a test program for negotiation of comprehensive small business subcontracting plans.

**DATES:** Effective Date: July 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Directorate, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, telephone (703) 602–0131. Please cite DFARS Case 95–D002 in all correspondence related to this issue.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final DFARS rule implements Section 7103 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355). Section 7103 amends Section 834 of Public Law 101–189 by extending, through September 30, 1998, the test program for negotiation of comprehensive small business subcontracting plans.

### B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Please cite DFARS Case 95–D002 in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 219 and 252 are amended as follows:

## PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR Parts 219 and 252 are revised to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 219.702 is amended by revising paragraph (a) introductory text and paragraph (a)(i)(A)(*1*) to read as follows:

**219.702 Statutory requirements.**

(a) Section 834 of Pub. L. 101–189, as amended by Section 7103 of Pub. L. 103–355, requires the DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will increase subcontracting opportunities for small business concerns.

(i) * * *

(A) * * *

*(1)* From October 1, 1990, through September 30, 1998;

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.219–7004 is amended by revising the clause date ''(DEC 1991)'' to read ''(JUL 1995)'' and by revising paragraph (b) to read as follows:

**252.219–7004 Small business and small disadvantaged business subcontracting plan (test program).**

* * * * *

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101–189, as amended by Section 7103 of Pub. L. 103–355, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Pub. L. 95–507.

* * * * *

[FR Doc. 95–16719 Filed 7–7–95; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of test program.

**SUMMARY:** The Department of Defense is proposing to amend the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans.

**DATES:** Comments on the test plan should be submitted in writing at the address shown below on or before September 8, 1995 to be considered in finalization of the program.

**ADDRESSES:** Interested parties should submit written comments to: Office of Small and Disadvantaged Business Utilization, ATTN: Ms. Susan Haley, USD (A&T) SADBU, 3000 Defense Pentagon, Washington, DC 20301–3000. Telefax number (703) 693–7014.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Haley, (703) 697–9383.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Under Section 834 of Pub. L. 101–189, as amended, the Department of Defense (DoD) established a test program to determine whether the use of comprehensive small business subcontracting plans would result in increased opportunities for small firms performing under Defense contracts. The initial test program covered a four-year period, beginning October 1, 1990.

The period of the test program has been extended through September 30, 1998, to implement Section 7103 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

With regard to eligibility criteria, the revised plan clarifies that the requirement for business concerns to annually receive $25 million or more under DoD contracts applies at the corporate level. Eligibility criteria are further revised to require firms to have achieved a small disadvantaged business (SDB) subcontracting performance rate of 5 percent or more in order to participate, or to submit a special request for participation which would include a plan to achieve the 5 percent participation rate. All participants will be required to accept a 5 percent or higher SDB goal and must agree to comply with the provisions of Section 215.605 of the Defense Federal Acquisition Regulation Supplement regarding evaluation of small business (SB)/SDB participation in source selections.

The revised plan reduces from quarterly to annually the requirement for the contracting officer (CO) to review the progress of participating contractors toward achievement of the SB, SDB and women-owned small business goals as agreed upon in the comprehensive subcontracting plan. Submission of subcontracting reports (Standard Form (SF) 295) remains unchanged.

The test plan is also amended to recognize revisions related to women-owned small business.

The contracting activities under the military departments designated to participate remain unchanged. Defense agencies may nominate to the Director, Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition and Technology) a contracting activity to participate in this program.

**Susan Haley,**

*Office of Small and Disadvantaged Business Utilization.*

The revised test plan is as follows:

### Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

*I. Purpose*

This document implements section 834 of Public Law 101–189, the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended. The primary purpose of the Test Program (the Program) is to determine whether the negotiation and administration of comprehensive small business subcontracting plans will result in increased opportunities for small business concerns performing under Department of Defense (DoD) contracts.

*II. Authority*

The Program is established pursuant to section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended.

*III. Program Requirements*

A. The Program shall be conducted from October 1, 1990, through September 30, 1998.

B. The selection of contractors for participation in the Program shall be in accordance with section 834(b)(3). Large business concerns at the major (total) corporate level that, during the preceding fiscal year:

1. Pursuant to at least five Department of Defense (DoD) contracts, furnished supplies or services (including professional services) to the DoD, engaged in research and development for the Department, or performed construction for the Department; and were paid $25,000,000 or more for such contract activities.

2. (a) Achieved a small disadvantaged business (SDB) subcontracting participation rate of five percent or more during the preceding fiscal year 1994; or

(b) Firms with an SDB subcontracting participation rate of less than five percent during the preceding fiscal year 1994 may request through the designated contracting activity to participate under the Comprehensive Subcontracting Test Program. Requesting firms shall submit a detailed plan with milestones leading to attainment of at least five percent SDB subcontracting participation rate by fiscal year 1998. The provisions of paragraph B(2) do not apply to the eight original contractors accepted into the program.

3. Shall accept a SDB goal for each fiscal year of not less than five percent, or a SDB goal that is in accordance with the milestone established in paragraph B(2)(b) above.

4. Shall comply with the requirements of the Defense Federal Acquisition Regulation Supplement Subpart 215.605 for source selection purposes.

C. For the purposes of the Program, to the extent practicable, contractors selected to participate shall establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the Standard Form (SF) 295 during the preceding fiscal year except that in the case of a division or plant that historically reported through a higher level division, but would meet the criteria under B(2) above, shall be permitted to participate in the program if the division, plant or profit center can demonstrate a five percent or greater subcontract performance level with SDB concerns.

D. Contractors selected for participation shall:

1. Be eligible in accordance with III (B) and (C),

2. Have reported to the DoD on the SF 295 for the last fiscal year, except as applicable under III(C) above,

3. Offer a broad range of subcontracting opportunities,

4. Voluntarily agree to participate, and

5. Have at least one active contract that requires a subcontracting plan at the designated DoD buying activity responsible for negotiating the Comprehensive Subcontracting Plan.

*IV. Elements of the Comprehensive Small Business Subcontracting Plan*

A. The comprehensive small business subcontracting plan shall address each of the eleven elements set forth in paragraph (d) of the clause at FAR 52.219–9, ''Small Business and Small Disadvantaged Business Subcontracting Plan.''

1. The subcontracting plan, percentage and corresponding dollar goals for awards to small business, small disadvantaged business and women-owned small business concerns shall be developed by the contractor for its entire business operation in support of all DoD contracts regardless of dollar value.

2. Participating contractors shall include separate specific goals and timetables for the awarding of subcontracts in two industry categories which have not historically been made available to small business, small disadvantaged business and women-owned small business. These industry categories will be recommended by the contractor and approved by the contracting officer. Subcontract awards made in support of the specific industry categories shall also count towards attainment of the overall small business, small disadvantaged business and women-owned small business goals.

3. The subcontracting plan shall set-forth the prime contractor's actions to publicize prospective subcontract opportunities for small business, small disadvantaged business and women-owned small business concerns.

B. Subcontracting plans to be established under the Program shall be submitted each year by participating contractors to the designated contracting officer 45 days prior to the end of the Government's fiscal year (September 30). However, new contractors requesting participation under the Program shall submit subcontracting plans to the contracting officer as close as possible to September 30.

*V. Procedures*

A. The Service Acquisition Executive within each Military Department and Defense Agency having contractors that meet the requirements of III(B) shall designate one contracting activity to participate in the Program.

B. The designated contracting activity will accomplish the following:

1. With the coordination of the Director, Office of Small and Disadvantaged Business Utilization for their military Department or Defense Agency, select as many eligible prime contractors for participation under the Program as deemed appropriate.

2. Establish a ''Comprehensive Small Business Subcontracting Plan'' negotiating team(s) composed as follows:

a. A contracting officer(s) who will be responsible for negotiation and approval of the comprehensive subcontracting plan(s) as well as the responsibilities at FAR 19.705.

b. The contracting activity's Small and Disadvantaged Business Utilization Specialist.

c. The Small and Disadvantaged Business Utilization Specialist of the cognizant contract administration activity that administers the preponderance of the selected prime contractor's contracts and/or the appropriate individual who will administer contractor performance under the test in accordance with FAR 19.706 and the provisions herein.

d. Production specialist, price analyst and other functional specialists as appropriate.

C. The designated contracting officer shall:

1. Solicit proposed comprehensive subcontracting plans from selected contractor(s) as soon as possible and by July 1, annually thereafter.

2. By October 1, and annually thereafter, review, negotiate and approve on behalf of the DoD a comprehensive subcontracting plan for each selected contractor.

3. Distribute copies of the approved subcontracting plan in accordance with VI(A) below.

4. Upon negotiation and acceptance of the comprehensive subcontracting plan, the contracting officer shall obtain from the contractor:

a. A listing of all active DoD contracts that contain individual subcontracting plans required by section 211 of Public Law 95–507.

b. The listing shall include the following:

i. Contract number.

ii. Name and address of the contracting activity.

iii. Contracting officer's name and phone number.

5. Upon receipt of the information provided by the participating contractor under 4 above, the contracting officer shall notify the designated administrative contracting officer to issue a comprehensive change order, which modifies all of the contractor's active DoD contracts that include subcontracting plans. The modification will substitute the contractor's approved comprehensive subcontracting plan for the individual plans, will substitute the clause at DFARS 252.219–7004 for the clauses at FAR 52.219–9, and 52.219–16, respectively, and will delete the clauses at FAR 52.219–10 and DFARS 252.219–7003 and 252.219–7005, as appropriate.

6. Review annually, with the contract administration activity, contractor's performance under the plan. Document the review findings and distribute, in accordance with VI(A), within 45 days of the end of the fiscal year.

7. By November 15 of the year after acceptance and annually thereafter, determine whether the contractor has met its comprehensive subcontracting goals. If the goals have not been met, determine whether there is any indication that the contractor failed to make a good faith effort and take appropriate action.

8. By December 15, 1998, prepare and submit a report on each participating contractor's performance which details the results of the Program. The report must compare the contractor's performance under the Program with its performance for the three fiscal years prior to acceptance into the program. The report distribution will be in accordance with VI(A) below.

D. Participating contractors:

1. To the extent practicable, shall establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the Standard Form (SF) 295 during fiscal year 1994, except those contractors that historically reported through a higher headquarters however as a separate reporting profit center, plant or division the contractor achieved an SDB subcontracting performance rate of five percent or greater in fiscal year 1994.

2. Upon negotiation of an acceptable comprehensive subcontracting plan shall be exempt from individual contract by contract reporting requirements for DoD contracts unless otherwise required in accordance with (III)(B)(5).

3. Shall continue individual contract reporting on non-DoD contracts.

4. Shall comply with the flow-down provisions of section 211 of Public Law 95–507. Large business concerns receiving a DoD subcontract in excess of $500,000 ($1,000,000 for construction) are required to adopt a plan similar to that mandated by the clause at 52.219–9. Participating contractors are prohibited from flowing down the ''Comprehensive'' subcontracting deviations provisions of 252.219–7004. Accordingly, large business subcontractors to the participating contractors shall be required to establish individual subcontracting plans with specific goals for awards to small business, small disadvantaged business and women-owned small business.

5. Upon expulsion from the Program or Program termination on September 30, 1998, shall negotiate and establish individual subcontracting plans on all future DoD contracts that otherwise meets the requirements of section 211 of Public Law 95–507.

*VI. Monitoring and Reporting of Comprehensive Subcontracting Plans and Goals*

A. Upon negotiation and acceptance of comprehensive subcontracting plans and goals the designated activity shall immediately forward one copy of the plan to each of the following:

1. Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition and Technology), Room 2A338, The Pentagon, Washington, DC 20301–3061.

2. Director, Small and Disadvantaged Business Utilization, for the Military Department or Defense Agency of the activity that negotiated and accepted the comprehensive subcontracting plan.

3. The cognizant contract administration office.

B. Each participating contractor shall complete the Standard Form (SF) 295 ''Summary Subcontract Report'' in accordance with the instructions on the back of the form on a quarterly basis, except as noted below:

1. Participating contractors shall be exempt from completing items 17 and 18 under ''Subcontract Goal Achievement.''

2. Participating contractors shall enter in item 16 ''Remarks'' block the annual corporate, division or plant-wide small business, small disadvantaged business and women-owned small business percentage and corresponding dollar goals.

3. Participating contractors shall also enter separately in item 14 the percentage and corresponding dollar goals for each of the two selected industry category (see section IV(A)(2)).

4. Participating contractors shall also enter separately in item 14 on a quarterly cumulative basis the percentage and corresponding dollar amount of subcontract awards made in each of the two selected industry categories.

5. Participating contractors shall be exempt from the completion of SF 294 ''Subcontract Report For Individual Contracts'' for DoD contracts during their participation in the Program.

[FR Doc. 95–16720 Filed 7–7–95; 8:45 am]

BILLING CODE 5000–04–M

Federal Register

Monday
July 10, 1995

# Part IV

## Department of the Treasury

**Office of the Comptroller of the Currency**

**12 CFR Part 30**

## Federal Reserve System

**12 CFR Parts 208 and 263**

## Federal Deposit Insurance Corporation

**12 CFR Parts 303, 308, and 364**

## Department of the Treasury

**Office of Thrift Supervision**

**12 CFR Part 570**

**Standards for Safety and Soundness and Interagency Guidelines Establishing Standards for Safety and Soundness; Final Rule and Proposed Rule**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 30**

**[Docket No. 95–15]**

**FEDERAL RESERVE SYSTEM**

**12 CFR Parts 208 and 263**

**[Docket No. R–0766]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Parts 303, 308 and 364**

**RIN 3064–AB13**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 570**

**[No. 95–113]**

**RIN 1550–AA54**

## Standards for Safety and Soundness

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** As required by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board of Governors), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) have adopted a final rule establishing deadlines for submission and review of safety and soundness compliance plans. The agencies may require compliance plans to be filed by an insured depository institution for failure to meet the safety and soundness standards prescribed by guideline pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act). In conjunction with this final rule, the agencies have adopted Interagency Guidelines Establishing Standards for Safety and Soundness (Guidelines). The Guidelines will appear as an appendix to each of the agencies' final rule. The agencies view the final rule and Guidelines as a realistic balance between the objectives of section 132 of FDICIA and avoiding overly burdensome regulation.

In November 1993, the agencies published in the **Federal Register** a joint notice of proposed rulemaking prescribing standards for safety and soundness, including standards for asset quality and earnings. The agencies are proposing revised asset quality and earnings standards. A document requesting comment on these standards is published elsewhere in this separate part of the **Federal Register**. The agencies intend to add asset quality and earnings standards to the Guidelines after public comments are considered and final standards are adopted.

**EFFECTIVE DATE:** August 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** *OCC*: Emily R. McNaughton, National Bank Examiner (202/874–5170), Office of the Chief National Bank Examiner; David Thede, Senior Attorney (202/874–5210), Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board of Governors:* David Wright, Supervisory Financial Analyst (202/728–5854), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452–3583), Gregory A. Baer, Managing Senior Counsel (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

*FDIC:* Robert W. Walsh, Manager, Planning and Program Development (202/898–6911) or Michael D. Jenkins, Examination Specialist (202/898–6896), Division of Supervision; Lisa M. Stanley, Senior Counsel (202/898–7494) or Nancy L. Alper, Counsel (202/898–3720), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

*OTS:* William Magrini, Project Manager (202/906–5744), Policy Office, Cathern Smith, Regional Coordinator (202/906–6614), Regional Operations; Kevin Corcoran, Assistant Chief Counsel (202/906–6962), Teri M. Valocchi, Counsel (Banking and Finance) (202/906–7299), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Statutory Framework*

Section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102–242, added a new section 39 to the FDI Act (12 U.S.C. 1831p–1) which required each Federal banking agency to establish by regulation certain safety and soundness standards for the insured depository institutions and depository institution holding companies for which it was the primary Federal regulator. That portion of section 39 that addresses compensation was subsequently amended by section 956 of the Housing and Community Development Act of 1992, Pub. L. 102–550.

On September 23, 1994, the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), Pub. L. 103–325, was enacted. Section 318 of the CDRI Act further amended section 39 of the FDI Act: (1) To authorize the agencies to establish safety and soundness standards by regulation *or* by guideline for all insured depository institutions; (2) to give the agencies greater flexibility in prescribing asset quality and earnings standards; and (3) to eliminate the requirement that standards prescribed under section 39 apply to depository institution holding companies. Pursuant to section 318 of the CDRI Act, these amendments have the same effective date as section 39 of the FDI Act, as provided in section 132(c) of FDICIA.

Section 39(a) requires the agencies to establish operational and managerial standards relating to: (1) Internal controls, information systems and internal audit systems, in accordance with section 36 of the FDI Act (12 U.S.C. 1831m); (2) loan documentation; (3) credit underwriting; (4) interest rate exposure; (5) asset growth; and (6) compensation, fees, and benefits, in accordance with subsection (c) of section 39 of the FDI Act. Section 39(b) requires the agencies to establish standards relating to asset quality, earnings, and stock valuation that the agencies determine to be appropriate.

Section 39(c) requires the agencies to establish standards prohibiting as an unsafe and unsound practice any compensatory arrangement that would provide an executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits and any compensatory arrangement that could lead to material financial loss to an institution. Section 39(c) also requires that the agencies establish standards that specify when compensation is excessive. If an agency determines that an institution fails to meet any standard established by *regulation* under subsection (a) or (b) of section 39, the institution *must* submit to the agency an acceptable plan to achieve compliance with the standard. Under the CDRI Act

amendment to section 39, if an agency determines that an institution fails to meet any standard established by *guideline* under subsection (a) or (b) of section 39, the agency *may* require the institution to submit to the agency an acceptable plan to achieve compliance with the standard.

Where an agency requires submission of a plan to achieve compliance with the standards, if the institution fails to submit an acceptable plan within the time allowed by the agency or fails in any material respect to implement an accepted plan, the agency must, by order, require the institution to correct the deficiency. The agency may, and in some cases must, take other supervisory actions until the deficiency has been corrected.

*B. Agencies' Proposals*

On July 15, 1992, the agencies published a joint advance notice of proposed rulemaking (ANPR) in the **Federal Register**, 57 FR 31336, for a 60-day comment period. The agencies received over 400 comment letters in response to the ANPR, with some letters submitted to more than one agency. Commenters strongly recommended that the agencies propose general rather than specific standards in order to avoid regulatory micromanagement.

On November 18, 1993, the agencies published a joint notice of proposed rulemaking in the **Federal Register**, 59 FR 60802, for a 45-day comment period. Based on comments received in response to the ANPR, the agencies proposed general standards designed to identify emerging safety and soundness problems in depository institutions.

## II. The Final Rule

Although section 39 of the FDI Act, as amended by the CDRI Act, allows the agencies to establish safety and soundness standards by regulation *or* by guideline, section 39(e) of the FDI Act continues to require the agencies to establish deadlines for submission and review of compliance plans by regulation. For this reason, although the agencies have established safety and soundness standards by guideline, the agencies have established deadlines and procedures for submission and review of compliance plans by regulation.

The agencies' final rule adopts the procedures proposed for submission of compliance plans and issuance of orders, except that, under the final rule, the agencies are authorized, rather than required, to request a compliance plan for failure to satisfy the safety and soundness standards set out in the Guidelines. The procedures for issuing orders in the final rule are modelled after those adopted by the agencies for issuance of prompt corrective action directives pursuant to section 38 of the FDI Act.

The agencies expect that noncompliance with the standards adopted pursuant to section 39 generally will be detected during examinations of institutions. Under the final rule, an institution must file a compliance plan within 30 days of a request to do so from the institution's primary Federal regulator. An agency may extend or shorten that time, if necessary. The agency then generally has 30 days to review the plan.

Several commenters requested an extension, from 30 days to 60 days or more, of the time period within which an institution must file a compliance plan after receiving a request from the agency to do so. The agencies' proposal allowed the agencies to require that a compliance plan be filed within 30 days or within a time period specified by the agencies. The agencies believe that this provision provides sufficient flexibility to extend the time period where appropriate or necessary. Accordingly, the agencies have decided not to extend the time period within which an institution must generally file a compliance plan. Although section 39 does not provide for any prior notice or administrative review of an agency order, the agencies' final rule provides for prior notice of, and an opportunity to respond to, a proposed order.

A few commenters requested that the agencies extend from 14 to 60 days or more the time period within which an institution must respond to the agency's notice of intent to issue an order requiring the institution to correct a safety and soundness deficiency or to take or refrain from taking other actions. Under the agencies' proposal, the agencies could determine that a different time period was appropriate in light of the safety and soundness of the institution or other relevant considerations. The agencies have decided to adopt the time period set forth in the proposal because the agencies believe that time period carries out the purpose of section 39 to facilitate early identification and correction of safety and soundness deficiencies.

A compliance plan may, with the permission of the agency, be part of a capital restoration plan submitted pursuant to section 38 of the FDI Act (prompt corrective action) (12 U.S.C. 1831p), a cease-and-desist order entered into pursuant to section 8 of the FDI Act (12 U.S.C. 1818), a formal or informal agreement, or a response to a report of examination.

In conjunction with this rulemaking, the FDIC has amended part 303 of its regulations regarding delegations of authority to act on compliance plans under section 39.

## III. Interagency Guidelines Establishing Standards for Safety and Soundness

The agencies have adopted Interagency Guidelines Establishing Standards for Safety and Soundness (Guidelines) pursuant to section 39 of the FDI Act. By adopting the standards as guidelines, the agencies retain the authority to require an institution to submit an acceptable compliance plan as well as the flexibility to pursue other more appropriate or effective courses of action given the specific circumstances and severity of an institution's noncompliance with one or more standards. Failure to submit or adhere to a compliance plan will subject an institution to the sanctions under section 39.

The agencies expect to request a compliance plan from an institution whose failure to meet one or more of the standards is of such severity that it could threaten the safe and sound operation of the institution. The agencies may elect to rely on an existing plan or enforcement action to ensure that an institution achieves compliance with the Guidelines, rather than requiring the submission of a separate safety and soundness compliance plan.

The Guidelines set out the safety and soundness standards that the agencies will use to identify and address problems at institutions before capital becomes impaired. The agencies believe that the standards adopted in the Guidelines serve this end without dictating how institutions must be managed and operated. Adoption of these Guidelines is consistent with the overwhelming majority of commenters' recommendations that the standards established under section 39 be general and flexible in nature. The agencies have decided to use the flexibility provided by the CDRI Act to propose new asset quality and earnings standards which the agencies believe are more appropriate. Therefore, the agencies have not included these standards in the final Guidelines, but are seeking comment on these standards elsewhere in this separate part of the **Federal Register**. The agencies intend to add revised asset quality and earnings standards to the Guidelines after comments are considered and final standards are adopted.

*A. Holding Company Coverage*

Section 318 of the CDRI Act eliminates the requirement that the

standards established pursuant to section 39 apply to depository institution holding companies. The Conference Report for the CDRI Act states, ''The Conferees intend these requirements to apply only to the depository institutions.'' H.R. Conf. Rep. No. 652, 103rd Cong., 2d Sess. 175 (1994). Accordingly, the Guidelines do not apply to holding companies.

*B. Operational and Managerial Standards*

The agencies' proposed operational and managerial standards did *not* specify each procedure an institution must have in place. Instead, the proposed standards established the objectives that proper operations and management oversight should achieve, while leaving the methods for achieving those objectives to each institution. The proposed standards represented the fundamental standards in use by the agencies to assess the operational and managerial quality of an institution. The standards did not represent a change in any of the agencies' policies.

The majority of commenters believed that the proposed standards were sufficiently flexible and general in nature. Commenters generally viewed the standards as a realistic balance between the mandates of section 39 and the objective of avoiding overly burdensome regulation. Many commenters believed that the standards would ensure that decision-making responsibility resides with management of the institution.

A few commenters expressed concern that the agencies' examination process would, in effect, require specific standards, and they asked that more specific guidance be provided to examiners to ensure consistent interpretation of the standards. The agencies acknowledge the importance of consistent interpretation of the Guidelines and are considering issuing guidance to their examination staffs.

In response to the agencies' proposals, many commenters recommended that the agencies adopt standards that would apply according to an institution's asset size. The agencies recognize that smaller, less complex institutions may require less sophisticated systems and practices. Therefore, the standards for internal controls and information systems, internal audit systems, and credit underwriting state that these standards must be appropriate to the size of the institution and the nature and scope of its activities. In addition, the agencies' standard for interest rate exposure states that an institution must manage its interest rate risk in a manner appropriate to the size of the institution and the complexity of its assets and liabilities.

The agencies specifically requested comment on whether the proposed standards would require institutions to modify their operations. While many commenters encouraged the agencies to exempt certain institutions from the standards based on asset size or capital category, the majority of commenters did not believe that the proposed standards would require institutions to modify their operations in order to comply. The agencies believe that well-managed institutions generally should not find it necessary to modify their operations in order to comply with the operational and managerial standards in the Guidelines.

The standards adopted by the agencies are based in large measure upon the standards proposed by the agencies. In determining whether an institution satisfies the standards, the agencies intend to consider an institution's overall practices and performance so that an institution would not fail one of the standards due to an isolated error or inconsistency.

1. Compliance With Laws and Regulations

The agencies' proposed standards for internal controls and information systems, loan documentation, credit underwriting, interest rate exposure and asset growth included a requirement for compliance with laws and regulations. Several commenters believed that this requirement was redundant and unnecessary since all institutions must comply with applicable laws and regulations and violation of a law or regulation may subject an institution to appropriate supervisory and enforcement action. The agencies believe that the express requirement to ensure compliance with applicable laws and regulations is a necessary standard for internal controls and information systems, but agree that repeating the requirement in the other standards is unnecessary. Accordingly, the requirement to ensure compliance with applicable laws and regulations has been deleted from the standards for loan documentation, credit underwriting, interest rate exposure and asset growth.

2. Internal Controls, Information Systems, and Internal Audit Systems

The agencies' proposed standards for internal controls and information systems were designed to enable each institution to comply by using control systems tailored to its individual operating environment. The majority of commenters favored these standards. Some accounting and auditing firm commenters recommended that the agencies incorporate into the standards the guidelines prepared by the Committee of Sponsoring Organizations (COSO) of the Treadway Commission in ''Internal Control: An Integrated Framework''. The agencies believe that the proposed internal control standards are consistent with the COSO framework for the structure of control systems. Therefore, using the COSO framework in developing and evaluating a system of internal controls is one way an institution could meet the standards proposed by the agencies.

The agencies' proposal addressed internal audit systems separately. Internal audit systems are important to the ongoing monitoring of the effectiveness of the design and execution of any system of internal controls. The proposal required each institution to have an internal audit system that provided for adequate testing and review of internal controls and information systems among other provisions. Commenters criticized the requirement for an internal audit system because it seemed to imply that either a full-time internal auditor and staff or outside consultants would be necessary to perform an internal audit. Several commenters believed that the costs involved could not be justified for many smaller institutions.

The proposed audit standard did not explicitly require an internal audit function. The agencies believe it is management's responsibility to consider carefully the level of audit activity that will provide effective monitoring of the internal control system after taking into account the audit system's costs and benefits. For many banking organizations that have reached a certain size or complexity of operations, the benefits derived from an independent internal audit function more than outweigh its cost. However, for certain smaller institutions with few employees and less complex operations, the costs may outweigh these benefits.

Several commenters recommended that the agencies clarify how an institution, especially a small institution without an internal auditor, can ensure that its internal audit system provides for the ''independence and objectivity'' of those performing internal audits. The agencies believe that this standard can be met by ensuring that the person conducting the review, whether the auditor and/or another employee, is independent from the function under review and is able to report findings directly to the board of directors or to a designated directors' audit committee. The Guidelines adopted by the agencies clarify the appropriate role of a system

of independent reviews in an internal audit system.

A few commenters noted that the proposed standard providing for ''verification and review of management actions to address identified weaknesses'' seemed unnecessarily broad and potentially burdensome if the standard was interpreted to mean that every weakness, including minor, technical weaknesses, had to be specifically addressed by management in a report to the board of directors. To clarify this standard and to ensure that management's attention is focused on areas of concern, the agencies have changed ''identified weaknesses'' to ''material weaknesses''.

The agencies are aware that many institutions use data processing service organizations to execute and record transactions, maintain related records and process related data. The determination of whether an institution's independent auditor needs to review a service organization's operations, as they relate to the institution's internal controls, should be made in accordance with generally accepted auditing standards.

3. Loan Documentation

The agencies' proposal specified what an institution's loan documentation practices must enable the institution to do, instead of specifying an item-by-item listing of loan documentation requirements.[1] An overwhelming majority of commenters strongly favored general loan documentation standards. Commenters believed that the proposed standards were sufficiently general to allow for different treatment according to loan type and amount.

In response to numerous comments, the agencies wish to emphasize that in evaluating an institution's loan documentation practices, they do not expect an institution to obtain an opinion of legal counsel for the purpose of demonstrating that a claim against a borrower is legally enforceable. Rather, an institution must establish loan documentation practices that provide for proper recording or perfection of the security interest.

The Guidelines adopt the agencies' standards on loan documentation as proposed. The agencies believe that the loan documentation standards provide a gauge against which compliance can be measured, while at the same time allowing for differing approaches to loan documentation.

Under the Interagency Policy Statement Regarding Documentation of Small and Medium-sized Business and Farm Loans, (March 30, 1993), well-managed, well- or adequately capitalized institutions are permitted to establish a ''basket'' of small- and medium-sized business and farm loans that will not be subject to examiner criticism based on documentation. The agencies' Guidelines do not affect the application of this interagency policy statement.

4. Credit Underwriting

The agencies' proposed standards for credit underwriting established general parameters of safe and sound credit underwriting practices. Commenters overwhelmingly favored general credit underwriting standards rather than a detailed listing of requirements that must be met for each extension of credit. Based on the comments received, the agencies have adopted the credit underwriting standards as proposed, in guideline form.

5. Interest Rate Exposure

The agencies proposed to require an institution to manage interest rate risk in a manner appropriate to the size of the institution and the complexity of its assets and liabilities and to provide for periodic reporting to management and the board of directors regarding interest rate risk. A majority of commenters supported this standard. Based on these comments, the agencies' Guidelines adopt this standard without change.

Section 305 of FDICIA requires amendment of the agencies' risk-based capital standards to take account of interest rate risk. The final regulation implementing section 305 may require some institutions to quantify interest rate risk.[2]

6. Asset Growth

The agencies' proposal required an institution to base its asset growth on a plan that fully considered the source of the institution's growth, the risks presented by such growth, and the effect of growth on the institution's capital. Commenters overwhelmingly favored this approach rather than a quantitative limit on asset growth which the commenters believed would be overly restrictive and inconsistent with safety and soundness. The agencies do not believe that asset growth necessarily causes safety and soundness problems. The agencies, however, do find that unplanned or poorly managed asset growth can be a cause for concern.

Based on the comments received, the agencies' Guidelines adopt the asset growth standard as proposed. The agencies will evaluate asset growth against an institution's overall strategic plan for growth.

7. Compensation, Fees and Benefits

Section 39(a) requires the agencies to establish operational and managerial standards relating to compensation, fees and benefits. As noted in the agencies' proposal, this mandate is distinguishable from that of section 39(c), which requires the agencies to prohibit as an unsafe and unsound practice any compensation that is excessive or that could lead to material financial loss to an institution.

The agencies' proposal required each institution to maintain safeguards to prevent the payment of compensation, fees, or benefits that are excessive or that could lead to material financial loss. A majority of commenters supported the agencies' proposed rules, although many commenters recommended that the rules exempt healthy institutions from the compensation standards.

Section 39 does not allow for any exemptions from this standard. Moreover, the agencies do not believe that exemptions are necessary in view of the flexibility of this standard. For these reasons and based on the comments received, the agencies' Guidelines incorporate the proposed operational and managerial standards relating to compensation, fees and benefits without change.

*C. Standards Relating to Stock Valuation*

The agencies believe that establishing stock valuation standards for publicly traded institutions is not appropriate. As indicated in the agencies' proposal, in the long run the market value of an organization is dependent on an institution's financial condition and performance, but over shorter and more operationally relevant time horizons, market value is also affected by factors such as the attractiveness of financial institution stocks relative to other competitors and industries, the performance of the general stock market, industry conditions and random fluctuations. Therefore, over any practical period of time, institutions do not have direct control over the marketplace's evaluation of their stock's value. An additional consideration is the appropriateness of applying a standard that affects only a subset of banking and thrift organizations and

[1] The current regulation establishing detailed loan documentation requirements at 12 CFR 563.170(c) remains in effect for all savings associations regulated by the OTS.

[2] The OTS regulation implementing section 305 requires additional capital from institutions that have ''above normal'' interest rate risk. *See* 58 FR 45299 (August 31, 1993).

could operate to discourage depository institutions from becoming publicly traded. The agencies intend to continue their existing policy of augmenting their overall examinations and ongoing monitoring of publicly-traded institutions through the review of stock price changes, market price to book value ratios, bond ratings and other indicators of the market's assessment of an institution's performance. To the extent that an institution's market to book ratio appears to significantly contradict the agencies' assessment of its condition, the agencies intend to continue to scrutinize carefully such institutions for developing problems.

*D. Prohibition on Compensation That is Excessive or That Could Lead to Material Financial Loss*

Section 39(c) of the FDI Act, as amended by the CDRI Act, continues to require the agencies to establish standards (1) prohibiting as an unsafe and unsound practice the payment of excessive compensation or compensation that could lead to material financial loss to an institution; and (2) specifying when compensation, fees, or benefits are excessive.

The agencies' joint proposal relied upon the statutory language in formulating the standards required under section 39(c). Commenters strongly supported the use of the factors set forth in section 39(c) as the sole standard in defining excessive compensation. Commenters believed that more detailed standards would constitute micro-management of an institution's management practices. Accordingly, the agencies' Guidelines include the compensation standards as proposed.

In the Guidelines, as under the proposal, compensation is considered excessive if it is unreasonable or disproportionate to the services actually performed by the executive officer, employee, director, or principal shareholder being compensated. In making that determination, the agencies will consider all relevant factors, including those set out in section 39(c).

*E. Effect on Agencies' Existing Authority*

Compliance with the standards set out in the Guidelines does not preclude the agencies from finding that an institution is engaged in an unsafe and unsound practice or is in an unsafe and unsound condition. Conversely, failure to comply with the standards set out in the Guidelines does not necessarily constitute an unsafe or unsound practice or an unsafe and unsound condition, except for failure to comply with the standard prohibiting payment of excessive compensation or compensation that could lead to material financial loss.

The agencies may take supervisory action against an institution that has not been requested to submit a safety and soundness compliance plan. In addition, the agencies may request submission of a compliance plan without taking any other supervisory or enforcement action.

## IV. Regulatory Flexibility Act

The agencies have concluded that the final rule will not impose a significant economic hardship on small institutions. The rule establishes deadlines for submission and review of compliance plans requested by the agencies of any insured depository institution which fails to meet the standards adopted by the agencies in the Interagency Guidelines Establishing Standards for Safety and Soundness. The impact of the final rule on small institutions should be proportionate to its impact on larger institutions. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the agencies hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities.

## V. OCC and OTS: Unfunded Mandates Reform Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, the final rule establishes deadlines and procedures for submission and review of safety and soundness plans and establishes standards for safety and soundness, as prescribed by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242. The standards represent the fundamental standards in use by the agencies, represent no change in the agencies' policies and impose minimal new Federal requirements. Thus, no additional costs to State, local or tribal governments or to the private sector of $100 million or more in any one year result from this rule. Accordingly, the OCC and OTS have not prepared a budgetary impact statement nor specifically addressed any regulatory alternatives.

## VI. Effective Date

The agencies have determined that pursuant to section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 104–4, there is good cause for the final rule on safety and soundness to be effective 30 days after publication in the **Federal Register**. The implementation of this final regulation has been delayed because of changes required due to changes in the statute. CDRI amended 12 U.S.C. 1831p-1 to allow the agencies to implement the standards for safety and soundness by guideline rather than regulation. Under the guidelines the agencies may require an institution that fails to meet the standards to file a compliance plan. However, that action would be taken on a case-by-case basis after adequate notice to the institution. Therefore, the agencies believe that further delay is unnecessary.

## VII. Executive Order 12866

The OCC and the OTS have determined that this final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

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## Text of Final Common Rule

The text of the agencies' final common rule appears below:

**Appendix ____ to Part ____—Interagency Guidelines Establishing Standards for Safety and Soundness**

**Table of Contents**

I. Introduction

i. Section 39 of the Federal Deposit Insurance Act [1] (FDI Act) requires each Federal banking agency (collectively, the agencies) to establish certain safety and soundness standards by regulation or by guideline for all insured depository institutions. Under section 39, the agencies must establish three types of standards: (1) Operational and managerial standards; (2) compensation standards; and (3) such standards relating to asset quality, earnings, and stock valuation as they determine to be appropriate.

ii. Section 39(a) requires the agencies to establish operational and managerial standards relating to: (1) Internal controls, information systems and internal audit systems, in accordance with section 36 of the FDI Act (12 U.S.C. 1831m); (2) loan documentation; (3) credit underwriting; (4) interest rate exposure; (5) asset growth; and (6) compensation, fees, and benefits, in accordance with subsection (c) of section 39. Section 39(b) requires the agencies to establish standards relating to asset quality, earnings, and stock valuation that the agencies determine to be appropriate.

iii. Section 39(c) requires the agencies to establish standards prohibiting as an unsafe and unsound practice any compensatory arrangement that would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits and any compensatory arrangement that could lead to material financial loss to an institution. Section 39(c) also requires that the agencies establish standards that specify when compensation is excessive.

iv. If an agency determines that an institution fails to meet any standard established by guideline under subsection (a) or (b) of section 39, the agency may require the institution to submit to the agency an acceptable plan to achieve compliance with the standard. In the event that an institution fails to submit an acceptable plan within the time allowed by the agency or fails in any material respect to implement an accepted plan, the agency must, by order, require the institution to correct the deficiency. The agency may, and in some cases must, take other supervisory actions until the deficiency has been corrected.

v. The agencies have adopted amendments to their rules and regulations to establish deadlines for submission and review of compliance plans.[2]

vi. The following Guidelines set out the safety and soundness standards that the agencies use to identify and address problems at insured depository institutions before capital becomes impaired. The agencies believe that the standards adopted in these Guidelines serve this end without dictating how institutions must be managed and operated. These standards are designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the deposit insurance funds.

A. *Preservation of Existing Authority*

Neither section 39 nor these Guidelines in any way limits the authority of the agencies to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and these Guidelines may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the agencies. Nothing in these Guidelines limits the authority of the FDIC pursuant to section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831(o)) and Part 325 of Title 12 of the Code of Federal Regulations.

B. *Definitions*

1. *In general.* For purposes of these Guidelines, except as modified in the Guidelines or unless the context otherwise requires, the terms used have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813 and 1831p–1).

2. *Board of directors*, in the case of a state-licensed insured branch of a foreign bank and in the case of a federal branch of a foreign bank, means the managing official in charge of the insured foreign branch.

3. *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

4. *Director* shall have the meaning described in 12 CFR 215.2(c).[3]

5. *Executive officer* shall have the meaning described in 12 CFR 215.2(d).[4]

6. *Principal shareholder* shall have the meaning described in 12 CFR 215.2(*l*).[5]

II. Operational and Managerial Standards

A. *Internal controls and information systems.* An institution should have internal controls and information systems that are appropriate to the size of the institution and the nature, scope and risk of its activities and that provide for:

1. An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to established policies;

2. Effective risk assessment;

3. Timely and accurate financial, operational and regulatory reports;

4. Adequate procedures to safeguard and manage assets; and

5. Compliance with applicable laws and regulations.

B. *Internal audit system.* An institution should have an internal audit system that is appropriate to the size of the institution and the nature and scope of its activities and that provides for:

1. Adequate monitoring of the system of internal controls through an internal audit function. For an institution whose size, complexity or scope of operations does not warrant a full scale internal audit function, a system of independent reviews of key internal controls may be used;

2. Independence and objectivity;

3. Qualified persons;

4. Adequate testing and review of information systems;

5. Adequate documentation of tests and findings and any corrective actions;

6. Verification and review of management actions to address material weaknesses; and

7. Review by the institution's audit committee or board of directors of the effectiveness of the internal audit systems.

C. *Loan documentation.* An institution should establish and maintain loan documentation practices that:

1. Enable the institution to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;

2. Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;

3. Ensure that any claim against a borrower is legally enforceable;

4. Demonstrate appropriate administration and monitoring of a loan; and

5. Take account of the size and complexity of a loan.

D. *Credit underwriting.* An institution should establish and maintain prudent credit underwriting practices that:

1. Are commensurate with the types of loans the institution will make and consider the terms and conditions under which they will be made;

2. Consider the nature of the markets in which loans will be made;

3. Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed;

4. Establish a system of independent, ongoing credit review and appropriate communication to management and to the board of directors;

5. Take adequate account of concentration of credit risk; and

6. Are appropriate to the size of the institution and the nature and scope of its activities.

E. *Interest rate exposure.* An institution should:

1. Manage interest rate risk in a manner that is appropriate to the size of the

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[1] Section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1) was added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102–242, 105 Stat. 2236 (1991), and amended by section 956 of the Housing and Community Development Act of 1992, Pub. L. 102–550, 106 Stat. 3895 (1992) and section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (1994).

[2] For the Office of the Comptroller of the Currency, these regulations appear at 12 CFR Part 30; for the Board of Governors of the Federal Reserve System, these regulations appear at 12 CFR Part 263; for the Federal Deposit Insurance Corporation, these regulations appear at 12 CFR Part 308, subpart R, and for the Office of Thrift Supervision, these regulations appear at 12 CFR Part 570.

[3] In applying these definitions for savings associations, pursuant to 12 U.S.C. 1464, savings associations shall use the terms ''savings association'' and ''insured savings association'' in place of the terms ''member bank'' and ''insured bank''.

[4] See footnote 3 in section I.B.4. of this appendix.

[5] See footnote 3 in section I.B.4. of this appendix.

institution and the complexity of its assets and liabilities; and

2. Provide for periodic reporting to management and the board of directors regarding interest rate risk with adequate information for management and the board of directors to assess the level of risk.

F. *Asset growth.* An institution's asset growth should be prudent and consider:

1. The source, volatility and use of the funds that support asset growth;

2. Any increase in credit risk or interest rate risk as a result of growth; and

3. The effect of growth on the institution's capital.

G. [Reserved].

H. [Reserved].

I. *Compensation, fees and benefits.* An institution should maintain safeguards to prevent the payment of compensation, fees, and benefits that are excessive or that could lead to material financial loss to the institution.

III. Prohibition on Compensation That Constitutes an Unsafe and Unsound Practice

*A. Excessive Compensation*

Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

1. The combined value of all cash and non-cash benefits provided to the individual;

2. The compensation history of the individual and other individuals with comparable expertise at the institution;

3. The financial condition of the institution;

4. Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

5. For postemployment benefits, the projected total cost and benefit to the institution;

6. Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and

7. Any other factors the agencies determines to be relevant.

*B. Compensation Leading to Material Financial Loss*

Compensation that could lead to material financial loss to an institution is prohibited as an unsafe and unsound practice.

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**Adoption of Final Common Rule**

The agency specific adoption of the final common rule, which appears at the end of the common preamble, appears below.

**List of Subjects**

**OCC**

*12 CFR Part 30*

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Safety and soundness.

**Board**

*12 CFR Part 208*

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Safety and soundness, Securities.

*12 CFR Part 263*

Administrative practice and procedure, Claims, Crime, Equal Access to justice, Federal Reserve System, Lawyers, Penalties.

**FDIC**

*12 CFR Part 303*

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

*12 CFR Part 308*

Administrative practice and procedure, Claims, Crime, Equal access to justice, Investigations, Lawyers, Penalties.

*12 CFR Part 364*

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and soundness.

**OTS**

*12 CFR Part 570*

Accounting, Administrative practices and procedures, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Savings associations, Safety and soundness.

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## OFFICE OF THE COMPTROLLER OF THE CURRENCY

### 12 CFR Chapter I

### Authority and Issuance

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

1. A new part 30 is added to read as follows:

## PART 30—SAFETY AND SOUNDNESS STANDARDS

Sec.



**Authority:** 12 U.S.C. 1831p–1.

#### § 30.1 Scope.

The rules and procedures set forth in this part apply to national banks and federal branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p–1).

#### § 30.2 Purpose.

Section 39 of the FDI Act, 12 U.S.C. 1831p–1, requires the Office of the Comptroller of the Currency (OCC) to establish safety and soundness standards. Pursuant to section 39, a bank may be required to submit a compliance plan if it is not in compliance with a safety and soundness standard prescribed by guideline under section 39(a) or (b). An enforceable order under section 8 of the FDI Act, 12 U.S.C. 1818(b), may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, the bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This part establishes procedures for requiring submission of a compliance plan and issuing an enforceable order pursuant to section 39. The Interagency Guidelines Establishing Standards for Safety and Soundness are set forth in appendix A to this part.

#### § 30.3 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The OCC may, based upon an examination, inspection, or any other information that becomes available to the OCC, determine that a bank has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness set forth in Appendix A to this part.

(b) *Request for compliance plan.* If the OCC determines that a bank has failed a safety and soundness standard pursuant to paragraph (a) of this section, the OCC may request, by letter or through a report of examination, the submission of a compliance plan and the bank shall be deemed to have notice of the deficiency three days after mailing of the letter by the OCC or delivery of the report of examination.

**§ 30.4 Filing of safety and soundness compliance plan.**

(a) *Schedule for filing compliance plan*—(1) *In general.* A bank shall file a written safety and soundness compliance plan with the OCC within 30 days of receiving a request for a compliance plan pursuant to § 30.3(b) unless the OCC notifies the bank in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a bank is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act (12 U.S.C. 1818(b)), a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the OCC, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the bank will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this part, the OCC shall provide written notice to the bank of whether the plan has been approved or seek additional information from the bank regarding the plan. The OCC may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan*—(1) *Supervisory actions.* If a bank fails to submit an acceptable plan within the time specified by the OCC or fails in any material respect to implement a compliance plan, then the OCC shall, by order, require the bank to correct the deficiency and may take further actions provided in section 39(e)(2)(B). Pursuant to section 39(e)(3), the OCC may be required to take certain actions if the bank commenced operations or experienced a change in control within the previous 24-month period, or the bank experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, extraordinary growth means an increase in assets of more than 7.5 percent during any quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) will be excluded.

(e) *Amendment of compliance plan.* A bank that has filed an approved compliance plan may, after prior written notice to and approval by the OCC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the compliance plan as previously approved.

**§ 30.5 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.**

(a) *Notice of intent to issue order*—(1) *In general.* The OCC shall provide a bank prior written notice of the OCC's intention to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank shall have such time to respond to a proposed order as provided by the OCC under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the OCC finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the OCC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank immediately to take actions to correct a safety and soundness deficiency or take or refrain from taking other actions pursuant to section 39. A bank that is subject to such an immediately effective order may submit a written appeal of the order to the OCC. Such an appeal must be received by the OCC within 14 calendar days of the issuance of the order, unless the OCC permits a longer period. The OCC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the OCC, in its sole discretion, stays the effectiveness of the order.

(b) *Content of notice.* A notice of intent to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank;

(2) A description of any restrictions, prohibitions, or affirmative actions that the OCC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank subject to the order may file with the OCC a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A bank may file a written response to a notice of intent to issue an order within the time period set by the OCC. Such a response must be received by the OCC within 14 calendar days from the date of the notice unless the OCC determines that a different period is appropriate in light of the safety and soundness of the bank or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the OCC is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed order.

(d) *Agency consideration of response.* After considering the response, the OCC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank, or any other relevant source.

(e) *Failure to file response.* Failure by a bank to file with the OCC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any bank that is subject to an order under this part may, upon a change in circumstances, request in writing that the OCC reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the OCC, the order shall continue in place while such request is pending before the OCC.

**§ 30.6 Enforcement of orders.**

(a) *Judicial remedies.* Whenever a bank fails to comply with an order issued under section 39, the OCC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Failure to comply with order.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OCC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OCC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

2. A new appendix A is added to part 30 as set forth at the end of the common preamble:

### Appendix A to Part 30—Interagency Guidelines Establishing Standards for Safety and Soundness

Dated: April 13, 1995.

**Eugene A. Ludwig,**

*Comptroller of the Currency.*

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## FEDERAL RESERVE SYSTEM

### 12 CFR Chapter II

For the reasons outlined in the preamble, the Board hereby amends 12 CFR parts 208 and 263 as set forth below:

## PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for 12 CFR Part 208 is revised to read as follows:

**Authority:** 12 U.S.C. 36, 248(a) and (c), 321–338, 461, 481, 486, 601, and 611, 1814, 1823(j), 1831o, 1831p–1, 3906, 3909, 3310, 3331–3351; 15 U.S.C. 78b, 78o–4(c)(5), 78q, 78q–1, 78w, 781(b), 781(i), and 1781(g).

2. A new subpart D, comprising § 208.60, is added to part 208 to read as follows:

### Subpart D—Standards for Safety and Soundness

#### § 208.60 Standards for safety and soundness.

The Interagency Guidelines Establishing Standards for Safety and Soundness prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1), as set forth as appendix D to this part apply to all state member banks.

3. A new appendix D is added to part 208 as set forth at the end of the common preamble:

### Appendix D to Part 208—Interagency Guidelines Establishing Standards for Safety and Soundness

## PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for 12 CFR Part 263 is revised to read as follows:

**Authority:** 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o–4, 78o–5, and 78u–2.

2. A new subpart I, comprising §§ 263.300 through 263.305, is added to part 263 to read as follows:

### Subpart I—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders To Correct Safety and Soundness Deficiencies

Sec.



### Subpart I—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders To Correct Safety and Soundness Deficiencies

#### § 263.300 Scope.

The rules and procedures set forth in this subpart apply to State member banks that are subject to the provisions of section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p–1).

#### § 263.301 Purpose.

Section 39 of the FDI Act requires the Board to establish safety and soundness standards. Pursuant to section 39, a bank may be required to submit a compliance plan if it is not in compliance with a safety and soundness standard established by guideline under section 39(a) or (b). An enforceable order under section 8 may be issued if, after being notified that it is in violation of a safety and soundness standard established under section 39, the bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requiring submission of a compliance plan and issuing an enforceable order pursuant to section 39.

#### § 263.302 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The Board may, based upon an examination, inspection, or any other information that becomes available to the Board, determine that a bank has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness set out in appendix D to part 208 of this chapter.

(b) *Request for compliance plan.* If the Board determines that a State member bank has failed a safety and soundness standard pursuant to paragraph (a) of this section, the Board may request, by letter or through a report of examination, the submission of a compliance plan, and the bank shall be deemed to have notice of the request three days after mailing of the letter by the Board or delivery of the report of examination.

#### § 263.303 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan*—(1) *In general.* A State member bank shall file a written safety and soundness compliance plan with the Board within 30 days of receiving a request for a compliance plan pursuant to § 263.302(b), unless the Board notifies the bank in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a State member bank is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the Board, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the State member bank will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the Board shall provide written notice to the bank of whether the plan has been approved or seek additional information from the bank regarding the plan. The Board may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan.* (1) *Supervisory actions.* If a State member bank fails to submit an acceptable plan within the time specified by the Board or fails in any material respect to implement a compliance plan, then the Board shall, by order, require the bank to correct the deficiency and may take further actions

provided in section 39(e)(2)(B). Pursuant to section 39(e)(3), the Board may be required to take certain actions if the bank commenced operations or experienced a change in control within the previous 24-month period, or the bank experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, *extraordinary growth* means an increase in assets of more than 7.5 percent during any quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) will be excluded.

(e) *Amendment of compliance plan.* A State member bank that has filed an approved compliance plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the compliance plan as previously approved.

**§ 263.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.**

(a) *Notice of intent to issue order*—(1) *In general.* The Board shall provide a bank prior written notice of the Board's intention to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank shall have such time to respond to a proposed order as provided by the Board under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the Board finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the Board may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank immediately to take actions to correct a safety and soundness deficiency or take or refrain from taking other actions pursuant to section 39. A State member bank that is subject to such an immediately effective order may submit a written appeal of the order to the Board. Such an appeal must be received by the Board within 14 calendar days of the issuance of the order, unless the Board permits a longer period. The Board shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the Board, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intent to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank;

(2) A description of any restrictions, prohibitions, or affirmative actions that the Board proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank subject to the order may file with the Board a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A bank may file a written response to a notice of intent to issue an order within the time period set by the Board. Such a response must be received by the Board within 14 calendar days from the date of the notice unless the Board determines that a different period is appropriate in light of the safety and soundness of the bank or other relevant circumstances.

(2) *Contents of response.* The response should include:

(i) An explanation why the action proposed by the Board is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed order.

(d) *Agency consideration of response.* After considering the response, the Board may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank, or any other relevant source.

(e) *Failure to file response.* Failure by a bank to file with the Board, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any bank that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the Board reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the Board, the order shall continue in place while such request is pending before the Board.

**§ 263.305 Enforcement of orders.**

(a) *Judicial remedies.* Whenever a State member bank fails to comply with an order issued under section 39, the Board may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Failure to comply with order.* Pursuant to section 8(i)(2)(A) of the FDI Act, the Board may assess a civil money penalty against any State member bank that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the Board may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

By Order of the Board of Governors of the Federal Reserve System, June 6, 1995.

**William W. Wiles,**

*Secretary of the Board.*

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## FEDERAL DEPOSIT INSURANCE CORPORATION

**12 CFR Chapter III**

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends chapter III of title 12 of the Code of Federal Regulations as follows:

## PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for part 303 is revised to read as follows:

**Authority:** 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 (Seventh and Tenth), 1828, 1831e, 1831o, 1831p–1; 15 U.S.C. 1607.

2. In § 303.9, a new paragraph (o) is added to read as follows:

**§ 303.9 Delegation of authority to act on certain enforcement matters.**

* * * * *

(o) *Compliance plans under section 39 of the Act (standards for safety and soundness) and part 308 of this chapter.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, to reject, to require new or

revised compliance plans or to make any other determinations with respect to the implementation of compliance plans pursuant to subpart R of part 308 of this chapter.

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to:

(i) Issue notices of intent to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(1) of this chapter;

(ii) Issue an order requiring the bank immediately to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(2) of this chapter; and

(iii) Act on requests for modification or rescission of an order.

(3) The authority delegated under paragraph (o)(1) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director accepts, rejects or requires new or revised compliance plans or makes any other determinations with respect to compliance plans, by the appropriate regional counsel, that the action taken is not inconsistent with the Act.

(4) The authority delegated under paragraph (o)(2) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final order pursuant to section 39 of the Act or that the issuance of a final order is not inconsistent with section 39 of the Act or that the stipulated section 39 order is not inconsistent with section 39 and is an order which has become final for purposes of enforcement pursuant to the Act.

## PART 308—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 308 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 1815(e), 1817(a) and 1818(j), 1818, 1828(j), 1829, 1831i, 1831o, 1831p–1; 15 U.S.C. 78l(h), 78(m), 78n(a), 78n(c), 78n(d), 78n(f), 78(o), 78o–4(c)(5), 78(p), 78(q), 78q–1, 78s.

4. A new subpart R, comprising §§ 308.300 through 308.305, is added to part 308 to read as follows:

**Subpart R—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders To Correct Safety and Soundness Deficiencies**

Sec.



## Subpart R—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders To Correct Safety and Soundness Deficiencies

### § 308.300 Scope.

The rules and procedures set forth in this subpart apply to insured state nonmember banks and to state-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p–1).

### § 308.301 Purpose.

Section 39 of the FDI Act requires the FDIC to establish safety and soundness standards. Pursuant to section 39, a bank may be required to submit a compliance plan if it is not in compliance with a safety and soundness standard established by guideline under section 39(a) or (b). An enforceable order under section 8 of the FDI Act may be issued if, after being notified that it is in violation of a safety and soundness standard established under section 39, the bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requiring submission of a compliance plan and issuing an enforceable order pursuant to section 39.

### § 308.302 Determination and notification of failure to meet a safety and soundness standard and request for compliance plan.

(a) *Determination.* The FDIC may, based upon an examination, inspection, or any other information that becomes available to the FDIC, determine that a bank has failed to satisfy the safety and soundness standards set out in part 364 of this chapter and in the Interagency Guidelines Establishing Standards for Safety and Soundness set forth in appendix A to part 364 of this chapter.

(b) *Request for compliance plan.* If the FDIC determines that a bank has failed a safety and soundness standard pursuant to paragraph (a) of this section, the FDIC may request, by letter or through a report of examination, the submission of a compliance plan and the bank shall be deemed to have notice of the request three days after mailing of the letter by the FDIC or delivery of the report of examination.

### § 308.303 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan*—(1) *In general.* A bank shall file a written safety and soundness compliance plan with the FDIC within 30 days of receiving a request for a compliance plan pursuant to § 308.302(b), unless the FDIC notifies the bank in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a bank is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the FDIC, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the bank will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the FDIC shall provide written notice to the bank of whether the plan has been approved or seek additional information from the bank regarding the plan. The FDIC may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan*—(1) *Supervisory actions.* If a bank fails to submit an acceptable plan within the time specified by the FDIC or fails in any material respect to implement a compliance plan, then the FDIC shall, by order, require the bank to correct the deficiency and may take further actions provided in section 39(e)(2)(B). Pursuant to section 39(e)(3), the FDIC may be required to take certain actions if the bank commenced operations or experienced a change in control within the previous 24-month period, or the

bank experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, extraordinary growth means an increase in assets of more than 7.5 percent during any quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) will be excluded.

(e) *Amendment of compliance plan.* A bank that has filed an approved compliance plan may, after prior written notice to and approval by the FDIC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the compliance plan as previously approved.

**§ 308.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.**

(a) *Notice of intent to issue order—*.(1) *In general.* The FDIC shall provide a bank prior written notice of the FDIC's intention to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank shall have such time to respond to a proposed order as provided by the FDIC under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the FDIC finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the FDIC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank immediately to take actions to correct a safety and soundness deficiency or take or refrain from taking other actions pursuant to section 39. A bank that is subject to such an immediately effective order may submit a written appeal of the order to the FDIC. Such an appeal must be received by the FDIC within 14 calendar days of the issuance of the order, unless the FDIC permits a longer period. The FDIC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the FDIC, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intent to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank;

(2) A description of any restrictions, prohibitions, or affirmative actions that the FDIC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank subject to the order may file with the FDIC a written response to the notice.

(c) *Response to notice—*(1) *Time for response.* A bank may file a written response to a notice of intent to issue an order within the time period set by the FDIC. Such a response must be received by the FDIC within 14 calendar days from the date of the notice unless the FDIC determines that a different period is appropriate in light of the safety and soundness of the bank or other relevant circumstances.

(2) *Contents of response.* The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed order.

(d) *Agency consideration of response.* After considering the response, the FDIC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank, or any other relevant source.

(e) *Failure to file response.* Failure by a bank to file with the FDIC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any bank that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the FDIC reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the FDIC, the order shall continue in place while such request is pending before the FDIC.

**§ 308.305 Enforcement of orders.**

(a) *Judicial remedies.* Whenever a bank fails to comply with an order issued under section 39, the FDIC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Failure to comply with order.* Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

5. A new part 364 is added to read as follows:

## PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

Sec.
364.100 Purpose.
364.101 Standards for safety and soundness.

**Authority:** 12 U.S.C. 1819(Tenth), 1831p–1.

**§ 364.100 Purpose.**

Section 39 of the Federal Deposit Insurance Act requires the Federal Deposit Insurance Corporation to establish safety and soundness standards. Pursuant to section 39, this part establishes safety and soundness standards by guideline.

**§ 364.101 Standards for safety and soundness.**

The Interagency Guidelines Establishing Standards for Safety and Soundness prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1), as set forth as appendix A to this part apply to all insured state nonmember banks and to state-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act.

6. A new appendix A is added to part 364 as set forth at the end of the common preamble:

### Appendix A to Part 364—Interagency Guidelines Establishing Standards for Safety and Soundness

By order of the Board of Directors.

Dated at Washington, DC, this 21st day of March, 1995.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

## OFFICE OF THRIFT SUPERVISION

### 12 CFR Chapter V

For the reasons set out in the preamble, chapter V of title 12 of the Code of Federal Regulations is amended as follows:

1. A new part 570 is added to read as follows:

## PART 570—SUBMISSION AND REVIEW OF SAFETY AND SOUNDNESS COMPLIANCE PLANS AND ISSUANCE OF ORDERS TO CORRECT SAFETY AND SOUNDNESS DEFICIENCIES

Sec.



**Authority:** 12 U.S.C. 1831p–1.

### § 570.1 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part and the Guidelines in Appendix A to this part are issued by the OTS pursuant to section 39 (section 39) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1) as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3895 (1992)), and as amended by section 318 of the Community Development Banking Act of 1994 (Pub. L. 103–325, 108 Stat. 2160 (1994)).

(b) *Purpose.* Section 39 of the FDI Act requires the OTS to establish safety and soundness standards. Pursuant to section 39, a savings association may be required to submit a compliance plan if it is not in compliance with a safety and soundness standard established by guideline under section 39 (a) or (b). An enforceable order under section 8 of the FDI Act may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, the savings association fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This part establishes procedures for submission and review of safety and soundness compliance plans and for issuance and review of orders pursuant to section 39. Interagency Guidelines Establishing Standards for Safety and Soundness pursuant to section 39 of the FDI Act are set forth in Appendix A to this part.

(c) *Scope.* This part and the Interagency Guidelines Establishing Standards for Safety and Soundness in Appendix A to this part implement the provisions of section 39 of the FDI Act as they apply to savings associations.

(d) *Preservation of existing authority.* Neither section 39 of the FDI Act nor this part in any way limits the authority of the OTS under any other provision of law to take supervisory actions to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OTS.

### § 570.2 Determination and notification of failure to meet safety and soundness standards and request for compliance plan.

(a) *Determination of failure to meet safety and soundness standard.* The OTS may, based upon an examination, inspection, or any other information that becomes available to the OTS, determine that a savings association has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness as set forth in Appendix A to this part.

(b) *Request for compliance plan.* If the OTS determines that a savings association has failed to meet a safety and soundness standard pursuant to paragraph (a) of this section, the OTS may request by letter or through a report of examination, the submission of a compliance plan. The savings association shall be deemed to have notice of the request three days after mailing or delivery of the letter or report of examination by the OTS.

### § 570.3 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan*—(1) *In general.* A savings association shall file a written safety and soundness compliance plan with the OTS within 30 days of receiving a request for a compliance plan pursuant to § 570.2(b), unless the OTS notifies the savings association in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a savings association is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination, it may, with the permission of the OTS, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the savings association will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the OTS shall provide written notice to the savings association of whether the plan has been approved or seek additional information from the savings association regarding the plan. The OTS may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan.* If a savings association fails to submit an acceptable plan within the time specified by the OTS or fails in any material respect to implement a compliance plan, then the OTS shall, by order, require the savings association to correct the deficiency and may take further actions provided in section 39(e)(2)(B) of the FDI Act. Pursuant to section 39(e)(3), the OTS may be required to take certain actions if the savings association commenced operations or experienced a change in control within the previous 24-month period, or the savings association experienced extraordinary growth during the previous 18-month period.

(e) *Amendment of compliance plan.* A savings association that has filed an approved compliance plan may, after prior written notice to and approval by the OTS, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the savings association shall implement the compliance plan as previously approved.

### § 570.4 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order*—(1) *In general.* The OTS shall provide a savings association prior written notice of the OTS's intention to issue an order requiring the savings association to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section

39 of the FDI Act. The savings association shall have such time to respond to a proposed order as provided by the OTS under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the OTS finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the OTS may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a savings association immediately to take actions to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39. A savings association that is subject to such an immediately effective order may submit a written appeal of the order to the OTS. Such an appeal must be received by the OTS within 14 calendar days of the issuance of the order, unless the OTS permits a longer period. The OTS shall consider any such appeal, if filed in a timely manner, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the OTS, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intent to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the savings association;

(2) A description of any restrictions, prohibitions, or affirmative actions that the OTS proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the savings association subject to the order may file with the OTS a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A savings association may file a written response to a notice of intent to issue an order within the time period set by the OTS. Such a response must be received by the OTS within 14 calendar days from the date of the notice unless the OTS determines that a different period is appropriate in light of the safety and soundness of the savings association or other relevant circumstances.

(2) *Contents of response.* The response should include:

(i) An explanation why the action proposed by the OTS is not an appropriate exercise of discretion under section 39 of the FDI Act;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the savings association regarding the proposed order.

(d) *OTS consideration of response.* After considering the response, the OTS may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the savings association; or

(3) Seek additional information or clarification of the response from the savings association, or any other relevant source.

(e) *Failure to file response.* Failure by a savings association to file with the OTS, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any savings association that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the OTS reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the OTS, the order shall continue in place while such request is pending before the OTS.

### § 570.5 Enforcement of orders.

(a) *Judicial remedies.* Whenever a savings association fails to comply with an order issued under section 39 of the FDI Act, the OTS may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OTS may assess a civil money penalty against any savings association that violates or otherwise fails to comply with any final order issued under section 39 and against any savings association-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OTS may seek enforcement of the provisions of section 39 of the FDI Act or this part through any other judicial or administrative proceeding authorized by law.

2. A new appendix A is added to part 570 as set forth at the end of the common preamble:

## Appendix A to Part 570—Interagency Guidelines Establishing Standards for Safety and Soundness

Dated: May 25, 1995.

By the Office of Thrift Supervision.

**Jonathan L. Fiechter,**

*Acting Director.*

[FR Doc. 95–16563 Filed 7–7–95; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 30**

**[Docket No. 95–15]**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 208**

**[Docket No. R–0766]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 364**

**RIN 3064–AB13**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 570**

**[No. 95–114]**

**RIN 1550–AA54**

## Interagency Guidelines Establishing Standards for Safety and Soundness

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Proposed guidelines.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board of Governors), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) are proposing asset quality and earnings standards to be added to the Interagency Guidelines Establishing Standards for Safety and Soundness (Guidelines) adopted pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) and appearing as an appendix to each of the agencies' standard for safety and soundness final rule published elsewhere in this separate part of the **Federal Register**. The agencies may require an insured depository institution to file a compliance plan for failure to meet these asset quality and earnings standards when adopted in final form.

**DATES:** Comments must be submitted by August 24, 1995.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments will be shared among the agencies.

*OCC:* Communications Division, 250 E Street, SW., Washington, DC 20219, attention: Docket No. 95–15. Comments will be available for public inspection and photocopying at the same location on business days between 9 a.m. and 5 p.m.

*Board of Governors:* Comments, which should refer to Docket No. R–0766, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

*FDIC:* Robert E. Feldman, Acting Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. [FAX number (202) 898–3838]; Internet E-mail comments @fdic.gov. Comments will be available for inspection and photocopying in room 7118, 550 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

*OTS:* Send comments to Chief, Dissemination Branch Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 95–114. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Emily R. McNaughton, National Bank Examiner (202/874–5170), Office of the Chief National Bank Examiner; David Thede, Senior Attorney, (202/874–5210) Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board of Governors:* David Wright, Supervisory Financial Analyst (202/728–5854), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452–3583), Gregory A. Baer, Managing Senior Counsel (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

*FDIC:* Robert W. Walsh, Manager, Planning and Program Development (202/898–6911) or Michael D. Jenkins, Examination Specialist (202/898–6896), Division of Supervision; Lisa M. Stanley, Senior Counsel (202/898–7494), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*OTS:* William Magrini, Project Manager (202/906–5744), Cathern Smith, Regional Coordinator (202/906–6614), Supervision; Kevin Corcoran, Assistant Chief Counsel (202/906–6962), Teri M. Valocchi, Counsel (Banking and Finance) (202/906–7299), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Statutory Framework*

Section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), added a new section 39 to the FDI Act which required each Federal banking agency to establish by regulation certain safety and soundness standards for the insured depository institutions and depository institution holding companies for which it was the primary Federal regulator. As enacted in FDICIA, section 39(b) of the FDI Act required the agencies to establish standards by regulation specifying a maximum ratio of classified assets to capital and minimum earnings sufficient to absorb losses without impairing capital.

On September 23, 1994 the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) was enacted. Section 318(a) of the CDRI Act eliminated the requirement that standards prescribed under section 39 apply to depository institution holding companies and replaced the requirement that the agencies establish quantitative asset quality and earnings standards with a requirement that the agencies establish standards, by regulation *or* by guideline, relating to asset quality and earnings that the agencies determine to be

appropriate. Pursuant to section 318 of the CDRI Act, these amendments have the same effective date as section 39 of the FDI Act, as provided in section 132(c) of FDICIA.

*B. Agencies' Proposals*

The agencies published a joint advance notice of proposed rulemaking in the **Federal Register**. 57 FR 31336 (July 15, 1992). The agencies received over 400 comment letters in response to the ANPR, with some letters submitted to more than one agency. The agencies' proposal requested comment on all aspects of the safety and soundness standards required to be prescribed pursuant to section 39 of the FDI Act, as enacted in FDICIA. Commenters strongly recommended that the agencies adopt general rather than specific standards. The agencies published a joint notice of proposed rulemaking in the **Federal Register** on November 18, 1993, 59 FR 60802. The agencies proposed quantitative asset quality and earnings standards in accordance with the statutory mandate set forth in FDICIA.

*C. Final Rule and Interagency Guidelines Establishing Standards for Safety and Soundness*

Each of the agencies has adopted a final rule (Final Rule) and Interagency Guidelines Establishing Standards for Safety and Soundness (Guidelines). The agencies' Final Rule establishes deadlines for submission and review of safety and soundness compliance plans which may be required for failure to meet one or more of the safety and soundness standards adopted in the Guidelines. The agencies' Final Rule and Guidelines are published elsewhere in this separate part of the **Federal Register**. The Guidelines will appear as appendices to each of the agencies' Final Rule.[1]

If adopted in final form, the agencies intend to incorporate these asset quality and earnings standards into the Guidelines. Thus, if adopted in final form, the agencies may require submission of a compliance plan for failure to meet the asset quality and earnings standards.

## II. Request for Comment on Proposed Asset Quality and Earnings Standards

As enacted in FDICIA, section 39(b) of the FDI Act required the agencies to establish standards specifying a maximum ratio of classified assets to capital and minimum earnings sufficient to absorb losses without impairing capital. As amended by the CDRI Act, section 39(b) no longer requires the agencies to establish quantitative standards. Instead, the agencies are required to establish such standards relating to asset quality and earnings that the agencies determine to be appropriate.

Although commenters generally found the agencies' proposed quantitative standards acceptable, some commenters criticized the proposed standards as inflexible and simplistic. While the agencies believe that the standards as proposed are acceptable, they also believe that more comprehensive standards in these areas, as allowed under section 39(b), as amended, would be more useful and appropriate. Therefore, the agencies are proposing new standards for asset quality and earnings that emphasize monitoring, reporting and preventive or corrective action appropriate to the size of the institution and the nature and scope of its activities. These standards would be adopted by guideline.

The agencies believe the proposed standards are more likely to aid in the identification and resolution of emerging problems than setting minimum or maximum ratios. The agencies intend to continue to perform independent analyses that may include asset quality and earnings ratio analysis and will focus on an institution's oversight, reporting and corrective actions in these areas. The agencies believe that well-managed institutions should not find it necessary to modify their operations to comply with the proposed guidelines.

*A. Standards Relating to Asset Quality*

The agencies are proposing asset quality standards requiring monitoring and reporting systems to identify emerging problems and corrective actions to resolve them. The standards provide for institutions to identify problem assets and estimate inherent losses. Institutions would also be required to: (1) Consider the size and potential risks of material concentrations of credit risk, (2) compare the level of problem assets to the level of capital and establish reserves sufficient to absorb anticipated losses on those and other assets, (3) take appropriate corrective action to resolve problem assets; and (4) provide periodic asset quality reports to the board of directors to assess the level of asset risk.

The complexity and sophistication of an institution's monitoring, reporting systems and corrective actions should be commensurate with the size, nature and scope of the institution's operations. The agencies believe that the proposed asset quality standards are consistent with the practices of well-managed institutions and represent the long-standing and established expectations of the agencies.

*B. Standards Relating to Earnings*

The agencies are proposing earnings standards requiring monitoring and reporting systems similar to the standards for asset quality. The standards are intended to ensure prompt remedial actions to enhance early identification and resolution of problems. The standards require institutions to compare their earnings trends, relative to equity, assets and other common benchmarks with their historical experience and with their peers. The standards also provide that institutions should: (1) evaluate the adequacy of earnings given the institution's size, and complexity, and the risk profile of the institution's assets and operations, (2) assess the source, volatility and sustainability of earnings, (3) evaluate the effect of nonrecurring or extraordinary income or expense, (4) take steps to ensure that earnings are sufficient to maintain adequate capital and reserves after considering asset quality and the institution's rate of growth, and (5) provide periodic reports with enough information for management and the board of directors to assess earnings performance.

As with the asset quality standards, the institution's monitoring, reporting systems and corrective actions should be commensurate with the size, nature and scope of the institution's operations. Once again, the agencies believe that these earnings standards are consistent with the practices of well-managed institutions and represent the long-standing and established expectations of the agencies.

The agencies propose to add to the Interagency Guidelines Establishing Standards for Safety and Soundness standards relating to asset quality and earnings as set forth below. The agencies request comment on all aspects of the proposed standards.

**Regulatory Flexibility Act**

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the agencies certify that the proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This proposal adds asset quality and earnings standards to the Interagency Guidelines

[1] For the OCC, these Guidelines appear as Appendix A to Part 30; for the Board of Governors, these Guidelines appear as Appendix D to Part 208; for the FDIC, these Guidelines appear as Appendix A to Part 364; and for the OTS, these Guidelines appear as Appendix A to Part 570.

Establishing Standards for Safety and Soundness.

**Executive Order 12866**

The OCC and the OTS have determined that this proposal is not a ''significant regulatory action'' for purposes of Executive Order 12866.

The proposed new paragraphs G and H of Section II of the Interagency Guidelines Establishing Standards for Safety and Soundness are as follows:

**Asset Quality and Earnings Standards**

G. *Asset Quality.* An insured depository institution should establish and maintain a system to identify problem assets and prevent deterioration in those assets in a manner commensurate with its size and the nature and scope of its operations. The institution should:

1. Conduct periodic asset quality reviews to identify problem assets and estimate the inherent losses in those assets;

2. Consider the size and potential risks of material asset concentrations;

3. Compare problem asset totals to capital and establish reserves that are sufficient to absorb estimated losses;

4. Take appropriate corrective action to resolve problem assets;

5. Provide periodic asset quality reports with adequate information for management and the board of directors to assess the level of asset quality risk.

H. *Earnings.* An insured depository institution should establish and maintain a system to evaluate and monitor earnings and ensure that earnings are sufficient to maintain adequate capital and reserves in a manner commensurate with its size and the nature and scope of its operations. The institution should:

1. Compare recent earnings trends relative to equity, assets or other commonly used benchmarks to the institution's historical results and those of its peers;

2. Evaluate the adequacy of earnings given the size, complexity and risk profile of the institution's assets and operations;

3. Assess the source, volatility and sustainability of earnings;

4. Evaluate the effect of nonrecurring or extraordinary income or expense;

5. Take steps to ensure that earnings are sufficient to maintain adequate capital and reserves after considering the institution's asset quality and growth rate; and

6. Provide periodic earnings reports with adequate information for management and the board of directors to assess earnings performance.

Dated: April 13, 1995.

**Eugene A. Ludwig,**

*Comptroller of the Currency.*

By Order of the Board of Governors of the Federal Reserve System, June 6, 1995.

**William W. Wiles,**

*Secretary of the Board.*

By order of the Board of Directors.

Dated at Washington, D.C., this 21st day of March, 1995.

Federal Deposit Insurance Corporation

**Robert E. Feldman,**

*Deputy Executive Secretary.*

Dated: May 25, 1995.

By the Office of Thrift Supervision.

**Jonathan L. Fiechter,**

*Acting Director.*

[FR Doc. 95–16564 Filed 7–7–95; 8:45 am]

**BILLING CODES: 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P**

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

[9] Note: Title 19, CFR Parts 141-199, revised 4-1-95 volume is being republished to restore inadvertently omitted text.