AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

9-21-84
Vol. 49 No. 185
Pages 37055-37368

# federal register

Friday
September 21, 1984

## Selected Subjects

**Administrative Practice and Procedure**
Alcohol, Tobacco and Firearms Bureau

**Air Pollution Control**
Environmental Protection Agency

**Animal Drugs**
Food and Drug Administration

**Aviation Safety**
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**Government Property Management**
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**Marketing Agreements**
Agriculture Marketing Service

**Meat Inspection**
Food Safety and Inspection Service

**Milk Marketing Orders**
Agriculture Marketing Service

**Mineral Royalties**
Minerals Management Service

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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# Rules and Regulations

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

### Prevailing Rate Systems

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises and updates Civil Service regulations on the Prevailing Rate Systems to implement existing law and to make the regulations more clear and up to date. These revisions add a new section on payment of premium pay for Federal Wage System (FWS) employees working flexible and compressed work schedules (5 U.S.C. 8331(13) and 8332(b)(5)); clarify creditable service entitlements; and clarify environmental differentials and their relationship to basic pay. These changes either implement new law or are editorial in nature; they do not involve any policy changes.

**EFFECTIVE DATE:** October 22, 1985.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Newbold, (202) 632–7830.

**SUPPLEMENTARY INFORMATION:** At 49 FR 602 dated January 5, 1984, the Office of Personnel Management proposed this regulation, with a 60-day comment period. This regulation revises and updates the basic provisions of the Prevailing Rate Systems under sections 5343 and 5346 of title 5, United States Code, as amended by Pub. L. 92–392, August 19, 1972. Responses were received from two labor organizations and one agency—no additions, deletions, or changes were recommended.

**Executive Order 12291, Federal Regulation**

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are editorial changes that will affect only employees of the Federal Government.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
**Donald J. Devine,**
*Director.*

## PART 532—PREVAILING RATE SYSTEMS

Accordingly, OPM amends Part 532 of Title 5 of the Code of Federal Regulations as follows:

1. Section 532.417 is amended by revising paragraphs (c)(4) and (c)(6) and adding (c)(9) to read as follows:

**§ 532.417 Within-grade increases.**

* * * * *

(c) * * *

(4) A period of military service when:

(i) An employee is on leave of absence to perform such service and returns to pay status through the exercise of a restoration right provided by law, Executive order, or regulation; or

(ii) A former employee is reemployed with the Federal Service not later than 52 calendar weeks after separation from such service or hospitalization continuing thereafter for a period of not more than one year. Military service means honorable active service in the Armed Forces, in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or as a commissioned officer of the Environmental Science Services Administration after June 30, 1961, but does not include service in the National Guard, except when ordered to active duty in the service of the United States.

* * * * *

(6) Time during which an employee is performing service, which is creditable under section 8332(b) (5) or (7) of title 5, United States Code;

* * * * *

(9) Time during which an employee is temporarily employed by another agency in a position covered by this subpart.

2. In § 532.511, paragraph (c) is revised to read as follows:

**§ 532.511 Environmental differentials.**

* * * * *

(c) *Basic pay.* Environmental differential pay is part of basic pay and shall be used to compute premium pay (pay for overtime, holiday, or Sunday work) from which retirement deductions are made and group life insurance is based. It is not part of basic pay for purposes of lump-sum annual leave payments and severance pay nor is its loss an adverse action.

3. Section 532.513 is added to Part 532 to read as follows:

**§ 532.513 Flexible and compressed work schedules.**

Federal Wage System employees, other than Nonappropriated Fund employees of the Armed Forces as defined in 5 U.S.C. 2105(c), who are authorized to work flexible and compressed work schedules under sections 6122 and 6127 of 5 U.S.C. shall be paid premium pay in accordance with the provisions of subchapter II of chapter 61 of title 5, United States Code. Subpart D of Part 610 of this title supplements that subchapter and must be read with it.

(5 U.S.C. 5343)

[FR Doc. 84–25170 Filed 9–20–84; 8:45 am]
BILLING CODE 6325–01–M

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### 7 CFR Part 800

### Definitions

*Correction*

In FR Doc. 84–24225 beginning on page 36067 in the issue of Friday, September 14, 1984, make the following corrections:

**§ 800.0 [Corrected]**

1. On page 36068, third column, "of" should read "or" in the third line of

§ 800.0(b)(5), and in the fourth line of § 800.0(b)(7).

2. On page 36071, first column, in the fourth line of § 800.0(b)(83), "889" should read "88".

BILLING CODE 1505-01-M

## Agricultural Marketing Service

### 7 CFR Part 910

[Lemon Reg. 482]

## Lemons Grown in California and Arizona; Limitation of Handling

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 230,598 cartons during the period September 23–29, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

**EFFECTIVE DATE:** September 23, 1984.

**FOR FURTHER INFORMATION CONTACT:** William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on September 18, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

### List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

### PART 910—[AMENDED]

Section 910.782 is added as follows:

**§ 910.782 Lemon Regulation 482.**

The quantity of lemons grown in California and Arizona which may be handled during the period September 23, 1984, through September 29, 1984, is established at 230,598 cartons.

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

Dated: September 19, 1984.

**Thomas R. Clark,**

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

[FR Doc. 84–25258 Filed 9–20–84; 8:45 am]

BILLING CODE 3410–02–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### 18 CFR Part 371

**[Docket Nos. RM80–36–001; RM80–36–002; and RM80–36–003]**

## Generic Determination of Rate of Return on Common Equity for Electric Utilities

Issued: September 17, 1984.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order Granting Rehearing for Purposes of Further Consideration.

**SUMMARY:** On July 18, 1984, the Federal Energy Regulatory Commission (Commission) issued Order No. 389, a final rule that added a new Part 37 to establish procedures for determining benchmark rates of return on common equity for jurisdictional electric utilities and for applying them in individual cases.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

**EFFECTIVE DATE:** September 17, 1984.

**FOR FURTHER INFORMATION CONTACT:** Fred A. Wolgel, Office of the General Counsel, Rulemaking and Legislative Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20428, 357–8033.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On July 18, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule on the generic determination of rate of return on common equity for electric utilities. 49 FR 29946 (July 25, 1984) (Order No. 389, Docket No. RM80–36–000). This rule established procedures for determining benchmark rates of return on common equity for jurisdictional electric utilities and for applying them in individual cases.

The Commission has received three timely petitions for rehearing on this final rule.[1] To have sufficient time to consider the issues in these petitions, the Commission will grant rehearing of the final rule solely for the purpose of such further consideration. This action does not constitute a grant or denial of any petition on its merits, either in whole or part. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR 385.713), no answers to these petitions will be entertained by the Commission because this Order does not grant rehearing on any substantive issue.

[1] The petitions are: (1) Petition for Rehearing by Allegheny Electric Cooperative, Inc., North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Oglethorpe Power Corporation, Old Dominion Electric Cooperative, Inc., Seminole Electric Cooperative, Inc., South Mississippi Electric Power Association, Southern Maryland Electric Cooperative, Inc., and Wolverine Electric Cooperative (Docket No. RM80–36–001); (2) Application of the Edison Electric Institute for Rehearing of Order No. 389 (Docket No. RM80–36–002); and (3) Motion to Intervene Out of Time and Petition for Rehearing of the Attorney General of the State of Rhode Island (Docket No. RM80–36–003).

By the Commission.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 84-25029 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 101

[T.D. 84-195]

## Change in the Customs Service Field Organization; Philadelphia Consolidation

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Final rule and solicitation of comments.

**SUMMARY:** This document amends the Customs Regulations to change the Customs Service field organization by consolidating the Philadelphia and Chester, Pennsylvania, and Wilmington, Delaware, ports of entry into a single port of entry with headquarters in Philadelphia. The consolidated port area includes the geographical territory of the existing three ports and the geographical limits of the City of Salem, New Jersey. Because Salem was not part of the original proposal and thus, the public was unable to comment upon this aspect, comments are invited regarding Salem's inclusion within the consolidated port area of Philadelphia.

**EFFECTIVE DATES:** The consolidation will be effective October 22, 1984. However, comments regarding the inclusion of Salem New Jersey, within the consolidated port area of Philadelphia, Pennsylvania, will be received on or before November 20, 1984

**ADDRESS:** Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8157).

### Background

**SUPPLEMENTARY INFORMATION:** As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs published a notice of proposed rulemaking in the Federal Register on August 5, 1983 (48 FR 35666), proposing to amend § 101.3(b), Customs Regulations (19 CFR 101.3(b)), by consolidating the Philadelphia and Chester, Pennsylvania, and Wilmington, Delaware, ports of entry into a single port of entry with headquarters in Philadelphia. The consolidated port area would have included the geographical territory of the existing three ports.

One particular benefit for Customs is that reimbursable travel expenses would be reduced 75-80 percent while the Customs response time would be decreased. Vessel entry activities would be reduced substantially for both vessel agents and the shipping industry. Vessel entrance and clearance would be facilitated for both vessel agents and their accounts at reduced costs.

Five comments were received in response to the proposal. Four commenters objected to any reduction in service at Chester. However, there will be no reduction in service. Customs service will continue to be provided at Chester, as appropriate, after the consolidation. The fifth comment was from the Bureau of the Census, regarding the possible loss of individual port vessel statistics after the consolidation. Census and Customs personnel will resolve this issue.

These amendments differ slightly from the notice proposing the change in that the geographical limits of the consolidated port area of Philadelphia have been extended to include Salem, New Jersey. Because Salem was not part of the original proposal, and thus, the public was unable to comment upon this aspect, comments are invited regarding Salem's inclusion within the consolidated port area of Philadelphia. If any changes are required after analysis of any comments received, another document will be published in the Federal Register. Thus, this document amends § 101.3(b), Customs Regulations (19 CFR 101.3(b)), to change the Customs field organization by consolidating the Philadelphia and Chester, Pennsylvania, and Wilmington, Delaware, ports of entry and the geographical territory of Salem, New Jersey, into a single port of entry with headquarters in Philadelphia.

### Changes in the Customs Service Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II) and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449), the geographical limits of the consolidated port of Philadelphia, Pennsylvania, are as follows:

The ports of Philadelphia, Pennsylvania (comprising the territory within the corporate limits of Philadelphia, Pennsylvania, Camden, Gloucester City, and Salem, New Jersey, the territory within the limits of the Boroughs of Brooklawn, National Park, and Paulsboro, and the Townships of West Deptford and Greenwich, all in New Jersey, the Borough of Folcroft and the Townships of Darby and Tinicum, all in Pennsylvania, and the territory between the Delaware River and U.S. Highway No. 13, in Bucks County, Pennsylvania, from the corporate limits of Philadelphia to and including Morrisville, Pennsylvania, and the territory between the Delaware River and U.S. Highway No. 130 and U.S. Highway No. 206, in Camden, Burlington, and Mercer Counties, New Jersey, from the corporate limits of Camden, New Jersey, to and including Trenton, New Jersey), Chester, Pennsylvania (comprising the territory within the corporate limits of Chester, Pennsylvania, the territory within the limits of the Boroughs of Marcus Hook, Trainer, Upland, Parkside, Eddystone, and the Townships of Lower Chichester and Ridley, all in Pennsylvania, and the territory extending along the Pennsylvania side of the Delaware River from Darby Creek to the Delaware State line, a distance of approximately 10 miles), and Wilmington, Delaware (comprising the territory within the corporate limits of Wilmington, Delaware, the territory within the limits of New Castle, Newport, and Claymont, Delaware, and the territory within the limits of Carneys Point and Deep Water Point, New Jersey, and the territory lying between U.S. Highway No. 13 and the Delaware River, from the corporate limits of Wilmington to the Chesapeake and Delaware Canal, Delaware).

### Comments

While adopting these amendments, consideration will be given to any written comments timely submitted to the Commissioner of Customs relating specifically to the inclusion of Salem, New Jersery, within the consolidated port area of Philadelphia. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229. If any changes are required after analysis of any comments received

regarding the inclusion of Salem, New Jersey, within the Philadelphia port consolidation, another document will be published in the **Federal Register.**

**Executive Order 12291**

Because these amendments relate to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291, it is not subject to that Executive Order.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final requlatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Philadelphia and Chester, Pennsylvania; Wilmington, Delaware; and Salem, New Jersey; areas, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendments will not have a significant economic impact on a substantial number of small entities.

**Drafting Information**

The principal author of this document was James S. Demb, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**Lists of Subjects in 19 CFR Part 101**

Customs duties and inspection, Imports, Organization.

**Amendments to the Regulations**

## PART 101—GENERAL PROVISIONS

**§ 101.3 [Amended]**

To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), in the Philadelphia, Pennsylvania, Customs district of the Northeast Region, is amended in the following manner:

1. By removing the words "PHILADELPHIA, PA., including Camden and Gloucester City, N.J., and territory described in E.O. 7840, Mar. 15, 1938; 3 FR 687; T.D. 53738 and T.D. 54303," under the column headed "Ports of entry" and inserting, in their place, the words "PHILADELPHIA—CHESTER, PA. AND WILMINGTON, DEL., including Camden, Gloucester City, and Salem, N.J., and territory described in T.D. 84– ".

2. By removing the words "Chester, Pa. (E.O. 7706, Sept. 11, 1937; 2 FR 1848).".

3. By removing the words "Wilmington, Del., including territory described in T.D. 54202 (E.O. 4496, Aug. 12, 1926).".

**William van Raab,**

*Commissioner of Customs.*

Approved: September 7, 1984.

**John M. Walker, Jr.,**

*Assistant Secretary of the Treasury.*

[FR Doc. 84-25112 Filed 9-20-84; 8:45 am]

**BILLING CODE 4820-02-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 446 and 546

**[Docket No. 83N-0285]**

### Antibiotic Drugs; Updating and Technical Changes; Correction

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting the final rule that amended that antibiotic drug regulations by making corrections, updatings, and minor noncontroversial technical changes in certain regulations providing for accepted standards of antibiotic and antibiotic-containing drugs for human and veterinary drugs. This document corrects several sections in which certain sentences were inadvertently omitted from the text.

**EFFECTIVE DATE:** September 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 83-30122 appearing on page 51292 in the issue of Tuesday, November 8, 1983, the following corrections are made.

1. On page 51293 in the second column:

**§ 446.167 [Corrected]**

a. In § 446.167 *Oxytetracycline hydrochloride capsules,* paragraph (b)(3) is corrected by adding a sentence at the end of the paragraph to read as follows: "The quantity *Q* (the amount of oxytetracycline dissolved) is 60 percent within 30 minutes and 85 percent within 60 minutes."

**§ 446.181d [Corrected]**

b. In § 446.181d *Tetracycline hydrochloride tablets,* paragraph (b)(3) is corrected by adding a sentence at the end of the paragraph to read as follows: "The quantity *Q* (the amount of tetracycline hydrochloride dissolved) is 60 percent within 30 minutes and 85 percent within 60 minutes."

**§ 446.181e [Corrected]**

c. In § 446.181e *Tetracycline hydrochloride capsules,* paragraph (b)(4) is corrected by adding two sentences at the end of the paragraph to read as follows: "The quantity *Q* (the amount of tetracycline hydrochloride dissolved), except for the 500-milligram capsule, is 60 percent within 30 minutes and 85 percent within 60 minutes. For the 500-milligram capsule, the quantity *Q* is 50 percent within 30 minutes, 70 percent within 60 minutes, and 85 percent within 90 minutes."

**§ 546.110d [Corrected]**

2. On page 51294 in the first column, in § 546.110d *Chlortetracycline hydrochloride tablets,* paragraph (b)(4) is corrected by adding a sentence at the end of the paragraph to read as follows: "The quantity *Q* (the amount of tetracycline hydrochloride dissolved) is 60 percent within 30 minutes and 85 percent within 60 minutes."

Dated: September 17, 1984.

**William F. Randolph,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 84-25103 Filed 9-20-84; 8:45 am]

**BILLING CODE 4160-01-M**

### 21 CFR Part 524

### Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Dexamethasone Acetate, Nitrofurathiazide, Griseofulvin, Undecylenic Acid and Tetracaine Hydrochloride Otic Suspension

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that section which reflects approval of a new animal drug application (NADA) held by Schering Corp. providing for topical use of a prescription otic suspension containing dexamethasone acetate, nitrofurathiazide, griseofulvin, undecylenic acid, and tetracaine

hydrochloride for treating cats for otitis externa. In a notice published elsewhere in this issue of the **Federal Register**, FDA if withdrawing approval of this NADA.

**EFFECTIVE DATE:** October 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** John K. Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

**SUPPLEMENTARY INFORMATION:** In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Schering's NADA 12-890 for Fulvidex® Otic Suspension. This document removes the regulation that reflects approval of this NADA.

**List of Subjects in 21 CFR Part 524**

Animal drugs, topical.

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

**§ 524.541 [Removed]**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), Part 524 is amended by removing § 524.541 *Dexamethasone acetate, nitrofurathiazide, griseofulvin, undecylenic acid, tetracaine hydrochloride otic suspension.*

*Effective date:* October 1, 1984.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)))

Dated: September 14, 1984.

**Lester M. Crawford,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 84-25101 Filed 9-20-84; 8:45 am]

**BILLING CODE 4160-01-M**

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**21 CFR Part 555**

## Chloramphenicol Drugs for Animal Use; Chloramphenicol Oral Solution; Removal of Regulation

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is removing that portion of the animal drug regulations which reflects approval of the new animal drug application (NADA) providing for prescription use of chloramphenicol oral solution in dogs for treatment of infections of the respiratory and urinary tract, and enteritis and tonsillitis caused by susceptible organisms. The sponsor International Multifoods Corp., requested withdrawal of approval.

**EFFECTIVE DATE:** October 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** John K. Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

**SUPPLEMENTARY INFORMATION:** In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of International Multifoods' NADA 55-003 for Tevcocin ® (chloramphenicol) Oral Solution for prescription use in dogs. The sponsor voluntarily requested withdrawal of approval because the product is no longer being marketed. This document amends the animal drug regulations to remove that portion of 21 CFR 555.110c reflecting approval of the NADA.

**List of Subjects in 21 CFR Part 555**

Animal drugs, Antibiotics, chloramphenicol.

## PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

**§ 555.110c [Amended]**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), Part 555 is amended in § 555.110c *Chloramphenicol oral solution* in paragraph (c)(2)(i) by removing the sponsor number "012518".

*Effective date:* October 1, 1984.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)))

Dated: September 14, 1984.

**Lester M. Crawford,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 84-25099 Filed 9-20-84; 8:45 am]

**BILLING CODE 4160-01-M**

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**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1304**

## Records and Reports of Registrants; Changes in Registrant Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This is a Final Rule issued by the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration amending 21 CFR 1304.38(a) to include reporting requirements for categories of drugs which are listed in Schedules III and IV of the Psychotropic Convention of 1971, and Schedule IV of the Single Convention on Narcotic Drugs of 1961. An amendment to 1304.39(b) to simplify and reduce the current reporting system and the removal of reporting under 1304.40.

**EFFECTIVE DATE:** September 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** Alfred A. Russell, Chief, Regulatory Support Section, Office of Diversion Controls, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537, (202-633-1570).

**SUPPLEMENTARY INFORMATION:** A notice was published in the **Federal Register** on November 8, 1983 (48 FR 51329), proposing rulemaking to include reporting requirements for categories of drugs which are listed in Schedules III and IV of the Psychotropic Convention of 1971 and Schedule IV of the Single Convention on Narcotic Drugs of 1961, simplifying the current reporting system, discontinuing a portion of the reporting burden and providing an opportunity for any interested party to submit comments or objections in writing regarding the proposal on or before January 9, 1984.

One comment in response to the proposal was received from Hoffman-La Roche, Inc., Nutley, New Jersey. Hoffman-La Roche was concerned that the proposal was not consistent with the changes in the reporting requirements included in the ARCOS Reporting Manual (October, 1982) and that the Psychotropic Convention requires only yearly reports where the proposal sets quarterly reports. Based upon those comments, Hoffman-La Roche proposed that the rule should be more specific and the information should be collected on a yearly basis.

It appears that Hoffman-La Roche misunderstood the proposal. The amendments are consistent with the existing regulations which set the general reporting requirements with the specific reporting instructions set forth in the ARCOS Reporting Manual. Due to the complexities of the reporting system, the detailed reporting instructions cannot be set forth in the regulations; the regulations merely set the overall requirements. These amendments, though more generally stated, are consistent with the ARCOS Reporting Manual.

The yearly reporting to the International Narcotics Control Board is

required under the Psychotropic Convention; however, yearly submissions have always been required under the Single Convention on Narcotic Drugs. The quarterly reporting set forth in the proposed rule is to ensure that the voluminous information can be collected, collated, input into the computer system, quality controlled and analyzed in a timely manner for submission to the international bodies each year. This activity could not be performed in a timely manner if reported only on a yearly basis. In addition, yearly reporting for only a portion of the information would be inconsistent with the quarterly reporting on the remaining information and would result in confusion for the reporting industry.

**List of Subjects in 21 CFR Part 1304**

Drug traffic control, Reporting and recordkeeping requirements.

No further comments nor objections were received, nor were there any requests for a hearing, and in view thereof, under the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control, the Deputy Assistant Administrator hereby orders that Part 1304 of Title 21, Code of Federal Regulations be amended as follows:

1. Section 1304.38 is amended by revising the introductory text of the section and paragraph (a), and adding the OMB control number to the end of this section to read as follows:

**§ 1304.38 Reports from manufacturers of bulk materials or dosage units.**

Each person who is registered to manufacture controlled substances in bulk or dosage form shall report as follows:

(a) *Substance covered.* Reports shall include data on each controlled substance listed in Schedules I and II, on each narcotic controlled substance listed in Schedules III, IV and V, and on each psychotropic controlled substance listed in Schedules III and IV as identified below:

**Schedule III**

(1) Benzphetamine;
(2) Cyclobarbital;
(3) Glutethimide;
(4) Methylprylon; and
(5) Phendimetrazine.

**Schedule IV**

(1) Barbital;
(2) Diethylproprion (Amfepramone);
(3) Ethchlovynol;
(4) Ethinamate;
(5) Lefetamine (SPA);
(6) Mazindol;
(7) Meprobamate;
(8) Methylphenobarbital;
(9) Phenobarbital;
(10) Phentermine; and
(11) Pipradrol.

Data shall be presented in such a manner as to identify the particular form, strength, and trade name, if any, of the product containing the controlled substance for which the report is being made. For this purpose, persons filing reports shall utilize the National Drug Code Number assigned to the product under the National Drug Code System of the Food and Drug Administration.

* * * * *

(Approved by the Office of Management and Budget under OMB Control No. 1117–0003)

2. Section 1304.39 is amended by revising paragraph (6) and adding the OMB control number to read as follows:

**§ 1304.39 Reports from packagers and labelers.**

* * * * *

(b) *Transactions reported.* Reports shall provide data on each acquisition to inventory (identifying whether it is, e.g., by purchase or transfer, return from a customer, or supply by the Federal Government and each reduction from inventory (identifying whether it is, e.g., by sale or transfer, sampling, theft, destruction, or seizure by Government agencies). These reports shall be filed every month not later than the 15th day of the month succeeding the month for which it is submitted; except that a registrant may be given permission to file more frequently or less frequently (but not less than quarterly), depending on the number of transactions being reported each time by that registrant.

* * * * *

(Approved by the Office of Management and Budget under OMB Control No. 1117–0003)

**§ 1304.40 [Removed]**

**§§ 1304.41 and 1304.42 [Redesignated §§ 1304.40 and 1304.41]**

3. Section 1304.40, Reports from importers and exporters is hereby removed and existing §§ 1304.41 and 1304.42 are hereby redesignated §§ 1304.40 and 1304.41, respectively.

The Deputy Assistant Administrator hereby certifies that this final rule will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This action effects an overall reduction in registrant reporting requirements.

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of the Executive Order 12291, this action has been submitted for review by the Office of Management and Budget, and approval of that Office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

Dated: August 27, 1984.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 84–24925 Filed 9–20–84; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 26 CFR Part 601

**[T.D. ATF–184]**

### Statement of Procedural Rules

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** This final rule reflects a functional shift within ATF for responsibility for and management of seized personal property and forfeiture regulations from ATF's regional administrative offices to its Headquarters' Office of Law Enforcement.

**EFFECTIVE DATE:** This final rule is effective on September 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** Frank W. Nickell or Gayle P. Miller, Planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7123).

**SUPPLEMENTARY INFORMATION:** In order to provide maximum efficiency in the processing of seized property, responsibility for the seized property and forfeiture functions has been centralized in AFT Bureau Headquarters' Office of Law Enforcement. Therefore, the regional administrative officer, who previously managed this function, no longer has this authority. The authority for administering this regulation now resides with the Director of ATF or his delegate in ATF Headquarters' Office of Law Enforcement, under a Treasury memorandum dated September 16, 1983.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule

because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C 553 or any other law.

**Executive Order 12291**

Because this document relates to agency organization and management, it is not subject to the requirements of Executive Order 12291 pursuant to section 1(a)(3) thereof.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

**Notice and Public Participation**

This final notice is promulgated without notice and public procedure, as required by 5 U.S.C. 553(b), because it is a rule of procedure.

**Drafting Information**

The principal author of this document is Gayle P. Miller of the Planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 26 CFR Part 601**

Administrative practice and procedure, Authority delegations, Seizures and forfeitures, Surety bonds.

**Authority**

This regulation is issued under the authority contained in 5 U.S.C. 301, 552. Accordingly, Title 26, Code of Federal Regulations, is amended as follows:

## PART 601—STATEMENT OF PROCEDURAL RULES

**§ 601.327 [Amended]**

1. Section 601.327(c) is amended by deleting the term "regional administrative officer" and substituting therefore "the Director or his delegate."

Signed: August 17, 1984.

**Robert J. Maxwell,**

*Acting Director.*

Approved: September 7, 1984.

**John M. Walker, Jr.,**

*Assistant Secretary (Enforcement and Operations).*

[FR Doc. 84-25049 Filed 9-20-84; 8:45 am]

BILLING CODE 4810-31-M

**27 CFR Part 72**

**[T.D. ATF-183]**

## Disposition of Seized Personal Property

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** This final rule reflects a functional shift within ATF for responsibility for and management of seized personal property regulations from ATF's regional administrative offices to its Headquarters' Office of Law Enforcement.

**EFFECTIVE DATE:** This final rule is effective on September 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** Frank W. Nickell or Gayle P. Miller, Planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7123).

**SUPPLEMENTARY INFORMATION:** In order to provide maximum efficiency in the processing of seized property, responsibility for the seized property function has been centralized in ATF Bureau Headquarters' Office of Law Enforecement. Therefore, the regional officials entitled regional regulatory administrator and regional administrative officer, who previously managed this function, no longer have this authority. Further, the regional director position has been abolished due to a Bureau reorganization. The authority for administering these regulations now resides with the Director of ATF or his delegate in ATF Headquarters' Office of Law Enforcement, under a Treasury memorandum dated September 16, 1983.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

**Executive Order 12291**

Because this document relates to agency organization and management, it is not subject to the requirements of Executive Order 12291 pursuant to section 1(a)(3) thereof.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

**Notice and Public Participation**

This final notice is promulgated without notice and public procedure, as required by 5 U.S.C. 553(b), because it is a rule of procedure.

**Drafting Information**

The principal author of this document is Gayle P. Miller of the planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 72**

Administrative practice and procedure, Authority delegations, Seizures and forfeitures, Surety bonds.

**Authority**

These regulations are issued under the authority contained in 18 U.S.C. 921, 18 U.S.C. 1261, 26 U.S.C. 7805, 49 U.S.C. 788. Accordingly, Title 27, Code of Federal Regulations, is amended as follows:

## PART 72—DISPOSITION OF SEIZED PERSONAL PROPERTY

**§ 72.11 [Amended]**

1. Section 72.11 is amended by deleting the definitions of the regional administrative officer and the regional regulatory administrator.

**§§ 72.22, 72.23, 72.26, 72.36, 72.40, and 72.63 [Amended]**

2. Sections 72.22(a)(3), 72.23, 72.26, 72.36, 72.40(b), and 72.63(c)(2) are amended by deleting the term "regional director" and substituting therefor "the Director or his delegate."

**§§ 72.22, 72.23, 72.26, 72.39, 72.40, 72.61, 72.65, and 72.68 [Amended]**

3. Sections 72.22(a) (5) and (6), 72.23, 72.26, 72.39 (a) (3) and (b), 72.40(b), 72.61, 72.65, and 72.68 are amended by deleting the term "regional administrative officer" and substituting therefor "the Director or his delegate."

**§ 72.22 [Amended]**

4. Section 72.22(b) is amended by deleting the term "Regional Counsel" and substituting therefor the "Chief Counsel or his delegate."

Signed: August 17, 1984.

**Robert J. Maxwell,**

*Acting Director.*

Approved: September 7, 1984.

**John M. Walker Jr.,**

*Assistant Secretary (Enforcement and Operations).*

[FR Doc. 84-25048 Filed 8-20-84: 8:45 am]

**BILLING CODE 4810-31-M**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 943

### Notice of Suspension of Current Rulemaking and Extension of Deadline for Submission of Program Amendments to the Texas Program

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

**ACTION:** Final rule.

**SUMMARY:** OSM is announcing its decision to suspend current rulemaking and extend the deadline for Texas to (1) promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On March 1, 1984, Texas submitted to OSM an amendment to its approved regulatory program which was intended to implement the Federal requirements for a blaster training, examination and certification program. In its subsequent review of the proposed amendment, OSM identified several deficiencies and pointed these out to the State. On June 25, 1984, OSM received a letter from Texas which requested a six-month extension of the deadline for submission of a blaster program in order that Texas might adequately address and respond to the issues raised by OSM. Texas requested a six-month extension in order to prepare documentation on the issues raised by OSM and to prepare any necessary revisions to the program. Texas also requested suspension of the current rulemaking on this subject. On August 2, 1984, OSM published in the **Federal Register** (49 FR 30972) a proposed suspension of rulemaking and extension of deadline for program amendment. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State a six-month extension of time to submit a proposed blaster certification program.

**EFFECTIVE DATE:** September 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 581-7658.

**SUPPLEMENTARY INFORMATION:** On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Texas' program, the applicable date was 12 months after the publication date of OSM's rule, or March 4, 1984.

On March 1, 1984, Texas submitted an amendment to its approved program which was intended to implement the Federal requirements for a blaster training, examination and certification program. OSM published a notice of public comment period and opportunity for public hearing in the **Federal Register** on March 23, 1984 (49 FR 10943). In its subsequent review of the proposed amendment, OSM identified several deficiencies and pointed these out to the State.

On June 25, 1984, Texas advised OSM that it would require a six-month extension of the deadline for resubmission of a blaster program in order that Texas might adequately address and respond to the issues raised by OSM. Texas requested the six-month extension in order to prepare documentation on the issues raised by OSM and to prepare any necessary revisions and additions to the program. Texas also requested suspension of the current rulemaking on this subject.

In the August 2, 1984 **Federal Register** (49 FR 30972), OSM sought comment on suspension of the current rulemaking and a six-month extension for Texas to resubmit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending September 5, 1984. No comments were submitted to OSM during the comment period.

Section 850.12(b) of the Federal regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

#### Director's Determination

In accordance with the State's request, the Director has decided to suspend the current rulemaking and extend the deadline for Texas to submit a proposed blaster training program until March 21, 1985 to resubmit rules governing a blaster certification and training program consistent with Federal requirements.

#### Additional Determinations

*1. Compliance With the National Environmental Policy Act*

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

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

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

*3. Paperwork Reduction Act*

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

#### List of Subjects in 30 CFR Part 943

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

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

Dated: September 18, 1984.

John D. Ward

*Acting Director, Office of Surface Mining.*

## PART 943—TEXAS

30 CFR Part 943 is amended by adding a new section 943.16 to read as follows:

**§ 943.16 Required program amendments.**

Pursuant to 30 CFR 732.17, Texas is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By March 21, 1985, Texas shall submit for OSM's approval

(1) rules governing the training, examination and certification of blasters and

(2) a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[FR Doc. 84-25114 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-05-M

## 30 CFR Part 950

## Notice of Extension of Deadline for Submission of Program Amendments to the Wyoming Permanent Program

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

**ACTION:** Final rule.

**SUMMARY:** OSM is announcing its decision to extend the deadline for Wyoming to (1) promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. Wyoming requested a six month extension of time until October 14, 1984, for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program within twelve months after program approval or within twelve months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State a six-month extension of time to submit a proposed blaster certification program.

**EFFECTIVE DATE:** September 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 328-5830.

**SUPPLEMENTARY INFORMATION:**

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Wyoming, the applicable date is 12 months after publication of the Federal rules, or April 14, 1984.

Wyoming advised OSM that it would be unable to meet the April 14, 1984 deadline and requested an additional six months to develop and adopt a blaster certification program.

The Wyoming Department of Environmental Quality, Land Quality Division, the regulatory authority for Wyoming's program submitted to OSM a request for a six month extension until October 14, 1984, to submit final rules addressing the blaster certification program. Additional time was needed in order to develop the blaster certification program in conjunction with the Office of the Wyoming Mine Inspector and Western Wyoming College and to execute a "Memorandum of Understanding" with both parties.

In the August 2, 1984 **Federal Register** (49 FR 30973), OSM proposed an extension until October 14, 1984 for Wyoming to submit to OSM final rules addressing the blaster certification program. Public comment on this proposal was sought for 30 days ending September 4, 1984. No comments were submitted to OSM during the comment period.

### Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for Wyoming to submit a proposed blaster certification program until October 14, 1984. This extension will allow the Wyoming Department of Environmental Quality, Land Quality Division, to develop, in conjunction with the Office of the Wyoming Mine Inspector and Western Wyoming College, an adequate blaster training and certification program.

### IV. Additional Determinations

*1. Compliance With the National Environmental Policy Act*

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

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

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

*3. Paperwork Reduction Act*

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

### List of Subjects in 30 CFR Part 950

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

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

Dated: September 18, 1984.

**John D. Ward,**

*Acting Director, Office of Surface Mining.*

## PART 950—WYOMING

30 CFR Part 950 is amended by adding a new section 950.16 to read as follows:

**§ 950.16 Required program amendments.**

Pursuant to 30 CFR 732.17, Wyoming is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By October 14, 1984 Wyoming shall submit for OSM's approval

(1) rules governing the training, examination and certification of blasters and

(2) a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[FR Doc. 84-25115 Filed 9-20-84; 8:45 am]
BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-4-FRL-2675-6]

### Prevention of Significant Deterioration (PSD) of Air Quality; Supplemental Delegation of Authority to North Carolina

**AGENCY:** Environmental Protection Agency.

**ACTION:** Delegation of Authority.

**SUMMARY:** On September 16, 1976, the State of North Carolina requested partial delegation of the Prevention of Significant Air Quality Deterioration (PSD) program from EPA. On November 24, 1976, EPA granted such delegation to the State. A review of the above request for partial delegation, EPA's granting of delegation, and EPA's February 23, 1982, approval of North Carolina's PSD regulation (2D .0530) at 47 FR 7836, has led us to the conclusion that further delegation of EPA's PSD authority should be delegated to the State. This notice addresses delegation of EPA's authority to issue modifications to Federally issued PSD permits. By letter dated June 8, 1984, the State of North Carolina was delegated authority to modify Federally issued PSD permits in the State.

**EFFECTIVE DATE:** This supplemental delegation of authority to North Carolina was effective on June 8, 1984.

**ADDRESSES:** Copies of the requests for the delegation of authority and EPA's letters of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365.

All requests for modifications to Federally issued PSD permits in the State of North Carolina should be submitted to: Mr. Fin Johnson, Chief, Air Quality Section, Division of Environmental Management, North Carlina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

**SUPPLEMENTARY INFORMATION:** On September 16, 1976, the State of North Carolina requested partial delegation of the Prevention of Significant Air Quality Deterioration (PSD) program from EPA. On November 24, 1976, EPA granted such delegation to the State. On February 23, 1982, EPA approved North Carolina's PSD regulation, 2D .0530, at 47 FR 7836. Our review of the aforementioned has led us to the conclusion that further delegation of part of EPA's PSD authority should be made to the State. This notice addresses delegation of EPA's authority to issue modifications to Federally issued PSD permits.

In the State of North Carolina's original request for PSD authority, they asked that a condition be included to make it clear that PSD permits issued by EPA to sources in North Carolina would continue to rest within the authority of EPA.

In EPA's November 26, 1976, response, the Agency reserved "authority under 40 CFR 52.21(e)(1)(v) (1977) to take final action on an application," i.e., to issue the permit. (Since there are no different formal procedures for issuing modifications to PSD permits set forth in the PSD regulations, EPA looks generally to the procedures for original issuance in modifying permits.)

Furthermore, EPA's November 1976 delegation reserved "its authority to take enforcement action under 40 CFR 52.21(e)(2) (1977)," in a related response to North Carolina's September 1976 concerns, and EPA also reserved ultimate authority "on any matter involving interpretation of 40 CFR 52.01 and 52.21 . . ."

The North Carolina PSD regulation (2D .5530) which EPA approved on February 23, 1982, at 47 FR 7836, is silent on the issue of authority to modify EPA-issued permits and the notice itself implies that the State's PSD permitting authority under that regulation is *prospective only:* EPA's approval of these regulations means that the State of North Carolina will *now* have authority to issue PSD permits to sources *locating* in the State." (Emphasis added.)

Significantly, even this authority is not completely transferred to the State since, as the notice explains, under certain contingencies having to do with the State's 90-day processing requirements, the authority to issue (or modify) PSD permits in the State—even to modify those the State originally issued—will revert to EPA.

On February 7, 1984 the State of North Carolina submitted a preliminary determination and proposed to approve a modification to a Federally issued PSD permit (PSD-NC-058) for the Diamond Shamrock Corporation located in Castle Hayne, North Carolina. Since the original partial delegation of authority and subsequent adoption of PSD regulations as part of the State Implementation Plan (SIP) were silent on the issue of whether the State has legal authority to modify Federally issued permits, EPA concluded that the State should be the lead agency for issuing modifications to Federally issued PSD permits.

By letter dated June 8, 1984, EPA notified the State of North Carolina of its decision to delegate authority to the State to modify Federally issued PSD permits within the State, subject to the limitations set forth immediately herein above.

This supplemental delegation was effective immediately and there was no requirement that the State notify EPA of its acceptance. The June 1984 letter indicated that unless EPA received from the State written notice of objections within ten (10) days of the date of receipt of that letter, the State would be deemed to have accepted all terms of the delegation. No objections were received by EPA from the State.

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

This notice is issued under the authority of sections 101, 110, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, and 7601).

Dated: September 12, 1984.

**Charles R. Jeter,**

*Regional Administrator.*

[FR Doc. 84-24930 Filed 9-20-84; 8:45 am]
BILLING CODE 6560-50-M

### 40 CFR Parts 60 and 61

[Docket No. ACB-NY 8401; A-2-FRL-2675-7]

### Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); Delegation of Authority to the State of New York

**AGENCY:** Environmental Protection Agency.

**ACTION:** Delegation of Authority.

**SUMMARY:** Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS) and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS). On March 8, 1984, in accordance with the agreement set out in EPA's previous delegation letter of July 14, 1983 (48 FR 46535, October 13,

1983), EPA informed the State of New York of those additions, changes and revisions which had occurred since the last delegation (from June 10, 1984 through January 31, 1984) and offered delegation of those additions, changes and revisions which EPA determined the State of New York had the authority to implement and enforce. On May 29, 1984, the State of New York accepted delegation of the new NSPS subparts and the revisions to the previously delegated NSPS and NESHAPS standards which EPA offered in its March 8, 1984 letter. The State of New York now has authority to implement and enforce these standards. Applications, reports and other submittals required under these regulations should now be sent to the State's Department of Environmental Conservation.

**EFFECTIVE DATE:** June 6, 1984.

**ADDRESSES:** Applications, reports and other submittals required under those NSPS and NESHAPS categories for which the State of New York has delegation should be addressed to the appropriate regional office of the New York State Department of Environmental Conservation or the central office at 50 Wolf Road, Albany, New York 12233, Attention: Division of Air, Bureau of Source Control.

**FOR FURTHER INFORMATION CONTACT:** F. W. Giaccone, Chief, Air Compliance Branch, EPA Region II, telephone (212) 264-9627 or FTS 264-9627.

**SUPPLEMENTARY INFORMATION:** On July 10, 1983 EPA and the New York State Department of Environmental Conservation (DEC) entered into a delegation agreement whereby, among other things, EPA would offer, every six months, delegation of those new categories of NSPS and NESHAPS standards that were promulgated by EPA during that six month period and that EPA found DEC had the authority to implement and enforce. Additionally, by this July 10, 1983 delegation agreement, EPA was to inform DEC of any changes or revisions to previously delegated NSPS or NESHAPS categories. Subsequently, DEC would accept delegation of these changes and revisions if DEC did not decline such delegation.

On March 8, 1984, EPA informed DEC of the new NSPS categories and those changes to previously delegated NSPS and NESHAPS categories.

On April 18, 1984 and again on May 29, 1984, the DEC responded to EPA's offer of delegation of the new NSPS Subparts RR, WW, and XX and the previously undelegated NSPS Subparts D and GG by accepting delegation of these NSPS Subparts. DEC also accepted delegation of all changes and revisions to the previously delegated NSPS and NESHAPS categories. DEC now has the authority to implement and enforce all NSPS and NESHAPS standards promulgated prior to February 1, 1984 except the following:

**NSPS**

40 CFR Part 60 Subpart Da
40 CFR Part 60 Subpart VV

**NESHAPS**

40 CFR Part 61 Subpart M 145, 146, 147, 150 & 152

Effective immediately, all applications, reports, correspondence and other submittals required under the categories of NSPS and NESHAPS delegated to the State of New York should be sent to the address listed above.

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: August 28, 1984.

**Richard T. Dewling,**

*Acting Regional Administrator.*

[FR Doc. 84-24931 Filed 9-20-84; 8:45 am]

**BILLING CODE 6560-50-M**

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**40 CFR Part 147**

**[WH-FRL-2567-6]**

## North Dakota Department of Health; Underground Injection Control Program Approval

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; Approval of State Program.

**SUMMARY:** The State of North Dakota has submitted an application under section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, III, IV, and V injection wells. After careful review of the application and comments received from the public, the Agency has determined that the State's program to regulate Classes I, III, IV, and V injection wells meets the requirements of section 1422 of the Act. Therefore, this application is approved.

**EFFECTIVE DATE:** This regulation shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on October 5, 1984, and shall become effective on that date.

**FOR FURTHER INFORMATION CONTACT:** Patrick A. Crotty, Chief, Ground Water Section, Drinking Water Branch, Water Management Division, U.S. Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295. PH (303) 837-2731. Copies of the responsiveness summary of the public hearing are available from the above address.

**SUPPLEMENTARY INFORMATION:** Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which in his judgment a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of North Dakota was listed as needing a UIC program on June 19, 1979 (44 FR 35288). The State submitted an application under section 1422 on November 12, 1982, for the approval of a UIC program governing Classes I, III, IV, and V injection wells. The program would be administered by the North Dakota Department of Health (NDDH). On December 23, 1982, EPA published notice of its receipt of the application, requested public comments, and scheduled a public hearing on the North Dakota UIC program submitted by the (47 FR 57302). A public hearing was held on January 25, 1983, in Bismark, North Dakota.

After careful review of this application, I have determined that the North Dakota UIC program submitted by the NDDH to regulate Classes I, III, IV, and V injection wells meets the requirements of section 1422 of the SDWA, and hereby approve it. The

effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of North Dakota.

This approval will be codified in 40 CFR Part 147.1751. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA.

In this application, North Dakota chooses not to assert jurisdiction over Indian lands or reservations for purposes of its UIC program. Therefore, the EPA will, at a future date, prescribe a UIC program governing injection wells on any Indian lands or reservations.

Since this approval, in large part, simply ratifies State regulations and requirements already in effect under State law, EPA is publishing this approval effective immediately. This will enable North Dakota to begin immediately issuing UIC permits for Classes I, III, IV, and V injection wells under the Federally approved program. Currently there are 2 Class I wells, 4 Class III wells, and approximately 96 Class V wells in the State.

### List of Subjects in 40 CFR Part 147

Indians—lands, Water Supply, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Incorporation by reference.

### OMB Review

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

### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under section 1422 of the Safe Drinking Water Act of the application by the North Dakota Department of Health will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: September 5, 1984.

**William D. Ruckelshaus,**

*Administrator.*

Title 40 of the Code of Federal Regulations is amended as follows:

## PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

### Subpart JJ—North Dakota

Amend 40 CFR Part 147 by revising § 147.1751 and by adding and reserving § 147.1752 as follows:

**§ 147.1751 State-administered program—Class I, III, IV, and V wells.**

The UIC program for Class I, III, IV, and V wells in the State of North Dakota, except those on Indian lands, is the program administered by the North Dakota Department of Health, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the **Federal Register** on September 21, 1984; the effective date of this program is October 5, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Dakota. This incorporation by reference was approved by the Director of the Federal Register effective October 5, 1984.

(1) North Dakota Century Code Sections 38–12–01, 38–12–03 (1980);

(2) North Dakota Century Code Sections 61–28–02, 61–28–06 (Supp. 1981);

(3) North Dakota Administrative Code Sections 33–25–01–01 through 33–25–01–18 (North Dakota State Health Department Underground Control Program) (1983);

(4) North Dakota Administrative Code Sections 43–02–02–01, 43–02–02–12, 43–02–02–16 through 43–02–02–26, 43–02–02–29, 43–02–02–31, 43–02–02–35 (North Dakota Geological Survey Subsurface Mineral Exploration and Development) (1978);

(5) North Dakota Administrative Code Sections 43–02–02–1–01 through 43–02–02–1–18 (North Dakota Geological Survey—Undergound Injection Control Program) (1984);

(b) *Other Laws.* The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program;

(1) North Dakota Environmental Law Enforcement Act of 1975, North Dakota Century Code Sections 32–40–01 to 32–40–11 (1976);

(2) North Dakota Century Code, Ch. 38–12 (Regulation, Development, and Production of Subsurface Minerals) (1979);

(3) North Dakota Century Code Ch. 61–28 (Control, Prevention, and Abatement of Pollution of Surface Waters) (1981);

(4) North Dakota Administrative Code Article 33–22 (Practice and Procedure) (1983).

(c) The Memorandum of Agreement between EPA Region VIII and the North Dakota Department of Health, signed by the EPA Regional Administrator on May 18, 1984.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

**§ 147.1752 EPA-administered program—Indian lands. [Reserved]**

(42 U.S.C 300, Safe Drinking Water Act, Sec. 1422)

[FR Doc. 84–23929 Filed 9–20–84; 8:45 am]

BILLING CODE 6560–50–M

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### 40 CFR Part 261

**[SWH–FRL–2676–1]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Wastes

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is today granting final exclusions for the solid wastes generated at three particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "site-specific basis" from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous waste under 40 CFR Part 261.

**EFFECTIVE DATE:** September 21, 1984.

**ADDRESS:** The public docket for these final exclusions is located in Room S–212A, U.S. Environmental Protection Agency, 401 M Street SW., Washington D.C. 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free (800) 424–9346 or at (202) 382–3000. For technical information contact Mr. Myles Morse, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M

Street, SW., Washington, D.C. 20460. (202) 475–8551.

**SUPPLEMENTARY INFORMATION:** On March 9, 1984, EPA proposed to exclude specific wastes generated by: (1) Union Carbide Corporation, located in Taft, Louisiana; (2) Kay-Fries, Inc., located in Stoney Point, New York; and (3) the Metropolitan Sewer District of Greater Cincinnati (MSD), located in Cincinnati, Ohio from the lists of hazardous wastes (see 49 FR 8962). This action was taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their waste from hazardous waste control. In their petitions, these companies have argued that the waste, for which the exclusion was requested, was nonhazardous based on the criteria for which the waste was listed.

The purpose of today's action is to make final that proposal and to make the exclusions effective immediately. More specifically, today's rule allows these facilities to manage the waste, for which an exclusion was requested, as a non-hazardous waste, in accordance with any conditions of the exclusion. These exclusions remain in effect unless: (1) They are granted for a one-time disposal of a specific volume of waste or (2) the waste varies from that originally described in the petition (*i.e.* the waste is altered as a result of changes in manufacturing or treatment process). [1] In addition, generators still are obliged to determine whether these wastes exhibit any of the characteristics of hazardous waste.

### Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

The final exclusions granted here therefore apply only when the waste is under Federal jurisdiction. In unauthorized States, these wastes are excluded from Federal control. In authorized States, however, only the State can decide whether to exclude a hazardous waste from the State RCRA program. State control of these wastes thus is not nullified by the granting of a Federal exclusion. Petitioners are urged to contact their State regulatory authority for the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

Union Carbide Corp., Taft, Louisiana
Kay-Fries, Inc., Stoney Point, New York
Metropolitan Sewer District of Greater Cincinnati, Cincinnati, Ohio

## I. Union Carbide Corporation

### *A. Proposed Exclusion*

Union Carbide Corporation (UCC) has petitioned the Agency to exclude approximately 11,000 cubic yards of acrolein-contaminated soil at its facility in Taft, Louisiana from EPA Hazardous Waste No. P003. The contaminated soil was generated as a result of a storage tank rupture and subsequent fire at UCC's facility.

At the time of the initial petition (March 1983), UCC identified two areas of contamination. One area was found to contain acrolein levels far in excess of 20 ppm. A second, outlying area exhibited acrolein levels below 20 ppm and is proposed to be left in place. UCC proposed to treat the area of higher concentration (approximately 6,000 cubic yards of soil) by mixing the soil with lime and aerating it in six inch layers; this treatment, UCC argued, would decrease acrolein levels below 9 ppm. (This treatment already has been completed under an emergency permit issued by EPA Region VI.) The remaining 5,000 cubic yards of soil was claimed by UCC to contain only non-hazardous levels of acrolein (*i.e.*, less than 20 ppm) and would continue to degrade naturally in the environment. (This degradation has occurred, according to tests submitted by the petitioner, and the concentration of acrolein in this area also is less than 9 ppm.)

In support of their petition, UCC submitted information demonstrating that their contaminated soil is not acutely hazardous, that the degradation rate of acrolein in lime-treated soil is rapid (*i.e.*, the treatment employed by UCC would destroy the contaminant of concern), and that human exposure to acrolein from these wastes would be extremely low based on a modeling effort, using reasonable worst case assumptions, that calculated the fate and transport of acrolein to surface water (via filtration and stormwater runoff), to ground water (via infiltration), and to air (via long and short-term wind dispersion). In addition, UCC submitted representative field sampling data indicating that the acrolein already had degraded to very low levels. (Although not required, UCC also submitted data demonstrating that this soil does not contain other toxic components.) See 49 FR 8963–8964 (March 9, 1984), for a more detailed explanation of why EPA proposed to grant UCC's petition.

### *B. Agency Response to Comments*

Two comments were received regarding Union Carbide's proposed exclusion. One commenter expressed concern that the initial concentration of acrolein in the soil at the site had not been reported and without this data an optimal cleanup strategy could not be determined.

It should be noted that the concentration of acrolein in the lime-treated soil and had been reported by the petitioner from non-detectable (less than 1 ppm) to 9 ppm, while untreated soil contained acrolein concentrations as high as 1000 ppm. The Agency is concerned about the effectiveness of different clean-up strategies; however, this evaluation was not considered as part of the delisting decision. Rather, the cleanup strategy was evaluated by the EPA Regional Office before issuance of the emergency treatment permit.[2]

The delisting petition was evaluated on the merits of whether the residue that resulted from treatment remains hazardous. Based on the data submitted in the petition, the Agency believes that UCC has demonstrated that the waste is non-hazardous.

The other commenter expressed concern over insufficient explanation of the treatment process, lack of pilot scale verification, and the need for additional sampling to assure that there was less than 9 ppm of acrolein in the soil.

The Agency believes that a more detailed description of the treatment process is not necessary since the treatment process simply involves excavation of the contaminated soil, mixing with lime, and respreading the mixture in 6 inch layers. UCC, however, did investigate the effect of several bases, soil moisture, and field application method on the polymerization rate of acrolein.[3] The

[1] The current exclusion only applies to the process covered by the original demonstration. A facility may file a new petition if it alters its process; however, the facility must treat its waste as hazardous until a new exclusion is granted.

[2] A long evaluation process of different treatment methods was not practical. Since base-catalyzed polimerization of acrolein is rapid and effective at removing acrolein, the Region issued UCC the emergency treatment permit using that method.

[3] This information was submitted as Confidential Business Information (CBI) by Union Carbide.

results of this investigation indicated that the proposed treatment method was very effective at removing acrolein from soil. Again, the actual treatment of the contaminated soil was regulated by the conditions of the emergency treatment permit rather than the delisting decision. The treatment method and known half-life of acrolein under alkaline conditions along with sampling data in Union Carbide's petition, however, support the claim that acrolein is rapidly degraded. Therefore, the Agency believes that the description of the process and field verification data submitted by Union Carbide are reasonable and representative and feels that additional explanation and demonstration are not necessary.

With respect to additional sampling, the Agency believes that the sampling plan used by UCC was more than adequate. An imaginary grid was used as prescribed by *Test Methods for Evaluating Solid Waste (SW–846)*, to collect in excess of 100 non-biased samples. UCC sampled the damage area completely, that is, rather than collecting from random sampling points from the grid, all intersecting grid points were sampled. After treatment these samples showed such extremely low variability that the Agency is able to characterize the acrolein level in the contaminated soil as less than 2 ppm, with a ninety-five percent degree of confidence.

*C. Final Agency Decision*

Based on the low concentrations of acrolein in these soils (*i.e.*, less than 9 ppm in both areas),[4] the low likelihood of human exposure to acrolein in these wastes using a reasonable worst case disposal scenario,[5] and the relatively short half-life of acrolein (less than 22 days), the Agency is granting a final exclusion from EPA Hazardous Waste No. P003 to Union Carbide for approximately 11,000 cubic yards of contaminated soil from both areas, as described in their petition.

**II. Kay-Fries, Inc.**

*A. Proposed Exclusion*

Kay-Fries has petitioned the Agency to exclude its filter press sludge and its biological aeration sludge (presently contained in its holding lagoon) from EPA Hazardous Waste Nos.: F003 and F005 based on their non-ignitability and on the low concentration of the listed solvents in these wastes.[6] All solvents used in Kay-Fries' process are recovered actively within the process, with the exception of methanol, thus allowing only minor volumes of the solvents to enter the wastewater treatment system. In addition, it is claimed that all these solvents are easily degraded in the biological aeration lagoon used by Kay-Fries. (See 49 FR 8964–8965, March 9, 1984 for a more detailed explanation of why EPA proposed to grant Kay-Fries' petition.)

*B. Agency Response to Public Comments*

There were no comments on the proposed exclusion of these wastes.

*C. Final Agency Decision*

Kay-Fries' claim were substantiated. First, representative samples of these wastes tested for ignitability demonstrated that the wastes exhibited no flash point. Secondly, analyses of filter press samples and the lagoon sludge indicated maximum toluene concentrations of 0.1 ppm and 0.149 ppm, respectively. These levels are far below that which would be considered significant.[7] (See 49 FR 8964.) (Kay-Fries also submitted data on the other non-listed hazardous constituents which reasonably may be expected to be present in the waste. This data indicated that no other hazardous constituents were present in these wastes at concentrations of regulatory concern.)

Based on the non-ignitability of the waste and the low levels of toluene in the wastes, the Agency is granting a final exclusion to Kay-Fries, Inc. for its biological aeration lagoon sludge (contained in their holding lagoon) and its filter press sludge from EPA Hazardous Waste Nos. F003 and F005 at its Stoney Point, New York facility. This exclusion remains in effect as long as Kay-Fries does not alter the processes which generate the waste.

**III. Metroplitan Sewer District of Greater Cincinnati**

*A. Proposed Exclusion*

The Cincinnati Metropolitan Sewer District (MSD) has petitioned the Agency to exclude (on a one-time basis) sluiced bottom ash contained in two on-site lagoons. MSD burns hazardous wastes F001, F002, F003, F004, and F005 along with sewage sludge.[8] The mixed ash is slurried with wastewater from the municipal wastewater treatment plant and pumped to the lagoons for de-watering. MSD has requested delisting for the contents of both lagoons, which together contain approximately 50,000 cubic yards of ash.

MSD claims that the ash in these lagoons is non-hazardous due to the destruction of the hazardous constituents during combustion. MSD further claims that 99.75 percent of the incinerated waste which produces this ash is municipal waste, while only 0.25 percent of the incinerated waste is inductrial waste (of which a smaller percentage are the listed hazardous wastes). MSD also provided data which indicates non-detectable concentrations of the listed solvents, except for methylene chloride; methylene chloride levels ranged from non-detectable to 1.9 ppm in the ash (See 49 FR 8965). (MSD also submitted data on the other listed hazardous constituents which reasonably may be expected to be present in the waste. This data indicated

[4] The Agency has evaluated the chronic toxicity of acrolein and has established an Acceptable Daily Intake for humans of 1.1 mg/day. (See Summary of Current Acceptable Daily Intakes (ADI's) for oral exposure, Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, Cincinnati, Ohio, November 29, 1983). If all the acrolein in the soil migrates at the same time (a worst case assumption) the maximum concentration of acrolein in the leachate will be about 18 mg/l, assuming a maximum soil concentration of 9 mg/kg and a soil pore volume of 50%. Attenuation and dilution are expected to reduce the concentration of acrolein in the leachate by at least one to two orders of magnitude, *i.e.*, to less than 1.8 mg/l. Furthermore, acrolein is expected to hydrolize in water; thus, reducing even further the concentration expected in the drinking water, to less than the ADI. The Agency, therefore, considers the maximum levels of acrolein in the soil, 9 mg/kg, relatively low.

[5] The model used by UCC, although site-specific, is consistent with other models (*i.e.*, Darcy's Law for ground and surface water and a Gaussian Distribution Model for air) developed by the Agency for similar evaluations. As part of the Agency's evaluation, since site-specific factors cannot be considered, various generalized worst case parameters were substituted into the models to determine whether there was any potential for acrolein to reach levels of concern. The Agency used much lower dilution factors (10% of what was claimed by UCC), assumed no degradation of acrolein during transport, and used higher soil permeabilities (10 × higher than values measured at the site). By using non-site-specific worst case values, the agency determined that the concentration of acrolein in the ground and surface waters and the air at the site still would be less than any health based standard.

[6] In particular, the two sludges Kay-Fries requested be excluded contained the following solvents: F003-ethyl acetate, methyl isobutyl ketone, and methanol; and F005-toluene. Both sludges contain the F003 and F005 wastes. Toluene is the only solvent in the F005 listing, used by Kay-fries. Its concentration in the waste is primarily of concern due to toxicity. The other solvents used are listed only because of their ignitability.

[7] The Agency has established an Ambient Water Quality Criteria for toluene of 14.3 mg/l (See Ambient Water Quality Criteria for Toluene, EPA 440/5–80–075, October 1980). If all of the toluene in the waste migrates at the same time (a worst case assumption), the maximum concentration of toluene in the leachate will be about 0.4 mg/l, assuming a maximum waste concentration of 0.2 mg/kg and an average waste pore volume of 50%. Since the maximum leachate concentration is well below the water quality criteria the Agency feels the level of toluene in these wastes are relatively low.

[8] In particular, MSD has requested exclusion of the sluiced ash which contains all the solvents listed in F001, F002, F003, and F005 in the two impoundments.

that the waste contained in the South Lagoon contains certain polynuclear aromatic compounds (PNAs) which may be of environmental concern.) See 49 FR 8965–8966 (March 9, 1984), for a more detailed explanation of why EPA proposed to grant MSD's petition.

*B. Agency Response to Public Comments*

One commenter raised serious concerns over the presence of the PNAs in MSD's waste in the South Lagoon and the potential harm the waste may present to human health and the environment because of their known or suspected carcinogenicity. In addition, the commenter was concerned that the Agency had not yet performed the necessary studies to determine whether the PNAs should be added as a basis for listing the waste.

The Agency believes that the concentration of known or suspected carcinogenic PNAs in the sluiced ash contained in the North Lagoon are not of regulatory concern since only very low levels of the PNAs were found in the waste (see Agency Decision below). The Agency has not determined yet, however, whether the level of PNAs found in the waste of the South Lagoon are of environmental concern. Therefore, the Agency shares the commenter's concern and is defering any action until those PNA levels (*i.e.*, chrysene 17.5 ppm, benzo(a)pyrene 16.66 ppm, etc.) can be further evaluated. At this time, the Agency has not completed its investigation to determine whether these toxicants should be included as a basis for listing. We expect, however, to make this determination over the next several months. At that time, we will decide whether to modify the listing; until this decision is made, however, we believe it inappropriate to exclude the waste from regulatory control.

*C. Final Agency Decision*

The Agency believes that MSD has demonstrated successfully that the sluiced bottom ash contained in the North Lagoon is non-hazardous due to very low levels of the listed solvents. All of the analyses provided by MSD indicated non-detectable levels of solvents in the waste (except for methylene chloride); the maximum level of methylene chloride found in the waste (*i.e.*, less than 2.0 ppm) also is not considered significant.[9] The data submitted by MSD for the other hazardous constituents found in the waste also indicates that the ash is non-hazardous and, as such, the Agency believes should be excluded from hazardous waste control.[10]

Therefore, the Agency is granting a final exclusion to MSD for the waste contained in the North Lagoon (which contain EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005) at its Cincinnati, Ohio location.

The Agency also believes that the level of solvents found in the South Lagoon are not of regulatory concern. As discussed earlier, however, the Agency has concerns about the potentially toxic level of PNAs in the South Lagoon. Since the Agency is considering including these toxicants as a basis for listing this waste, the Agency is *not* making any final decision on the sluiced bottom ash contained in the South Lagoon. This analysis will include a review of available toxicity information, the determination of specific retardation factors for PNAs on soils and ash, and an evaluation of PNA concentrations in various types of incineration ash. The Agency is planning to complete this study in the fall and is, therefore, delaying its decision until this comprehensive analysis can be conducted. Therefore, the waste in the South Lagoon remains hazardous and must be managed in accordance with the Subtitle C hazardous waste regulations.

## IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions to the regulations take effect six months after promulgation. The purpose of this requirement is to allow persons handling hazardous waste sufficient lead time to prepare to comply with major new regulatory requirements. Today's amendment, however, reduces, rather than increases, the existing requirements for persons generating hazardous waste. In addition, if the amendment promulgated today did not become effective for six months after promulgation there would be unnecessary disruption in the implementation of the regulation. In light of the hardship that would be imposed by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, EPA believes it appropriate to make this rule effective immediately. In addition, for the reasons stated above, EPA believes that under 5 U.S.C. 553(d) this rule may be made effective immediately.

## V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

[9] The Agency has evaluated the chronic toxicity of methylene chloride and has established an Acceptable Daily Intake for humans of 13 mg/day. (See Summary of Current Acceptable Daily Intakes (ADI's) for oral exposure, Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, Cincinnati, Ohio, November 29, 1983). If all of the methylene chloride in the waste migrates at the same time (a worst case assumption) the maximum concentration in the leachate will be about 4 mg/1, assuming a maximum concentration of 2 mg/kg in the waste and an average waste pore volume of 50%. Attenuation and dilution are further expected to reduce the concentration of methylene chloride by one to two orders of magnitude, *i.e.*, to less than 0.40 mg/1. Since this concentration is one order of magnitude less than the ADI, the Agency considers the maximum level of methylene chloride in the ash, 2 ppm, relatively low.

[10] The concentrations of PNAs in the waste in the North Lagoon ranged from non-detectable (*i.e.*, less than .01 ug/gm) to a maximum of 0.47 ug/gm (see 49 FR 8966, March 9, 1984). The Agency's Office of Health and Environmental Assessment (OHEA) Carcinogen Assessment Group (CAG) has evaluated 54 chemicals for their relative carcinogenic potencies (see Health Assessment Document for Ethylene Oxide, EPA 600/8–84–009A, April, 1984) and has determined that the slope of the dose response curve for Benzo(a)pyrene is 11.5 mg/kg/day. Since the risk of obtaining one additional cancer is equal to the product of the slope of the curve and the dose, there would be one additional cancer in a million at a dose of .006 ug/day for an average adult. It is also known, however, that PNAs are very insoluble in water, and are strongly absorbed on particulates, which renders them immobile. There retardation factors are usually estimated to be well in excess of 1000. (See the RCRA Risk Cost Analysis Model, March 1, 1984.) Therefore, assuming other PNAs behave similarly to benzo(a) pyrene, the Agency believes that these wastes, which contain less than 6 ug/gm of PNAs, are not of regulatory concern.

This regulation, therefore, does not require a regulatory flexibility analysis.

This action is exempt from review under Executive Order 12291.

### VI. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: September 12, 1984.

**Jack W. McGraw,**

*Acting Assistant Administrator.*

### PART 261—[AMENDED]

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

1. The authority citation for Part 261 read as follows:

**Authority:** Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912, 6921, and 6922].

2. Section 261.31 is amended by adding the following introductory text before the table to read as follows:

**§ 261.31 Hazardous wastes from non-specific sources**

The following solid wastes are listed hazardous wastes from non-specific sources unless they are excluded under §§ 260.20 and 260.22 and listed in Appendix XI.

* * * * *

3. Section 261.32 is amended by adding the following introductory text before the table to read as follows:

**§ 261.32 Hazardous wastes from specific sources**

The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under §§ 260.20 and 260.22 and listed in Appendix IX.

* * * * *

4. Section 261.33 is amended by revising the introductory text to read as follows:

**§ 261.33 Discarded commercial chemical products, off-specification species, container residues and spill residues thereof.**

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded unless they are excluded under §§ 260.20 and 260.22 and listed in Appendix IX.

* * * * *

5. Appendix IX is added to Part 261 to read as follows:

### Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| Kay-Fries, Inc. | Stoney Point, NY. | Biological aeration lagoon sludge and filter press sludge generated after September 21, 1984, which contain EPA Hazardous Waste Nos. F003 and F005 as well as that disposed of in a holding lagoon as of September 21, 1984. |
| Metropolitan Sewer District of Greater Cincinnati. | Cincinnati, OH. | Sluiced bottom ash sludge (approximately 25,000 cubic yards), contained in the North Lagoon, on September 21, 1984, which contains EPA Hazardous Wastes Nos. F001, F002, F003, F004, and F005. |

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| (Reserved) | | |

TABLE 3.—WASTES EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

| Facility | Address | Waste description |
|---|---|---|
| Union Carbide Corp. | Taft, LA | Contaminated soil (approximately 11,000 cubic yards), which contains acrolein in concentrations of less than 9 ppm. |

[FR Doc. 84-24929 Filed 9-20-84; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 300

**[SWH-FRL-2646-2]**

## Amendment to National Oil and Hazardous Substance Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. This document amends the National Priorities List ("NPL"), which was promulgated as Appendix B of the NCP on September 8, 1983. CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, and contaminants throughout the United States, and that the list be revised at least annually. The NPL constitutes this list and is being revised to meet those requirements.

**DATES:** The promulgation date for this amendment to the NCP shall be September 21, 1984. Under section 305 of CERCLA, amendments to the NCP cannot take effect until Congress has had at least 60 "calendar days of continuous session" from the date of promulgation in which to review the amended Plan. Since the actual length of this review period may be affected by Congressional action, it is not possible at this time to specify a date on which the NPL will become effective. Therefore, EPA will publish a **Federal Register** notice at the end of the review period announcing the effective date of this NPL. EPA notes, however, that the legal effect of a Congressional veto pursuant to section 305 has been placed in question by the recent decision, *Immigration and Naturalization Service* v. *Chadha*, 103 S. Ct. 2764 (1983). Nonetheless, the Agency has decided, as a matter of policy, to submit the NPL for Congressional review. If, however, public health or environmental concerns indicate the necessity for the Agency to initiate remedial action at any of the sites that have been placed on the NPL before the expiration of the time period specified in section 305, such actions will be taken.

**ADDRESSES:** The public docket for the NCP will contain Hazard Ranking System (HRS) score sheets for all sites on the NPL, as well as a "Documentation Record" for each site, describing the information used to compute the scores. The main docket is located in Room S325, Waterside Mall, 401 M Street, SW, Washington, DC 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for copies of these documents should be directed to EPA at the above address. The EPA Regional Offices maintain dockets concerning the sites located in their Regions. Addresses for the Regional Office dockets are:

Peg Nelson, Region I, U.S. EPA Library, John F. Kennedy Federal Bldg., Boston, MA 02203, 617/223-5791;

Audrey Thomas, Region II, U.S. EPA Library, 26 Federal Plaza, 10th Floor, New York, NY 10278, 212/264-2881;

Diane McCreary, Region III, U.S. EPA Library, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, 215/597-0580;

Carolyn Mitchell, Region IV, U.S. EPA Library, 345 Courtland Street, NE, Atlanta, GA 30365, 404/881-4216;
Lou Tilly, Region V, U.S. EPA Library, 230 South Dearborn Street, Chicago, IL 60604, 312/353-2022;
Nita House, Region VI, U.S. EPA Library, First International Building, 1201 Elm Street, Dallas, TX 75270, 214/767-7341;
Connie McKenzie, Region VII, U.S. EPA Library, 324 East 11th Street, Kansas City, MO 64106, 816/374-3497;
Delores Eddy, Region VIII, U.S. EPA Library, 1860 Lincoln Street, Denver, CO 80295, 303/844-2560;
Jean Circiello, Region IX, U.S. EPA Library, 215 Freemont Street, San Francisco, CA 94105, 415/974-8076;
Julie Sears, Region X, U.S. EPA Library, 1200 6th Avenue, Seattle, WA 98101, 206/442-1289.

**FOR FURTHER INFORMATION CONTACT:**

C. Scott Parrish, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548-E), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, Phone (800) 424-9346 (or 382-3000 in the Washington, DC, metropolitan area).

**SUPPLEMENTARY INFORMATION:**

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III—Implementation
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VIII—Updates and Deletions
IX—Regulatory Impact Analysis
X—Regulatory Flexibility Act Analysis

## I. Introduction

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601-9657 ("CERCLA" or "the Act"), and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180). Those amendments to the NCP implemented responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, and contaminants.

Section 105(8)(A) of CERCLA requires that the NCP includes criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

Section 105(8)(B) of CERCLA requires that these criteria be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States, and that to the extent practicable at least 400 sites be designated individually on this National Priorities List (NPL). Section 105(8)(B) also requires that the list of priorities be revised at least annually. EPA has included on the NPL releases and threatened releases not only of designated hazardous substances, but of any "pollutant or contaminant" which presents an imminent and substantial danger to the public health or welfare. CERCLA requires that the NPL be included as part of the NCP. On September 8, 1983, EPA amended the NCP by adding the NPL, consisting of 406 sites, as Appendix B. On that same day, EPA proposed to amend Appendix B to add an additional 133 sites to the NPL. Of that number, four sites (San Gabriel Sites 1, 2, 3 and 4) have already been added to the NPL on May 8, 1984. Today, the Agency is revising Appendix B by adding 128 sites to the NPL. The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

## II. Purpose of the NPL

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d. Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site on the NPL is intended primarily to guide EPA in determining which sites warrant further investigation in order to assess the nature and extent of the public health and environmental risks associated with the site and to determine what response action, if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake response actions. Moreover, listing does not require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site.

In addition, although the HRS scores used to place sites on the NPL may be helpful to the Agency in determining priorities for cleanup and other response activities among sites on the NPL, EPA does not rely on the scores as the sole means of determining such priorities, as discussed below. Neither can the HRS itself determine the appropriate remedy for a site. The information collected to develop HRS scores to choose sites for the NPL is not sufficient in itself to determine the appropriate remedy for a particular site. After a site has been included on the NPL, EPA generally will rely on further, more detailed studies conducted at the site to determine what response, if any, is appropriate. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies EPA may conclude that it is not desirable to conduct response action at some sites on the NPL because of more pressing needs at other sites. Given the limited resources available in the Hazardous Substance Response Fund established under CERCLA, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that no action is needed at a site because the site does not present a significant threat to public health, welfare or the environment.

## III. Implementation

EPA's policy is to pursue cleanup of hazardous waste sites using all appropriate response and/or enforcement actions which are available to the Agency. Publication of sites on the NPL will serve as notice to any potentially responsible party that the Agency may initiate Fund-financed response action. The Agency will decide on a site-by-site basis whether to take enforcement action or to proceed directly with Fund-financed response

actions and seek recovery of response costs after cleanup. To the extent feasible, once sites are listed on the NPL EPA will determine high priority candidates for Fund-financed response action and enforcement action through State or Federal initiative. The determinations will take into account which approach is more likely to accomplish cleanup of the site while using the Fund's limited resources as efficiently as possible.

In many situations, it is difficult to determine whether private party response through enforcement measures of Fund-financed response and cost recovery will be the more effective approach in securing site cleanup until studies have been completed indicating the extent of the problem and alternative response actions. Accordingly, the Agency plans to proceed with remedial investigations and feasibility studies at sites as quickly as possible. (See the NCP, 40 CFR 300.68, and the preamble, 47 FR 31180, July 16, 1982, for a more detailed discussion of remedial investigations and feasibility studies.)

Funding of response actions for sites will not necessarily take place in order of the sites' ranking on the NPL. EPA does intend in most cases to set priorities for remedial investigations and feasibility studies largely on the basis of relative position on the list and the States' priorities simply because at this early stage these may be the only sources of information regarding the risks presented by a site. Funding for the design and construction of remedial measures is less likely, however, to be done according to relative position on the list. State assurances that cost sharing and other State responsibilities will be met are prerequisites for construction of remedial measures. Taking those factors into account, EPA will base priorities for design and construction on impacts on public health and the environment, as indicated by the HRS scores and other available information, and on a case-by-case evaluation of economic, engineering, and environmental considerations.

Revisions to the NPL such as today's rulemaking will tend to result in moving some previously listed sites to a lower position on the NPL. If EPA has initiated remedial action such as a remedial investigation or feasibility study at a site, the Agency does not intend to cease such actions in order to determine whether a subsequently listed site should have a higher priority for funding. Rather, the Agency will continue funding remedial actions once they have been initiated regardless of whether higher scoring sites are later added to the NPL.

The NPL does not determine priorities for removal actions; EPA may take removal actions at any site, whether listed or not, that meets the criteria of §§ 300.65–300.67 of the NCP. Likewise, EPA may take enforcement actions under applicable statutes against responsible parties regardless of whether the site is listed on the NPL, although the focus of EPA's enforcement actions will be on NPL sites.

## IV. Process for Establishing the NPL

Section 105(8) of the CERCLA contemplates that the States will identify the majority of candidate sites for the NPL according to EPA criteria, although EPA also has independent authority to consider sites for listing. For that reason, most of the sites on the NPL were evaluated by the States in accordance with the HRS and submitted to EPA. In some cases, however, EPA Regional Offices, independent of these State efforts, scored other sites using the HRS. For all sites considered for this update of the NPL, including those scored by the States, EPA reviewed the HRS evaluations and conducted quality assurance audits. These audits are intended to ensure accuracy and consistency in HRS scoring among the various EPA and State offices.

On September 8, 1983, EPA proposed the first revision to the NPL in the Federal Register (48 FR 40674). Of the 133 sites proposed, 131 had received HRS scores of 28.50 or higher; one site was designated by the State as its top priority and, according to CERCLA, must be included among the top 100 sites; and one site was proposed for listing on the basis of a future NCP amendment which will delineate additional criteria for listing sites on the NPL. The cutoff score of 28.50 points was the same cutoff chosen for the initial NPL (see 47 FR 58476, December 30, 1982, and 48 FR 40658, September 8, 1983). The cutoff score was selected because it would yield an initial NPL of at least 400 sites as suggested by CERCLA, not because of any determination that sites scoring less than 28.50 did not present a significant risk to human health, welfare or the environment.

The public comment period on the proposed rule ended November 8, 1983. EPA considered all comments received by March 30, 1984. Based on the comments received on the September 8, 1983, proposed rule, as well as further investigation by EPA and the States, EPA recalculated the HRS scores for individual sites where appropriate. EPA's response to public comments and explanations of any score changes made as a result of such comments, are addressed in the "Support Document for the Revised National Priorities List—1984." This document is available for review in the EPA dockets in Washington, DC and the Regional Offices.

One commenter disagreed with EPA's approach for selecting sites for the NPL update. The commenter was concerned over the lack of a permanent and consistent rationale for the NPL cutoff score of 28.50. The commenter said that the threshold should be based on risk, not on the need to include a specified number of sites. The commenter suggested that EPA should begin to address this issue for long-range planning purposes in its implementation of CERCLA. The commenter expressed concern that EPA and others may "erroneously assume there is an automatic need to continually replenish the list." The commenter said that if sites posing minimal or non-existent risks continue to be added to the NPL, the public could be misled about the nature of the risks, and unnecessary demands could be placed on public and private resources.

In response, EPA selected the 28.50 score for the initial NPL because it would yield a list of at least 400 sites as required in section 105(8)(B) of CERCLA. The decision to retain the 28.50 cutoff score for the first update was based on the absence of any scientific evidence of an alternative HRS threshold score. EPA has not made a determination that sites scoring less than 28.50 do not present a significant risk to human health, welfare, or the environment.

The HRS was designed to use information such as that collected during a site inspection in order to allow EPA to include sites which have not been extensively investigated. As stated in the Preamble to the NCP (47 FR 31188), the requirements of section 105(8)(A) of CERCLA to list national priorities would not be met if EPA waited until extensive information has been generated for all releases. Consequently, the HRS does not measure absolute risks associated with a site. EPA believes that such a risk assessment would require significantly greater time and funds than are presently required for placing a site on the NPL. The HRS does distinguish relative risks among sites and does identify sites that appear to present a significant risk to public health, welfare, or the environment.

A much more detailed investigation is conducted following a site's listing on the NPL. Decisions on the type and

extent of actions to be taken at these sites are made in accordance with the criteria contained in subpart F of the NCP. These more detailed studies would determine if sites posing minimal or nonexistent risks had been included on the NPL. In response to the commenter's concerns, EPA could conclude after further analysis that no action is needed at such a site because it does not present a significant threat to public health, welfare, or the environment.

EPA has initiated a preliminary study to characterize the potential threats from sites that score below the cutoff score of 28.50. Generally, these are sites that potentially affect fewer people, or where there is less opportunity for exposure. EPA has acknowledged that in limited circumstances it may be appropriate to consider other criteria than simply a sufficiently high HRS total score for purposes of listing sites on the NPL. These criteria, described in the Preamble to the first NPL update (48 FR 40676, September 8, 1983) were the basis for proposing the Quail Run Mobile Manor, Missouri site for inclusion on the NPL. Although the NCP does not currently include provisions to add sites on the basis of these criteria, EPA intends to modify the NCP in such a way that Quail Run and other similar sites will qualify for the NPL.

EPA considered several alternatives for adding sites to the NPL: (1) Maintaining the size of the list at approximately 400 sites by raising the threshold HRS score and removing lower-scoring sites from the list; (2) allowing the list to expand in a limited way by raising the threshold score but not removing lower-scoring sites from the list; and (3) maintaining the threshold score of 28.50 and allowing the size of the NPL to be determined by the number of sites exceeding the threshold score. EPA selected the third approach in order to be consistent at all sites and to give equal treatment to all interested parties. EPA's decision was not based on a need to replenish the list. The list is growing because EPA and the States continue to identify candidates as a result of their investigative programs.

Some commenters stated that certain specific sites not included in the September 8, 1983, proposed rule should be on the NPL. EPA and States are evaluating those sites and will propose any sites that meet EPA's criteria in future updates.

## V. Contents of the NPL

As noted above, CERCLA requires that the NPL include, if practicable, at least 400 sites. The NPL amendment published today contains a total of 538 entries, including 128 new sites. Each entry contains the name of the facility, the State and city or county in which it is located, and the corresponding EPA Region. For informational purposes, each entry is accompanied by a notation on the current status of response and enforcement activities at the site. The definitions of the status codes are described more fully below.

The new sites added to the NPL are incorporated into the previously promulgated NPL in order of their HRS score (except where EPA modified the order to reflect top priorities designated by States, as discussed in the following paragraph). Those new sites are also listed separately in Table 2. The NPL is presented in groups of 50 sites to emphasize the fact that minor differences in HRS scores do not necessarily represent significantly different levels of risk. EPA considers the sites within a group to have approximately the same priority for response actions.

Section 105(8)(B) of CERCLA requires that, to the extent practicable, the NPL include within the 100 highest priorities at least one facility designated by each State as representing the greatest danger to public health, welfare, or the environment among known facilities in the State. The Agency did not require States to rely exclusively on the HRS in designating their top priority sites, and the HRS scores of some of these sites did not place them among the first 100. These lower-scoring State priority sites are listed at the bottom of the first 100 sites. All top priority sites designated by States are indicated by asterisks.

For informational purposes, the NPL includes several categories of notation reflecting the status of response and enforcement actions based on the Agency's most current information. Because a site's status may change periodically, these notations may become outdated. Site status will be noted in the following categories: Voluntary or Negotiated Response (V); Federal and State Response (R); Federal or State Enforcement (E); and Actions to be Determined (D). Each category is explained below.

*Voluntary or Negotiated Response (V)*

Sites are included in the Voluntary or Negotiated Response category if private parties are taking response actions pursuant to settlement agreements or consent orders to which EPA is a party. Voluntary or negotiated cleanup may also include actions taken pursuant to a consent decree reached after EPA has commenced an enforcement action. This category of response may include remedial investigations, feasibility studies, and other preliminary work, as well as actual cleanup.

*Federal and State Response (R)*

The Federal and State Response category includes sites at which EPA or State agencies have commenced or completed removal or remedial actions under CERCLA, including remedial investigations and feasibility studies (see NCP, § 300.68 (f)–(i), 47 FR 31217, July 16, 1982). For purposes of this classification, EPA considers the response action to have commenced when EPA has obligated funds. For some sites in this category EPA may follow remedial investigations and feasibility studies with enforcement actions, at which time the site status would change to "Federal or State Enforcement."

*Federal or State Enforcement (E)*

This category includes sites where the United States or the State has filed a civil complaint or issued an administrative order. It also includes sites at which a Federal or State court has mandated some form of non-consensual response action following a judicial proceeding. It does not, necessarily, include all sites at which preliminary enforcement activities are underway. A number of sites on the NPL are the subject of enforcement investigation or have been formally referred to the Department of Justice for enforcement action. EPA's policy is not to release information concerning a possible enforcement action until a lawsuit has been filed. Accordingly, such sites are not included in the enforcement category.

*Actions to be Determined (D)*

This category includes all sites not listed in any other category. A wide range of activities may be in progress for such sites. The Agency may be considering whether to undertake response action, or may be conducting an enforcement investigation. EPA may have referred a case involving the site to the Department of Justice prior to formal commencement of enforcement action. Other examples of actions not covered in other categories include investigations to determine the source of a release in areas adjacent to or near a Federal facility or cleanup operations by responsible parties that are not covered by consent orders, consent decrees, or settlement agreements.

## VI. Eligibility

CERCLA restricts EPA's authority to respond to the release of certain substances into the environment, and

explicitly excludes some substances from the definition of release. In addition, as a matter of policy, EPA may choose not to respond to certain types of releases under CERCLA because existing regulatory or other authority under other Federal statutes provides for an appropriate response. Where such other authorities exist, and the Federal government can undertake or enforce cleanup pursuant to a particular established program, listing on the NPL to determine the priority or need for response under CERCLA may not be appropriate. EPA has therefore chosen not to consider certain types of sites for the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency will consider listing them on the NPL.

This section discusses the comments received on these categories of releases and the Agency's decisions with respect to including them on the NPL.

*Releases of Radioactive Materials*

Section 101(22) of CERCLA excludes several types of releases of radioactive materials from the statutory definition of "release." These releases are therefore not eligible for CERCLA response actions or inclusion on the NPL. The exclusions apply to the following: (1) Releases of source, by-product or special nuclear material from a nuclear incident if these releases are subject to financial protection requirements under section 170 of the Atomic Energy Act; and (2) any release of source, by-product, or special nuclear material from any processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Accordingly, such radioactive releases have not been considered eligible for the NPL. As a policy matter, EPA has also chosen not to list releases of source, by-product, or special nuclear material from any facility with a current license issued by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has full authority to require cleanup of releases from such facilities. Formerly licensed facilities whose licenses no longer are in effect will, however, be considered for listing.

Some commenters took issue with EPA's position on releases of radioactive materials in presenting the following arguments: (1) EPA should not include facilities on the NPL that hold a current license issued by a State pursuant to a delegation of authority from the NRC pursuant to section 274 of the Atomic Energy Act (42 U.S.C. 2021); (2) EPA should not include sites containing radioactive materials on the NPL because other Federal authorities, such as UMTRCA, provide adequate authority to control releases from such sites; and (3) HRS scores do not accurately reflect the real hazards presented by radioactive sites especially when the releases are within radiation limits established by NRC pursuant to the Atomic Energy Act. These comments reiterate points made when the first NPL was published. EPA's response (48 FR 30661, September 8, 1983) remains unchanged. Regarding the points that facilities regulated by States should not be included on the NPL, one commenter said that EPA is incorrect as to the control exercised by the NRC in such agreement States and that such State controls are adequate. EPA on the other hand believes that if such controls are adequate, then the sites will not have sufficiently high HRS scores to warrant including them.

*Releases From Federal Facilities*

CERCLA section 111(e)(3) prohibits use of the Fund for remedial actions at Federally owned facilities. EPA has not listed any sites where the release clearly resulted solely from a Federal facility, regardless of whether contamination remains on-site or has migrated off-site. EPA did, however, consider eligible for inclusion on the NPL sites where it was unclear whether the Federal facility was the sole source of contamination based on the rationale that if some other source were also responsible, EPA might be authorized to respond. In these situations, the off-site contaminated area associated with this type of release was considered eligible for inclusion. Sites previously, but not currently, owned by the Federal government were also considered eligible. Finally, sites not owned by the Federal government but where the Federal government may have contributed to a release were also eligible.

EPA chose not to list releases coming solely from Federal facilities because EPA lacks response authority and because Executive Order 12316 (46 FR 42237, August 20, 1981) assigns the responsibility for cleanup of these sites to the responsible Federal agency. EPA incorporated this position into the NCP, at § 300.66(e)(2) (47 FR 31215, July 16, 1982). However, after further consideration of this policy, the Agency concluded that it may be useful for informational purposes to include Federal facility sites on the NPL and will propose a future amendment to the NCP to permit the Agency to do so. EPA intends to consider Federal facilities in the next update proposal.

*Indians Lands*

Sites on Indian lands are currently eligible for inclusion on the NPL. EPA is developing a discovery and investigation program for evaluating potential sites on Indian lands. The Agency urges commenters to submit information on any sites which they feel may need to be evaluated for future updates to the NPL.

*RCRA Sites*

As stated in EPA's previous NPL rulemaking (48 FR 40658, September 8, 1983), both CERCLA and the Resource Conservation and Recovery Act (RCRA) contain authorities applicable to hazardous waste facilities. These authorities overlap for certain sites. Accordingly, where a site consists only of regulated units of a RCRA facility operating pursuant to a permit or imterim status, it will not be included on the NPL but will instead be addressed under the authorities of RCRA except as provided in the paragraph that follows. The Land Disposal Regulations under RCRA (40 CFR Parts 122, 260, 264, and 265) gives EPA and the States authority to control active sites through a broad program which includes monitoring, compliance inspections, penalties for violations, and requirements for postclosure plans and financial responsibility. RCRA regulations require a contingency plan for each facility. The regulations also contain ground water protection standards (40 CFR Part 264 Subpart F) that cover detection monitoring, compliance monitoring (if ground water impacts are identified) and corrective action for releases within the boundaries.

These monitoring and corrective action standards apply to all "regulated units" of RCRA facilities, i.e., any part of the waste treatment, storage, or disposal operation within the boundaries of the facility that accepted waste after January 26, 1983, the effective date of the Land Disposal Regulations (47 FR 32349, July 26, 1982). Even if the unit ceases operation after this time, EPA has the authority to require it to obtain a permit, and the monitoring and corrective action requirements could therefore be enforced by this mechanism. Given this alternative authority to ensure cleanup, regulated units of RCRA facilities generally are not included on the NPL. If the facility is abandoned or lacks sufficient resources and the RCRA corrective action requirements cannot be enforced, EPA will consider listing the site on the NPL for possible response under CERCLA. This policy is applicable not only to

sites subject to EPA-administered hazardous waste programs but also to sites in States that administer programs approved by EPA. In the latter instance, close Federal control is ensured by the comprehensiveness of the program elements required of all State programs along with EPA's authority to enforce State program requirements directly if the State fails to do so. EPA does, however, consider eligible for listing on the NPL those RCRA facilities where a significant portion of the release appears to come from "non-regulated units" of the facility (that is, portions that ceased operation prior to January 26, 1983).

*Releases of Mining Wastes*

Some commenters expressed their views that CERCLA does not authorize EPA to respond to releases of mining wastes and, therefore, sites involving mining wastes should not be included on the NPL. The commenters argued that it is unclear if CERCLA was intended to address the type of waste problem, characterized by low concentrations and large volumes, associated with mining waste. The commenter believed the HRS is not an appropriate tool to estimate the risk to health and the environment presented by mining waste sites. Finally, the commenters stated that the mining waste sites are generally in rural areas, so that no sizable target populations are affected.

These comments also were received during the previous rulemaking and EPA's response to these comments (48 FR 40663, September 8, 1983) remains unchanged. Some commenters raised a new issue related the EPA's authorities to respond to mining sites; that is, certain sites do not pose imminent hazards, thus, should not have been included on the NPL or are not eligible. EPA believes that if the substance involved at a site is a "hazardous substance," the Agency can respond to any release, or any threatened release, without any need to determine that a threshold level of hazard is present. With respect to pollutants or contaminants, EPA does not agree that response authority is limited to releases that pose an imminent and substantial danger. Section 104(a)(1)(B) of CERCLA clearly states that response is authorized for any release that "may" present an imminent and substantial danger, and is not limited to those that actually do present such danger. More importantly, response is authorized not only for releases, but for any "substantial threat of release." As one example, the East Helena site in Montana presents at least a substantial threat of release, as indicated by the fact that its HRS score was based on the potential for a release, which resulted in a score high enough to place it on the NPL.

Regarding the issue of whether the HRS is appropriate for evaluating mining sites, one commenter elaborated on the point that HRS does not use information on the concentrations of the substances involved and that mineral substances do not pose the same risks as man-made chemicals. In response, the commenters have presented no information that would support a contention that concentrations of hazardous substances in discharges from mining sites are lower than from other types of sites or are too low to cause problems. The toxicity values specified in the HRS instructions, including those for mineral substances, are derived from standard references in the field of toxicology. Concentrations at which various health effects occur are the basis for assigning toxicity values to various mineral substances. The fact that these standard texts assign the highest toxicity values to some mineral substances contradicts the position set forth by the commenter. Furthermore, EPA believes that there is ample evidence that the concentrations and amounts of pollutants and contaminants discharged by mining sites can and do have a significant impact on public health and the environment. As the commenter pointed out, mining sites tend to generate extremly large quantities of wastes. Thus, even if the concentration of hazardous substances in the wastes are low, as the commenter contends, the total quantities of substances available to be discharged into the environment are high. Finally, as the commenter's own studies demonstrate, the two most important factors in determining whether a mining site is included on the NPL are whether the site is known to be discharging into the environment and the size of and distance to the potentially affected populations. EPA believes that these are reasonable factors to use in assessing sites.

*Sites Which May Be Cleaned Up by Responsible Parties*

Some commenters said that EPA should not include on the NPL those sites associated with known active waste sources with identified responsible parties because such listing misrepresents the amount of Fund money required for response actions and may give an unduly negative impression with respect to ongoing cleanup activities. One commenter suggested deleting from the NPL sites undergoing such cleanups. Another commenter said that EPA should not include on the NPL those sites where the responsible parties are "acting appropriately." Other commenters said that EPA should not have included certain sites on the NPL because responsible parties had concluded agreements with State agencies or the Federal government providing for response actions.

In developing the policy on eligibility for the NPL, EPA considered several alternatives for excluding sites where private parties might be performing cleanup. The Agency decided, however, that making such exclusions was not the best approach, taking into account the purpose of the NPL as stated in the legislative history of CERCLA, the objectives of protecting public health and the environment, and the need to administer the program consistently. The NPL is primarily for informational purposes (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)). The Agency believes that even where a site is undergoing response actions, interested parties such as neighboring residents may need to know about the threats posed by that site relative to other sites. In addition, the Agency believes that including sites on the NPL until appropriate cleanup actions have been completed will provide more incentives for early and effective actions than the alternatives such as excluding sites where responsible parties have agreed to begin cleanup. Another consideration is that the comprehensiveness and effectiveness of such agreements will vary considerably among States, and in some cases agreements may not be completely consistent with the standards of the NCP. Excluding sites on the basis of the financial resources of responsible parties may establish a dual standard that is unfair to small businesses. Furthermore, some financially viable responsible parties have refused to undertake response actions. Finally, excluding sites on the basis of financial resources of potentially responsible parties would necessitate identification of those parties and comparison of their resources with potential cleanup costs before listing them on the NPL, which EPA believes would significantly increase the costs of the NPL, and seriously delay its implementation. Accordingly, consistent with previous Agency policy, EPA has decided not to exclude any sites based on the financial resources of responsible parties or their willingness to respond to releases.

*Sites Which Are Difficult to Address*

One commenter said that "unbounded or unmanageable sites, such as well fields" should not be included on the NPL. In response, EPA believes that unless a remedial investigation and feasibility study has been completed at a site, it is not possible to specify whether a site presents a manageable problem. Furthermore, at many of those sites where commonly applied remedial actions are infeasible, some response actions short of waste removal or source controls, e.g., providing alternative water supplies, may be appropriate. EPA believes that the technologies for response actions have been developing rapidly; a response which was infeasible in the past may become feasible in the near future. Finally, with the case specifically mentioned, wellfields, the Agency has generally found the need for CERCLA response particularly acute since this generally involves contamination of public water supplies. Hence, EPA has not attempted to exclude sites which are especially difficult to address through current response technologies.

*Noncontiguous Facilities*

Section 104(d)(4) of CERCLA authorizes the Federal government to treat two or more noncontiguous facilities as one for purposes of response, if such facilities are reasonably related on the basis of geography or their potential threat to public health, welfare, or the environment. As previously stated (48 FR 65058, September 8, 1983), for purposes of the NPL, EPA has decided that in most cases such sites should be scored and listed individually because the HRS scores more accurately reflect the conditions at the sites if each is scored individually. In other cases, however, the nature of the operation that created the sites and, possibly, the nature of the appropriate response may indicate that two geographically separate properties should be treated as one site for purposes of listing. EPA has done so for some sites previously listed separately on the NPL.

Factors relevant to such a determination may include whether the two or more areas were operated as parts of a single unit. Another factor is whether contamination from the two or more sites is threatening the same part of an aquifer or surface water body. Finally, EPA will also consider the distance between the noncontiguous sites and whether the target population (i.e., within 3 miles) is essentially the same or substantially overlapping for the sites.

One commenter, Governor Bond of Missouri, submitted the 33 known dioxin sites in that State as a single site on the NPL. Using characteristics from various sites, he assigned a single HRS score to the 33 sites. Governor Bond maintained that the dioxin was produced by a single waste generator and that the sites had a common method of disposal. According to the Governor, by treating the sites individually EPA has complicated negotiations for health studies, development of cost recovery suits, and the State's accounting procedures.

EPA carefully considered the Governor's proposal and, taking into account the factors discussed above, decided that his reasons did not warrant consolidating the 33 sites into a single site. The sites are dispersed over a wide area of the State and affect different target populations. The 33 sites generally comprised different disposal operations rather than parts of the same facility. Many of the 33 sites would not individually score high enough to be on the NPL and, thus, the overall score for the 33 sites would be misleading. EPA has also concluded that listing the 33 sites as a single site on the NPL is not a prerequisite for developing a consolidated response strategy for the Missouri dioxin sites. Many of these sites may qualify for Fund-financed removal actions. The Agency is currently evaluating ways of coordinating possible response strategies at these sites to alleviate the problems which Governor Bond has identified.

Another commenter expressed the view that any grouping of noncontiguous sites would be inappropriate. EPA disagrees. In some instances the property boundaries or other factors commonly used to define a site may not be very useful or reasonable for determining if a problem involves one site or several. One example is the Minker/Stout/Romaine Creek site in Missouri where dioxin contaminated soils were used as fill in several yards in a residential neighborhood. Even though the contaminated areas are not contiguous and the properties involved have several different owners, the Agency determined that the site was really a single operation, that the same target populations might be affected, and that there is no logic to support treating the various areas as separate sites. Given the many factors involved in making such determinations and the differing importance that each factor may take on in various situations, the Agency must weigh each situation individually to determine if noncontiguous disposal areas are a single site or several.

Where EPA determines, based on the above considerations, that two or more noncontiguous locations are most logically considered as a single site, they will appear as a single site on the NPL. While the listing suggests prospective response actions, it does not prescribe them; EPA may decide that response efforts should be distinct and separate for the two locations. Also, EPA may decide to respond to several sites listed separately on the NPL with a single response if it appears cost-effective to do so.

*Scoring of Air Releases*

A comment was received concerning how past air releases are scored. Language in the preamble to the final NCP caused a commenter on the Bayou Sorrell, Louisiana site to question whether past air releases may properly be included in a site's HRS score. This issue is discussed in detail in the "Support Document for the revised National Priorities List—1984" for the Bayou Sorrell site. However, the main points of this issue are presented in the following discussion.

EPA believes that past air releases are included in a site's HRS score. The HRS stipulates that a site is to be scored for an air release if data "show levels of a contaminants at or in the vicinity of the facility that significantly exceed background levels, regardless of the frequency of the occurrence (47 FR 31236). According to the HRS as established in the NCP revisions, therefore, the single evidence of an air release such as that which occurred at Bayou Sorrell, requires that the site be scored as having an observed release to air. This approach to scoring has been clarified by EPA's stated policy that sites are to be scored on the basis of conditions existing before any remedial measures were performed. This policy was clearly stated at the time of promulgation of the NCP revisions (47 FR 31188), and EPA considers it to be firmly established as part of the HRS. In addition, the Agency has attempted to clarify further the reasons for this policy in subsequent statements (48 FR 40664-5).

Several considerations underlie the policy. Actions by States to conduct or enforce cleanup might be discouraged if partial cleanup of a site could reduce the score such that the site would not be eligible for the NPL.

Another concern is that responsible parties might be encouraged to conduct minimal, incomplete cleanup actions at sites that might reduce the HRS score

but fail to remedy the problems completely. For example, a site may present problems in all three routes—ground water, surface water, and air, and only the air route is remedied. In such a situation, because the partial cleanup could leave significant health threats unaddressed, the site would not be scored on the basis of the latest conditions, but rather on the basis of conditions existing prior to the remedy of the air route (48 FR 40664).

A third consideration is that the HRS was designed according to the reasonable approximations of risk that could be derived from certain basic conditions at a site as they existed prior to any cleanup actions. Where the data on a site reflect conditions after some cleanup actions, the assumptions upon which the HRS was designed may no longer be appropriate, and the score would not represent an approximation of risk that is accurate or consistent with scores for other sites. All three of these considerations are explained in detail in the preamble to the initial NPL (48 FR 40664–5).

Another consideration is that the level of scrutiny provided by the HRS and the NPL listing process, while sufficient to provide a general approximation of risks and comparison among sites, is not sufficiently detailed to evaluate the adequacy of cleanup actions. The HRS was designed to take into account as many factors regarding the condition of sites and the risk they present as can be considered simply and for many sites across the country. It does not take into account factors that the Agency believes would require sophisticated data or analysis. In developing the HRS, EPA considered evidence that a release above background has occurred is relatively easily determined. However, the Agency determined that evidence as to whether past cleanup actions are sufficient to have eliminated the release and potential for future releases is much more difficult to obtain and evaluate, and therefore chose not to include consideration of this factor in the HRS. Likewise, the Agency decided not to require evidence of frequency and continuation of a release, as explained in the promulgation of the HRS (47 FR 31188). To do otherwise would render the NPL process unnecessarily expensive and time-consuming, which would divert funds from cleanup activities and impede the progress of the program. EPA recognizes that these considerations are very relevant to determining the risks presented by a site and the remedies, if any, that should be conducted. Factors of this type, however, are intended to be evaluated after the NPL listing process has identified a limited number of sites as potential problems. Having taken this approach in the HRS, EPA must apply it consistently to individual sites.

A commenter on the Bayou Sorrell, Louisiana site cited preamble language which states that "air releases must currently exist, must be measured, and must not be caused by disturbances from investigations" (47 FR 31189). EPA believes that the commenter took this language out of context. Read in context, it in no way contradicts the Agency's policies of scoring on the basis of a single observation and scoring on the basis of conditions existing before any cleanup actions.

The portion of the preamble (47 FR 31189) containing this language was written in response to comments arguing that the HRS should provide for scoring for the potential of a release, rather than only scoring when an actual release is observed. The HRS does score for potential releases in the ground water and surface water routes if no actual release has been observed. For the air route, however, EPA believed that evidence of the potential for an air release could not be easily established and would be too tenuous a possibility to warrant taking it into account. Therefore, in order to calculate any score at all for the air route, an actual release must be observed. By stating that air releases must "currently exist," EPA was attempting to explain that the release must have actually occurred, rather than being merely a potentiality. This interpretation is consistent with the actual HRS instructions, which require "data that show levels of a contaminant at or in the vicinity of the facility that significantly exceed background levels, regardless of the frequency of occurrence" (47 FR 31236).

Any other interpretation of this language would be illogical. If the word "current" were to be interpreted as meaning "today," then an observed release to air would have to be continually updated and redocumented. This would not only entail considerable expense but would also allow the assignment of an observed release to the air to be negated by a removal or remedial action. The Agency has consistently scored sites on the basis of conditions before removal or remedial actions, as explained in 48 FR 40664.

## VII. Changes From the Proposed NPL

The Agency received a total of 128 comments on the proposed NPL update. Of these, 112 comments pertained to 50 of the proposed sites. The remainder of the comments addressed sites that were not proposed or generic or technical issues that were not site specific. General comments on the NPL are addressed throughout this preamble. Significant comments regarding specific sites are addressed in the "Support Document for the Revised National Priorities List—1984." A number of the site-specific comments addressed similar issues, and EPA's rationale for addressing those issues is presented in this section. Many of the issues raised in comments are the same as those raised previously and discussed in the previous final rulemaking on the NPL (48 FR 40658, September 8, 1983). The Agency's positions on these issues remains unchanged.

### *Waste Quantity*

A number of commenters said that the waste quantity values assigned under the HRS were too high because EPA had included the non-hazardous constituents of the hazardous substances in calculating the quantity of waste located at the facility. Commenters raised similar issues when the first NPL was published (48 FR 40658, September 8, 1983), and EPA's response remains unchanged.

### *Consideration of Flow Gradients*

In some instances commenters maintained that, based upon their conclusions regarding prospective movement of contaminants in ground waters, the values assigned by EPA to population served by ground water are too high. The commenters said that EPA should only count the population using those wells which they believed would be affected by the releases. As was the case with the waste quantity issue, this issue was addressed and resolved when the NPL was first promulgated (48 FR 40658). The rationale for the Agency's approach is futher discussed in the preamble to the NCP (47 FR 31190–91, July 16, 1982) and is equally applicable now. The HRS specifies that all the population using the aquifer of concern within 3 miles of the facility should be included in the calculations of population served by ground water. The Agency's approach is based on the difficulty of predicting precisely the movements of ground water based on the limited amount of data consistently avaliable at the time of HRS scoring. Furthermore, in establishing the rating scales, the Agency took into account the fact that most wells within 3 miles would not be affected. If EPA were to establish rating scales based only on the populations that have been or are certain to be affected, the scales would have assigned high values for much smaller populations then those specified

in the current HRS. Another consideration is that population using the aquifer is a measure of the value of the ground water to the local population. Thus, even if EPA determines at a specific site that currently operating wells will not be affected, taking current water use into account is important because it allows the Agency to indirectly estimate the potential uses of the resource.

*Scoring on the Basis of Current Conditions*

Many commenters felt that EPA should take current conditions into account when scoring sites where response actions have reduced the hazards posed by the site. For the ground water, surface water, and air pathways, EPA scored sites for inclusion in the NPL based on the hazards that existed before any response actions were initiated. This policy was explained in the preamble to the final revisions to the NCP (47 FR 31187, July 16, 1982). At that time the Agency explained that public agencies might have been discouraged from taking early response if such actions could lower the HRS score and prevent a site from being included on the NPL. Another reason, stated in the Preamble to the NCP, is that EPA does not want to encourage incomplete solutions that might leave significant health threats unaddressed. EPA is also concerned that if a site is rescored taking the response actions into account, the drop in score that may result might not reflect a commensurate reduction in the level of risk presented by a site. EPA has elaborated on this rationale in the Preamble to the previous NPL final rule (48 FR 40658, September 8, 1983), and the Agency's position remains unchanged.

Where response actions have already been initiated by private parties or another agency, listing such sites will enable EPA to evaluate the need for a more complete response. Inclusion on the NPL therefore does not reflect a judgment that responsible parties are failing to address the problems. The Agency believes, therefore, that this approach is appropriate, and consistent with the purpose of the NPL as stated in the legislative history of CERCLA.

This policy is also relevant to evaluating the waste management practices at a facility for the purpose of assigning a score for the "containment" factor as a part of the "Route Characteristics" score for a site. Some commenters said the EPA should have considered corrective actions at sites in assigning containment values. In response, the containment values were designed to allow EPA to evaluate the likelihood of a release occurring in light of the measures taken to prevent such a release (e.g., infiltration controls designed to prevent leachate generation). If such controls are not operational until some time after disposal, then the likelihood of a release is high, and subsequent installation of the controls does not alter that fact. Thus, in scoring the containment factor EPA has considered only those waste management practices that clearly have been applied in a timely manner.

*Small Observed Release*

Some commenters maintained that EPA incorrectly assigned values for observed releases to ground waters because the measured concentrations of the substances involved were below the regulatory limits specified under the Safe Drinking Water Act or other Federal and State laws. Their comments reiterate comments made when the first NPL was published. EPA's response (48 FR 40658, September 8, 1983) remains unchanged.

Some commenters submitted data showing lower concentrations of contaminants in the environment than EPA or the States had found in previous analyses; in some instances the data indicated the absence of any contaminants at the time of sampling. These commenters suggested that EPA had erred in assigning an observed release. In all such instances EPA carefully reviewed the original EPA or State data as well as that furnished by the commenters. In those cases where EPA determined that the original data substantiating the observed releases were valid, EPA assigned values based on that data even if subsequent sampling failed to detect the same contaminants. Such an approach is consistent with the HRS and recognizes that many releases vary in concentration through time or occur sporadically. Thus, negative results during one or more sampling intervals cannot refute a finding, when based on valid sampling and analyses, that an observed release has occurred.

Several commenters questioned the validity of the sampling and analytical data used to establish observed releases, particularly in instances where the amount of contaminant detected in a sample is near the detection limit of the appropriate analytical method. As stated in the HRS (47 FR 31224), the standard requirement for establishing an observed release is that the measured concentration of a contaminant in a sample must be significantly higher than background concentrations of the contaminant in other samples from the site. The methodologies used to establish background levels and to determine significantly higher concentrations are explained below in response to these comments.

In cases in which a specific contaminant is not detected in some site samples, the background level of that contaminant is assumed to be some unknown value less than the detection limit. Any measurable quantity of contaminant in the site samples is considered significantly higher than the background and provides the basis for scoring an observed release. The validity of these assumptions is supported by the statistical analysis used to establish detection limits for the analytical methodology.

In situations in which a specific contaminant is detected in all site samples, an observed release is sometimes more difficult to determine than in the case where the substance is not detected in background samples. Generally, there are insufficient numbers of samples from a site to apply conventional statistical tests for significance. The scorer must often rely on inspection of the data to evaluate whether an observed release has occurred. If the data cluster into a group of high values and a group of lower values, particularly if the high values are attributed to sampling locations that appear to be downgradient of a site, an observed release is confirmed. If the analytical results from only one sampling location are significantly higher than from all other locations, an observed release has also ocurred. However, if the contaminant concentrations are similar among background and monitoring wells within a 10 to 20 percent range, for example, EPA generally cannot state conclusively that an observed release has occurred. In addition, low concentrations (e.g., less than 10 parts per billion) of phthalates and other substances very commonly found in ground water are examined very carefully along with any other evidence that might tend to corroborate or disprove that a release has occurred.

*Summary of Score Changes*

For the 133 sites proposed on September 8, 1983, a total of 14 HRS scores changed on the basis of the Agency's reviews of comments and other information (Table 1). For 12 sites, the changes had no effect on listing; however, some of these changes resulted in the site being placed in different groups. For two sites, final HRS scores were below 28.50 and the sites will not be included on the NPL at this time. For four sites, the Agency is still considering the comments received.

TABLE 1.—HRS SCORE CHANGES

| State city and county | Site name | HRS score | |
|---|---|---|---|
| | | As proposed | Revised |
| **Region II** | | | |
| New Jersey: | | | |
| Shamong Township | Ewan Property | 45.08 | 50.19 |
| Florence Township | Florence Land Recontouring | 58.79 | 47.39 |
| Mount Holly | Landfill & Development Co | 31.03 | 33.62 |
| **Region III** | | | |
| Delaware: Delaware City | Old Brine Sludge Landfill | 40.32 | 14.49 |
| Pennsylvania: Williams Township | Industrial Lane (Chrin) | 41.12 | 42.47 |
| **Region IV** | | | |
| Florida: Medley | Pepper Steel & Alloy | 32.11 | 31.92 |
| **Region V** | | | |
| Indiana: Indianapolis | Reilly Tar & Chemical | 42.92 | 34.03 |
| Minnesota: | | | |
| Faribault: Nutting Truck & Caster. | 42.38 | 37.89 | |
| New Brighton | MacGillis & Gibbs Co./Bell Lumber & Pole Co | 52.53 | 48.33 |
| Ohio: Dayton | Powell Road Landfill | 30.86 | 31.62 |
| Wisconsin: Milwaukee | Moss American | 43.53 | 32.14 |
| **Region VI** | | | |
| Oklahoma: Tulsa County | Compass Industries (Avery Drive) | 33.83 | 36.57 |
| **Region X** | | | |
| Idaho: Pocatello | Pacific Hide & Fur Recycling Co | 44.52 | 42.30 |
| Washington: Roy | Rosch Property | 29.31 | 10.38 |

In addition, on September 8, 1983, EPA deferred rulemaking on a total of seven sites that had been included in the first proposed rule for the NPL, December 30, 1982 (47 FR 58476). Those sites are listed below along with the originally proposed scores and the final scores.

| State | Site name | Proposed score | Final score |
|---|---|---|---|
| Arizona | Kingman Airport Industrial Area. | 40.02 | 8.45 |
| Kentucky | Airco | 35.19 | 33.29 |
| Louisiana | Bayou Sorrel | 45.58 | 34.69 |
| Michigan | Clare Water Supply | 32.38 | 38.43 |
| Michigan | Electrovoice | 29.77 | 35.36 |
| Michigan | Littlefield Township Dumps | 32.09 | 28.48 |
| Michigan | Whitehall Wells | 29.85 | 35.45 |

*Proposed NPL Sites with Scores Below 28.50.* The following sites will not be included on the NPL because the final HRS scores are below 28.50:

*State and Site Name*

Arizona—Kingman Airport Industrial Area (proposed 12/30/82).
Delaware—Old Brine Sludge Landfill.
Michigan—Littlefield Township Dump (proposed 12/30/82).
Washington—Rosch Property.

*Sites Still Under Consideration.* In the case of the following sites, EPA was unable to reach a final decision on listing in time for this publication:

*State and Site Name*

Georgia—Olin Corporation (Areas 1, 2, & 4).
Missouri—Quail Run Mobile Manor.
Oklahoma—Sand Springs.
Texas—Pig Road.

Regarding Quail Run Mobile Manor, the site does not meet the criteria currently specified in the NCP for including a site on the NPL. The Agency does, however, intend to modify the NCP in such a way that Quail Run and other similar sites will qualify for the NPL. Regarding the Sand Springs and Olin Corporation (Areas 1, 2, & 4) sites, EPA has determined that the HRS scoring documents for these sites, on which the September 8, 1983, Notice of Proposed Rulemaking (48 FR 40674) was based, were not in the public docket and were not available to the public during the 60-day comment period for this rule. Thus, EPA is seeking further public comment on these sites for a period of 60 days following publication of this notice. Interested parties may inspect the HRS scoring documents for these sites in the EPA Headquarters or Region IV (Olin Corporation) and Region VI (Sand Springs) dockets. In the case of Pig Road site, the Agency has determined that further sampling and laboratory analysis will be necessary to determine the appropriate HRS scores. Interested persons may obtain copies of that sampling and analysis data when it becomes available by notifying the EPA Region VI docket of their intent to provide further comments on that site. EPA will announce deadlines for comments on the Pig Road site in a later notice. EPA will continue to evaluate these sites and announce its decisions in subsequent NPL rulemaking.

*Name Revision*

In some instances EPA has determined that the names of sites should be revised to more accurately reflect the location or nature of the problem. Those name revisions are listed below:

| State | Site name for proposed NPL | New site name |
|---|---|---|
| New Hampshire | Kearsage Metallurgical Corp. | Kearsarge Metallurgical Corp. |
| New Jersey | Chemical Leaman Tank Liners, Inc. | Chemical Leaman Tank Lines Inc. |
| Texas | Compass Industries. | Compass Industries (Avery Drive) |
| Montana | East Helena Smelter. | East Helena site |

In addition, the name of the Toms River Chemical, New Jersey site promulgated on September 8, 1983 (48 FR 40674) has been changed to the Ciba-Geigy Corporation site.

*Additional Criteria for Listing*

In the September 8, 1983, proposed rule to update the NPL (48 FR 40674), EPA invited comments on the general issue of alternative criteria for selecting sites for the NPL in addition to the HRS and State's top priority designations. EPA has concluded that at some sites remedial actions may be the only adequate response, but that these sites will not score sufficiently high to be included on the NPL. That can occur where the type of problem (e.g., direct contact), is usually addressed through removal actions, and thus the HRS total score does not reflect the associated risks. EPA cited Quail Run Mobile Manor, in Gray Summit, Missouri, as an example and included that site in the proposed update to the NPL. EPA intends to propose an amendment to the NCP to authorize consideration of additional criteria.

Several commenters addressed the issue of additional criteria. One expressed interest in the specifics of the proposed amendment and suggested that it include a clear statement of goals and an explanation of where emergency and removal authority will "prove inadequate." The commenter also suggested that criteria for extraordinary listings require "a demonstration for each proposed site that remedial action, as opposed to other types of response action, is necessary and an actual health threat beyond some threshold exists."

Another commenter stated that EPA's invitation to provide comments on additional criteria for listing "belies the Agency's assertion that the HRS is effective in approximating risks and raises the questions as to the overall validity of the HRS/MITRE model in assessing risks at any site." The same commenter suggested that the additional criteria be the subject of a detailed separate notice of proposed rulemaking, so that the overall effectiveness of the HRS can be examined.

In response, EPA does intend to publish a separate notice of proposed rulemaking revising the NCP to incorporate additional criteria for listing. EPA is developing such a notice, and the comments received so far have been useful for defining the issues. When that rule is proposed, EPA will seek further public comment on the additional criteria. The full scope of that proposed revision has not been determined. EPA disagrees with the commenter's assertion that inviting comment on the additional criteria raises questions regarding the validity of using the HRS to assess risks at any site.

Since EPA is still working on revising the NCP and establishing additional criteria for listing, the Agency will not at this time complete rulemaking on Quail Run, which was included in the September 8, 1983, proposed rule.

**VIII. Updates (Additions and Deletions) to the NPL**

CERCLA requires that the NPL be revised or updated at least once per year. The Agency plans to identify, consider, and propose additional sites for NPL updates as it has in the past. States have the primary responsibility for identifying sites, computing HRS scores, and providing that information to EPA. EPA Regional Offices may assist in investigation, sampling, monitoring, and scoring, and may in some cases consider candidate sites on their own initiative. In advance of each update publication, EPA will notify the States of the closing dates for submission of proposed additions (or deletions, as discussed below) to EPA. EPA will exercise quality control and quality assurance to verify the accuracy and consistency of scoring. The Agency will then propose the new sites that appear to meet the criteria for listing and solicit public comment on the proposal. Based on comments, and any further review by EPA, the Agency will determine final scores and in the next update publication will include on the final NPL any sites that score high enough for listing.

In addition to these periodic updates, EPA believes it may be appropriate in rare instances to add sites to the NPL individually as in the case of the Times Beach site in Missouri.

One commenter said that EPA should clarify whether it will follow notice and comment rulemaking procedures in future updates. The commenter said that such rulemaking might have a substantial impact on private parties and that EPA should adhere to the Administrative Procedures Act. In response, EPA intends to continue seeking public comment prior to final rulemaking on the NPL updates as long as most response actions are not significantly delayed as a result. The Agency reserves the right to depart from that general approach should a situation require expedited rulemaking.

*Deletion of Sites*

There is no specific statutory requirement that the NPL be revised to delete sites. However, EPA has decided to consider deleting sites to provide incentives for cleanup to private parties and public agencies. Furthermore, deleting sites allows the Agency to give notice that the sites have been cleaned up and gives the public an opportunity to comment on those actions. EPA does not consider this policy to be binding, and may revise it to provide for deletion of sites based on other factors in appropriate cases.

EPA will consider deleting sites at which any of the following criteria have been met:

(1) EPA, in consultation with the State, has determined that responsible parties have completed all appropriate response actions.

(2) EPA, in consultation with the State, has determined that all appropriate Fund-financed response actions have been completed and that no further cleanup by responsible parties is appropriate.

(3) Based on a remedial investigation, EPA in consultation with the State has determined that the facility poses no significant threat to public health, welfare, or the environment and, therefore, construction of remedial measures is not appropriate.

Although there are not any deletions included in this rulemaking, EPA intends to publish a notice of proposed rulemaking and solicit public comments on rulemaking actions to delete sites in future updates. EPA is considering some alternative approaches, but for now the Agency will follow the procedures specified in the guidance memorandum, "Interim Procedures for Deleting Sites from the National Priorities List," March 27, 1984. This document is available in the EPA dockets (see addresses section of this announcement).

*Rescoring Sites*

EPA expects that updates to the NPL will be solely for the purposes of adding sites to or deleting sites from the NPL. The current EPA position, which will serve as guidance for individual listing and deletion decisions, is that EPA will not rescore sites that previously had been placed on the NPL.

Several commenters presented suggestions to the contrary. Some recommended that EPA revise HRS scores periodically to reflect the results of cleanup activities, and suggested deleting any site whose HRS score dropped below the cutoff. Other commenters pointed out that new data gathered on a site might alter previous assumptions in scoring, and suggested continual rescoring to reflect any new data for purposes of adjusting a site's position on the list or deleting it if the score fell below the cutoff.

Another commenter suggested that EPA reevaluate all HRS scores, preferably after a thorough site investigation. The commenter said that this process would help assure that sites most in need of remedy would be identified and that the process would allow the deletion of sites placed on the list due to scoring based on incorrect facts.

EPA believes that the current approach of scoring by EPA or the States, EPA quality assurance review, public comment on the scoring, and EPA review of the comments provides adequate safeguards against incorrect site scores. EPA's experience to date indicates that very few scores, if any, would be lowered sufficiently to remove sites from the NPL if EPA were to do as the commenter suggests. On the other hand, many site scores would increase somewhat if the commenters' approach were followed. Moreover, the alternative recommended by the commenter would significantly increase the time and resources needed to develop the NPL.

EPA believes that a number of important factors support its current position that site on the final NPL should not be rescored for future updates. With respect to sites where response actions have been taken, the HRS was not designed to reflect completeness of cleanup, and therefore should not be used as a tool for deleting sites from the list or altering their relative ranking based on response actions. If response actions were taken into account in scoring, the lower HRS score that results might not reflect a commensurate reduction in the endangerment presented by the site. The result might be to delete sites where cleanups have not been completed, thereby removing incentives for further response and giving incentives for selecting cleanups primarily designed to result in score reductions as opposed to risk reductions.

In addition to the foregoing reasons, other considerations justify the current position not to rescore sites after final listing. These considerations apply not only to cleanup situations but also to situations where a score might be

affected by new information about a site or by detection of an error in the original calculations. The process established by EPA for developing the NPL is comprehensive, involving initial scoring, public proposal, consideration of public comment, re-examination of data and scores, final score calculation, and inclusion on the final NPL. Given this level of scrutiny, and the time and expense involved in scoring sites, EPA finds it necessary to rely upon the interested public to identify factors pertinent to HRS score in a timely manner. EPA believes that it is appropriate to consider inclusion of a site on the final NPL to end the scoring process.

Furthermore, as described in Part II of this preamble, the purpose of the NPL is primarily informational, to serve as a tool for EPA to identify sites that appear to present a significant risk to public health or the environment, for purposes of deciding which sites to investigate fully and determine what response, if any, is appropriate. EPA believes that it is most consistent with that statutory purpose to cease the costly and time-consuming efforts of site scoring once a site is on the NPL. Rather than spend the limited resources of the Fund on rescoring, the Agency prefers to use all available resources to clean up sites.

EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process. Since HRS scores alone do not determine the priorities for actual response actions, any new data or revealed errors indicating that a site is either more or less of a problem than reflected in the HRS score will be taken into account and the priority for response adjusted accordingly. If the new information indicates that the site does not present a significant threat to health, welfare, or the environment, the site may meet one of the EPA criteria for deletion regardless of any original or revised HRS score.

In conclusion, EPA does not currently plan to rescore sites once they have been included on the final NPL because: (1) The HRS was not designed to reflect reductions in hazard resulting from cleanup; (2) EPA does not want to create the incentive for incomplete cleanup actions; (3) the Fund must be conserved and focused on further investigation and cleanup; (4) the NPL serves as a guide to EPA and does not determine liability or the need for response; and (5) any new information can be used to adjust response priorities or to delete a site without recalculating the HRS score. Actual decisions on the appropriate treatment of individual sites, however, will be made on a case-by-case basis, with consideration of this policy and any other appropriate factors.

## IX. Regulatory Impact Analysis

The cost of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below, and therefore the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. The EPA has conducted a preliminary analysis of the economic implications of today's amendment to the NCP. The EPA believes that the kind of the economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA. The Agency believes the anticipated economic effects related to adding 128 sites to the NPL can be characterized in terms of the conclusions of the earlier regulatory impact analysis. At proposal, the Agency noted that a more extensive analysis of the economic impacts of the NCP would be prepared in the future and would accompany publication of future major amendments to the NCP. The Agency expects to propose major amendments to the NCP and a more comprehensive economic analysis will be made available for comment at that time.

*Costs*

The EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake response action, nor does it require any action by a private party or determine their liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in a listing rulemaking.

The major events that follow the listing of a site on the NPL are a responsible party search and a Remedial Investigation/Feasibility Study (RI/FS) which determines whether response actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

Costs associated with responsible party searches are generally borne by EPA. Responsible parties may bear some or all the costs of the RI/FS, design and construction, and O&M, or the costs may be shared by EPA and the States on a 90%: 10% basis (50%:50% in the case of state-owned sites). Additionally, States assume all costs for O&M activities after the first year at sites involving fund-financed remedial actions.

Rough estimates of the average total per-site and total costs associated with each of the above activities are presented below. At this time EPA is unable to predict what portions of the total costs will be borne by responsible parties, since the distribution of costs depends on the extent of voluntary and negotiated response and the successfulness of cost recovery actions where such actions are brought.

| Cost category | Average total cost per site * |
|---|---|
| RI/FS | $800,000 |
| Remedial design | 440,000 |
| Remedial action | 7,200,000 |
| Initial remedial measures (IRM) at 10 pct of sites | 80,000 |
| Net present value of O&M (over 30 years) | 4,100,000 |

*1948 U.S. Dollars.

SOURCE: OERR budget figures (assumes $6.5 million Federal share for remedial action).

Costs to States associated with today's amendment arise from the statutory State cost-share requirement of (1) 10 percent of remedial implementation (remedial action and IRM) and O&M costs at privately-owned sites, and (2) 50 percent of the remedial planning (RI/FS and remedial design), remedial implementation and O&M costs at publicly-owned sites. Using the assumptions developed in the 1982 RIA, we can assume that 90 percent of the 128 sites added to the NPL in this amendment will be privately-owned and 10 percent will be publicly-owned. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial actions at all 128 sites would be $212 million.

The act of adding a hazardous waste site to the NPL does not necessarily cause firms responsible for the site to bear costs. Nonetheless, listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary, and made on a case-by-case basis.

Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of response costs, but the Agency considers such factors as: The volume and nature of the wastes contributed; the strength of the evidence linking the wastes at the site to the parties; ability to pay, inequities and aggravating circumstances; and other factors when deciding whether and how to proceed against potentially responsible parties.

Economy-wide effects of this amendment are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this revision on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

*Benefits*

The real benefits associated with today's amendment come in the form of increased health and environmental protection as a result of increased public awareness of potential hazards and the additional response actions at hazardous waste sites. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts to avoid potential adverse publicity, torts, and/or enforcement action. Listing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional NPL remedies, there will be lower human exposure to high risk chemicals, and higher quality surface water, ground water, soil, and air. The magnitude of these benefits is expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

Associated with the costs are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that each dollar expended for a response puts someone to work directly or indirectly (through purchased materials).

**X. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities the Act refers to small businesses, small governmental jurisdiction, and non-profit organizations.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The listing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of clean-up costs) will occur, but EPA cannot identify the potentially affected businesses at this time nor estimate a number of businesses affected. In addition, we cannot define what is "small" for the wide variety of potentially affected firms.

The Agency does expect that certain industries and small firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 128 sites, or the NPL as a whole, to have a significant economic impact on small business as a whole when they are considered as a nation-wide group.

In any case, economic impacts would only occur through enforcement and cost recovery actions which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay. The impacts (from cost-recovery) on small governments and non-profit organizations would be determined on a similar case-by-case basis.

**List of Subjects in 40 CFR Part 300**

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

**PART 300—[AMENDED]**

Appendix B of 40 CFR Part 300 is amended by adding the following sites to the National Priorities List:

Dated: September 11, 1984.

**Alvin L. Alm,**

*Acting Administrator.*

BILLING CODE 6560-50-M

GROUP 1

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 25 | 03 | PA | Tysons Dump | Upper Merion Twp | R |
| 29 | 08 | MT | East Helena Site | East Helena | E |
| 37 | 06 | TX | Geneva Industries/Fuhrmann Energy | Houston | R E |
| 41 | 02 | NJ | Vineland Chemical Co., Inc. | Vineland | V |
| 45 | 02 | NJ | Shieldalloy Corp. | Newfield Borough | R E |
| 49 | 05 | WI | Omega Hills North Landfill | Germantown | D |

#: V = VOLUNTARY OR NEGOTIATED RESPONSE; R = FEDERAL AND STATE RESPONSE;
E = FEDERAL AND STATE ENFORCEMENT; D = ACTIONS TO BE DETERMINED.
* = STATES' DESIGNATED TOP PRIORITY SITES.
NOTE: GROUP REFERS TO THE NPL GROUP WITH SIMILAR HRS SCORES.

GROUP 2

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 54 | 05 | OH | United Scrap Lead Co., Inc. | Troy | D |
| 59 | 05 | WI | Janesville Old Landfill | Janesville | D |
| 61 | 04 | SC | Independent Nail Co. | Beaufort | D |
| 62 | 04 | SC | Kalama Specialty Chemicals | Beaufort | E |
| 63 | 05 | WI | Janesville Ash Beds | Janesville | D |
| 65 | 05 | OH | Miami County Incinerator | Troy | R E |
| 67 | 05 | WI | Wheeler Pit | La Prairie Township | D |
| 97 | 04 | MS | Flowood Site * | Flowood | D |

#: V = VOLUNTARY OR NEGOTIATED RESPONSE; R = FEDERAL AND STATE RESPONSE;
E = FEDERAL AND STATE ENFORCEMENT; D = ACTIONS TO BE DETERMINED.
* = STATES' DESIGNATED TOP PRIORITY SITES.
NOTE: GROUP REFERS TO THE NPL GROUP WITH SIMILAR HRS SCORES.

GROUP 3

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 108 | 02 | NY | Hudson River PCBs | Hudson River | R E |
| 113 | 01 | CT | Old Southington Landfill | Southington | V E |
| 122 | 10 | ID | Union Pacific Railroad Co. | Pocatello | D |
| 124 | 04 | AL | Ciba-Geigy Corp. (McIntosh Plant) | McIntosh | D |
| 130 | 05 | MN | St. Regis Paper Co. | Cass Lake | V |
| 133 | 04 | GA | Hercules 009 Landfill | Brunswick | D |
| 144 | 05 | WI | Muskego Sanitary Landfill | Muskego | D |
| 148 | 02 | NJ | Ventron/Velsicol | Wood Ridge Borough | R E |

#: V = VOLUNTARY OR NEGOTIATED RESPONSE; R = FEDERAL AND STATE RESPONSE;
E = FEDERAL AND STATE ENFORCEMENT; D = ACTIONS TO BE DETERMINED.
* = STATES' DESIGNATED TOP PRIORITY SITES.
NOTE: GROUP REFERS TO THE NPL GROUP WITH SIMILAR HRS SCORES.

GROUP 4

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 151 | 04 | SC | Koppers Co., Inc (Florence Plant) | Florence | E |
| 153 | 02 | NJ | Nascolite Corp. | Millville | V R |
| 163 | 02 | NJ | Ewan Property | Shamong Township | D |
| 165 | 05 | MN | Boise Cascade/Onan/Medtronics | Fridley | E |
| 168 | 02 | NJ | Delilah Road | Egg Harbor Township | R E |
| 169 | 03 | PA | Mill Creek Dump | Erie | R |
| 173 | 05 | WI | Schmalz Dump | Harrison | D |
| 180 | 08 | CO | Lowry Landfill | Arapahoe County | V R E |
| 181 | 05 | MN | MacGillis & Gibbs/Bell Lumber | New Brighton | E |
| 188 | 04 | SC | Wamchem, Inc. | Burton | D |
| 189 | 02 | NJ | Chemical Leaman Tank Lines, Inc. | Bridgeport | D |
| 190 | 05 | WI | Master Disposal Service Landfill | Brookfield | E |
| 192 | 02 | NJ | Florence Land Recontouring LF | Florence Township | R E |
| 198 | 02 | NJ | W. R. Grace & Co. (Wayne Plant) | Wayne Township | R |
| 200 | 04 | SC | Leonard Chemical Co., Inc. | Rock Hill | E |

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GROUP 5

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 204 | 04 | AL | Stauffer Chem (Cold Creek Plant) | Bucks | D |
| 212 | 05 | OH | South Point Plant | South Point | D |
| 214 | 03 | PA | Dorney Road Landfill | Upper Macungie Twp | R |
| 215 | 05 | IN | Northside Sanitary Landfill, Inc | Zionsville | E |
| 220 | 09 | CA | Atlas Asbestos Mine | Fresno County | D |
| 221 | 09 | CA | Coalinga Asbestos Mine | Coalinga | D |
| 238 | 05 | MN | Joslyn Manufacturing & Supply Co. | Brooklyn Center | E |
| 243 | 05 | MN | Arrowhead Refinery Co. | Hermantown | R |

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GROUP 6

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 253 | 01 | MA | Iron Horse Park | Billerica | D |
| 256 | 05 | WI | Kohler Co. Landfill | Kohler | D |
| 260 | 05 | WI | Lauer I Sanitary Landfill | Menomonee Falls | E |
| 262 | 05 | MN | Union Scrap | Minneapolis | E |
| 263 | 02 | NJ | Radiation Technology, Inc. | Rockaway Township | E |
| 268 | 03 | PA | Industrial Lane | Williams Township | R |
| 269 | 05 | WI | Onalaska Municipal Landfill | Onalaska | D |
| 273 | 10 | ID | Pacific Hide & Fur Recycling Co. | Pocatello | R E |
| 277 | 02 | PR | Vega Alta Public Supply Wells | Vega Alta | R |
| 278 | 05 | MI | Sturgis Municipal Wells | Sturgis | D |
| 279 | 05 | MN | Washington County Landfill | Lake Elmo | D |
| 286 | 02 | PR | Upjohn Facility | Barceloneta | V |
| 288 | 03 | PA | Henderson Road | Upper Merion Twp | R |
| 290 | 06 | LA | Petro-Processors | Scotlandville | V R E |
| 296 | 03 | PA | East Mount Zion | Springettsbury Twp | R |

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GROUP 7

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 301 | 02 | NY | General Motors (Cent Foundry Div) | Massena | R |
| 314 | 05 | MN | Whittaker Corp. | Minneapolis | D |
| 316 | 01 | CT | Kellogg-Deering Well Field | Norwalk | V R E |
| 320 | 04 | AL | Olin Corp. (McIntosh Plant) | McIntosh | D |
| 327 | 04 | FL | Tri-City Oil Conservationist, Inc | Tampa | R |
| 331 | 05 | WI | Northern Engraving Co. | Sparta | D |
| 335 | 01 | NH | Kearsarge Metallurgical Corp. | Conway | V E |
| 336 | 04 | SC | Palmetto Wood Preserving | Dixianna | D |
| 337 | 05 | MI | Clare Water Supply | Clare | V |
| 340 | 05 | MN | Morris Arsenic Dump | Morris | R |
| 348 | 05 | MN | Perham Arsenic Site | Perham | R |

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GROUP 8

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 354 | 05 | MN | Nutting Truck & Caster Co. | Faribault | V D |
| 362 | 01 | NH | Savage Municipal Water Supply | Milford | D |
| 363 | 05 | IN | Poer Farm | Hancock County | R |
| 365 | 06 | TX | United Creosoting Co. | Conroe | R |
| 370 | 05 | WI | City Disposal Corp. Landfill | Dunn | D |
| 371 | 02 | NJ | Tabernacle Drum Dump | Tabernacle Twp | E |
| 372 | 02 | NJ | Cooper Road | Voorhees Township | D |
| 376 | 04 | FL | Cabot/Koppers | Gainesville | R |
| 380 | 06 | OK | Compass Industries (Avery Drive) | Tulsa | R |
| 385 | 05 | MN | General Mills/Henkel Corp. | Minneapolis | V |
| 389 | 09 | CA | Del Norte Pesticide Storage | Crescent City | R |
| 390 | 02 | NJ | De Rewal Chemical Co. | Kingwood Township | D |
| 392 | 04 | GA | Monsanto Corp. (Augusta Plant) | Augusta | D |
| 393 | 01 | NH | South Municipal Water Supply Well | Peterborough | D |
| 397 | 05 | WI | Eau Claire Municipal Well Field | Eau Claire | D |
| 398 | 04 | GA | Powersville Site | Peach County | D |
| 400 | 05 | MI | Metamora Landfill | Metamora | D |

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NOTE: GROUP REFERS TO THE NPL GROUP WITH SIMILAR HRS SCORES.

GROUP 9

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 401 | 05 | MI | Whitehall Municipal Wells | Whitehall | E |
| 403 | 02 | NJ | Diamond Alkali Co. | Newark | V R E |
| 405 | 05 | MI | Electrovoice | Buchanan | D |
| 406 | 02 | PR | Fibers Public Supply Wells | Jobos | D |
| 409 | 05 | WI | Mid-State Disposal, Inc. Landfill | Cleveland Township | R |
| 410 | 08 | CO | Broderick Wood Products | Denver | R E |
| 413 | 02 | NJ | Woodland Route 532 Dump | Woodland Township | D |
| 414 | 05 | IN | American Chemical Service, Inc. | Griffith | D |
| 422 | 06 | LA | Bayou Sorrell | Bayou Sorrell | R E |
| 427 | 05 | WI | Lemberger Transport & Recycling | Franklin Township | E |
| 430 | 10 | WA | Queen City Farms | Maple Valley | V |
| 431 | 05 | WI | Scrap Processing Co., Inc. | Medford | E |
| 435 | 02 | NJ | Hopkins Farm | Plumstead Township | D |
| 437 | 05 | IN | Reilly Tar (Indianapolis Plant) | Indianapolis | D |
| 440 | 02 | NJ | Wilson Farm | Plumstead Township | D |
| 450 | 09 | CA | Koppers Co.,Inc. (Oroville Plant) | Oroville | E |

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GROUP 10

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 452 | 03 | PA | Walsh Landfill | Honeybrook Township | R |
| 453 | 02 | NJ | Landfill & Development Co. | Mount Holly | E |
| 454 | 02 | NJ | Upper Deerfield Township Slf | Upper Deerfield Twp | V E |
| 459 | 04 | KY | Airco | Calvert City | D |
| 463 | 01 | MA | Sullivan's Ledge | New Bedford | D |
| 465 | 05 | IN | Bennett Stone Quarry | Bloomington | E |
| 467 | 04 | AL | Stauffer Chem (Le Moyne Plant) | Axis | D |
| 469 | 04 | SC | Geiger (C & M Oil) | Rantowles | D |
| 470 | 05 | WI | Moss-American(Kerr-McGee Oil Co.) | Milwaukee | D |
| 471 | 05 | WI | Waste Research & Reclamation Co. | Eau Claire | E |
| 473 | 05 | MN | St. Louis River Site | St. Louis County | E |
| 476 | 03 | PA | Berks Sand Pit | Longswamp Township | R |
| 479 | 04 | FL | Hipps Road Landfill | Duval County | R |
| 480 | 04 | FL | Pepper Steel & Alloys, Inc. | Medley | R |
| 482 | 05 | WI | Oconomowoc Electroplating Co. Inc | Ashippin | E |
| 485 | 05 | OH | Powell Road Landfill | Dayton | D |
| 487 | 08 | CO | Lincoln Park | Canon City | D |
| 491 | 02 | NJ | Woodland Route 72 Dump | Woodland Township | D |
| 494 | 10 | OR | United Chrome Products, Inc. | Corvallis | R |
| 497 | 03 | PA | Taylor Borough Dump | Taylor Borough | R |

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GROUP 11

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 502 | 05 | MI | Burrows Sanitation | Hartford | E |
| 529 | 05 | WI | Delavan Municipal Well #4 | Delavan | D |
| 532 | 10 | WA | American Lake Gardens | Tacoma | V |
| 533 | 10 | WA | Greenacres Landfill | Spokane County | D |

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NOTE: GROUP REFERS TO THE NPL GROUP WITH SIMILAR HRS SCORES.

GROUP 1

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 1 | 02 | NJ | Lipari Landfill | Pitman | V R E |
| 2 | 03 | DE | Tybouts Corner Landfill * | New Castle County | R E |
| 3 | 03 | PA | Bruin Lagoon | Bruin Borough | R |
| 4 | 02 | NJ | Helen Kramer Landfill | Mantua Township | R |
| 5 | 01 | MA | Industri-Plex | Woburn | V R E |
| 6 | 02 | NJ | Price Landfill * | Pleasantville | R E |
| 7 | 02 | NY | Pollution Abatement Services * | Oswego | R |
| 8 | 07 | IA | LaBounty Site | Charles City | V R E |
| 9 | 03 | DE | Army Creek Landfill | New Castle County | D |
| 10 | 02 | NJ | CPS/Madison Industries | Old Bridge Township | E |
| 11 | 01 | MA | Nyanza Chemical Waste Dump | Ashland | R |
| 12 | 02 | NJ | Gems Landfill | Gloucester Township | R |
| 13 | 05 | MI | Berlin & Farro | Swartz Creek | V R E |
| 14 | 01 | MA | Baird & McGuire | Holbrook | R E |
| 15 | 02 | NJ | Lone Pine Landfill | Freehold Township | R |
| 16 | 01 | NH | Somersworth Sanitary Landfill | Somersworth | R |
| 17 | 05 | MN | FMC Corp. (Fridley Plant) | Fridley | V |
| 18 | 06 | AR | Vertac, Inc. | Jacksonville | V R E |
| 19 | 01 | NH | Keefe Environmental Services | Epping | R E |
| 20 | 08 | SD | Whitewood Creek * | Whitewood | V |
| 21 | 08 | MT | Silver Bow Creek | Sil Bow/Deer Lodge | R |
| 22 | 06 | TX | French, Ltd. | Crosby | R |
| 23 | 01 | NH | Sylvester * | Nashua | R E |
| 24 | 05 | MI | Liquid Disposal, Inc. | Utica | R |
| 25 | 03 | PA | Tysons Dump | Upper Merion Twp | R |
| 26 | 03 | PA | McAdoo Associates * | McAdoo Borough | R |
| 27 | 06 | TX | Motco Inc. * | La Marque | R |
| 28 | 05 | OH | Arcanum Iron & Metal | Darke County | R |
| 29 | 08 | MT | East Helena Site | East Helena | E |
| 30 | 06 | TX | Sikes Disposal Pits | Crosby | R |
| 31 | 04 | AL | Triana/Tennessee River | Limestone/Morgan | V E |
| 32 | 09 | CA | Stringfellow * | Glen Avon Heights | R E |
| 33 | 01 | ME | McKin Co. | Gray | R |
| 34 | 06 | TX | Crystal Chemical Co. | Houston | R E |
| 35 | 02 | NJ | Bridgeport Rental & Oil Services | Bridgeport | R E |
| 36 | 08 | CO | Sand Creek Industrial | Commerce City | E |
| 37 | 06 | TX | Geneva Industries/Fuhrmann Energy | Houston | R E |
| 38 | 01 | MA | W. R. Grace & Co. (Acton Plant) | Acton | V E |
| 39 | 05 | MN | Reilly Tar (St. Louis Park Plant) | St. Louis Park | R |
| 40 | 02 | NJ | Burnt Fly Bog | Marlboro Township | R E |
| 41 | 02 | NJ | Vineland Chemical Co., Inc. | Vineland | V |
| 42 | 04 | FL | Schuylkill Metals Corp. | Plant City | D |
| 43 | 05 | MN | New Brighton/Arden Hills | New Brighton | R E |
| 44 | 02 | NY | Old Bethpage Landfill | Oyster Bay | V |
| 45 | 02 | NJ | Shieldalloy Corp. | Newfield Borough | R E |
| 46 | 04 | FL | Reeves SE Galvanizing Corp. | Tampa | D |
| 47 | 08 | MT | Anaconda Co. Smelter | Anaconda | V R E |
| 48 | 10 | WA | Western Processing Co., Inc. | Kent | V R E |
| 49 | 05 | WI | Omega Hills North Landfill | Germantown | D |
| 50 | 04 | FL | American Creosote Works | Pensacola | R |

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GROUP 2

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 51 | 02 | NJ | Caldwell Trucking Co. | Fairfield | R |
| 52 | 02 | NY | GE Moreau | South Glen Falls | V E |
| 53 | 05 | IN | Seymour Recycling Corp. * | Seymour | V R E |
| 54 | 05 | OH | United Scrap Lead Co., Inc. | Troy | D |
| 55 | 06 | OK | Tar Creek (Ottawa County) | Ottawa County | R |
| 56 | 07 | KS | Cherokee County | Cherokee County | R |
| 57 | 02 | NJ | Brick Township Landfill | Brick Township | V |
| 58 | 05 | MI | Northernaire Plating | Cadillac | R E |
| 59 | 05 | WI | Janesville Old Landfill | Janesville | D |
| 60 | 10 | WA | Frontier Hard Chrome, Inc. | Vancouver | R |
| 61 | 04 | SC | Independent Nail Co. | Beaufort | D |
| 62 | 04 | SC | Kalama Specialty Chemicals | Beaufort | E |
| 63 | 05 | WI | Janesville Ash Beds | Janesville | D |
| 64 | 04 | FL | Davie Landfill | Davie | D |
| 65 | 05 | OH | Miami County Incinerator | Troy | R E |
| 66 | 04 | FL | Gold Coast Oil Corp. | Miami | V |
| 67 | 05 | WI | Wheeler Pit | La Prairie Township | D |
| 68 | 09 | AZ | Tucson Intl Airport Area | Tucson | V R |
| 69 | 02 | NY | Wide Beach Development | Brant | R |
| 70 | 09 | CA | Iron Mountain Mine | Redding | R |
| 71 | 02 | NJ | Scientific Chemical Processing | Carlstadt | E |
| 72 | 08 | CO | California Gulch | Leadville | E |
| 73 | 02 | NJ | D'Imperio Property | Hamilton Township | R |
| 74 | 05 | MI | Gratiot County Landfill * | St. Louis | V |
| 75 | 01 | RI | Picillo Farm * | Coventry | R E |
| 76 | 01 | MA | New Bedford Site * | New Bedford | V R E |
| 77 | 06 | LA | Old Inger Oil Refinery * | Darrow | R |
| 78 | 05 | OH | Chem-Dyne * | Hamilton | V R E |
| 79 | 04 | SC | SCRDI Bluff Road * | Columbia | V R E |
| 80 | 01 | CT | Laurel Park, Inc. * | Naugatuck Borough | E |
| 81 | 08 | CO | Marshall Landfill * | Boulder County | E |
| 82 | 05 | IL | Outboard Marine Corp. * | Waukegan | R E |
| 83 | 06 | NM | South Valley * | Albuquerque | R E |
| 84 | 01 | VT | Pine Street Canal * | Burlington | D |
| 85 | 03 | WV | West Virginia Ordnance * | Point Pleasant | R |
| 86 | 07 | MO | Ellisville Site * | Ellisville | R |
| 87 | 08 | ND | Arsenic Trioxide Site * | Southeastern N.D. | R |
| 88 | 09 | TT | PCB Wastes * | Pacific Trust Terr | R |
| 89 | 03 | VA | Matthews Electroplating * | Roanoke County | R |
| 90 | 07 | IA | Aidex Corp. * | Council Bluffs | R E |
| 91 | 09 | AZ | Mountain View Mobile Homes * | Globe | R E |
| 92 | 09 | AS | Taputimu Farm * | American Samoa | R |
| 93 | 04 | TN | North Hollywood Dump * | Memphis | R |
| 94 | 04 | KY | A.L. Taylor (Valley of Drums) * | Brooks | R |
| 95 | 04 | NC | PCB Spills * | 210 Miles of Roads | R E |
| 96 | 09 | GU | Ordot Landfill * | Guam | R |
| 97 | 04 | MS | Flowood Site * | Flowood | D |
| 98 | 08 | UT | Rose Park Sludge Pit * | Salt Lake City | V |
| 99 | 07 | KS | Arkansas City Dump * | Arkansas City | R |
| 100 | 09 | CM | PCB Warehouse * | Marianas | R |

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GROUP 3

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 101 | 05 | MN | Oakdale Dump | Oakdale | V E |
| 102 | 05 | IL | A & F Material Reclaiming, Inc. | Greenup | V R E |
| 103 | 03 | PA | Douglassville Disposal | Douglassville | R |
| 104 | 02 | NJ | Krysowaty Farm | Hillsborough | R |
| 105 | 05 | MN | Koppers Coke | St. Paul | D |
| 106 | 01 | MA | Plymouth Harbor/Cannon Engnrng | Plymouth | R E |
| 107 | 10 | ID | Bunker Hill Mining & Metallurg | Smelterville | E |
| 108 | 02 | NY | Hudson River PCBs | Hudson River | R E |
| 109 | 02 | NJ | Universal Oil Products(Chem Div) | East Rutherford | E |
| 110 | 09 | CA | Aerojet General Corp. | Rancho Cordova | E |
| 111 | 10 | WA | Com Bay, South Tacoma Channel | Tacoma | R E |
| 112 | 03 | PA | Osborne Landfill | Grove City | E |
| 113 | 01 | CT | Old Southington Landfill | Southington | V E |
| 114 | 02 | NY | Syosset Landfill | Oyster Bay | D |
| 115 | 09 | AZ | Nineteenth Avenue Landfill | Phoenix | E |
| 116 | 10 | OR | Teledyne Wah Chang | Albany | D |
| 117 | 02 | NY | Sinclair Refinery | Wellsville | R E |
| 118 | 04 | AL | Mowbray Engineering Co. | Greenville | R |
| 119 | 05 | MI | Spiegelberg Landfill | Green Oak Township | R |
| 120 | 04 | FL | Miami Drum Services | Miami | R E |
| 121 | 02 | NJ | Reich Farms | Pleasant Plains | R E |
| 122 | 10 | ID | Union Pacific Railroad Co. | Pocatello | D |
| 123 | 02 | NJ | South Brunswick Landfill | South Brunswick | V D |
| 124 | 04 | AL | Ciba-Geigy Corp. (McIntosh Plant) | McIntosh | R |
| 125 | 04 | FL | Kassauf-Kimerling Battery | Tampa | R |
| 126 | 05 | IL | Wauconda Sand & Gravel | Wauconda | R E |
| 127 | 01 | NH | Ottati & Goss/Kingston Steel Drum | Kingston | V R E |
| 128 | 05 | MI | Ott/Story/Cordova | Dalton Township | R E |
| 129 | 02 | NJ | NL Industries | Pedricktown | E |
| 130 | 05 | MN | St. Regis Paper Co. | Cass Lake | V |
| 131 | 02 | NJ | Ringwood Mines/Landfill | Ringwood Borough | V |
| 132 | 04 | FL | Whitehouse Oil Pits | Whitehouse | R D |
| 133 | 04 | GA | Hercules 009 Landfill | Brunswick | |
| 134 | 05 | MI | Velsicol Chemical (Michigan) | St. Louis | V E |
| 135 | 05 | OH | Summit National | Deerfield Township | V R E |
| 136 | 02 | NY | Love Canal | Niagara Falls | R E |
| 137 | 05 | IN | Fisher-Calo | LaPorte | V E |
| 138 | 04 | FL | Pioneer Sand Co. | Warrington | R E |
| 139 | 05 | MI | Springfield Township Dump | Davisburg | R |
| 140 | 03 | PA | Hranica Landfill | Buffalo Township | D |
| 141 | 04 | NC | Martin Marietta, Sodyeco, Inc. | Charlotte | D |
| 142 | 04 | FL | Zellwood Ground Water Contam | Zellwood | R D |
| 143 | 05 | MI | Packaging Corp. of America | Filer City | R D |
| 144 | 05 | WI | Muskego Sanitary Landfill | Muskego | D |
| 145 | 02 | NY | Hooker (S Area) | Niagara Falls | V E D |
| 146 | 03 | PA | Lindane Dump | Harrison Township | |
| 147 | 08 | CO | Central City-Clear Creek | Idaho Springs | R |
| 148 | 02 | NJ | Ventron/Velsicol | Wood Ridge Borough | R E |
| 149 | 04 | FL | Taylor Road Landfill | Seffner | E |
| 150 | 01 | RI | Western Sand & Gravel | Burrillville | R E |

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GROUP 4

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # | | |
|---|---|---|---|---|---|---|---|
| 151 | 04 | SC | Koppers Co., Inc (Florence Plant) | Florence | | | E |
| 152 | 02 | NJ | Maywood Chemical Co. | Maywood/Rochelle Pk | | | E |
| 153 | 02 | NJ | Nascolite Corp. | Millville | V | R | |
| 154 | 06 | OK | Hardage/Criner | Criner | | R | E |
| 155 | 05 | MI | Rose Township Dump | Rose Township | | R | |
| 156 | 05 | MN | Waste Disposal Engineering | Andover | V | | E |
| 157 | 02 | NJ | Kin-Buc Landfill | Edison Township | V | R | E |
| 158 | 05 | OH | Bowers Landfill | Circleville | | R | |
| 159 | 02 | NJ | Ciba-Geigy Corp. | Toms River | | | D |
| 160 | 05 | MI | Butterworth #2 Landfill | Grand Rapids | | | E |
| 161 | 02 | NJ | American Cyanamid Co. | Bound Brook | | | E |
| 162 | 03 | PA | Heleva Landfill | North Whitehall Twp | | R | |
| 163 | 02 | NJ | Ewan Property | Shamong Township | | | D |
| 164 | 02 | NY | Batavia Landfill | Batavia | | | E |
| 165 | 05 | MN | Boise Cascade/Onan/Medtronics | Fridley | | | E |
| 166 | 01 | RI | L&RR, Inc. | North Smithfield | | | E |
| 167 | 04 | FL | NW 58th Street Landfill | Hialeah | | R | E |
| 168 | 02 | NJ | Delilah Road | Egg Harbor Township | | R | E |
| 169 | 03 | PA | Mill Creek Dump | Erie | | R | |
| 170 | 04 | FL | Sixty-Second Street Dump | Tampa | | R | |
| 171 | 05 | MI | G&H Landfill | Utica | | R | |
| 172 | 02 | NJ | Metaltec/Aerosystems | Franklin Borough | | R | E |
| 173 | 05 | WI | Schmalz Dump | Harrison | | | D |
| 174 | 02 | NJ | Lang Property | Pemberton Township | | | D |
| 175 | 02 | NJ | Sharkey Landfill | Parsippany Troy Hls | | R | |
| 176 | 09 | CA | Selma Treating Co. | Selma | | | E |
| 177 | 06 | LA | Cleve Reber | Sorrento | | R | |
| 178 | 05 | IL | Velsicol Chemical (Illinois) | Marshall | V | | |
| 179 | 05 | MI | Tar Lake | Mancelona Township | | R | |
| 180 | 08 | CO | Lowry Landfill | Arapahoe County | V | R | E |
| 181 | 05 | MN | MacGillis & Gibbs/Bell Lumber | New Brighton | | | E |
| 182 | 02 | NJ | Combe Fill North Landfill | Mount Olive Twp | | R | |
| 183 | 01 | MA | Re-Solve, Inc. | Dartmouth | | R | E |
| 184 | 02 | NJ | Goose Farm | Plumstead Township | | R | E |
| 185 | 04 | TN | Velsicol Chem (Hardeman County) | Toone | | | D |
| 186 | 02 | NY | York Oil Co. | Moira | | R | E |
| 187 | 04 | FL | Sapp Battery Salvage | Cottondale | | R | E |
| 188 | 04 | SC | Wamchem, Inc. | Burton | | | D |
| 189 | 02 | NJ | Chemical Leaman Tank Lines, Inc. | Bridgeport | | | D |
| 190 | 05 | WI | Master Disposal Service Landfill | Brookfield | | | E |
| 191 | 07 | KS | Doepke Disposal Site (Holliday) | Johnson County | | R | |
| 192 | 02 | NJ | Florence Land Recontouring LF | Florence Township | | R | E |
| 193 | 01 | RI | Davis Liquid Waste | Smithfield | | R | E |
| 194 | 01 | MA | Charles-George Reclamation Lf | Tyngsborough | | R | E |
| 195 | 02 | NJ | King of Prussia | Winslow Township | | | D |
| 196 | 03 | VA | Chisman Creek | York County | | R | |
| 197 | 05 | OH | Nease Chemical | Salem | | | D |
| 198 | 02 | NJ | W. R. Grace & Co. (Wayne Plant) | Wayne Township | | R | |
| 199 | 02 | NJ | Chemical Control | Elizabeth | | R | E |
| 200 | 04 | SC | Leonard Chemical Co., Inc. | Rock Hill | | | E |

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GROUP 5

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # | | |
|---|---|---|---|---|---|---|---|
| 201 | 05 | OH | Allied Chemical & Ironton Coke | Ironton | V | | |
| 202 | 05 | MI | Verona Well Field | Battle Creek | | R | |
| 203 | 01 | CT | Beacon Heights Landfill | Beacon Falls | | R | E |
| 204 | 04 | AL | Stauffer Chem (Cold Creek Plant) | Bucks | | | D |
| 205 | 05 | MN | Burlington Northern (Brainerd) | Brainerd/Baxter | | | D |
| 206 | 03 | PA | Malvern TCE | Malvern | | | D |
| 207 | 02 | NY | Facet Enterprises, Inc. | Elmira | V | | |
| 208 | 03 | DE | Delaware Sand & Gravel Landfill | New Castle County | | R | |
| 209 | 04 | TN | Murray-Ohio Dump | Lawrenceburg | V | | E |
| 210 | 05 | IN | Envirochem Corp. | Zionsville | V | R | E |
| 211 | 05 | IN | MIDCO I | Gary | | R | E |
| 212 | 05 | OH | South Point Plant | South Point | | | D |
| 213 | 04 | FL | Coleman-Evans Wood Preserving Co. | Whitehouse | | | E |
| 214 | 03 | PA | Dorney Road Landfill | Upper Macungie Twp | | R | |
| 215 | 05 | IN | Northside Sanitary Landfill, Inc | Zionsville | | | E |
| 216 | 04 | FL | Florida Steel Corp. | Indiantown | | | D |
| 217 | 09 | AZ | Litchfield Airport Area | Goodyear/Avondale | | R | E |
| 218 | 02 | NJ | Spence Farm | Plumstead Township | | R | |
| 219 | 06 | AR | Mid-South Wood Products | Mena | | R | E |
| 220 | 09 | CA | Atlas Asbestos Mine | Fresno County | | | D |
| 221 | 09 | CA | Coalinga Asbestos Mine | Coalinga | | | D |
| 222 | 04 | FL | Brown Wood Preserving | Live Oak | V | | E |
| 223 | 02 | NY | Port Washington Landfill | Port Washington | V | | |
| 224 | 02 | NJ | Combe Fill South Landfill | Chester Township | | R | |
| 225 | 02 | NJ | JIS Landfill | Jamesburg/S. Brnswck | | | E |
| 226 | 03 | PA | Centre County Kepone | State College Boro | | | E |
| 227 | 05 | OH | Fields Brook | Ashtabula | | R | |
| 228 | 01 | CT | Solvents Recovery Service | Southington | V | | E |
| 229 | 08 | CO | Woodbury Chemical Co. | Commerce City | | R | |
| 230 | 01 | MA | Hocomonco Pond | Westborough | | R | |
| 231 | 04 | KY | Distler Brickyard | West Point | | R | |
| 232 | 02 | NY | Ramapo Landfill | Ramapo | V | | |
| 233 | 09 | CA | Coast Wood Preserving | Ukiah | | | E |
| 234 | 02 | NY | Mercury Refining, Inc. | Colonie | | | E |
| 235 | 04 | FL | Hollingsworth Solderless Terminal | Fort Lauderdale | | | D |
| 236 | 02 | NY | Olean Well Field | Olean | | R | |
| 237 | 04 | FL | Varsol Spill | Miami | V | R | |
| 238 | 05 | MN | Joslyn Manufacturing & Supply Co. | Brooklyn Center | | | E |
| 239 | 08 | CO | Denver Radium Site | Denver | | R | |
| 240 | 04 | FL | Tower Chemical Co. | Clermont | | R | E |
| 241 | 07 | MO | Syntex Facility | Verona | V | | E |
| 242 | 08 | MT | Milltown Reservoir Sediments | Milltown | | R | |
| 243 | 05 | MN | Arrowhead Refinery Co. | Hermantown | | R | |
| 244 | 02 | NJ | Pijak Farm | Plumstead Township | | R | |
| 245 | 02 | NJ | Syncon Resins | South Kearny | | R | |
| 246 | 09 | CA | Liquid Gold Oil Corp. | Richmond | | | E |
| 247 | 09 | CA | Purity Oil Sales, Inc. | Malaga | | R | |
| 248 | 01 | NH | Tinkham Garage | Londonderry | | R | |
| 249 | 04 | FL | Alpha Chemical Corp. | Galloway | | | D |
| 250 | 02 | NJ | Bog Creek Farm | Howell Township | | R | |

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GROUP 6

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # | | |
|---|---|---|---|---|---|---|---|
| 251 | 01 | ME | Saco Tannery Waste Pits | Saco | R | | |
| 252 | 04 | FL | Pickettville Road Landfill | Jacksonville | | | D |
| 253 | 01 | MA | Iron Horse Park | Billerica | | | D |
| 254 | 03 | PA | Palmerton Zinc Pile | Palmerton | R | | |
| 255 | 05 | IN | Neal's Landfill (Bloomington) | Bloomington | V | E | |
| 256 | 05 | WI | Kohler Co. Landfill | Kohler | | | D |
| 257 | 01 | MA | Silresim Chemical Corp. | Lowell | R | E | |
| 258 | 01 | MA | Wells G&H | Woburn | R | E | |
| 259 | 02 | NJ | Chemsol, Inc. | Piscataway | | | D |
| 260 | 05 | WI | Lauer I Sanitary Landfill | Menomonee Falls | | E | |
| 261 | 05 | MI | Petoskey Municipal Well Field | Petoskey | | E | |
| 262 | 05 | MN | Union Scrap | Minneapolis | | E | |
| 263 | 02 | NJ | Radiation Technology, Inc. | Rockaway Township | | E | |
| 264 | 02 | NJ | Fair Lawn Well Field | Fair Lawn | V | | |
| 265 | 05 | IN | Main Street Well Field | Elkhart | V | | |
| 266 | 05 | MN | Lehillier/Mankato Site | Lehillier | R | | |
| 267 | 10 | WA | Lakewood Site | Lakewood | | E | |
| 268 | 03 | PA | Industrial Lane | Williams Township | R | | |
| 269 | 05 | WI | Onalaska Municipal Landfill | Onalaska | | | D |
| 270 | 02 | NJ | Monroe Township Landfill | Monroe Township | | E | |
| 271 | 02 | NJ | Rockaway Borough Well Field | Rockaway Township | | | D |
| 272 | 05 | IN | Wayne Waste Oil | Columbia City | | E | |
| 273 | 10 | ID | Pacific Hide & Fur Recycling Co. | Pocatello | R | E | |
| 274 | 07 | IA | Des Moines TCE | Des Moines | R | | |
| 275 | 02 | NJ | Beachwood/Berkley Wells | Berkley Township | R | | |
| 276 | 02 | NY | Vestal Water Supply Well 4-2 | Vestal | | E | |
| 277 | 02 | PR | Vega Alta Public Supply Wells | Vega Alta | R | | |
| 278 | 05 | MI | Sturgis Municipal Wells | Sturgis | | | D |
| 279 | 05 | MN | Washington County Landfill | Lake Elmo | | | D |
| 280 | 09 | AZ | Indian Bend Wash Area | Scottsdale/Tempe | R | E | |
| 281 | 09 | CA | San Gabriel Valley (Area 1) | El Monte | R | | |
| 282 | 09 | CA | San Gabriel Valley (Area 2) | Baldwin Park Area | R | | |
| 283 | 10 | WA | Com Bay, Near Shore/Tide Flats | Pierce County | R | E | |
| 284 | 05 | IL | LaSalle Electric Utilities | LaSalle | R | | |
| 285 | 05 | IL | Cross Brothers Pail (Pembroke) | Pembroke Township | R | | |
| 286 | 02 | PR | Upjohn Facility | Barceloneta | V | | |
| 287 | 09 | CA | McColl | Fullerton | R | E | |
| 288 | 03 | PA | Henderson Road | Upper Merion Twp | R | | |
| 289 | 10 | WA | Colbert Landfill | Colbert | R | | |
| 290 | 06 | LA | Petro-Processors | Scotlandville | V | R | E |
| 291 | 02 | PR | Frontera Creek | Rio Abajo | | | D |
| 292 | 02 | PR | Barceloneta Landfill | Florida Afuera | | | D |
| 293 | 03 | MD | Sand, Gravel & Stone | Elkton | R | | |
| 294 | 05 | MI | Spartan Chemical Co. | Wyoming | | E | |
| 295 | 02 | NJ | Roebling Steel Co. | Florence | R | | |
| 296 | 03 | PA | East Mount Zion | Springettsbury Twp | R | | |
| 297 | 04 | TN | Amnicola Dump | Chattanooga | | | D |
| 298 | 02 | NJ | Vineland State School | Vineland | R | | |
| 299 | 03 | PA | Enterprise Avenue | Philadelphia | R | | |
| 300 | 01 | MA | Groveland Wells | Groveland | R | E | |

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GROUP 7

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # | | |
|---|---|---|---|---|---|---|---|
| 301 | 02 | NY | General Motors (Cent Foundry Div) | Massena | R | | |
| 302 | 04 | SC | SCRDI Dixiana | Cayce | R | E | |
| 303 | 07 | MO | Fulbright Landfill | Springfield | | | D |
| 304 | 03 | PA | Presque Isle | Erie | | | D |
| 305 | 02 | NJ | Williams Property | Swainton | R | | |
| 306 | 02 | NJ | Renora, Inc. | Edison Township | | | D |
| 307 | 02 | NJ | Denzer & Schafer X-Ray Co. | Bayville | | | D |
| 308 | 02 | NJ | Hercules, Inc. (Gibbstown Plant) | Gibbstown | | | |
| 309 | 05 | IN | Ninth Avenue Dump | Gary | V | E | |
| 310 | 06 | AR | Gurley Pit | Edmondson | | | D |
| 311 | 01 | RI | Peterson/Puritan, Inc. | Lincoln/Cumberland | V | E | |
| 312 | 07 | MO | Times Beach Site | Times Beach | R | | |
| 313 | 05 | MI | Wash King Laundry | Pleasant Plains Twp | | | D |
| 314 | 05 | MN | Whittaker Corp. | Minneapolis | | | D |
| 315 | 05 | MN | NL Industries/Taracorp/Golden | St. Louis Park | V | | |
| 316 | 01 | CT | Kellogg-Deering Well Field | Norwalk | V | R | E |
| 317 | 01 | MA | Cannon Engineering Corp. (CEC) | Bridgewater | | R | E |
| 318 | 02 | NY | Niagara County Refuse | Wheatfield | | | D |
| 319 | 04 | FL | Sherwood Medical Industries | Deland | | | D |
| 320 | 04 | AL | Olin Corp. (McIntosh Plant) | McIntosh | | | D |
| 321 | 05 | MI | Southwest Ottawa County Landfill | Park Township | | E | |
| 322 | 02 | NY | Kentucky Avenue Well Field | Horseheads | R | | |
| 323 | 02 | NJ | Asbestos Dump | Millington | R | | |
| 324 | 04 | KY | LEE'S LANE LANDFILL | LOUISVILLE | R | E | |
| 325 | 06 | AR | Frit Industries | Walnut Ridge | V | E | |
| 326 | 05 | OH | Fultz Landfill | Jackson Township | | | D |
| 327 | 04 | FL | Tri-City Oil Conservationist, Inc | Tampa | R | | |
| 328 | 05 | OH | Coshocton Landfill | Franklin Township | R | E | |
| 329 | 03 | PA | Lord-Shope Landfill | Girard Township | | E | |
| 330 | 10 | WA | FMC Corp. (Yakima Pit) | Yakima | V | | |
| 331 | 05 | WI | Northern Engraving Co. | Sparta | | | D |
| 332 | 01 | MA | PSC Resources | Palmer | V | | |
| 333 | 05 | MI | Forest Waste Products | Otisville | R | | |
| 334 | 03 | PA | Drake Chemical | Lock Haven | R | | |
| 335 | 01 | NH | Kearsarge Metallurgical Corp. | Conway | V | E | |
| 336 | 04 | SC | Palmetto Wood Preserving | Dixianna | | | D |
| 337 | 05 | MI | Clare Water Supply | Clare | V | | |
| 338 | 03 | PA | Havertown PCP | Haverford | R | | |
| 339 | 03 | DE | New Castle Spill | New Castle County | | | D |
| 340 | 05 | MN | Morris Arsenic Dump | Morris | R | | |
| 341 | 05 | IN | Lake Sandy Jo (M&M Landfill) | Gary | R | | |
| 342 | 05 | IL | Johns-Manville Corp. | Waukegan | V | R | E |
| 343 | 05 | MI | Chem Central | Wyoming Township | | | D |
| 344 | 05 | MI | Novaco Industries | Temperance | | E | |
| 345 | 02 | NJ | Jackson Township Landfill | Jackson Township | | E | |
| 346 | 05 | MI | K&L Avenue Landfill | Oshtemo Township | V | E | |
| 347 | 10 | WA | Kaiser Aluminum Mead Works | Mead | V | | |
| 348 | 05 | MN | Perham Arsenic Site | Perham | R | | |
| 349 | 05 | MI | Charlevoix Municipal Well | Charlevoix | R | | |
| 350 | 02 | NJ | Montgomery Township Housing Dev | Montgomery Township | | | D |

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GROUP 8

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 351 | 02 | NJ | Rocky Hill Municipal Well | Rocky Hill Borough | E |
| 352 | 02 | NY | Brewster Well Field | Putnam County | R |
| 353 | 02 | NY | Vestal Water Supply Well 1-1 | Vestal | R |
| 354 | 05 | MN | Nutting Truck & Caster Co. | Faribault | V D |
| 355 | 02 | NJ | U.S. Radium Corp. | Orange | R |
| 356 | 06 | TX | Highlands Acid Pit | Highlands | R |
| 357 | 03 | PA | Resin Disposal | Jefferson Borough | D |
| 358 | 08 | MT | Libby Ground Water Contamination | Libby | D |
| 359 | 04 | KY | Newport Dump | Newport | E |
| 360 | 03 | PA | Moyers Landfill | Eagleville | R E |
| 361 | 04 | FL | Parramore Surplus | Mount Pleasant | D |
| 362 | 01 | NH | Savage Municipal Water Supply | Milford | D |
| 363 | 05 | IN | Poer Farm | Hancock County | R |
| 364 | 05 | MI | Hedblum Industries | Oscoda | D |
| 365 | 06 | TX | United Creosoting Co. | Conroe | R |
| 366 | 08 | WY | Baxter/Union Pacific Tie Treating | Laramie | D |
| 367 | 02 | NJ | Sayreville Landfill | Sayreville | D |
| 368 | 01 | NH | Dover Municipal Landfill | Dover | R |
| 369 | 02 | NY | Ludlow Sand & Gravel | Clayville | R |
| 370 | 05 | WI | City Disposal Corp. Landfill | Dunn | D |
| 371 | 02 | NJ | Tabernacle Drum Dump | Tabernacle Twp | E |
| 372 | 02 | NJ | Cooper Road | Voorhees Township | D |
| 373 | 07 | MO | Minker/Stout/Romaine Creek | Imperial | R |
| 374 | 01 | CT | Yaworski Waste Lagoon | Canterbury | R E |
| 375 | 03 | WV | Leetown Pesticide | Leetown | R |
| 376 | 04 | FL | Cabot/Koppers | Gainesville | R |
| 377 | 02 | NJ | Evor Phillips Leasing | Old Bridge Township | D |
| 378 | 03 | PA | Wade (ABM) | Chester | R E |
| 379 | 03 | PA | Lackawanna Refuse | Old Forge Borough | R E |
| 380 | 06 | OK | Compass Industries (Avery Drive) | Tulsa | R |
| 381 | 02 | NJ | Mannheim Avenue Dump | Galloway Township | D |
| 382 | 02 | NY | Fulton Terminals | Fulton | R |
| 383 | 01 | NH | Auburn Road Landfill | Londonderry | R E |
| 384 | 03 | WV | Fike Chemical, Inc. | Nitro | E |
| 385 | 05 | MN | General Mills/Henkel Corp. | Minneapolis | V |
| 386 | 05 | OH | Laskin/Poplar Oil Co. | Jefferson Township | R E |
| 387 | 05 | OH | Old Mill | Rock Creek | R |
| 388 | 07 | KS | Johns' Sludge Pond | Wichita | V E |
| 389 | 09 | CA | Del Norte Pesticide Storage | Crescent City | R |
| 390 | 02 | NJ | De Rewal Chemical Co. | Kingwood Township | D |
| 391 | 02 | NJ | Swope Oil & Chemical Co. | Pennsauken | V R |
| 392 | 04 | GA | Monsanto Corp. (Augusta Plant) | Augusta | D |
| 393 | 01 | NH | South Municipal Water Supply Well | Peterborough | D |
| 394 | 01 | ME | Winthrop Landfill | Winthrop | E |
| 395 | 06 | AR | Cecil Lindsey | Newport | R |
| 396 | 05 | OH | Zanesville Well Field | Zanesville | D |
| 397 | 05 | WI | Eau Claire Municipal Well Field | Eau Claire | D |
| 398 | 04 | GA | Powersville Site | Peach County | D |
| 399 | 05 | MI | Grand Traverse Overall Supply Co. | Greilickville | D |
| 400 | 05 | MI | Metamora Landfill | Metamora | D |

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GROUP 9

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # |
|---|---|---|---|---|---|
| 401 | 05 | MI | Whitehall Municipal Wells | Whitehall | E |
| 402 | 05 | MN | South Andover Site | Andover | D |
| 403 | 02 | NJ | Diamond Alkali Co. | Newark | V R E |
| 404 | 05 | MI | Kentwood Landfill | Kentwood | E |
| 405 | 05 | MI | Electrovoice | Buchanan | D |
| 406 | 02 | PR | Fibers Public Supply Wells | Jobos | D |
| 407 | 05 | IN | Marion (Bragg) Dump | Marion | R |
| 408 | 05 | OH | Pristine, Inc. | Reading | E |
| 409 | 05 | WI | Mid-State Disposal, Inc. Landfill | Cleveland Township | R |
| 410 | 08 | CO | Broderick Wood Products | Denver | R E |
| 411 | 05 | OH | Buckeye Reclamation | St. Clairsville | D |
| 412 | 06 | TX | Bio-Ecology Systems, Inc. | Grand Prairie | R |
| 413 | 02 | NJ | Woodland Route 532 Dump | Woodland Township | D |
| 414 | 05 | IN | American Chemical Service, Inc. | Griffith | D |
| 415 | 01 | VT | Old Springfield Landfill | Springfield | R E |
| 416 | 02 | NY | Solvent Savers | Linckiaen | R E |
| 417 | 03 | VA | U.S. Titanium | Piney River | R E |
| 418 | 05 | IL | Galesburg/Koppers Co. | Galesburg | D |
| 419 | 02 | NY | Hooker (Hyde Park) | Niagara Falls | V E |
| 420 | 05 | MI | SCA Independent Landfill | Muskegon Heights | E |
| 421 | 09 | CA | MGM Brakes | Cloverdale | E |
| 422 | 06 | LA | Bayou Sorrell | Bayou Sorrell | R E |
| 423 | 05 | MI | Duell & Gardner Landfill | Dalton Township | R |
| 424 | 02 | NJ | Ellis Property | Evesham Township | R |
| 425 | 04 | KY | Distler Farm | Jefferson County | R |
| 426 | 10 | WA | Harbor Island (Lead) | Seattle | D |
| 427 | 05 | WI | Lemberger Transport & Recycling | Franklin Township | E D |
| 428 | 05 | OH | E.H. Schilling Landfill | Hamilton Township | |
| 429 | 05 | MI | Cliff/Dow Dump | Marquette | R E |
| 430 | 10 | WA | Queen City Farms | Maple Valley | V |
| 431 | 05 | WI | Scrap Processing Co., Inc. | Medford | E |
| 432 | 06 | NM | Homestake Mining Co. | Milan | V E |
| 433 | 05 | MI | Mason County Landfill | Pere Marquette Twp | E |
| 434 | 05 | MI | Cemetery Dump | Rose Center | R |
| 435 | 02 | NJ | Hopkins Farm | Plumstead Township | D |
| 436 | 01 | RI | Stamina Mills, Inc. | North Smithfield | R E |
| 437 | 05 | IN | Reilly Tar (Indianapolis Plant) | Indianapolis | D |
| 438 | 01 | ME | Pinette's Salvage Yard | Washburn | R |
| 439 | 06 | TX | Harris (Farley Street) | Houston | V E |
| 440 | 02 | NJ | Wilson Farm | Plumstead Township | D |
| 441 | 03 | PA | Old City of York Landfill | Seven Valleys | E |
| 442 | 05 | IL | Byron Salvage Yard | Byron | R |
| 443 | 03 | PA | Stanley Kessler | King of Prussia | E |
| 444 | 02 | NJ | Friedman Property | Upper Freehold Twp | R |
| 445 | 02 | NJ | Imperial Oil/Champion Chemicals | Morganville | |
| 446 | 02 | NJ | Myers Property | Franklin Township | R |
| 447 | 02 | NJ | Pepe Field | Boonton | D |
| 448 | 05 | MI | Ossineke Ground Water Contam | Ossineke | E |
| 449 | 03 | WV | Follansbee Site | Follansbee | D |
| 450 | 09 | CA | Koppers Co., Inc. (Oroville Plant) | Oroville | E |

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GROUP 10

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # | | |
|---|---|---|---|---|---|---|---|
| 451 | 05 | MI | U.S. Aviex | Howard Township | | E | |
| 452 | 03 | PA | Walsh Landfill | Honeybrook Township | R | | |
| 453 | 02 | NJ | Landfill & Development Co. | Mount Holly | | E | |
| 454 | 02 | NJ | Upper Deerfield Township Slf | Upper Deerfield Twp | V | E | |
| 455 | 06 | NM | AT & SF (Clovis) | Clovis | V | E | D |
| 456 | 02 | NY | American Thermostat Co. | South Cairo | | E | |
| 457 | 04 | TN | Lewisburg Dump | Lewisburg | | | D |
| 458 | 05 | MI | McGraw Edison Corp. | Albion | | E | |
| 459 | 04 | KY | Airco | Calvert City | | | D |
| 460 | 03 | PA | Metal Banks | Philadelphia | V | | |
| 461 | 04 | KY | B.F. Goodrich | Calvert City | | | D |
| 462 | 05 | MI | Organic Chemicals, Inc. | Grandville | | E | |
| 463 | 01 | MA | Sullivan's Ledge | New Bedford | | | D |
| 464 | 02 | PR | Juncos Landfill | Juncos | V | R | |
| 465 | 05 | IN | Bennett Stone Quarry | Bloomington | | E | |
| 466 | 04 | FL | Munisport Landfill | North Miami | | | D |
| 467 | 04 | AL | Stauffer Chem (Le Moyne Plant) | Axis | | | D |
| 468 | 02 | NJ | M&T Delisa Landfill | Asbury Park | V | | |
| 469 | 04 | SC | Geiger (C & M Oil) | Rantowles | | | D |
| 470 | 05 | WI | Moss-American(Kerr-McGee Oil Co.) | Milwaukee | | | D |
| 471 | 05 | WI | Waste Research & Reclamation Co. | Eau Claire | | E | |
| 472 | 10 | OR | Gould, Inc. | Portland | | E | |
| 473 | 05 | MN | St. Louis River Site | St. Louis County | | E | |
| 474 | 05 | MI | Auto Ion Chemicals, Inc. | Kalamazoo | | R | |
| 475 | 04 | SC | Carolawn, Inc. | Fort Lawn | | R | E |
| 476 | 03 | PA | Berks Sand Pit | Longswamp Township | | R | |
| 477 | 05 | MI | Sparta Landfill | Sparta Township | | | E |
| 478 | 05 | IL | ACME Solvent (Morristown Plant) | Morristown | | R | |
| 479 | 04 | FL | Hipps Road Landfill | Duval County | | R | |
| 480 | 04 | FL | Pepper Steel & Alloys, Inc. | Medley | | R | |
| 481 | 01 | ME | O'Connor Co. | Augusta | | | D |
| 482 | 05 | WI | Oconomowoc Electroplating Co. Inc | Ashippin | | | E |
| 483 | 05 | MI | Rasmussen's Dump | Green Oak Township | | R | |
| 484 | 03 | PA | Westline Site | Westline | | R | |
| 485 | 05 | OH | Powell Road Landfill | Dayton | | | D |
| 486 | 05 | MI | Ionia City Landfill | Ionia | | R | |
| 487 | 08 | CO | Lincoln Park | Canon City | | | D |
| 488 | 05 | IN | Wedzeb Enterprises, Inc. | Lebanon | | | E |
| 489 | 02 | PR | GE Wiring Devices | Juana Diaz | V | | |
| 490 | 05 | OH | New Lyme Landfill | New Lyme | | R | |
| 491 | 02 | NJ | Woodland Route 72 Dump | Woodland Township | | | D |
| 492 | 02 | PR | RCA Del Caribe | Barceloneta | | | D |
| 493 | 03 | PA | Brodhead Creek | Stroudsburg | | R | |
| 494 | 10 | OR | United Chrome Products, Inc. | Corvallis | | R | |
| 495 | 05 | MI | Anderson Development Co. | Adrian | | | E |
| 496 | 05 | MI | Shiawassee River | Howell | | | E |
| 497 | 03 | PA | Taylor Borough Dump | Taylor Borough | | R | |
| 498 | 03 | DE | Harvey & Knott Drum, Inc. | Kirkwood | | R | |
| 499 | 04 | TN | Gallaway Pits | Gallaway | | R | E |
| 500 | 05 | OH | Big D Campground | Kingsville | | | E |

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[FR Doc. 84-24747 Filed 9-20-84; 8:45 am]
BILLING CODE 6560-50-C

GROUP 11

| RANK | EPA REG | ST | SITE NAME * | CITY/COUNTY | RESPONSE STATUS # | | |
|---|---|---|---|---|---|---|---|
| 501 | 03 | DE | Wildcat Landfill | Dover | | R | |
| 502 | 05 | MI | Burrows Sanitation | Hartford | | | E |
| 503 | 03 | PA | Blosenski Landfill | West Cain Township | | R | |
| 504 | 03 | DE | Delaware City PVC Plant | Delaware City | V | | |
| 505 | 03 | MD | Limestone Road | Cumberland | | R | E |
| 506 | 02 | NY | Hooker (102nd Street) | Niagara Falls | | | E |
| 507 | 03 | DE | New Castle Steel | New Castle County | | | D |
| 508 | 06 | NM | United Nuclear Corp. | Church Rock | | R | E |
| 509 | 06 | AR | Industrial Waste Control | Fort Smith | | R | E |
| 510 | 09 | CA | Celtor Chemical Works | Hoopa | | R | |
| 511 | 04 | AL | Perdido Ground Water Contam | Perdido | | | D |
| 512 | 02 | NY | Marathon Battery Corp. | Cold Springs | | R | |
| 513 | 03 | PA | Lehigh Electric & Engineering Co. | Old Forge Borough | | R | E |
| 514 | 05 | OH | Skinner Landfill | West Chester | | | D |
| 515 | 04 | NC | Chemtronics, Inc. | Swannanoa | | | D |
| 516 | 07 | MO | Shenandoah Stables | Moscow Mills | | | E |
| 517 | 06 | LA | Bayou Bonfouca | Slidell | | R | |
| 518 | 03 | VA | Saltville Waste Disposal Ponds | Saltville | | R | |
| 519 | 03 | PA | Kimberton Site | Kimberton Borough | | | D |
| 520 | 03 | MD | Middletown Road Dump | Annapolis | | R | E |
| 521 | 10 | WA | Pesticide Lab (Yakima) | Yakima | | | D |
| 522 | 05 | IN | Lemon Lane Landfill | Bloomington | | R | |
| 523 | 10 | ID | Arrcom (Drexler Enterprises) | Rathdrum | | | D |
| 524 | 03 | PA | Fischer & Porter Co. | Warminster | V | | |
| 525 | 09 | CA | Jibboom Junkyard | Sacramento | | R | |
| 526 | 02 | NJ | A. O. Polymer | Sparta Township | | | E |
| 527 | 02 | NJ | Dover Municipal Well 4 | Dover Township | | | D |
| 528 | 02 | NJ | Rockaway Township Wells | Rockaway | | R | |
| 529 | 05 | WI | Delavan Municipal Well #4 | Delavan | | | D |
| 530 | 09 | CA | San Gabriel Valley (Area 3) | Alhambra | | R | |
| 531 | 09 | CA | San Gabriel Valley (Area 4) | La Puente | | R | |
| 532 | 10 | WA | American Lake Gardens | Tacoma | V | | |
| 533 | 10 | WA | Greenacres Landfill | Spokane County | | | D |
| 534 | 06 | TX | Triangle Chemical Co. | Bridge City | | R | E |
| 535 | 02 | NJ | PJP Landfill | Jersey City | | | E |
| 536 | 03 | PA | Craig Farm Drum | Parker | | | D |
| 537 | 03 | PA | Voortman Farm | Upper Saucon Twp | | R | |
| 538 | 05 | IL | Belvidere Municipal Landfill | Belvidere | | R | |

#: V = VOLUNTARY OR NEGOTIATED RESPONSE; R = FEDERAL AND STATE RESPONSE;
E = FEDERAL AND STATE ENFORCEMENT; D = ACTIONS TO BE DETERMINED.
* = STATES' DESIGNATED TOP PRIORITY SITES.

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101-47

[FPMR Amdt. H-149]

### Screening of Excess Real Property

**AGENCY:** Federal Property Resources Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This amendment gives Federal agencies that sponsor public benefit disposals at less than fair market value an opportunity to make a recommendation to the disposal agency that the highest and best use of excess real property is for a specific public benefit purpose. Under this amendment, recommendations concerning the potential of excess real property for public benefit use will be solicited concurrently with the 30-day Federal agency utilization screening period. The intended effects of this amendment are to provide for the earliest possible highest and best use determination for excess Federal real property and to expedite the formulation of an appropriate disposal plan.

**EFFECTIVE DATE:** The regulation is effective September 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** James H. Pitts, Office of Real Property, (202) 535-7067.

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

**List of Subjects in 41 CFR Part 101-47**

Surplus government property, Government property management.

## PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

For the reasons set forth in the preamble, 41 CFR Part 101-47 is amended as follows:

1. The authority citation for Part 101-47 is as follows:

Authority: Sec. 205(c) (40 U.S.C. 486(c)).

### Subpart 101-47.2—Utilization of Excess Real Property

2. Section 101-47.203-5 is amended by revising paragraph (d) to read as follows:

**§ 101-47.203-5 Screening of excess real property.**

* * * * *

(d) Concurrently with the 30-day Federal agency use screening period, those Federal agencies that sponsor public benefit disposals at less than fair market value as permitted by the statutory authorities in § 101-47.4905 may provide the disposal agency with a recommendation, together with a brief supporting rationale, as illustrated in § 101-47.4909, that the highest and best use of the property is for a specific public benefit purpose. The recommendation may be made by the agency head, or designee, and will be considered by the disposal agency in its final highest and best use analysis and determination. After a determination of surplus has been made, if the disposal agency agrees with a sponsoring Federal agency that the highest and best use of a particular property is for a specific public benefit purpose, local public bodies will be notified that the property is available for that use.

### Subpart 101-47.49—Illustrations

3. Section 101-47.4909 is added to read as follows:

**§ 101-47.4909 Highest and best use.**

(a) Highest and best use is the most likely use to which a property can be put, so as to produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (e.g. zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

(b) An analysis and determination of highest and best use is based on information compiled from the property inspection and environmental assessment. Major considerations include:

(1) Present zoning category (check one or more as appropriate).

Industrial ____
Single family residential ____
Multiple family residential ____
Commercial/retail ____
Warehouse ____
Agriculture ____
Institutional or public use ____

Other (specify) _____

Not zoned ____
Zoning proceeding pending Federal disposal ____

Category proposed _____

(2) Physical characteristics. (Describe land and improvements and comment on property's physical characteristics including utility services, access, environmental and historical aspects, and other significant factors)

(3) Area/neighborhood uses (check one or more as appropriate).

Single family residential ____
Multiple family residential ____
Industrial ____
Office ____
Retail or commercial ____
Farmland ____
Recreational/park area ____

Other (specify) _____

(4) Existing neighboring improvements (check one or more as appropriate).

Deteriorating ____
Stable ____
Some recent development ____
Significant recent development ____

Vicinity improvements:
——Dense ——Moderate ——Sparse ——None

(5) Environmental factors/constraints adversely affecting the marketability of the property (check one or more as appropriate).

Severe slope or soil instability ____
Road access ____
Access to sanitary sewers or storm sewers ____
Access to water supply ____
Location within or near floodplain ____
Wetlands ____
Tidelands ____
Irregular shape ____
Present lease agreement or other possessory non-Federal interest ____
Historic, archeological or cultural ____

Contamination or other hazards..... ——

Other (specify)——————————

Comments on adverse conditions ——————

(6) Former Government uses (check one or more as appropriate).

Office ..... ——
Industrial..... ——
Warehouse or storage..... ——
Residential..... ——
Retail/commercial ..... ——
Agricultural..... ——

Specify other uses below, such as airport, health, education, recreation and special military facilities—

(c) Determination of highest and best use (check one or more as appropriate).

Single family residential..... ——
Multiple family residential..... ——
Industrial..... ——
Office ..... ——
Retail or commercial..... ——
Agricultural..... ——
Warehouse/storage ..... ——
Transportation ..... ——
Historic monument ..... ——
Recreation/park ..... ——
Health..... ——
Education or related institutional use..... ——
Airport..... ——
Wildlife Conservation..... ——
Public utility..... ——

Other (include general public or governmental).

Remarks: ——————

(d) Are significant costs required to make property conform to highest and best use (i.e. demolition of existing improvements, relocation of existing improvements, etc.)?

Remarks: ——————

(e) Can a knowledgeable cost estimate be given in reference to paragraph d above? (Enter figure).

Yes ($ )..... ——
No..... ——

(f) Is the property located adjacent to or inside the boundaries of a State park, forest or recreational area?

Yes..... ——
No..... ——

Remarks ——————

Dated: August 27, 1984.

**Ray Kline,**

*Acting Administrator of General Services.*

[FR Doc. 84-25110 Filed 9-20-84; 8:45 am]

BILLING CODE 6820-96-M

## OFFICE OF PERSONNEL MANAGEMENT

### 45 CFR Part 801

### Voting Rights Program; Appendix A: Georgia

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management is establishing the location of five new offices for filing of applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

**DATES:** This rule is effective September 21, 1984. In view of the need for its publication without an opportunity for prior comment, comments will still be received and considered. To be timely, comments must be received on or before October 22, 1984.

**ADDRESS:** Send or deliver comments to: Ronald E. Brooks, Coordinator, Voting Rights Program, Office of Personnel Management, 1900 E Street, NW, Room 5532, Washington, D.C. 20415.

**FOR FURTHER INFORMATION CONTACT:** Ronald E. Brooks, Coordinator, Voting Rights Program, (202) 632-5544.

**SUPPLEMENTARY INFORMATION:** The Attorney General has designated Baldwin, Chattahoochee, Jefferson, Pike and Worth Counties, Georgia, as additional examination points under the provisions of the Voting Rights Act of 1965, as amended. He has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Pursuant to Section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to Section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to register voters immediately in view of the pending elections to be held in the subject counties, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

### E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantial number of small entities because its purpose is the addition of five new locations to the list of counties in the regulations concerning OPM's responsibilities under that Voting Rights Act.

### List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting rights.

U.S. Office of Personnel Management.

**Donal J. Devine,**

*Director.*

Accordingly, the Office of Personnel Management amends 45 CFR 801.202, Appendix A, by alphabetically adding Baldwin County, Chattahoochee County, Jefferson County, Pike County, and Worth County, Georgia, to read as follows:

## PART 801—VOTING RIGHTS PROGRAM

**§ 801.202 Times and places for filing and forms of application.**

* * * * *

Appendix A

* * * * *

Georgia

*County; Place for filing; Beginning date.*

* * * * *

Baldwin—ASCS, Post Office Building, 110 Handcock Street, Room 206, Milledgeville, Georgia; Chattahoochee—U.S. Post Office Lumpkin Highway, Cusseta, Georgia; Jefferson—Post Office Building Room 4, 131 W. Broad Street, Louisville, Georgia; Pike—ASCS, Pike County Agriculture Building, Gwyn Street, Zebulon, Georgia; Worth—ASCS, Worth County ASCS Building, 501 N. Henderson, Sylvester, Georgia. Upon publication.

* * * * *

(5 U.S.C. 1103; secs. 7,9,79 Stat. 440, 411 (42 U.S.C. 1973c, 1973g)

[FR Doc. 84-25171 Filed 9-20-84; 8:45 am]

BILLING CODE 6325-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 83-1295; RM-4583]**

### FM Broadcast Station in Red Bluff, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein substitutes Class B Channel 239 for Channel 240A at Red Bluff, California, and modifies the Class A license, accordingly, in response to a petition filed by Wireless Associates.

**EFFECTIVE DATE:** November 20, 1984.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:**

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

Radio broadcasting.

**Report and Order (Proceeding Terminated)**

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Red Bluff, California) MM Docket 83-1295, RM-4583.

Adopted: September 12, 1984.
Released: September 14, 1984.

By the Chief, Policy and Rules Division.

1. In response to a petition filed by Wireless Associates ("petitioner") [1], the Commission adopted the *Notice of Proposed Rule Making*, 48 FR 55588, published December 14, 1983, proposing to substitute Class B Channel 239 for Channel 240A at Red Bluff, California. The *Notice* also proposed to modify the petitioner's Class A license for Station KALF(FM) to specify operation on Channel 239. Supporting comments were filed by the petitioner. There were no oppositions to the proposal.

2. In comments, the petitioner restated its intention to convert from a Class A to Class B facility, if no other interest is expressed in Channel 239, and if the proposal is adopted.

3. After consideration of the proposal, we conclude that the public interest would be served by the channel substitution at Red Bluff, in order to provide an increase in coverage by the petitioner's station. Red Bluff is located in Zone II, approximately 12.5 miles north of the 40th parallel which divides Zones 1-A and II, and would normally be assigned Class C channel. Here, however, Class B Channel 239 can be assigned to Red Bluff, with a site restriction of 17.1 miles southwest of the city [2], in accordance with §§ 73.202(a) and 73.205 of the Rules. This restriction will also avoid a short spacing to Station KPAY-FM (Channel 236), Chico, California.

4. Additionally, we have authorized in paragraph 5 a modification of petitioner's license for Station KALF(FM), Red Bluff, California, to specify operation on Channel 239, since there has been no other expressions of interest in the Class B channel. See *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

5. Accordingly, pursuant to the authority found in section 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective November 20, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended to include the community listed below, as follows:

| City | Channel No. |
|---|---|
| Red Bluff, California | 239, 272A |

6. It is further ordered, pursuant to the authority contained in § 316 of the Communications Act of 1934, as amended, that the license of Station KALF(FM), Red Bluff, California, is modified to specify operation on Channel 239, subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 84-25050 Filed 9-20-84; 8:45 am]

BILLING CODE 6712-01-M

[1] Petitioner is the licensee of Station KALF(FM), Red Bluff, California.

[2] The petition was filed prior to March 1, 1984, therefore, this location does not allow for a 16 km buffer zone to Station KBOY-FM, Medford, Oregon, as provided for in BC Docket 80-90 *Memorandum Opinion and Order*, 49 FR 10260, published March 20, 1984.

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Parts 32 and 33

### Addition of Fifteen National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird Hunting, Upland Game Hunting, Big Game Hunting, and/or Sport Fishing

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule adds fifteen refuges to the lists of open areas for migratory game bird hunting, upland game hunting, big game hunting, and/or sport fishing. The Secretary has determined that this action is in accordance with the provisions of all applicable laws, is consistent with the principles of sound wildlife management, and is otherwise in the public interest. The Secretary has further determined that such uses are compatible with the major purposes for which each refuge was established. The hunting of migratory game birds, upland game and big game, and/or sport fishing would provide additional public recreational opportunities.

**EFFECTIVE DATE:** September 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** James Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240; Telephone (202) 343–4311.

**SUPPLEMENTARY INFORMATION:** National wildlife refuges are closed to hunting and sport fishing until opened by rulemaking. The Secretary may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purposes for which refuge areas were established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. Some of these hunting programs require refuge specific hunting regulations. These regulations are included in this rulemaking also. On August 20, 1984, a rule was published (49 FR 33027) that proposed the addition of the fifteen refuges cited below to the lists of areas open to migratory game bird hunting, upland game hunting, big game hunting and/or sport fishing. The Department received written comments regarding the opening of these refuges to hunting and fishing, and these are considered in the following section.

**Responses to Comments Received**

A careful review of all the public comments identified a number of issues concerning the proposed rulemaking. The following is a listing of each issue that was raised by the public and the Service's response.

1. A lead poisoning problem is likely to develop at Alligator River NWR and Chincoteague NWR. These refuges should be designated as non-toxic shot zones at the outset of the migratory waterfowl hunting program.

*Service Response:* The Service policy regarding the use of non-toxic shot on national wildlife refuges was delineated by the Director to the regional directors in his January 27, 1983, memorandum, a part of which follows: "Non-toxic shot will be required for waterfowl hunting *only* if a lead poisoning problem has been documented in the area where waterfowl hunting will take place. Evidence of a lead poisoning problem must be documented as verified deaths or high levels of lead in soft tissues (e.g., 6 ppm net weight in liver or 0.5 ppm in blood) in conjunction with gross lesions and chemical signs of lead poisoning." We are not aware of evidence of the above situation at either Alligator River NWR or Chincoteague NWR.

2. Sport hunting on refuges is illegal.

*Service Response:* The Refuge Recreation Act states that the Secretary of the Interior is authorized to administer refuges for public recreation. The National Wildlife Refuge System Administration Act, as amended, states that the Secretary is authorized to permit the use of any area within the Refuge System for any purpose, including hunting. Thus, Congress clearly intended that recreation be an important part of a refuge management program to the extent that it can be made compatible with the primary purposes of a refuge. This was affirmed in the decision of the matter of *The Humane Society of the United States* v. *Morton* (Civil Action No. 3627) where the court found that public hunting on Great Swamp, Eastern Neck, and Chincoteague National Wildlife Refuges was a valid and legal form of public recreation on these refuges.

3. Data was not offered to back up the summary assertions that hunting is compatible on the refuges and that funds are available to administer the programs.

*Service Response:* The proposed rule contained a compatibility and funding statement for each refuge listed in the rule. The purpose for which each refuge was established, and a brief description of how each hunting program is compatible with these purposes was discussed. A funding estimate for the hunting programs on each refuge was also presented in that rule. The environmental assessments and hunting plans for each refuge were also available to the public at the time of publication of the proposed rule. The Service believes that these documents contain the necessary data to judge the compatibility of these hunting programs.

4. The requirements of 50 CFR 31.1 and 31.2 have not been met.

*Service Response:* 50 CFR Part 31 is limited to recognizing general authority to dispose of surplus wildlife and lists hunting as one method of control and disposition. The Service's procedure for permitting public hunting on refuges is set forth in 50 CFR Part 32. This rule involves the policy and regulations set forth in Part 32 which essentially require that hunting be consistent with the principles of sound wildlife management and otherwise be in the public interest.

5. The regulations governing the proposed hunting programs will illegally transfer the authority for managing Federal lands to the States.

*Service Response:* The regulations governing the hunting programs do not transfer Service authority for managing national wildlife refuges. National wildlife refuges are opened to hunting and hunting is managed in accordance with the Secretary's authority under the National Wildlife Refuge System Administration Act, as amended, and the Refuge Recreation Act. Once the Secretary has made the mandated determinations under the above mentioned authorities, it is the policy of the Department to conduct hunting programs within the framework of State laws and regulations and to impose additional requirements, where necessary, as refuge specific regulations. This policy is clearly stated in 50 CFR 32.2(d), "Each person shall comply with the applicable provisions of the laws and regulations of the State wherein any area is located unless further restricted by Federal law or regulation." Under the regulations that will govern these hunts the Service maintains its authority to enforce all State and Federal game regulations on national wildlife refuges.

6. The regulations governing the proposed hunting programs show little evidence of effort to provide protection for endangered and threatened species from potential adverse impacts of the hunting programs.

*Service Response:* When the hunting plans and environmental assessments for the hunting programs were developed, consideration was given to the potential impact upon any endangered or threatened species that might use the refuge. Where it was necessary, the Service complied with the Endangered Species Act by preparing Section 7 analyses. The hunting programs were developed to minimize any potential impact on endangered and threatened species, and when they were needed, refuge specific regulations were imposed to ensure that these hunting programs will not affect endangered or threatened species.

7. Land owners adjacent to Chincoteague NWR and Cross Creeks NWR objected to hunting activities near their property.

*Service Response:* The Service recognizes that some people may object to hunting near their property, but the Service feels that the hunting programs developed for Chincoteague NWR and Cross Creeks NWR will not adversely effect adjacent land owners. The waterfowl hunting program at Chincoteague NWR will carefully control the number and location of the hunters on the refuge, therefore, practically eliminating any adverse impact on adjacent land owners. Waterfowl hunting at Cross Creeks NWR will generally occur a good

distance inside refuge boundaries and should not impact nearby land owners. Deer hunting at Cross Creek NWR is limited to archery hunting, and the upland game hunting program is limited to squirrel hunting at this time. It is unlikely that these activities will adversely impact adjacent land owners.

8. The ten day comment period for the proposed rule did not allow a sufficient time for the public to respond.

*Service Response:* The Service received eight written responses regarding this rule. This number of responses is similar to those received by the Service during a thirty day comment period for a previous rulemaking (49 FR 22819) that opened thirteen refuges to hunting and fishing. Thus, judging from the number of comments received on this rule, the Service believes that the ten day comment period was adequate. In addition, the public living in the vicinity of the refuges where these hunting and fishing programs are being instituted were given notice of this action, and in many cases, their input was sought during the planning stages of these programs. The short comment period for this rule was necessary in order to conduct some of the new hunting programs within the State seasons that occur during the months of September and October, and to avoid confusing the public in regards to the scheduling of these hunts.

**Conformance with Statutory and Regulatory Authorities**

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge System Administration Act authorizes the Secretary to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established. (The compatibility determination for each refuge is discussed below.) In addition, the Act provides that the taking of migratory game birds will be permitted on no more than 40 percent of any area that has been designated as an inviolate sanctuary for migratory game birds. Of the refuges that are opened to the hunting of migratory birds by this rule, Chincoteague and Hatchie National Wildlife Refuges were originally established as inviolate sanctuaries for migratory birds. This rule opens less than 40 percent of the above mentioned refuges to migratory game birds and therefore conforms to this provision of the Act.

The Refuge Recreation Act authorizes the Secretary of the Interior to administer refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires that the Secretary shall determine that funds be made available for the development, operation, and maintenance of these permitted forms of recreation, prior to initiating such uses of refuge areas.

In accordance with the Refuge Administration Act and the Refuge Recreation Act, the Secretary of the Interior has determined that these openings for hunting and fishing are compatible with the primary purposes for which each of the refuges was established. The hunting and fishing programs will be consistent with State and Federal (migratory game bird) regulatory frameworks which are developed specifically to ensure conservation of fish and wildlife populations. A discussion of the compatibility of the hunting and fishing programs with the purposes for which each refuge was established and the availability of funding for each program follows:

Alligator River NWR was established for the conservation of fish and wildlife by donation under the provisions of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742f(b)). Conservation of fish and wildlife involves the perpetuation of fish and wildlife habitat and populations. Migratory game bird, upland and big game hunting and sport fishing at Alligator River NWR will result in only minor temporary disturbances to refuge habitat and limited harvest of wildlife. Implementation of these hunting and fishing progams will be an integral part of the management of refuge fish and wildlife populations. These programs will utilize a renewable resource while maintaining balanced fish and wildlife populations and their habitats. Therefore, the opening of Alligator River NWR to migratory game bird, upland game and big game hunting and sport fishing will be compatible with the purposes for which the refuge was established and will be in compliance with the Refuge Administration Act. Funds are available for the administration of these hunting and fishing programs.

Chincoteague NWR was established by the Migratory Bird Conservation Commission for the conservation of migratory birds. Migratory game bird hunting will be limited to the recently acquired area known as Wildcat Marsh. Wildcat Marsh comprises 492 acres of the 9,931-acre refuge, or less than five percent of the total refuge area, and complies with the 40% provision of the Refuge Administration Act. Hunting will be from established blinds and hunter numbers will be restricted. Travel to blinds will be over established pathways and will result in only minimal disturbance to refuge habitat. Migratory waterfowl hunting regulations regulate the seasons, bag limits and the number of hunters to ensure the conservation of waterfowl populations, including black duck populations. Moreover, waterfowl hunting will be structured to have a positive effect on refuge habitat by dispersing snow geese which will help to limit excessive use of the marsh vegetation by snow geese that has caused a thinning of the Spartina grasses called "eat out" areas. Under these conditions, hunting will be consistent with the conservation of migratory birds, including the perpetuation of migratory bird habitat and populations. Therefore, the opening of Chincoteague NWR to migratory game bird hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of this hunting program will be less than $8,000. Within the annual refuge budget of approximately $701,000, the necessary funds are available for the administration of the migratory game bird hunting program. Therefore, the opening of Chincoteague NWR to migratory game bird hunting is in compliance with the Refuge Recreation Act.

Cross Creeks NWR was established under Pub. L. 83–780, Senate Document No. 81 and Public Land Order 4560, for the purpose of transferring refuge lands to the Service as mitigation for the loss of waterfowl habitat at Kentucky Woodlands NWR. Upland and big game hunting will occur in habitat not normally used by migratory waterfowl. Migratory game bird hunting will be space and time zoned to ensure that only minimal disturbances will occur to the overall migratory bird population. Waterfowl use might decrease slightly in the part of the refuge open to migratory game bird hunting, but this will only involve temporary daytime disturbances. Under these conditions, the proposed hunting programs will be consistent with the conservation of

migratory birds, including the perpetuation of migratory bird habitat and populations. Therefore, the opening of Cross Creeks NWR to migratory game bird, upland game and big game hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of these hunting programs will be less than $20,000. Within the annual refuge budget of approximately $230,000, the necessary funds are available for the administration of the migratory game bird, upland game and big game hunting programs. Therefore, the opening of Cross Creeks NWR to these hunting programs is in compliance with the Refuge Recreation Act.

Fox River NWR was acquired with Land and Water Conservation Funds in 1979 to preserve and enhance the wetland and adjacent upland habitat found along the Fox River; to preserve and enhance wildlife populations through habitat preservation, restoration and management; to protect habitats of endangered and threatened species; and for purposes of research, outdoor recreation, environmental education and other public uses. Big game hunting will be used to manage the refuge deer population which has increased, since the establishment of the refuge, to the point where it is having an adverse impact on refuge habitat and crops on neighboring private lands. Reducing the deer population and maintaining it at optimum levels will ensure the preservation and enhancement of refuge wildlife populations and habitat. In addition, opening the refuge to big game hunting will make the area available to an important form of outdoor recreation. Therefore, the opening of Fox River NWR to big game hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of these hunting programs will be less than $4,000. Within the annual refuge complex budget of approximately $328,000, the necessary funds are available for the administration of the big game hunting program. Therefore, the opening of Fox River NWR to big game hunting is in compliance with the Refuge Recreation Act.

Hatchie NWR was established by the Migratory Bird Conservation Commission for the conservation of migratory birds. Migratory game bird hunting will be permitted on approximately 350 acres of the 4,662-acre refuge, or less than 10% of the total refuge area. This hunting area will be outside the area that is intensively managed for migrating and wintering waterfowl. Hunting will be limited to half-day hunts on three days of the week during the State season, so that waterfowl will be assured opportunities to utilize the hunting area without being disturbed. Waterfowl use might decrease slightly in the part of the refuge open to hunting, but this will involve only temporary daytime disturbances. Under these conditions, hunting will be consistent with the conservation of migratory birds, including the conservation of migratory bird habitat and populations. Therefore, the opening of Hatchie NWR to migratory game bird hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of the hunting program will be less than $1,500. Within and annual refuge budget of approximately $220,000, the necessary funds are available for the administration of the migratory game bird hunting program. Therefore, the opening of Hatchie NWR to migratory game bird hunting is in compliance with the Refuge Recreation Act.

Lacassine NWR was established by Executive Order 7760 as a refuge and breeding ground for migratory birds and other wildlife. Like other national wildlife refuges established as refuge and breeding grounds, Lacassine NWR was created primarily to safeguard wildlife populations and their habitats and is not intended to be a "safe haven" for individual animals. Thus, the use of hunting as a refuge management tool is in keeping with refuge purposes to conserve wildlife populations and habitat. Big game hunting on Lacassine NWR will occur primarily on spoil banks and levees throughout the refuge with little disturbance to this habitat. Big game hunting will occur in October prior to the use of the refuge by large numbers of migratory waterfowl and there will be no significant disturbance to the waterfowl. Therefore, the opening of Lacassine NWR to big game hunting is compatible with the purpose for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of the hunting program will be less than $8,000. Within the annual refuge budget of approximately $268,000, the necessary funds are available for the administration of the big game hunting program. Therefore, the opening of Lacassine NWR to big game hunting is in compliance with the Refuge Recreation Act.

Necedah NWR was established by Executive Order 8065 as a refuge and breeding ground for migratory birds and other wildlife. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats and are not intended to be "safe havens" for individual animals, the use of hunting as a refuge management tool is in keeping with refuge purposes to conserve wildlife populations and habitat. Migratory game bird hunting on Necedah NWR will be permitted on approximately 4,000 acres of the refuge that have recently come under Service management. The Service will implement a permit system to limit the number of hunters using the area at any one time. Under this system, only minor temporary disturbances to other refuge wildlife and their habitat will occur. Therefore, the opening of Necedah NWR to migratory game bird hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of the migratory game bird hunting program will be less than $10,000. Within the annual refuge budget approximately $233,000, the necessary funds are available for the administration of the migratory game bird hunting programs. Therefore, the opening of Necedah NWR to migratory game bird hunting is in compliance with the Refuge Recreation Act.

Optima NWR was established through a cooperative agreement with the Department of the Army for the development, conservation and management of wildlife resources. Migratory game bird hunting for mourning dove and upland game hunting for quail, rabbit and pheasant will be managed as an intergral part of a comprehensive refuge wildlife management program. The individual hunting programs are consistent with State and Federal regulatory frameworks which are developed specifically to ensure the conservation of fish and wildlife populations. Therefore, the opening of Optima NWR to migratory game bird and upland game hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of these hunting programs will be less than $8,000. Within the annual refuge complex budget of approximately $230,000, the necessary funds are available for the administration of migratory game bird and upland game hunting programs. Therefore, the opening of Optima NWR to migratory game bird and upland game hunting is in compliance with the Refuge Recreation Act.

Ouray NWR was established by the Migratory Bird Conservation Commission for the conservation of migratory birds. Sport fishing will occur primarily during July through September when waterfowl use of the Green River is minimal and waterfowl production will not be affected. Similarly, sport fishing will have no effect on bald eagle use of the river, which occurs during a period from December through April. Therefore, the opening of Ouray NWR to sport fishing is compatible with the purposes for which the refuge was established would be in compliance with the Refuge Administration Act. The annual cost of this sport fishing program will be less than $4,000. Within the annual refuge budget of approximately $203,000, the necessary funds are available for the administration of the sport fishing program. Therefore, the opening of Ouray NWR to sport fishing is in compliance with the Refuge Recreation Act.

Pea Island NWR was established by Executive Order 7864 as a refuge and breeding ground for migratory birds and other wildlife. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and are not intended to be "safe havens" for individual animals, the use of hunting as a management tool is in keeping with refuge purposes to conserve wildlife populations and habitat. Upland game hunting on Pea Island NWR will result in temporary disturbances to vegetation, but this impact will be minimized by limiting the number of hunters and the frequency of hunts. Hunting will also be limited to high marsh and upland areas where the impact on waterfowl use will be minimal. Therefore, the opening of Pea Island NWR to upland game hunting is compatible with purposes for which the refuge was established and is in compliance with Refuge Administration Act. The annual cost of the hunting program will be less than $3,000. Within the annual refuge budget of approximately $166,000, the necessary funds are available for the administration of the upland game hunting program. Therefore, the opening of Pea Island NWR to upland game hunting is in compliance with the Refuge Recreation Act.

Reelfoot NWR was established by a cooperative agreement with the State of Tennessee for the benefit of wintering waterfowl and other wildlife species. Big game hunting will be used to manage the refuge deer population which, if it continues growing at its present rate, will have an adverse impact on refuge habitat and agricultural crops. Proper management of the refuge deer population will benefit diverse refuge habitat and other wildlife species. Big game hunting will occur in November prior to the period of intensive migratory waterfowl use and will be zoned so that only minor temporary disturbances to waterfowl and their habitat will occur. Therefore, the opening of Reelfoot NWR to big game hunting is compatible with the purpose for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of the big game hunting program will be less than $5,000. Within the annual refuge budget of approximately $273,000, the necessary funds are available for the administration of the big game hunting program. Therefore, the opening of Reelfoot NWR to big game hunting is in compliance with the Refuge Recreation Act.

Santee NWR was established by a cooperative agreement with the South Carolina Public Service Authority to alleviate the loss of natural waterfowl habitat by the construction of hydro-electric power and navigation projects on Lakes Marion and Moultrie. The refuge primarily serves as a winter sanctuary for migratory waterfowl. Upland game hunting will occur before and after the critical wintering period for migratory waterfowl. Time and space zoning will be implemented to ensure that the hunting program does not conflict with the management of other wildlife species on the refuge. Therefore, the opening of Santee NWR to upland game hunting will be compatible with the primary purposes for which the refuge was established and will be in compliance with the Refuge Administration Act.

The annual cost of administering this hunt program will be $6,000. Within the annual refuge budget of approximately $242,000, the necessary funds are available for the administration of the upland game hunting program. Therefore, the opening of the Santee NWR to upland game hunting is in compliance with the Refuge Recreation Act.

Savannah NWR was established as a refuge and breeding ground for birds and wild animals by Executive Order 5748. This action revoked Executive Order 4626 which had previously established the refuge. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and are not intended to be "safe havens" for individual animals, the use of hunting as a refuge management tool is in keeping with refuge purposes to conserve wildlife populations and habitat. When wildlife and the habitats are properly managed, they produce game populations from which a certain segment can be taken without affecting population trends. Savannah NWR reflects this situation. Upland and big game hunting on the refuge will utilize game species without affecting population trends and, further, will protect refuge habitat and dikes from hog depredation. Therefore, the opening of Savannah NWR to upland and big game hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of these hunting programs will be less than $6,000. Within the annual refuge complex budget of approximately $896,000, the necessary funds are available for the administration of the upland and big game hunting programs. Therefore, the opening of Savannah NWR to these hunting programs is in compliance with the Refuge Recreation Act.

Trempealeau NWR was established by Executive Order 7437 as a refuge and breeding ground for migratory birds and other wildlife. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and are not intended to be "safe havens" for individual animals, the use of hunting as a refuge management tool is in keeping with refuge wildlife conservation purposes. Migratory game bird, upland game and big game hunting and sport fishing at Trempealeau NWR will be limited to specific areas of the refuge, so that only minor temporary disturbances will occur to refuge habitat and wildlife. For example, the areas where cormorants and ospreys nest will be closed to sport fishing. In addition, migratory game bird, upland and big game hunting will be limited to areas where there will be minimal disturbance to waterfowl. The implementation of these hunting programs will be an integral part of the management of refuge wildlife populations. For example, big game hunting will be used to reduce the deer population which at the present time exceeds the carrying capacity of refuge habitat. Migratory game bird and upland game hunting will also utilize a renewable resource while maintaining balanced wildlife populations on the refuge. Therefore, the opening to Trempealeau NWR to migratory game bird, upland and big game hunting and sport fishing is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The

annual cost of these hunting programs will be less than $8,000. Within the annual refuge budget of $135,000, the necessary funds are available for the administration of the migratory game bird, upland and big game and sport fishing programs. Therefore, the opening of Trempealeau NWR to these hunting and sport fishing programs is in compliance with the Refuge Recreation Act.

Wertheim NWR was established as a migratory bird sanctuary by donation under the provisions of section 5 of the Migratory Bird Conservation Act (16 U.S.C. 715). Sport fishing will cause only minor temporary disturbances to refuge wildlife. Access to fishing areas along the bank of the Carmans River would be limited to foot trails, and only nonmotorized boats will be permitted to launch from the refuge. Therefore, the opening of Wertheim NWR to sport fishing is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of the sport fishing program will be less than $1,000. Within the annual refuge budget of $255,000, the necessary funds are available for the administration of the sport fishing program. Therefore, the opening of Wertheim NWR to sport fishing is in compliance with the Refuge Recreation Act.

In summary, the Service has determined that these hunting and fishing programs will be appropriate incidental or secondary uses of these refuges; will be compatible with and would not interfere with the primary purposes for which these refuges were established; will be biologically sound and compatible with the principles of sound wildlife management; and will not be inconsistent with any other previously authorized Federal programs or with the primary objectives of these refuges. The Service has further determined that funds are available for administration of these programs, and that these programs will otherwise be in the public interest in that they will provide needed recreational opportunities without impairment of the resource.

Hunting plans are developed for each hunting program on a refuge prior to the opening of the refuge to hunting. In some cases, refuge specific hunting regulations are included as a part of the hunting plan to ensure the compatibility of the hunting programs with refuge purposes. For this reason, refuge specific regulations that are necessary for the proposed hunting programs are also included in this rulemaking.

**Economic Effect**

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

It is estimated that the opening of these refuges to hunting and fishing will generate approximately 74,000 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, total annual receipts generated from purchases such as for food, transportation, hunting equipment, fishing gear, fees, and licenses associated with these programs are expected to be approximately $1.9 million, or substantially less than $100 million. In addition, since these estimated receipts will be spread over 12 States, the implementation of this rule should not have a significant economic impact on the overall economy, or a particular region, industry or group of industries, or level of government.

With respect to small entities, this rule will have a positive aggregate economic effect on small business, organizations and governmental jurisdictions. The proposed opening will provide recreational opportunities and generate economic benefits that would otherwise exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal Government to implement activities under this rule would be less than income generated from the implementation of these hunting and/or sport fishing programs.

Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

**Paperwork Reduction Act**

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

| Type of information collection | OMB approval No. |
|---|---|
| Hunter surveys | 1018-0044 |
| Special Use Permits | 1018-0046 |
| Hunter reservation/application/blind assignment | 1018-0047 |
| Weapon Qualification | 1018-0050 |

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

**Environmental Considerations**

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" (FES 76-59) was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1976 (41 FR 51131). Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), environmental assessments and Findings of No Significant Impact have been prepared for these openings. Section 7 evaluations have been prepared where appropriate pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543). These documents are available for public inspection and copying in Room 2343, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, or by mail, addressing the Director at the address above.

Richard Frietsche, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240 is the primary author of this rulemaking document.

**List of Subjects**

*50 CFR Part 32*

Hunting, National wildlife refuge system, Wildlife, Wildlife refuges.

*50 CFR Part 33*

Fishing, National wildlife refuge system, Wildlife refuges.

These hunting and fishing programs will provide needed recreational opportunities without impairment of refuge resources. In view of the rapidly approaching seasons there is an immediate need to place these regulations (which relieve restrictions)

into effect. Thus the Department has concluded that good cause exists within the meaning of 5 U.S.C. 553 (d)(3) and (b)(B) of the Administrative Procedure Act to make these regulations effective upon publication in the **Federal Register.**

Parts 32 and 33 of Chapter I of Title 50 of the Code of Federal Regulations are amended as set forth below:

1. The authority citation for Part 32 reads as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, sec. 5, 45 Stat. 449, sec. 10, 45 Stat. 1224, sec. 4, 48 Stat. 402, as amended, sec. 4, 48 Stat. 451, as amended, sec. 2, 48 Stat. 1270, sec. 4, 76 Stat. 654 as amended, sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k, 668dd; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb, unless otherwise noted.

2. The authority citation for Part 33 reads as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2 48 Stat. 402, as amended, 451, 1270, sec. 4, 76 Stat. 654; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb, unless otherwise noted.

3. Section 32.11 is amended by adding Alligator River MWR, NC; Optima NWR, OK; Cross Creeks NWR and Hatchie NWR, TN; Chincoteague NWR, VA; and Neceedah NWR and Trempealeau NWR, WI alphabetically by State as follows:

**§ 32.11 List of open areas; migratory game birds.**

* * * * *

North Carolina

* * * * *

Alligator River National Wildlife Refuge.

* * * * *

Oklahoma

* * * * *

Optima National Wildlife Refuge.

* * * * *

Tennessee

* * * * *

Cross Creeks National Wildlife Refuge.
Hatchie National Wildlife Refuge.

* * * * *

Virginia

* * * * *

Chincoteague National Wildlife Refuge.

* * * * *

Wisconsin

* * * * *

Necedah National Wildlife Refuge.
Trempealeau National Wildlife Refuge.

* * * * *

4. Section 32.12 is amended by redesignating paragraphs (ff)(1) through (ff)(3) as paragraphs (ff)(2) through (ff)(4), respectively; by adding a new paragraph (ff)(1); by redesignating paragraphs (kk)(1) through (kk)(4) as paragraphs (kk)(3)(i), (kk)(3)(ii), (kk)(3)(iii) and (kk)(3)(iv), respectively; by adding new paragraphs (kk)(1) and (kk)(2); by redesignating paragraphs (oo) and (pp) as paragraphs (pp) and (rr), respectively; and by adding new paragraphs (oo), (qq)(1) and (qq)(2) as follows:

**§ 32.12 Refuge specific regulations; migratory game birds.**

* * * * *

(ff) *Oklahoma*—(1) *Optima National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge.

* * * * *

(kk) *Tennessee*—(1) *Cross Creeks National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted only on Wednesdays, Thursdays, Saturdays, and Sundays during the regular duck season.

(iii) Hunters are required to check in and out of the refuge.

(iv) Hunters must use and be in possession of only shells containing steel shot.

(2) *Hatchie National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge, subject to the following conditions:

(i) Hunting is permitted only on Tuesdays, Thursdays, and Saturdays until noon.

(ii) Only portable blinds and blinds made of native vegetation may be used.

(iii) Portable blinds and decoys must be removed from the refuge following each day's hunt.

(iv) Hunters must use and be in possession of only shells containing steel shot.

* * * * *

(oo) *Virginia—Chincoteague National Wildlife Refuge.* Hunting of migratory game birds is permitted on Wildcat Marsh subject to the following condition: Permits are required.

* * * * *

(qq) *Wisconsin*—(1) *Necedah National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Waterfowl hunters must use and be in possession of only shells containing steel shot.

(2) *Trempealeau National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Waterfowl hunters must use and be in possession of only shells containing steel shot.

* * * * *

5. Section 32.21 is amended by adding Savannah NWR, GA and SC; Alligator River NWR and Pea Island NWR, NC; Optima NWR, OK; Santee NWR, SC; Cross Creeks NWR, TN; and Trempealeau, WI alphabetically by State as follows:

**§ 32.21 List of open areas; upland game.**

* * * * *

Georgia

* * * * *

Savannah National Wildlife Refuge.

* * * * *

North Carolina

* * * * *

Alligator River National Wildlife Refuge.
Pea Island National Wildlife Refuge.

* * * * *

Oklahoma

* * * * *

Optima National Wildlife Refuge.

* * * * *

South Carolina

* * * * *

Savannah National Wildlife Refuge.
Santee National Wildlife Refuge.

* * * * *

Tennessee

* * * * *

Cross Creeks National Wildlife Refuge.

* * * * *

Wisconsin

Trempealeau National Wildlife Refuge.

* * * * *

6. Section 32.22 is amended by redesignating paragraphs (i)(1) and (i)(2) as paragraphs (i)(1)(i) and (i)(1)(ii); by adding a new paragraph (i)(2); by redesignating paragraphs (cc)(1), (cc)(2) and (cc)(3) as paragraphs (cc)(2)(i), (cc)(2)(ii) and (cc)(2)(iii), respectively; by adding a new paragraph (cc)(1); by redesignating paragraphs (ee)(1) through (ee)(3) as paragraphs (ee)(2) through (ee)(4), respectively; by adding a new paragraph (ee)(1); by adding new paragraphs (hh)(3) and (hh)(4); by redesignating paragraphs (jj)(1) through (jj)(3) as paragraphs (jj)(2) through (jj)(4), respectively; by adding a new paragraph (jj)(1); and by adding a new paragraph (oo)(3) as follows:

**§ 32.22 Refuge specific regulations; upland game.**

* * * * *

(i) * * *

(2) *Savannah National Wildlife Refuge.* Hunting of squirrels and rabbits is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted for seven consecutive days beginning the fourth Monday in October.

* * * * *

(cc) *North Carolina*—(1) *Pea Island National Wildlife Refuge.* Hunting of pheasant and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of pheasant is permitted on Saturdays from the last Saturday in October through the second Saturday in December and on two days beginning Thanksgiving Day. Hunting of rabbit is also permitted when the above dates coincide with the State rabbit season.

(iii) Only shotguns are permitted.

* * * * *

(ee) *Oklahoma*—(1) *Optima National Wildlife Refuge.* Hunting of pheasant, bobwhite and scaled quail, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

* * * * *

(hh) * * *

(2) * * *

(3) *Santee National Wildlife Refuge.* Hunting of bob-white quail, gray squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of gray squirrel is permitted through September 30.

(iii) Hunting of quail and rabbit is permitted only during February.

(iv) Hunting of raccoon and opossum is permitted from March 1 through March 10.

(4) *Savannah National Wildlife Refuge.* Hunting of squirrels and rabbits is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted for seven consecutive days beginning the fourth Monday in October.

* * * * *

(jj) *Tennessee*—(1) *Cross Creeks National Wildlife Refuge.* Hunting of squirrel is permitted on designated areas of the refuge subject to the following special condition: Hunting is permitted through October 31.

* * * * *

(oo) * * *

(2) * * *

(3) *Trempealeau National Wildlife Refuge.* Hunting of ring-necked pheasant, ruffed grouse, gray and fox squirrels and cottontail rabbits is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on that portion of the refuge lying north and west of the Green Bay and Western Railroad right-of-way.

* * * * *

7. Section 32.31 is amended by adding Savannah NWR, GA; Reelfoot NWR, KY; Lacassine, LA; Alligator River NWR, NC; Cross Creek NWR and Reelfoot NWR, TN; and Fox River NWR and Trempealeau NWR, WI alphabetically by State as follows:

**§ 32.31 List of open areas; big game.**

* * * * *

**Georgia**

* * * * *

Savannah National Wildlife Refuge.

* * * * *

**Kentucky**

* * * * *

Reelfoot National Wildlife Refuge.

* * * * *

**Louisiana**

* * * * *

Lacassine National Wildlife Refuge.

* * * * *

**North Carolina**

* * * * *

Alligator River National Wildlife Refuge.

* * * * *

**Tennessee**

* * * * *

Cross Creeks National Wildlife Refuge.
Reelfoot National Wildlife Refuge.

* * * * *

**Wisconsin**

* * * * *

Fox River National Wildlife Refuge.
Trempealeau National Wildlife Refuge.

* * * * *

8. Section 32.32 is amended by redesignating paragraphs (q)(4) and (q)(5) as paragraphs (q)(5) and (q)(6); by adding a new paragraph (q)(4); by redesignating paragraphs (r) through (rr) as paragraphs (s) through (ss), respectively; by adding a new paragraph (r). Also, newly designated paragraphs (ll)(1) through (ll)(3) are redesignated as paragraphs (ll)(2) through (ll)(4), respectively, and a new paragraph (ll)(1) is added; newly designated paragraphs (rr)(1) and (rr)(2) are redesignated as paragraphs (rr)(2) and (rr)(3) and new paragraphs (rr)(1) and (rr)(4) are added to read as follows:

**§ 32.32 Refuge specific regulations; big game.**

* * * * *

(q) * * *

(3) * * *

(4) *Lacassine National Wildlife Refuge.* Hunting of white-tailed deer is pemitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted from October 1 through October 31.

(ii) Only archery hunting is permitted.

(r) *Kentucky and Tennessee—Reelfoot National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting is permitted for two consecutive days beginning on the first Saturday in November and for two consecutive days beginning on the third Saturday in November.

(3) One deer of either sex may be taken.

(4) Hunters are required to check in and out of the refuge.

* * * * *

(ll) *Tennessee*—(1) *Cross Creeks National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only during the archery season.

(ii) Checking and tagging of bagged deer is required.

* * * * *

(rr) *Wisconsin*—(1) *Fox River National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) The construction or use of permanent blinds, platforms or ladders is not permitted.

* * * * *

(4) *Trempealeau National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A refuge permit is required for archery hunting, and a valid State permit for Quota Area 61B is required for the firearms deer hunt.

(ii) Firearms hunting is permitted during the first two days of the State firearms deer season. The taking of deer

is permitted only by shotgun or muzzleloader.

(iii) Archery hunting is permitted only during the December State season, and only on part of the refuge lying west of the auto tour road.

(iv) The construction or use of permanent blinds, platforms, or ladders is not permitted.

(v) Portable blinds or platforms must be removed from the refuge after each day's hunt.

* * * * *

9. Section 33.4 is amended by adding Wertheim NWR, NY; Alligator River NWR, NC; Ouray NWR, UT; and Trempealeau NWR, WI alphabetically by State as follows:

**§33.4 List of open areas; sport fishing.**

* * * * *

**New York**

* * * * *

Wertheim National Wildlife Refuge.

* * * * *

**North Carolina**

* * * * *

Alligator River National Wildlife Refuge.

* * * * *

**Utah**

* * * * *

Ouray National Wildlife Refuge.

* * * * *

**Wisconsin**

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Trempealeau National Wildlife Refuge.

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Dated: September 11, 1984.

**G. Ray Arnett,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 84-25032 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-55-M

# Proposed Rules

Federal Register
Vol. 49, No. 185
Friday, September 21, 1984

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1065

### Milk in the Nebraska-Western Iowa Marketing Area; Proposed Temporary Revision of Diversion Limitation Percentages

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

**ACTION:** Proposed temporary revision of rule.

**SUMMARY:** This notice invites written comments on a proposal to relax temporarily certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would relax for October 1984 through March 1985 the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association representing a substantial number of producers supplying the market in order to prevent uneconomic movements of milk.

**DATE:** Comments are due not later than September 28, 1984.

**ADDRESS:** Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, Dairy Division, Agriculture Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of October 1984 through March 1985.

All persons who desire to submit written data, views or arguments in connection with the proposed revision should file two copies of such material with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than September 28, 1984. The period for filing views is limited because a longer period would not provide the time needed to complete the required procedures and include October 1984 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The provisions proposed to be revised are the diversion limitation percentages set forth in § 1065.13(d). The revisions would be applicable for the months of October 1984 through March 1985. The specific revisions would increase the diversion limitation percentages for the months of October and November 1984 by 10 percentage points from the present 40 percent to 50 percent. For the months of December 1984 through March 1985, the diversion allowances would be increased 20 percentage points, from 40 percent to 60 percent.

Section 1065.13(d) of the Nebraska-Western Iowa milk order allows the Director of the Dairy Division to increase or decrease the diversion limitation percentages by up to 20 percentage points during any month to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc., a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of October and November 1984, the percentage of allowable diversions be increased 10 percentage points, and for the period December 1984 through March 1985, the diversion limits be increased 20 percentage points.

The cooperative states that for the period in question, the order provisions require more milk to move through pool plants than is necessary to meet the fluid, or bottling, requirements of the market. The cooperative cites improved milk quality as a result of less pumping and more economic hauling as the benefits to be gained from the proposed temporary relaxation. According to the cooperative, the financial status of its producer members may be jeopardized unless the more economic hauling practices resulting from increased diversion allowances can be adopted.

The cooperative also states that diversion percentages should be the reciprocal of supply plant shipping percentages in order to allow the maximum amount of milk to move directly to manufacturing. The 50-percent diversion limits for October and November, and 60-percent for the period December 1984 through March 1985, would complement the 50-percent (temporarily revised) supply plant requirement for October and November and the 40-percent supply plant standard for December through March.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.13(d) for the months of October 1984 through March 1985 to prevent uneconomic shipments of milk.

### List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on September 17, 1984.

**Edward T. Coughlin,**

*Director, Dairy Division.*

[FR Doc. 84-25081 Filed 9-20-84; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1079

## Milk in the Iowa Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

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

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This notice invites written comments on a proposal to suspend portions of the Iowa Federal milk marketing order for the months of October and November 1984. The proposed suspension would increase the limits on the quantity of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. A cooperative association requested suspension in order to achieve added economies in disposing of reserve milk supplies.

**DATE:** Comments are due not later than September 28, 1984.

**ADDRESS:** Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building; U.S. Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

**SUPPLEMENTARY INFORMATION:** This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of October and November 1984:

In § 1079.13(d) (2) and (3) the words "the months of" and the words "through November" as they appear in each subparagraph.

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include October in the suspension period.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

### Statement of Consideration

Associated Milk Producers, Inc. (AMPI), an association of producers, operates plants regulated by the Iowa milk order. The cooperative has requested that the 50 percent diversion limitation be suspended for September, October, and November 1984. The remaining diversion provisions in the order would permit a greater portion of a handler's producer milk receipts to be moved directly from farms to nonpool manufacturing plants and still be priced under the order.

The cooperative notes that the 50 percent limit on diversions to nonpool plants is inadequate to permit efficient handling of milk that is not needed for fluid milk uses. For example, a supply plant must ship at least 35 percent of its milk supply to other plants to qualify as a pool plant. However, with diversions limited to 50 percent, the other 15 percent must be received at the supply plant and then transferred to a nonpool plant. AMPI contends that the extra handling involved adversely affects milk quality (more pumping than if diverted), and is an uneconomic means of pooling reserve milk supplies. Suspending the 50 percent diversion limit would alleviate these concerns and allow improved efficiencies, thus increasing returns to producers, according to the cooperative.

Under the conditions cited by AMPI, a suspension of the 50 percent limitation of the diversion provisions may be appropriate so that producer milk receipts not needed for fluid use may be moved directly from farms to manufacturing plants and still be priced under the order. A suspension of the 50 percent limitation may tend to improve efficiencies in disposing of the market's reserve milk supplies.

It should be noted that the suspension request is being considered for October and November only. There is not enough time to complete the procedural requirements and still suspend the provisions for September, if the suspension is warranted.

Also, pool plant handlers should be aware that suspension of the 50 percent limitation would not mean that the diversion limit would then be 70 percent. The effective diversion limit, if a suspension is granted for October and November, would be the reciprocal of the pool performance standards. For example, a supply plant would still have to ship 35 percent of its receipts; thus, the effective diversion limit would be 65 percent rather than 70 percent.

### List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C., on September 18, 1984.

**William T. Manley,**

*Deputy Administrator, Marketing Programs.*

[FR Doc. 84–25178 Filed 9–20–84; 8:45 am]

BILLING CODE 3410–02–M

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## Food Safety and Inspection Service

### 9 CFR Parts 317 and 381

**[Docket No. 83-041P]**

## Authorization To Manufacture Brands or Other Marking Devices Containing Inspection Legend

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal would require manufacturers of brands or other marking devices containing specified official inspection legends to obtain a certificate issued by the Food Safety and Inspection Service (FSIS) that would authorize manufacture of these devices. Manufacturers would be required to mark on each such device they manufacture under this authorization a permanent identifying serial number which manufacturers would also list on the certificate. The devices, along with a copy of the completed certificate, would be returned to the FSIS employee identified on the certificate (normally the plant inspector-in-charge). The proposed regulations are needed to strengthen the Department's control over the manufacture and distribution of brands and other marking devices and thereby help prevent their illegal use.

The proposal would also make minor revisions to the regulations to clarify language, to update them and to make

certain provisions conform to statutory language.

**DATE:** Comments must be received on or before December 20, 1984.

**ADDRESS:** Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Robert W. Gonter, Director, Compliance Division, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7745.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

The Department has determined that this proposed rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Effect on Small Entities

The Administrators, FSIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The manufacturers and the meat and poultry establishments would be required to fill out sections of the authorization certificate for orders of new brands or other marking devices and to keep the certificate on file. The costs of the proposed rule would primarily result from the expense of executing and filing the authorization forms required by this regulation and from the required marking with a permanent identifying number those devices made after the effective date of the rule. These costs would be incurred by both the manufacturer and/or the establishment, but the ultimate amount and proportion of costs between the manufacturer and the establishment cannot be determined. There would be no cost involved in obtaining authorization forms since FSIS would provide them.

The estabishments would bear an additional cost of either replacing or marking with a permanent identifying number those brands or other marking devices which are not already marked with a number. The establishments would have 1 year after the rule's effective date to mark or replace the devices.

All of the above costs have been estimated to be minimal, while the benefits from improving control over the maufacture and distribution of such devices is expected to be considerable.

### Paperwork Requirements

The recordkeeping and reporting requirements contained in this proposed regulation will be submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act.

### Comments

Interested persons are invited to submit written comments concerning this proposal. Comments should be sent in duplicate to the Regulations Office, referring to the docket number located in the heading. Any persons desiring an opportunity for oral presentation of views must make such request to Robert W. Gonter so that arrangements may be made. FSIS will make a transcript of all oral presentations. Comments submitted pursuant to this proposal will be made available for public inspection in the Regulations Office, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, between 9:00 a.m. and 4:00 p.m., Monday through Friday.

### Background

The Department inspects meat and poultry products, including imported products, that are subject to inspection under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Inspections are conducted by Food Safety and Inspection Service (FSIS) inspectors at official establishments or at official import inspection establishments at ports of entry. Products which pass inspection are identified with an official inspection legend, which appears on containers and certain enclosures of inspected and passed meat and poultry products, and is branded directly onto meat carcasses and parts. For example, a brand for cattle carcasses inspected and passed by an FSIS inspector bears a circular legend showing "U.S. INSP'D & P'S'D" and the establishment's assigned number.

Investigations by law enforcement officials over the past 20 years have shown that illegal meat distribution activities have frequently utilized a marking device to brand or otherwise mark meat and poultry products and their containers in order to deceive prospective buyers into believing that products had been inspected and passed by Federal inspectors. During this time, FSIS has developed various techniques to discover when operators were using brands or other marking devices illegally. However, the Department has statutory authority to control these devices which has not yet been exercised.

Part of the Department's statutory authority to control these devices dates from 1967. As a result of the exposure of a number of illegal meat distribution activities in the 1960's, the Wholesome Meat Act of 1967 made major revisions to Federal laws concerning meat inspection. The Act included a provision which clarified and strengthened the applications of then current prohibitions against counterfeiting labels, certificates or official marks, including legends, to brand manufacturers and printers. Section 11(a) of the Federal Meat Inspection Act (21 U.S.C. 611(a)) provides, "No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Secretary." Almost identical language was later included in the Poultry Products Inspection Act by section 9 of the Wholesome Poultry Products Act of 1968 (21 U.S.C. 458).

When the Department revised the Federal meat inspection regulations to implement the statutory revisions of the Wholesome Meat Act, the Department considered regulatory changes which would tigthen controls over the manufacture and distribution of brands and other marking devices containing official inspection legends. The Department determined at that time, however, that it would not exercise its authority to impose these tighter controls.

In the past few years, the Agency has found the operators of clandestine meat distribution activities in possession of brands that were made by brand manufacturers and delivered to official establishments but never surrendered to the USDA inspector as required. In a September 1983 Congressional hearing held in Philadelphia concerning an illegal branding operation that resulted in uninspected and unpassed product being sold and distributed as federally

inspected and passed product, the House Subcommittee on Livestock, Dairy and Poultry expressed interest in improving the Agency's security over the devices used to imprint inspection legends.

**Proposal**

These events have made it apparent that the Agency needs to expand its use of available authority and refocus its enforcement techniques to prevent these operations by regulating the source of marking devices.

Current meat inspection regulations require an official establishment or official import inspection establishment to supply brands or other marking devices containing an official inspection legend for marking product. The brands and devices are required to be used under the supervision of an inspector, and while not in use are required to be kept in the inspector's possession under lock and key (9 CFR 316.4).

The current regulations allow the manufacture of brands or other marking devices which contain the official inspection legend for a particular establishment without the prior authorization if the devices are made as samples for approval by the FSIS Administrator. Once the establishment obtains initial approval of such a brand or other marking device, the regulations provide that new devices "exactly similar to" the original may be made without obtaining further approvals (9 CFR 317.3). The poultry products inspection regulations contain a section similar to § 317.3, except that it does not refer to brands since they are not used to mark poultry (9 CFR 381.131). The provisions of §§ 317.3 and 381.131 have had the effect of allowing the manufacture of brands or other marking devices without any prior authorization.

The Agency has concluded that the current regulations do not adequately control the manufacture or distribution of brands or other marking devices containing an official inspection legend because establishments are able to order such marking devices without the knowledge of FSIS, and there is no assurance that the devices are turned over to inspectors for custody.

This proposal would require manufacturers of brands or other marking devices bearing specified official inspection legends to have a signed authorization certificate from FSIS before manufacturing such devices; all orders for such marking devices by an establishment would have to be accompanied by the certificate. A copy of the certificate that the Agency proposes to use and for which it is seeking approval from the Office of Management and Budget is printed below. When in final form, the certificate will show the seal of the Department.

BILLING CODE 3410-DM-M

U.S. DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
MEAT AND POULTRY INSPECTION OPERATIONS

## AUTHORIZATION CERTIFICATE

CERTIFICATE NUMBER

This certificate, when signed by an authorized representative of the Administrator, authorizes the making of brands or other devices bearing official inspection legends.

SECTION I - ITEMS 1-12 COMPLETED BY ESTABLISHMENT. ITEMS 13-20 COMPLETED BY MANUFACTURER

1. ESTABLISHMENT NO.
2. ESTABLISHMENT NAME
3. STREET ADDRESS
4. CITY
5. STATE
6. ZIP CODE
7. SIGNATURE OF ESTABLISHMENT OFFICIAL
8. DATE
9. NAME AND ADDRESS OF FIRM BRANDS OR DEVICES BEING ORDERED FROM

| 10. NUMBER OF BRANDS/ DEVICES | 11. SIZE *(If applicable)* | 12. TYPE *(Hot, cold)* | 13. SERIAL NUMBER(S) *(To be completed by manufacturers)* |
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14. NAME OF MANUFACTURER
15. STREET ADDRESS
16. CITY
17. STATE
18. ZIP CODE
19. SIGNATURE OF BRAND MANUFACTURER
20. DATE

NOTE TO MANUFACTURER: Send Brand(s)/Device(s) and Copy 1 of this certificate to the address below.

SECTION II - AUTHORIZATION - TO BE COMPLETED BY FSIS, MPIO, PROGRAM EMPLOYEE

1. NAME OF USDA, FSIS, MPIO, EMPLOYEE *(To receive brands/devices from manufacturer)*
2. STREET ADDRESS
3. CITY
4. STATE
5. ZIP CODE
6. NAME OF FSIS, MPIO, EMPLOYEE MAKING AUTHORIZATION
7. TITLE
8. SIGNATURE OF FSIS, MPIO, EMPLOYEE MAKING AUTHORIZATION
9. DATE

MP FORM 216 (5/84)

BILLING CODE 3410-DM-C

The certificate would be identified with a certificate number and indicate the quantity and type of brands or other marking devices ordered by the establishment. An FSIS employee and the establishment would complete and sign a portion of the certificate; both would keep a copy of the certificate, and two copies would be forwarded to the brand or marking device manufacturer with the establishment's order. The manufacturer would engrave or otherwise mark each brand or other marking device ordered with a permanent, unique serial number and complete the FSIS authorization certificate by listing on it the number marked on each device. The manufacturer would keep one copy of the certificate and return the other with the device to the FSIS employee whose name and address is given on the certificate as the recipient of the device. In practice, the plant inspector-in-charge normally would be both the FSIS employee who signs the authorization and the FSIS recipient of the device, but in some instances, as when a new establishment does not yet have an inspector assigned to it, other FSIS employees may be involved.

The numbers engraved on the brands or other marking devices and listed on the certificates would allow an inspector to keep an accurate record of all such marking devices made for the establishment. If a brand or other marking device becomes worn out, destroyed, or lost, an inspector should note this on the certificate listing that device. During an investigation, if it were necessary to determine whether a brand or other marking device suspected of being used illegally was forged or illegally diverted from an establishment, the records could help trace the source of the device.

If the proposal is adopted, the Agency would allow each manufacturer to develop its own serial numbering system. In order to ensure that each brand or other marking device is uniquely identified, the manufacturer would indicate on the brand or device, perhaps as part of the serial number, that it was made by that manufacturer. The Agency believes that it is unnecessary to go further by assigning serial numbers to the manufacturers. Assigning numbers would impose an unneeded complication and cost to the Agency and, especially, to the manufacturers, without any apparent benefits. The simplest and least costly numbering system for a manufacturer to implement would presumably be to assign numbers based on the order in which it manufactures marking devices. If the Agency were to assign numbers, it could not duplicate this simple numbering system because the Agency cannot reasonably ensure that a manufacturer receives or fills orders for marking devices in the same order that serial numbers would be assigned. The Agency invites comments concerning its proposed policy on assignment of serial numbers.

In the case of brands or other marking devices ordered from manufacturers before the effective date of the proposed regulations, establishments would be required to mark, under the direction of an inspector, such devices with permanent identifying numbers or obtain replacement devices within one year.

The proposed rule would apply to devices containing only certain specified official inspection legends. The Agency is primarily interested in controlling the use of inspection legends allowed under the regulations to be applied to products and containers by hand devices, such as brands and rubber stamps, because these devices are small and easily transportable and concealable. Therefore, the proposed rule would apply to devices for applying the legend branded on cattle, sheep, swine and goat carcasses and parts of carcasses (9 CFR 312.2(a)); the legend stamped on burlap, muslin, cheesecloth, heavy paper, or other acceptable materials that enclose cattle, sheep, swine and goat carcasses and parts (9 CFR 312.2(a)); the legend used on meat food products in animal casings (9 CFR 312.2(a)); the legend branded on horse carcasses and parts of such carcasses (9 CFR 312.3(a)) and nonhorse equine carcasses and parts of such carcasses (9 CFR 312.3(b)); the legends branded or stamped on imported meat and meat food products or their containers (9 CFR 312.7); and the legend stamped on containers of imported poultry products (9 CFR 381.102).

The proposed controls would not apply to devices for applying: (1) Legends appearing on containers and labels for containers of inspected and passed products of cattle, sheep, swine and goats shown in § 312.2(b) since these legends must be printed by mechanical means and not by hand stamps; (2) legends appearing on containers of poultry products shown in § 381.96 since they may not be applied by rubber stamps (these legends may be applied to shipping containers by stencil, but such stencils are bulky devices not easily transported or concealed); and (3) the horse meat food product and nonhorse equine meat food product official inspection legends shown in § 312.3 since, in practice, establishments mechanically pre-print such legends on containers, boxes and labels, even though the regulations do not limit application of these equine meat food product legends to mechanical, nonhand-stamp methods.

The proposed rule would revise 9 CFR 317.3(b), which currently regulates the manufacture of labels, brands or other marking devices bearing the official inspection legend used on meat and meat food products, and 9 CFR 381.131, which regulates the manufacture of labeling and other devices bearing the official poultry products inspection legend or other official inspection mark, by creating § 317.3(c) and § 381.131(b) to regulate the manufacture of marking devices containing the legends described above to which the proposed rule would apply.

The Agency recognizes that the proposed rule will not be a complete deterrent to the illegal use of devices imprinting inspection legends, but it will make it more difficult for those with criminal intentions to counterfeit or purchase such marking devices for the purpose of using them in their illegal activities.

A number of minor, related changes would also be made to the regulations under this proposal. The provision in § 317.3(b) that allows the manufacture of new supplies of labels and other marking devices "of a character exactly similar to" approved labels and devices would be revised by deleting the quoted phrase. This language adds nothing to the meaning of the provision and has caused unnecessary confusion. This language does not appear in the analagous provision of the poultry products inspection regulations (9 CFR 381.131). Additionally, current language in § 317.3 and § 381.131 would be revised to more closely conform to the language in the provisions of the Federal Meat Inspection Act (21 U.S.C. 611(a)) and the Poultry Products Inspection Act (21 U.S.C. 458(b)) from which these regulations are derived. Any unnecessary inconsistencies between the language in § 317.3 and § 381.131 would be removed. In addition, the proposed rule would revise § 381.102 of the poultry products inspection regulations. Figure 5 of that regulation shows an obsolete official inspection legend for marking poultry products offered for entry into the United States. The Agency no longer uses the name of the port or geographical area on the legend to identify where the product was inspected. Instead, the number of the official establishment or official import established where the product

was inspected is used. The proposed rule would show the legend currently in use.

**List of Subjects in 9 CFR Parts 317 and 381**

Official inspection marks and devices, meat inspection

**Proposed Rules**

Accordingly, Part 317 of the Federal meat inspection regulations (9 CFR Part 317) and the Federal poultry products inspection regulations (9 CFR Part 381) would be revised to read as follows:

**PART 317—[AMENDED]**

1. The authority citation for Part 317 is:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; [21 U.S.C. 601 *et seq.*]; 33 U.S.C. 1254.

2. In § 317.3 revise paragraph (b) and add new paragraph(c) as follows:

**§ 317.3 Approval of abbreviations of marks of inspection; preparation of marking devices bearing inspection legend without advance approval prohibited; exception.**

* * * * *

(b) Except for the purposes of preparing and submitting a sample or samples of the same to the Administrator for approval, no brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any marking device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, without the written authority therefor of the Administrator. However, when any such sample label, or other marking device, is approved by the Administrator, additional supplies of the approved label, or marking device, may be made for use in accordance with the regulations in this subchapter, without further approval by the Administrator. The provisions of this paragraph apply only to labels, or other marking devices, bearing or containing an official inspection legend shown in § 312.2(b), § 312.3(a) [only the legend appropriate for horse meat food products], or § 312.3(b) [only the legend appropriate for nonhorse equine meat food products], or any abbreviations, copy or representation thereof.

(c) No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make, without an official certificate issued in quadruplicate by a Program employee, a brand or other marking device containing an official inspection legend, or simulation thereof, shown in § 312.2(a), § 312.3(a) [only the legend appropriate for horse carcasses and parts of horse carcasses], § 312.3(b) [only the legend appropriate for nonhorse equine carcasses and parts of nonhorse equine carcasses] or § 312.7(a).

(1) The certificate is a Food Safety and Inspection Service form for signature by a Program employee and the official establishment ordering the brand or other marking device, bearing a certificate serial number and a letterhead and the seal of the United States Department of Agriculture. The certificate authorizes the making of only the brands or other marking devices of the type and quantity listed on the certificate.

(2) After signing the certificate, the Program employee and the establishment shall both keep a copy and the remaining two copies shall be given to the brand or other marking device manufacturer.

(3) The manufacturer of the brands or other marking devices shall engrave or otherwise mark each brand or other marking device with a permanent identifying serial number unique to it. The manufacturer shall list on each of the two copies of the certificate given to the manufacturer the number of each brand or other marking device authorized by the certificate. The manufacturer shall retain one copy of the certificate for the manufacturer's records and return the remaining copy with the brands or other marking devices to the Program employee whose name and address are given on the certificate as the recipient.

(4) In order that all such brands or other marking devices bear identifying numbers, within 1 year after the effective date of this paragraph (c), an establishment shall either replace each such brand or other marking device which does not bear an identifying number, or, under the direction of the inspector-in-charge, mark such brand or other marking device with a permanent identifying number.

**PART 381—[AMENDED]**

3. The authority citation for Part 381 reads as follows:

Authority: 71 Stat. 447, 448, as amended [21 U.S.C. 463, 468]; 76 Stat. 663, [7 U.S.C. 450 *et seq.*].

**§ 381.102 [Amended]**

4. Section 381.102 (9 CFR 381.102) would be revised to show the new Figure 5; redesignate footnote 2 as footnote 1 and revise new footnote 1 as follows:

FIGURE 5

[1] The number "I-42" is given as an example only. The establishment number of the official establishment or official import inspection establishment where the product was inspected shall be shown on each stamp impression.

5. Section 381.131 (9 CFR 381.131) would be revised to read as follows:

**§ 381.131 Preparation of labeling or other devices bearing official inspection marks without advance approval prohibited; exceptions.**

(a) Except for the purposes of preparing and submitting a sample or samples of the same to the Administrator for approval, no brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any marking device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, without the written authority therefor of the Administrator. However, when any such sample label, or other marking device, is approved by the Administrator, additional supplies of the approved label, or marking device, may be made for use in accordance with the regulations in this subchapter, without further approval of the Administrator. The provisions of this paragraph do not apply to marking devices containing the official inspection legend shown in Figure 5 of § 381.102.

(b) No brand manufacturer, printer or other person shall cast, print, lithograph, or otherwise make, without an official certificate issued in quadruplicate by a Program employee, a marking device containing the official inspection legend shown in Figure 5 of § 381.102 or any simulation of that legend.

(1) The certificate is a Food Safety and Inspection Service form for signature by a Program employee and the official establishment ordering the marking device, bearing a certificate serial number and a letterhead and the

seal of the United States Department of Agriculture. The certificate authorizes the making of only the devices of the type and quantity listed on the certificate.

(2) After signing the certificate, the Program employee and the establishment shall both keep a copy and the remaining two copies shall be given to the marking device manufacturer.

(3) The manufacturer of the marking devices shall engrave or otherwise mark each marking device with a permanent identifying serial number unique to it. The manufacturer shall list on each of the two copies of the certificate given to the manufacturer the number of each marking device authorized by the certificate. The manufacturer shall retain one copy of the certificate for the manufacturer's records and return the remaining copy with the marking devices to the Program employee whose name and address are given on the certificate as the recipient.

(4) In order that all such marking devices bear identifying numbers, within 1 year after the effective date of this paragraph (b), an establishment shall either replace each such marking device that does not bear an identifying number, or, under the direction of the inspector-in-charge, mark such a marking device with a permanent identifying number.

Done at Washington, DC, on: September 4, 1984.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 84-24908 Filed 9-20-84; 8:45 am]

**BILLING CODE 3410-DM-M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Ch. I

**[Summary Notice No. PR-84-9]**

## Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and be received on or before, November 20, 1984.

**ADDRESSES:** Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on September 14, 1984.

**John H. Cassady,**

*Assistant Chief Counsel, Regulations and Enforcement Division.*

PETITIONS FOR RULEMAKING

| Docket No. | Petitioner | Description of the petition |
|---|---|---|
| 24420 | Assoc. of Flight Attendants (AFA) | *Description of petitions:* To require airlines to measure and limit carry-on baggage prior to boarding. *Regulation affected:* 14 CFR 121.589. *Petitioner's reason for rule:* Carry-on baggage would have to be measured, and taken together would have to fit within the dimensions of 9" x 16" x 20". However, if the baggage would obviously fit within these dimensions, it would not have to be measured. If an airline could demonstrate to the agency that it has additional space available on its aircraft, then the airline could in addition measure and allow garment bags with a width of less than 3" aboard the aircraft. This rule is necessary to fulfill the purpose of existing regulations governing screening of carry-on baggage, and to eliminate existing hazards due to excess carry-on baggage on board aircraft. |
| 24171 | National Rifle Assoc. (NRA) | *Description of petitions:* To require all airlines to establish a procedure to allow a person carrying an unloaded firearm in his baggage who goes through the metal detector and who is discovered to have the firearm in his baggage to check the baggage at the aircraft. *Regulation Affected:* 14 CFR 108.9. *Petitioner's reason for rule:* The reason for the rule change is the fact that current rules do not take into account people who are transporting unloaded firearms in baggage they wish to, or must, check at the place of loading and not at the check-in counter. There have been numerous instances in which individuals who are transporting unloaded firearms in baggage which they intended to check at the airline counter, and who, either because they were late for their flight or because the airline had no counter at which the baggage could be checked, have been arrested and charged with a violation of 49 U.S.C. 1471(L)(1)(A) even though they had not "attempted to board" an aircraft. |
| 24236 | Eastern Air Lines, Inc | *Description of Petitions:* To amend this section so as to remove the present exception under which the hourly flight limitations at Newark Airport (§ 93.123) do not apply at this time. *Regulation affected:* 14 CFR 93.133, Subpart K. *Petitioner's reason for rule:* With this change, the high density rule will be in effect at all three New York airports (Kennedy, LaGuardia and Newark) and the FAA proposal in Docket 24206 that would impose new regulations at the three New York airports should be withdrawn. In sum, ATC problems in the New York area relating to all three airports will be addressed under the same high density rule which has been in effect for many years (14 CFR Part 93, Subpart K) and not the proposed FAA regulations in Docket 24206. |
| 24193 | Republic Airlines, Inc | *Description of petitions:* To commence proceedings for the adoption of a rule for the temporary, limited redistribution of slots at the High Density Airports so designated under 14 CFR Part 93, Subpart K. The rule would also allow the intra- and inter-airport trading of slots at the High Density Airports and would prohibit the tying, either directly or indirectly, of any other consideration to a trade transaction. *Regulation affected:* 14 CFR Part 93, Subpart K. |

PETITIONS FOR RULEMAKING—Continued

| Docket No. | Petitioner | Description of the petition |
|---|---|---|
| | | *Petitioner's reason for rule:* The purpose is to allow new entrants and growing incumbents a limited opportunity to enter and grow at High Density Airports while also recognizing the interests of incumbent air carriers. Such an opportunity does not realistically exist under the current airline scheduling committee process. This proposal is intended as an alternative to the 100 percent grandfathering-buy/sell proposal contained in Notice 84-6, Docket 24105. Requiring carriers to purchase a scarce resource from their competitors who received the resource for free is highly inequitable, particularly when purchasing the resource is the only likely means of obtaining it. The proposal retains substantial grandfathering in recognition of the extensive disruptions which would result if all slots were subject to redistribution. The proposed redistribution should introduce flexibility into the system without the harmful effects of a buy-sell mechanism, particularly when carriers are allowed to trade slots on an inter-airport basis, as Republic has proposed.<br>Republic is not wedded to the specific percentages or mechanics of its proposal; rather, it is concerned that the FAA has not previously considered or given interested parties any opportunity to comment formally on an alternative allocation concept to that proposed in Notice 84-6.<br>Under Republic's proposed redistribution mechanism, each incumbent carrier having more than 12 slots at a given airport would put up 5 percent of those slots for redistribution at the annual redistribution session administered by the airline scheduling committee for that airport. No incumbent carrier would be required to relinquish in the aggregate more than 10 percent of the slots it held at a given airport as of the date of the first annual redistribution session. The 5 percent (rounded to the nearest even number) which each carrier would annually relinquish would be determined by lottery. All incumbents and "new entrants" (carriers not serving the airport and having the necessary CAB authority and FAA certificate as of the date of the redistribution session) would have their names placed on a list on a ranking determined by random lottery. Fifty percent of the slots to be redistributed would then be selected by new entrants and incumbents having 12 or fewer slots at the airport, in the order of their ranking on the list. A carrier would select 2 slots at a time but no more than 4 slots total during this first phase of the redistribution. During the second phase of the redistribution, the remaining 50 percent of the slots plus slots not selected during the first phase would be redistributed to new entrants and all incumbents in the order of their rankings on the list. Carriers would select 2 slots at a time. |

[FR Doc. 84-25024 Filed 9-20-84; 8:45 am]
BILLING CODE 4910-13-M

## 14 CFR Part 39

**[Docket No. 84-CE-27-AD]**

## Airworthiness Directives; Piper PA-20, PA-22, PA-23, PA-24, PA-25, PA-36, PA-44 Series and All Models PA-30, PA-31P and PA-39 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This Notice proposed to adopt a new Airwothiness Directive (AD), applicable to Piper PA-20, PA-22, PA-23, PA-24, PA-25, PA-36, PA-44 series and all Piper Models PA-30, PA-31P and PA-39 airplanes. This AD would require installation of a brake operation warning placard. A ground operation accident occurred because the pilot improperly operated the brake system. This action will assure that the pilot is informed on proper brake operation.

**DATES:** Comments must be received on or before November 15, 1984..

**ADDRESSES:** Piper Aircraft Corporation Service Bulletin No. 771, dated May 19, 1984, concerning this AD may be obtained from Piper Aircraft Corporation, Lock Haven, Pennsylvania 17745, or the Rules Docket at the addresses below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Kenneth C. Tunjian, Airframe Section, ANE-170, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6427.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submittted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments recieved. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRMs

Any person may obtain a copy fo this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention Airworthiness Rules Docket No. 84-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

### Discussion

An accident occurred involving a Piper Model PA-23 airplane. The pilot set the airplane parking brake and routinely started the engines. After starting the engines, he discoverd that the airplane was rolling toward an unattended airplane. The pilot reported that he stood on his toe (wheel) brakes while he attempted to reset the parking brake, but no effective braking was realized. The Piper Model PA-23 airplane collided with the other airplane. Investigation of the wheel brake system of the Piper Model PA-23 airplane found that, because of the inherent characteristics of the system, no braking will occur if the brakes are applied while the parking brake handle is pulled and held. This arrangement was found to be common to numerous Piper model airplanes. The manufacturer issued Service Bulletin No. 711, dated May 19, 1984, which provides instructions for the installation of a placard on the pilot's instrument panel warning against using improper procedures in applying the parking brake.

Since the condition described is likely to exist or develop in other Piper PA-20, PA-22, PA-23, PA-24, PA-25, PA-36, PA-44 series and Models PA-30, PA-31P and PA-39 airplanes of the same design, the AD would require installation of the aforementioned warning placard on these airplanes. The FAA has determined there are approximately 29,000 airplanes affected by the proposed AD. The cost of installing the placard requested by the proposed AD is estimated to be $3 per airplane. The total cost is estimated to be $87,000 to the private sector. The cost of compliance with this AD on each airplane is so small that it will not have a significant financial impact on any small entities owning these airplanes. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) by adding the following new AD:

Piper: Applies to PA-20 series (S/Ns 20-1 and up), PA-22 series (S/Ns 22-1 and up), Models PA-23/PA-23-160 (S/Ns 23-1 and up), Pa-23-25 (S/Ns 27-1 and up), PA-24, PA-24-250/260 (S/Ns 26-1 and up), PA-25, PA-25-235/260 (S/Ns 25-1 and up), PA-30 (S/Ns 30-1 and up), PA-39 (S/Ns 39-1 and up), PA-31P (S/Ns 31P-1 and up), PA-36-285/300 (S/Ns 36-736001 and up), PA-36-375 (S/Ns 36-7802001 and up), PA-44-180 (S/Ns 44-7995001 and up), and PA-44-180T (S/Ns 44-8107001 and up) airplanes certificated in any category.

*Compliance:* Required within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To insure proper brake operation accomplish the following:

(a) Install a Piper Part Number 81090-02 placard in a central location on the pilot's instrument panel in full view of the pilot.

(b) The airplane may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin, Valley Stream, New York 11581, telephone (516) 791-6680.

Piper Aircraft Corporation Service Bulletin No. 771, dated May 19, 1984, covers the subject matter of this AD.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); § 11.85 of the Federal Aviation Regulations (14 CFR Sec. 11.85))

Issued in Kansas City, Missouri, on September 13, 1984.

John E. Shaw,

*Acting Director, Central Region.*

[FR Doc. 84-25026 Filed 9-20-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 23

## Draft Advisory Circular on Human Exposure to Impact; and a Preview of the Agency's Crash Dynamics Program

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to issue an Advisory Circular; and outline of the agency's crash dynamics program.

**SUMMARY:** The FAA has prepared an Advisory Circular that provides reasonable estimates of impact injury criteria for humans. The Advisory Circular is the first result being announced from the agency's crash dynamics engineering and development program. In addition, the FAA gives a preview of its intentions to issue guidance material regarding analytical methods to estimate the likely response of human/seat restraint systems in a "survivable" impact and intentions to establish state-of-the-art seat and occupant restraint system design standards. This is the beginning of an effort which will progressively disclose the results of several years of research; it gives the general public, especially the aviation industry, an opportunity to participate in the development of rules and guidance material that will affect the future crashworthy design of civil aircraft and appliances, especially seats and occupant restraint systems.

**DATES:** Commenters must identify file number 21-XX (AAC-119) and comments must be received on or before December 31, 1984.

**ADDRESS:** Send all comments on the draft Advisory Circular to: Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. 21-XX (AAC-119), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

Or deliver comments to: Room 335D, 800 Independence Ave., SW., Washington, D.C. 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur J. Hayes, Technical Analysis Branch, AWS-120, Telephone (202) 426-8374.

Comments received on the draft Advisory Circular and the agency's crash dynamics program may be inspected, before and after the closing date for comments, in Room 335D, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, D.C. 20591, between 8:30 a.m. and 4:30 p.m.

**SUPPLEMENTARY INFORMATION:** The agency's well-documented crash dynamics engineering and development program, which has as a goal an increased occupant protection level in a survivable impact, has reached a stage of development where it is appropriate to solicit formal public comments on the initial results of this program.

This annoncement is the first of at least four planned announcements which will progressively request comments on available results of the agency's crash dynamics engineering and development program. This announcement presents the overall structure of the crash dynamics program and makes available for public comment a draft Advisory Circular on human impact injury criteria. Subsequent announcements will address aircraft crash scenarios, analytical modeling techniques, and the agency's direction and intent with respect to potential regulatory action and Technical Standard Orders (TSO).

It is recognized that each category of civil aircraft could possess differing impact dynamics characteristics and these differences will be addressed in subsequent related announcements. This announcement deals with generic issues which are believed applicable for all categories of civil aircraft.

Crash Dynamics Program

The elements of the agency's crash dynamics engineering and development program and program logic are addressed herein. The agency's crash dynamics program has been structured to develop the technical data base and methodologies necessary to assess the dynamic impact environment and occupant survivability characteristics of civil aircraft. The technical data base includes elements such as the quantification of the impact

characteristics of current aircraft, the development of analytical modeling techniques, full scale component and aircraft impact testing, the assessment of human impact injury criteria, and most importantly, the analysis and correlation of all the above data elements to develop updated industry design standards. It is noteworthy that the completion of any one data element in the agency's crash dynamics program will not by itself constitute the justification for any regulatory change proposal. The FAA will place each program data element in its proper perspective, and only after a complete analysis of the comprehensive technical data base and assessment of public comments on that element can any regulatory proposal be considered.

The current crash dynamics engineering and development program, depicted generically in Figure 1, and in an expanded form for transport airplanes in Figure 2, is a joint FAA/National Aeronautics and Space Administration (NASA) effort supported by extensive industry participation (Reference 14). A systems analysis approach is used wherein the crash event itself is directly related to the airframe/occupant response and an established performance criteria. The systems analysis concept recognizes the importance of rationally considering all of the technical disciplines in the development of industry state-of-the-art design standards so those standards can be achievable and will provide an increased occupant protection level in a survivable impact.

A key element included in the crash dynamics program is the development, and more importantly, the correlation of analytical methods with full-scale testing since it is recognized that every new aircraft cannot be evaluated by a full-scale impact test. Past engineering and development programs did not always incorporate parallel full-scale test and analytical efforts but were mainly full-scale test oriented. Consequently, the results were applicable only for a particular crash event and aircraft configuration. Analytical tools were unavailable to assess other crash events or aircraft configurations. The current crash dynamics program includes integrated full-scale test and analytical methdology development/correlation efforts and is expected to provide the means to predict the impact characteristics of current and future aircraft configurations for a range of crash events. These validated analytical tools will then be available for use in the early stages of aircraft development and can be used to assess the occupant protection system design features of those aircraft.

A brief status of some of the major program elements follows. These items are expanded later in this announcement.

- Representative civil aircraft impact characteristics and crash scenarios have been established and are being further evaluated for quantification.
- A review of the current impact dynamics analytical methods has found that significant improvements have been made in recent years aided by increased digital computer capabilities. The current impact dynamics analytical methodologies developed for small airplane and helicopter applications are being expanded and further developed for transport airplane applications and these tasks are in progress.
- A comprehensive component and full-scale impact test program has been nearly completed to provide the necessary data base for correlation with the developing analytical methodologies.
- Acceptance levels/performance criteria have been evaluated and are the subject of a draft Advisory Circular regarding human impact injury criteria announced herein.
- Completion of the agency's planned crash dynamics engineering and development program and the comprehensive analysis of the resultant data base should provide the means to establish industry state-of-the-art design standards, to assess the adequacy of the current regulatory requirements, and to establish related aircraft regulatory requirements where deemed necessary.

### Crash Scenarios Development

The evaluation of the impact characteristics of civil aircraft was one of the first tasks in the agency's crash dynamics engineering and development program. That evaluation defined the scope of the engineering and development program and led to the definition of various crash scenarios. These crash scenarios are key elements for they define the potential design envelopes that must be known prior to initiating any full-scale aircraft impact test programs or developing methodologies to analyze a crash event.

A comprehensive evaluation of the transport category aircraft accident data files of domestic and foreign aviation authorities, manufacturers, and miscellaneous sources representing a period of 20 years of operation, has been completed with the purpose of defining representative crash scenarios. These data, which are available for public review, are currently being further analyzed by the FAA to quantify crash scenarios so they may become the basis of future design objectives.

Comparable undertakings are ongoing for small airplane and rotorcraft. In fact, the General Aviation Safety Panel in conjunction with the general aviation community has made use of much of the FAA/NASA analytical methodology and full-scale impact test results in formulating a dynamic test criteria applicable for small airplane seats. The General Aviation Safety Panel has submitted a recommendation that rulemaking action be initiated to incorporate a dynamic test criteria for small airplane seats in Federal Aviation Regulations (FAR) Part 23 (14 CFR Part 23). The content of that recommendation will be analyzed by the FAA, and the results of the agency's analysis will be the subject of a future announcement in the **Federal Register.**

The current crash scenario studies have revealed that the prevention of both impact injuries and post impact fires must be considered to achieve improved occupant survivability in survivable crash events. The agency's overall crashworthiness program is structured to consider both of these tasks. The agency's crash dynamics program discussed herein addresses the prevention of impact injuries. The post impact fire issue is the subject of another parallel FAA engineering and development program.

### Analytical Methods

The development and correlation of analytical methods with the integrated full-scale impact tests are the keystones of the agency's crash dynamics engineering and development program for the establishment of updated industry design standards; and methods of demonstrating compliance with those standards may be dependent on the available analytical tools.

The agency intends to develop and desseminate to the aircraft industry the analytical tools which may be used to analyze a crash event. The development of high speed digital computers and advanced analytical methods jointly provide the analytical tools required to perform a quantitative evaluation of a crash event.

The development of analytical methods is essential to meet two crash dynamics program goals.

The primary goal is the establishment of updated industry design standards and their respective regulatory requirements. To establish design standards it is essential to understand the mechanics and interrelationship of the crash event, the aircraft structure/

furnishings, and the occupants. Analytical methods provide cost effective means to evaluate the myriad variations in crash events, airframe structural differences, and occupants' responses to those variables that must be evaluated to develop meaningful design standards which will meet the goal of improving occupant survivability to a crash event. It is envisioned that analytical parametrical studies, supported and validated by the full-scale impact tests, will be the means by which the FAA will develop those design standards. Some preliminary analytical studies have been completed and the final analytical iterations will be started after completion of the full-scale tests and their correction with the analytical methodologies.

Secondly, these analytical tools may also be used to assess the impact characteristics of an aircraft/occupant protection system in the early design stages of the aircraft by providing the capability of directly relating the crash event to an occupant's response to that event and to respective acceptance/performance criteria. This analytical capability provides a means to access an aircraft/occupant protection system early in the design of that system and then facilities modification of the system that may be necessary to comply with any amended regulatory requirements.

Two of the best examples of current impact dynamics analytical methods being evaluated for application to civil aircraft are digital computer programs KRASH and DYCAST.

Program KRASH is a well-documented hybrid three dimensional mathematical modeling technique which has been used extensively by the FAA Technical Center, contractors, and the U.S. Army in evaluating the impact characteristics of small airplane and helicopter structures (References 5, 6, and 7).

Program DYCAST is a dynamic nonlinear finite element program being developed by the Grumman Aerospace Corporation as part of a joint NASA/FAA program in small airplane crashworthiness (Reference 9).

These analytical impact dynamics computer programs can be used to obtain the overall aircraft response to a crash event.

The final goal of an analysis of a crash event is the determination of the occupants' responses and their respective potentials for injury. The FAA also participated in the development of seat/occupant computer models which can be used to assess occupants' responses and their respective injury potentials in a crash event. Digital computer program SOMLA (Reference 8) has been developed and validated for that purpose and is now believed user ready as a design tool for small airplane seats. An expanded version of digital computer program SOMTA is currently being developed for application to transport airplane seats.

Near term impact analysis of civil aircraft will most likely use a combination of the models discussed herein. Further development of the impact dynamics analytical methodoligies by industry, combined with the next generation of high speed digital computers, should greatly advance this newly developing technology.

The FAA intends to use impact dynamics analytical techniques in its assessment and development of any industry state-of-the-art design standards and respective regulatory requirements. A subsequent announcement planned for the Spring of 1985 will be published in the **Federal Register** and will further discuss the subject of impact dynamics analytical techniques. That announcement will also request public comments on a draft Advisory Circular that will provide guidance regarding the application and limitations of impact dynamics analytical techniques.

**Full-Scale Impact Tests**

A series of component and full-scale aircraft impact tests has been included in the agency's overall aircraft crashworthiness engineering and development program. The full-scale impact tests are joint FAA/NASA/Department of Defense efforts with extensive industry participation.

The impact test specimens were typically instrumented with an array of accelerometers, load cells, displacement transducers, and photographic equipment necessary to record the impact environment experienced by the airframe, occupants, and major interior components. These data are being used in an effort to validate the impact dynamics analytical tools under development (References 10, 11, 12, and 13).

The full-scale impact tests, which are an experimental means of obtaining crash pulse data, provide quantitative data which have been used to demonstrate the predictive capability of the impact dynamics analytical tools by correlating test/analytical fuselage and cabin floor responses. Measured cabin floor pulses and passenger seat/occupant response data have also been used to assess the validity of the airframe/floor interface and seat/occupant mathematical models under development.

The FAA believes that the combination of passenger seat dynamic tests, the fuselage section drop tests, and the full-scale impact tests included in the crash dynamics engineering and development program have provided a comprehensive experimental data base which has had a synergistic effect in the development of the impact dynamics analytical tools.

**Acceptance Levels/Performance Criteria**

A definition of acceptance levels/performance criteria is required to judge the impact characteristics of an aircraft/occupant protection system. The establishment of human impact injury criteria, which may be used to form bases for acceptance levels/performance criteria, was one of the more challenging tasks facing the FAA. A general misconception is the belief that injury criteria for humans exposed to impact are well defined and that the aviation community is not making proper use of this well-defined data. In reality, the FAA finds that there is limited knowledge in this area. Most human tolerance data were obtained from tests which used young healthy male military volunteers and restraint systems typical of those found on military aircraft ejection seats. While such tolerance studies have been invaluable in demonstrating the operational feasibility of military systems (usually involving ejection from high speed aircraft), they are of only limited usefulness in the present effort. The volunteer subjects were not representative of the population involved in civil aviation which includes large numbers of females and older people, the restraint systems were not representative of the relatively simple systems acceptable for civil aircraft operations, and most importantly, the tolerable (non-injury) endpoints established by voluntary exposure to impact have limited application for the performance assessment of systems intended to reduce fatal injuries in survivable impacts.

It is recognized, however, that a wealth of data exists which describes injury criteria found useful in the performance assessment of occupant protective equipment in severe impacts. These data have been applied successfully to improve occupant survivability and injury reduction characteristics of automobiles that use restraint systems similar to those in civil aircraft. These data have been reviewed; and the most significant have been assembled citing their application

and limitations in the draft Advisory Circular which is a part of this announcement.

**Design Standards/Regulatory Intent**

The agency's crash dynamics engineering and development program, as described herein, is a comprehensive effort which considers in concert all of the technical disciplines that are required to assess the impact characteristics of an aircraft/occupant protection system.

All key program elements intrinsically possess a two-way interface. This interface provides cross-check paths between key program elements. The planned interrelationship assures that all analytical methods are correlated with one or more full-scale tests and that all key elements are rationally related to adjoining elements.

Completion of the agency's crash dynamics program and subsequent data correlation, which will be the culmination of several years of reserch, should lead to the establishment of updated industry design standards and analytical methodologies and should assist in defining future engineering and development needs. The form of design standards (Advisory Circulars, handbooks, TSO's, etc.) and the need for any regulatory action will be dependent on the program findings. Any contemplated regulatory action would be based on a comprehensive analysis of all of the data elements (including public comments) and would be consistent with the regulatory philosophy and policies followed in the establishment of other recent industry state-of-the-art design standards which were related to newly developed technology. With assistance from the aviation industry, it is also envisioned that any newly developed impact technology and design standards will be continuously reviewed for appropriateness and application.

The FAA is actively analyzing all program data elements related to its crash dynamics engineering and development program. Upon completion of that analysis, its findings, supported by their respective data elements and their relationship to any proposed regulatory direction, will be announced in the **Federal Register** in a timely manner as they become available. Regulatory requirements for seats for all aircraft are currently being assessed and, where deemed necessary, amended regulatory requirements will be proposed in the Spring of 1985. When the regulatory requirements are proposed, the present FAA crash dynamics program will be completed.

**References**

1. *Aircraft Crash Survival Design Guide,* (Volumes I–V); Simula, Inc.; USARTL–TR–79–22(A–E); Applied Technology Laboratory, U.S. Army Research and Technology Laboratories (AVRADCOM); Fort Eustis, Virginia 23604; 1980.

2. *Human Exposure to Impact With Two Point (Lapbelt) and Three Point (Lapbelt and Diagonal Shoulder Belt) Restraint Systems;* Chandler, R.F., Gowdy, R.V.; Memorandum No. AAC–119–83–7; Protection and Survival Laboratory, Civil Aeromedical Institute, Mike Monroney Aeronautical Center, Federal Aviation Administration; Oklahoma City, Oklahoma 73125; August 31, 1983.

3. *Human Tolerance to Impact Conditions as Related to Motor Vehicle Design;* SAE J885; Society of Automotive Engineers, Warrendale, Pennsylvania 15096; April 1980.

4. *Proceedings of the Stapp Car Crash Conference;* Society of Automotive Engineers, Warrendale, Pennsylvania 15096 (published annually since 1966 by the SAE under various SP numbers).

5. Gamon, M.A., "Genral Aviation Airplane Structural Crashworthiness User's Manual, Volume I, Program 'KRASH' Theory"; Report No. FAA–RD–77–189, i; February 1978; For sale by the National Technical Information Service, Springfield, Virginia 22161.

6. Gamon, M.A., et al., "General Aviation Airplane Structural Crashworthiness User's Manual, Volume II, Input-Output, Techniques and Applications"; Report No. FAA–RD–77–189, iii; February 1978; For sale by the National Technical Information Service, Springfield, Virginia 22161.

7. Wittlin, G., "General Aviation Airplane Structural Crashworthiness User's Manual, Volume III, Related Design Information"; Report No. FAA–RD–77–189, iii; February 1978; For sale by the National Technical Information Service, Springfield, Virginia 22161.

8. Laananen, D.H., et al., "Computer Simulation of an Aircraft Seat and Occupant in a Crash Environment"; DOT/FAA/CT–82/33–1, Volumes I and II; March 1983; For sale by the National Technical Information Service, Springfield, Virginia 22161.

9. Pifko, A.B., et al., "DYCAST—A Finite Element Program for the Crash Analysis of Structures"; Contract NASI–13148; April 1982. (This computer program will be made available to the public in October 1984 through: Cosmic, 112 Barrow Hall, University of Georgia, Athens, Georgia 30602.)

10. Cominsky, A., "Transport Aircraft Accident Dynamics"; Report No. FAA–RD–74–12; March 1982; For sale by the National Technical Information Service, Springfield, Virginia 22161.

11. Widmayer, E., et al., "Commercial Jet Transport Crashworthiness"; Report No. DOT–FAA–CT–82–86; April 1982; For sale by the National Technical Information Service, Springfield, Virginia 22161.

12. Wittlin, G., et al., "Analytical Modeling of Transport Aircraft Crash Scenarios To Obtain Floor Pulses"; Report No. DOT/FAA/CT–83–23; April 1983; For sale by the National Technical Information Service, Springfield, Virginia 22161.

13. Wittlin, G., et al., "Transport Aircraft Crash Dynamics"; Report No. DOT/FAA/CT–82/69; March 1982; For sale by the National Technical Information Service, Springfield, Virginia 22161.

14. Soltis, S., "Status of FAA Crash Dynamics Program—Transport Category Aircraft"; SAE 821483; Ocober 1982; For sale by the Society of Automotive Engineers, Warrendale, Pennsylvania 15096.

BILLING CODE 4910–13–M

# FAA CRASH DYNAMICS PROGRAM RELATES A CRASH EVENT TO AN ESTABLISHED PERFORMANCE CRITERIA

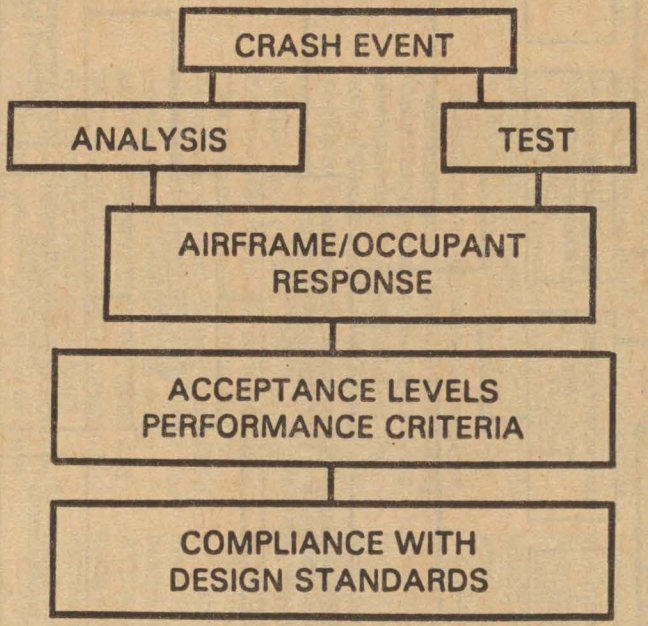


Figure 1

# FAA Crash Dynamics Engineering and Development Program

## Transport Airplanes

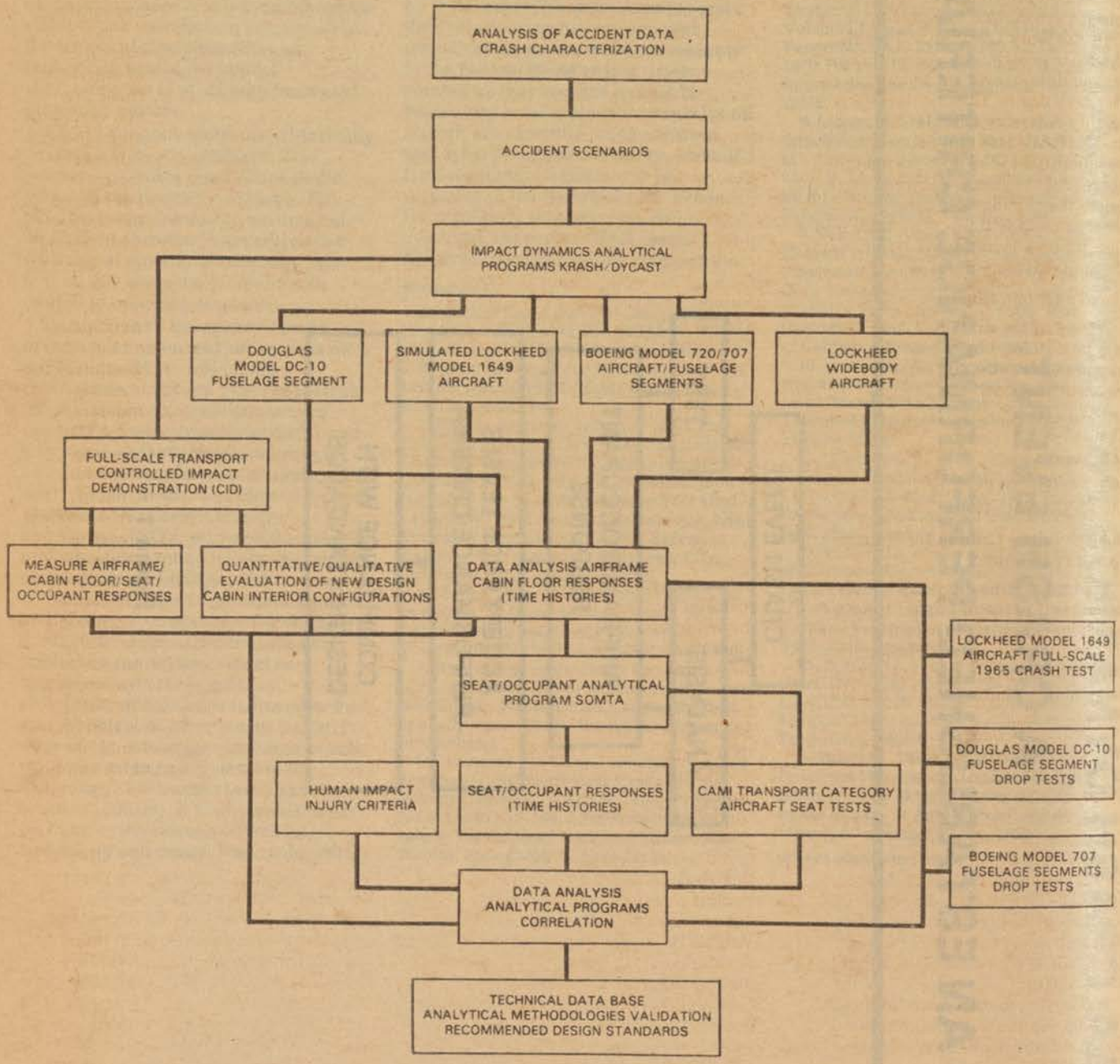


Figure 2



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**Comments Invited**

Although the FAA welcomes comments on its whole crash dynamics program at any time, the FAA plans to make completed elements of this effort available periodically for specific detailed public comment. Interested persons are invited to comment on the draft Advisory Circular and crash dynamics program by submitting such written data, views, or arguments as they may desire. Commenters should identify Advisory Circular file number 21-XX (AAC-119) and comments should be submitted to the address specified above. All comments received on or before the closing date specified above for comments will be considered by the Director of Airworthiness before using the final Advisory Circular.

**How To Obtain Copies**

A copy of the draft Advisory Circular may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, D.C., on September 14, 1984.

M.C. Beard,

*Director of Airworthiness.*

[AC 21-XX (AAC-119)]

**Subject: Injury Criteria for Human Exposure to Impact**

1. *Purpose.* This advisory circular describes a range of impact trauma which may be used to establish bases for acceptance levels/performance criteria in the evaluation of occupant survivability characteristics in civil aircraft.

2. *Related Federal Aviation Regulations (FAR) Sections.* Sections 23.561, 23.785, 25.561, 25.563, 25.785, 25.801, 25.803, 27.561, 27.785, 27.801, 29.561, 29.563, 29.785, 29.801, and 29.803.

3. *Related Reading Material.*

a. *Aircraft Crash Survival Design Guide,* (Volumes I–V), Simula Inc., USARTL–TR–79–22(A–E), Applied Technology Laboratory, U.S. Army Research and Technology Laboratories (AVRADCOM), Fort Eustis, Virginia, 23604. 1980.

b. *Bioastronautics Data Book,* NASA SP–3006, National Aeronautics and Space Administration, Washington, D.C. 20546, 1973.

c. *Human Tolerance to Impact Conditions as Related to Motor Vehicle Design,* SAE J885, Society of Automotive Engineers, Warrendale, Pennsylvania 15096, April 1980.

d. *Whole Body Tolerance to Impact with Lap Belt-Only Restraint,* Laananen, Simula, Tempe, Arizona 85282.

e. *Human Exposure to Impact with Two Point (Lapbelt) and Three Point (Lapbelt and Diagonal Shoulder Belt) Restraint Systems,* Chandler, R.F., Gowdy R.V., Memorandum No. AAC–119–83–7, Protection and Survival Laboratory, Civil Aeromedical Institute, Mike Monroney Aeronautical Center, Federal Aviation Administration, Oklahoma City, Oklahoma 73125, August 31, 1983.

f. *Human Survival in Aircraft Emergencies,* Yost, C.A., Oates, R.W., National Aeronautics and Space Administration, Washington, D.C. 20546, January 1969.

g. *Proceedings of the Stapp Car Crash Conference,* Society of Automotive Engineers, Warrendale, Pennsylvania 15096, (published annually since 1966 by the SAE under various SP numbers).

h. *Impulse Analysis of Airplane Crash Data with Consideration Given to Human Tolerance,* Huey D. Carden (NASA Langley), SAE 830748, Society of Automotive Engineers, Warrendale, Pennsylvania 15096, April 1983.

**Note.**—Initial inquiries for any reading material in this paragraph may be directed to the address in the applicable subparagraph.

4. *Background.* The scientific study of human exposure to impact began during World War II when ejection seats were developed for high speed aircraft. The work of Geertz and Ruff in Germany developed basic criteria which are still in use today for evaluating seat and restraint performance. After the War, the work was expanded by Stapp and other scientists working primarily for the military services. Eiband provided a concise summary of this early work. The concern for automobile crash safety which developed during the 1950's and 1960's resulted in a great expansion of studies to increase impact injury protection offered to a civil population. Guidelines for the application of these studies' findings to Army helicopters is found in the Aircraft Crash Survival Design Guide; and for automobiles, in various Society of Automotive Engineers documents and in the Federal Motor Vehicle Safety Standards. The developments can also be followed in the Proceedings of the Stapp Car Crash Conferences, published annually by the Society of Automotive Engineers since 1966.

5. *Definitions.*

a. *Human Tolerance.* Whole body human tolerance limits result from tests with voluntary human subjects who are exposed to increasingly severe impacts while being held by a specific seat and restraint system. The level of the impacts is increased until a subject feels that further tests would be unacceptable. Injury is seldom the endpoint for such tests, but when injury occurs it is often accidental and has always been minor in nature. Tolerance limits from such testing have limited general application for systems intended to protect humans against serious injury or death for they represent a voluntarily accepted impact level and not an impact level representative of serious injury or death.

b. *Injury criteria.* Injury criteria describe the trauma limits of individual human body components. These are more generally applicable to a variety of impact injury protection system designs. To provide data for protection against serious injury or death, biological surrogates are used instead of human subjects in tests; however, correlation of data between the biological surrogates and living humans is difficult. Moreover, for evaluating the performance of a protection system, an anthropomorphic test device (ATD) may be used instead of a biological surrogate, and the ATD is only a rudimentary representation of the human body. Impact injury criteria should be expressed in parameters which can be measured on an ATD.

c. *Anthropomorphic Test Device (ATD).* An ATD is a dummy used in place of a human for evaluation of impact in jury protection systems. While there have been many dummy types manufacturered, the only standardized adult size ATD generally available in the United States is the one described by 49 CFR 572. This device, commonly called the Part 572 dummy, provides only approximate correlations with humans, and considerable resources are being expended to develop better ATD's. Impact injury criteria determined using biological subjects should be expressed in parameters which can be measured on an ATD.

6. *Discussion.*

a. *Goals.*

(i) The goal of this advisory circular is to provide guidance regarding useful human impact injury data which may be used to establish bases for acceptance levels/performance criteria in the evaluation of occupant survivability characteristics in civil aircraft. *The human impact injury data provided herein are neither design criteria nor goals,* for it should be accepted that impact injury protection is a systems consideration with the human occupant as only one element in the system. Aircraft designs that absorb impact energy, help control the impact environment, maintain adequate living space, provide egress pathways for rapid evacuation, and use fire resistant systems to provide adequate time for egress contribute much to occupant survivability. The occupant protection

system elements, which are closest to an occupant, such as occupant/seat restraints, equipment, and furnishings, play a major role in injury protection. It is the proper interaction of all these and related elements which should be addressed to provide improvement in occupant protection against injury.

(ii) The goal of any impact injury protection system should be to reduce the level of injury insofar as possible; from fatal to non-life threatening to serious to minor to none. The extent to which progress can be made along that chain depends on many factors:

(A) Personal characteristics (age, sex, physical condition) of the occupant influence the ability to withstand the force of impact;

(B) Restraint system design details govern the placement of loads on the body at locations and at levels where loads can be most readily taken;

(C) Orientation of the impact vector relative to the occupant governs which components of the body are most highly stressed;

(D) A seat, which can provide distribution of load over the body and absorption of energy, may reduce the stress on the body;

(E) If the occupant/seat restraint does not preclude secondary impact of an occupant with the interior of a passenger compartment, then the ability of the cabin interior to distribute the impact load over the body segments and absorb energy influences the stress generated on the body from secondary impact; and

(F) Finally, the characteristics of the impact pulse, such as impact velocity and the "shape" of the time history of the acceleration (including duration, maximum levels, effective onset rate, etc.), influence the stress in the body.

b. *Whole Body Impact Tolerance.*

(i) *Considering the many factors influencing the ability of a system to protect against impact injury, any simple statement of tolerance should be heavily conditioned.* Eiband, in 1959, attempted to compile a summary of the knowledge existing at that time relative to human tolerance to impact and attempted to present it in a simple form. He chose to represent each test result as a point on a log-log plot of acceleration vs. duration. The value of acceleration (or deceleration) chosen for this point was the maximum acceleration measured in the test, and the duration was the duration of that maximum acceleration. This approach was effective at that time because most of the test data was obtained for ejection seat tests, where the acceleration pluse was roughly trapezoidal in shape, and could be fairly represented by duration and magnitude of the maximum acceleration; however, if the pulse shape deviates significantly from a trapezoidal or square shape, this method becomes ineffective. For example, the triangular pulse shape often recommended as representative of aircraft crash deceleration would not even appear on a log-log plot since the peak deceleration has no duration. Also, a deceleration pulse with a superimposed short duration spike would be characterized by the amplitude and duration of the peak acceleration of the spike, and all other characteristics, such as velocity change or energy, would be ignored. Indeed, such a pulse would appear to be no different than a pulse composed only of the spike. This advisory circular will retain the log-log format, but will interpret the data according to a method recently used by the Army in evaluating energy absorbing seat performance. This method measures, and plots, the duration of all acceleration levels which appear in the acceleration pulse of the test. Thus the test is represented as a curve, rather than just a single point on the log-log plot. A series of tests will appear as a family of curves, and the tangent to those curves represents an envelope of the maximum acceleration and duration of maximum acceleration to which a human was exposed in the test series. While this provides a more universal means of including a variety of pulse shapes, it cannot consider all of the factors previously mentioned. Also, since it retains the log-log tolerance format originally proposed by Eiband, it suffers from the same possible misinterpretation that any test or crash, which can be plotted within the tolerance curve, is tolerable without regard to velocity change.

(ii) The voluntary exposure areas of Figures 1 through 4 represent the acceleration levels and durations which have been tolerated by volunteer human subjects using the restraint concept indicated. The areas titled "low probability of life threatening injury" in Figures 2 and 4 represent accidental exposure of humans which resulted in reversible injuries.

c. *Impact Injury Criteria.* Of more importance for evaluating the performance of impact injury protection systems are measurements which can be made during testing. Historically, measurements of acceleration have been used as impact injury criteria, but these measurements have only been made popular by the ready availability of accelerometers rather than the significance of acceleration as a factor in injury. In short duration accelerations, such as occur in impacts (less than 0.02 second, for example), the injury limit is body structural, and this limit would be expressed better in terms of stress or strain. In any event, it should be understood that there are no universally accepted handbook values for impact injury criteria in the sense that there are handbook values for the properties of materials used in the construction of aircraft. Injury is a progressive occurrence, and the rate of progression varies with a number of factors which have not yet been completely understood. Also, impact injury criteria are not design criteria in the sense that they can be used during the design of an aircraft in the same manner as the properties of materials are used. Instead, such injury criteria must be viewed as test measurements which can be used to determine if an impact protection system is likely to have achieved some level of success. If a minimum level of protection has been established by regulatory requirements, as has been generated by the rulemaking process for the automotive industry or by military specifications for defense suppliers, then the criteria and methods of demonstrating compliance with those criteria are defined. In the absence of such a definitive process, the responsibility for the selection of injury criteria pertinent to a particular application and the development of appropriate test procedures to demonstrate that the injury criteria have been met falls on the manufacturer of the system. To assist in this effort, the following subparagraphs summarize some of the more important concepts for injury criteria which may, depending on the application, be of importance in the development of impact injury protection systems for civil aircraft. Other concepts, as well as arguments for and against most of the concepts presented here, can be found in the literature.

(i) *Head Injury.* Injuries to the head can be fractures or concussions. The mechanism of injury depends on the energy of the impact, the rotational and translational movement of the head relative to the body, the characteristics of the impacted surface (area, shape and load distribution properties, for example), and the site and direction of the load (force) vector relative to the head. The Wayne State University Concussion Tolerance Curve (WSUCTC), proposed by Lissner, et al., in 1960, forms the basis for most current head injury criteria. Gadd devised a weighted impulse criterion to define a Severity Index (GSI) to represent the WSUCTC, so that a GSI less than 1000 represented the limit for skull fracture from localized impacts against a hard

surface, and a GSI less than 1500 represented a concussion injury limit for distributed or non-contact blows to the head. An alternate representation of the WSUCTC, suggested by Versace, led to the Head Injury Criterion (HIC)

$$HIC = \left\{ (t_2 - t_1) \left[ \frac{1}{t_2 - t_1} \int_{t_1}^{t_2} a(t)\, dt \right]^{2.5} \right\}_{max} < 1000$$

where a(t) is the time history of the acceleration at the center of mass of the head measured with a system having a frequency response of 1000Hz, $t_1$ and $t_2$ are the initial and final times (seconds) during a pulse interval, and a value of 1000 is the limit for head injury. Although usually not specified in the criterion, this limit is most useful with pulse intervals not greater than 0.05 seconds.

(ii) *Chest Injury.* Upper torso injuries include both skeletal and soft tissue injury mechanisms. Neathery suggested that chest deflection showed good correlation with blunt frontal impacts and recommended a sternal deflection limit of 75mm for representing severe, not life-threatening, chest injury for a 45 year old mid-sized male. The primary problem with a deflection measurement is in making a single measurement which is descriptive of the complex thorax behavior under all conditions of impact. The same problem exists with a single acceleration measurement, such as used in limits which state ". . . shall not exceed 60 g's except for intervals whose cumulative duration is not more than 3 milliseconds", and is compounded by the difficulty of correlating an acceleration measurement with injury. Eppinger suggested an alternate, easily measured criteria, shoulder belt load, as a means of predicting thoracic fractures in cadaver tests (with consideration of cadaver weight and age at death). He suggested that a 5.8 to 6.7kN upper torso diagonal belt force would produce the minimum average number of fractures in the automobile fatality population in a 13.4 m/s frontal crash with a particular belt restraint system. This approach is conditioned by the understanding that belt loads are also strongly influenced by belt geometry, a factor not represented in the analysis.

(iii) *Abdominal Injury.* The clinical literature provides extensive documentation of the serious, life threatening injuries which can result from blunt abdominal trauma; however, the research accomplished to date to define abdominal injury criteria has been limited, and no practical criteria have evolved. Thus, considering the potential severity of abdominal loading, the only suitable recommendation is to avoid applying loads to the abdomen. In particular, a safety belt should be designed so that it does not slip from the pelvis to the abdomen.

(iv) *Leg Injury.*

(A) Early studies by Patrick, et al., used embalmed cadavers with head, chest, and knees striking lightly padded load cells during sled tests. They concluded that a load of 6.2 kN represented a conservative value for overall injury threshold for the patella-femur-pelvis complex. More recent studies by Melvin, et al., using unembalmed cadavers and an impactor with 25mm of energy absorbing padding, indicated a threshold of fracture of 13.3kN, with a threshold impactor momentum of 180–220Ns necessary to cause fracture. The current limit specified in FMVSS 208 is 10kN which is suggested as being appropriate criteria in aircraft. These studies concerned impacts which were essentially in line with the femur.

(B) Concentrated loading of the patella by impactors having circular or ring shapes less than 16mm in diameter demonstrated failures as low as 2.5kN, with patella damage varying dramatically with impact velocity.

(C) Transverse loading of the lower leg was reported by Young to result in tibia fracture at force levels from 4.45 to 6.67kN. Kramer, et al., found a 50 percent fracture limit of the lower leg to lie between 3.3 and 4.4kN, depending on the diameter of the impacting cylinder.

(v) *Spinal Injury.*

(A) Damage to the vertebral column, particularly to the upper lumbar and lower thoracic segments, occurs frequently where severe impact force is directed parallel to the spine. Stech and Payne modeled this impact as a single lumped-mass, damped-spring system, assuming that the total body mass which acts on the vertebrae to cause injury can be represented by one rigid mass. The model is used to predict the maximum deformation and the associated force of the spring (representing the vertebral column) for an input acceleration-time history measured on the structural seat pan of an ejection seat. The injury criterion which results is called the Dynamic Response Index (DRI). DRI limits for uniaxial spinal compression fractures of military aircrew have been suggested as follows:

DRI=18.0 implies less than 5 percent risk of injury

DRI=20.4 implies less than 20 percent risk of injury

DRI=23.0 implies greater than 50 percent risk of injury

While the DRI has been successfully used for several military programs, these programs have also used well designed restraint systems to avoid bending loads on the spinal column which are not always possible in civil systems. Moreover, few civil aircraft seats have well defined structural seat pans on which representative accelerations can be measured. In an attempt to overcome these problems, Chandler conducted tests using a modified Part 572 ATD with a load cell inserted into the pelvis at the base of the rubber "lumbar" cylinder of the dummy. He found that, under a variety of test conditions with a military type seat, a pelvic compression load of 6.7kN correlated with a DRI of 19, indicating a low to moderate risk of injury. Since loads from the restraint system which would cause spinal compression would most likely be reflected in an increased pelvic load, this measurement may have more general application and is suggested for use in aircraft.

(B) Models which are, in effect, limited to one injury indicator for spinal column injury cannot predict the complex stress distribution which exists in this complex structure. Several more sophisticated models have been suggested, but there is no general consensus of more representative injury criteria. In any event, the measurements which can be made during a test will probably limit any proposed criteria to axial and shear loads and moments and torque in practice.

(vi) *Restraint Effectiveness and Other Criteria.* There are several other criteria for effective protection against impact injury which cannot be defined by numerical limits. Among the more important of these are:

(A) The restraint system should be designed to encourage its frequent and proper use by an occupant. Restraints which are complex, uncomfortable, or unduly restrictive to normal operational functions of the occupant are unlikely to be successful.

(B) Restraints should fit the size range of occupants that are likely to use the system. Misfit restraint systems can cause injury; for example, a diagonal belt which bears against the side of the head can promote neck injury if vertical impact takes place; a diagonal belt which passes below the center of mass of the upper torso-head-neck complex may allow the torso to rotate out of the restraint and increase the potential of either impact with the aircraft interior or injury from spinal column torque, etc.

(C) Restraints should apply loads to the body areas most able to withstand the loads (i.e., pelvis or shoulders), and should not move from those areas during the impact.

(D) Seats and restraints should distribute their load over a maximum body contact area to reduce concentrated load on the body.

(E) The seat and restraint system should provide as much uniform load distribution to the body as possible to limit relative displacement of the body segments.

(F) Elasticity of elements in the restraint and seat allows body motion and can increase impact severity. For example, long lengths of restraint webbing stretch more than short webbing lengths and allow more occupant motion.

(vii) *Accepted Injury Criteria.* The following documents contain injury criteria and test procedures which have been accepted by user groups and have served as guidance for establishing similar criteria for civil aircraft crash injury protection systems:

(A) Federal Motor Vehicle Safety Standard No. 201, Occupant protection in interior impact (49 CFR 571.201), contains criteria for head impact with instrument panels and seat backs.

(B) Federal Motor Vehicle Safety Standard No. 202, Head Restraints (49 CFR 571.202), contains criteria for head restraints intended to reduce neck injury in rear-end collisions, and may be applicable to rear facing seat head rest design in aircraft.

(C) Federal Motor Vehicle Safety Standard No. 203, Impact protection for the driver from the steering control system (49 CFR 571.203), contains criteria to minimize chest, neck, and facial injuries resulting from impact with the steering control.

(D) Federal Motor Vehicle Safety Standard No. 208, Occupant crash protection (49 CFR 571.208), contains criteria for the head, thorax, and upper legs to minimize injury in an automobile crash.

(E) Military Specification 58095(AV), General Specification for Crashworthy, Non-Ejection, Aircrew Seat System (MIL–S–58095(AV)), contains specifications for limiting spinal injury created by whole body vertical acceleration.

(viii) *Suggested Numerical Values for Aircraft Use.* The following subparagraphs summarize the impact injury data that are suggested herein for use in assessing the performance of impact injury protection systems in civil aircraft. It is not intended that all of the suggested performance criteria should be sued in every case to assess each impact injury protection system. When regulatory requirements are established, specific performance criteria most likely will also be defined. In the absence of a definitive regulatory requirement, a manufacturer should select appropriate performance criteria, develop appropriate test procedures for the particular application, and demonstrate that the selected performance criteria have been met.

(A) Whole body tolerance—

(*1*) $-G_x$ (2 points restraint) Figure 1.

(*2*) $+G_z$ (2 points restraint) Figure 2.

(*3*) $-G_y$ (2 points restraint) Figure 3.

(*4*) $-G_x$ (3 points restraint) Figure 4.

(B) Head injury—HIC $< 100$ ($t_2 - t_1 <$ 0.05 seconds).

(C) Chest injury—Diagonal shoulder belt load—7.8 Kn (1,750 lb.).

(D) Abdominal Injury—No quantiative data suggested.

(E) Leg injury—

(*1*) In line with femur—10 kN (2,250 lb.).

(*2*) Patella (concentrated load)—2.5 kN (560 lb.).

(*3*) Transverse (lower leg)—4.45 kN (1,000 lb.).

(F) Spinal injury—Pelvic compression load—6.7. kN (1,500 lb.).

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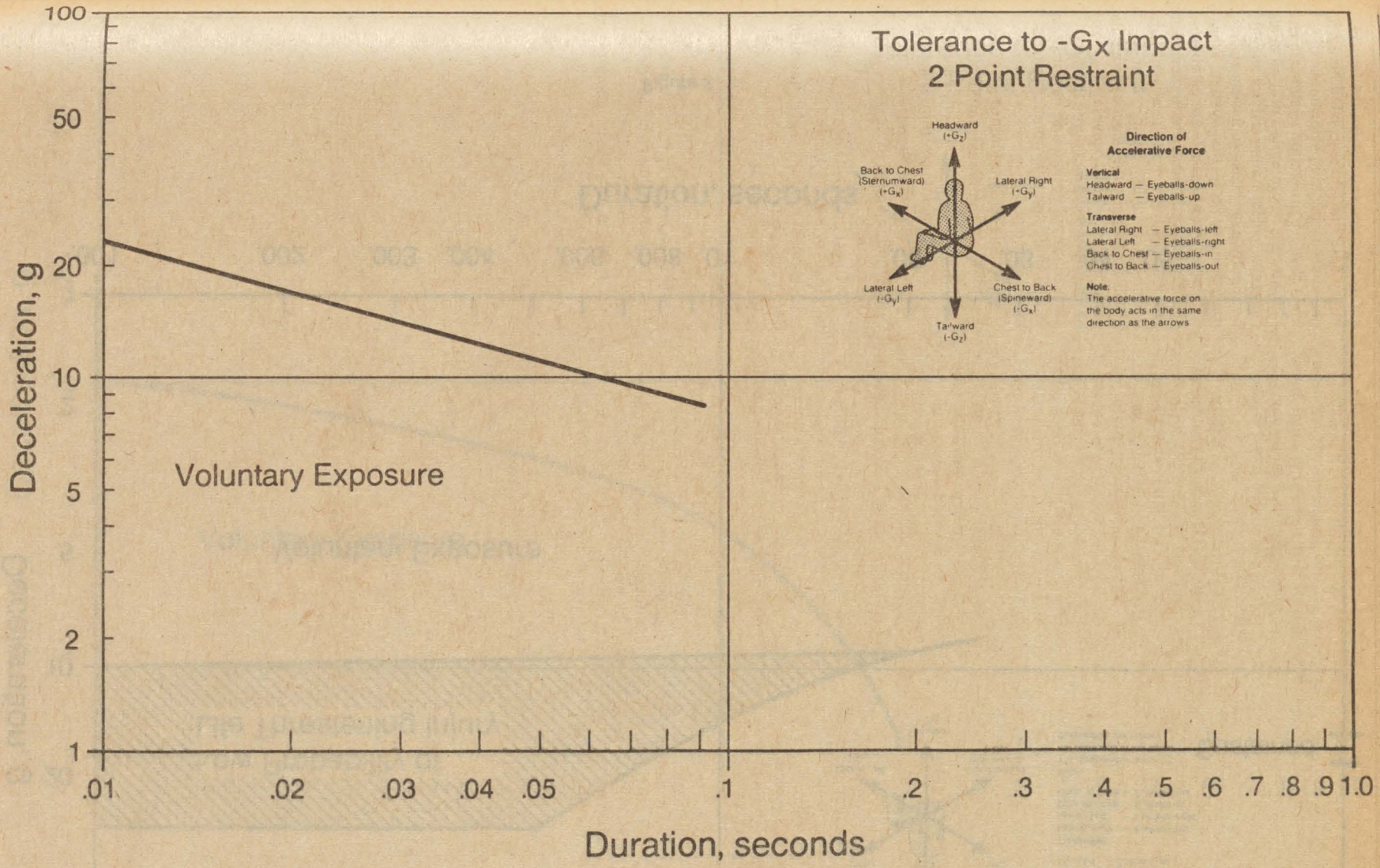
Tolerance to -Gx Impact
2 Point Restraint
Headward (+Gz)
Back to Chest (Sternumward) (+Gx)
Lateral Right (+Gy)
Lateral Left (-Gy)
Chest to Back (Spineward) (-Gx)
Tailward (-Gz)
Direction of Accelerative Force
Vertical
Headward — Eyeballs-down
Tailward — Eyeballs-up
Transverse
Lateral Right — Eyeballs-left
Lateral Left — Eyeballs-right
Back to Chest — Eyeballs-in
Chest to Back — Eyeballs-out
Note:
The accelerative force on the body acts in the same direction as the arrows
Deceleration, g
100
50
20
10
5
2
1
Voluntary Exposure
.01
.02
.03
.04
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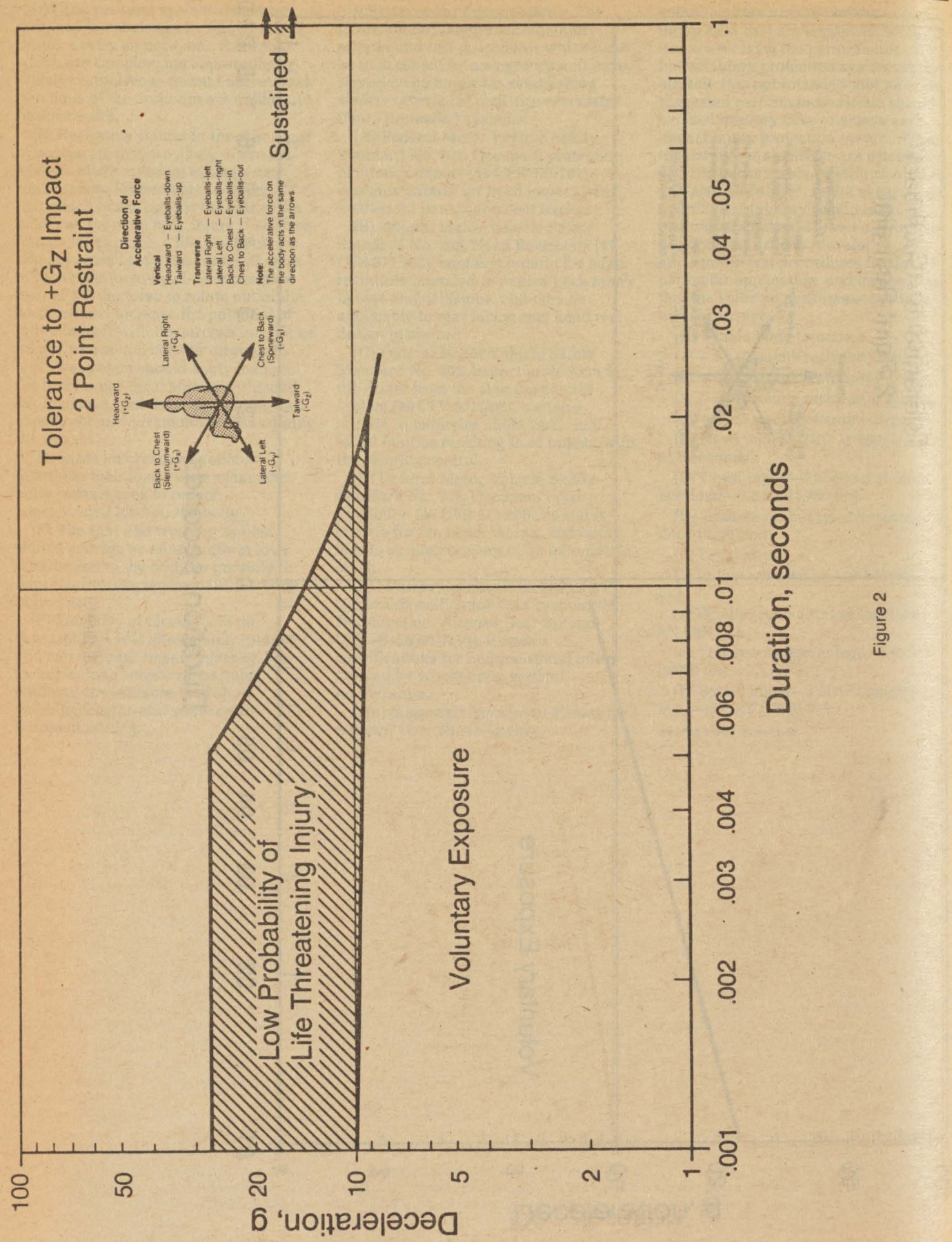
1.0
Duration, seconds

Figure 1


Tolerance to +Gz Impact
2 Point Restraint
Direction of
Accelerative Force
Vertical
Headward — Eyeballs-down
Tailward — Eyeballs-up
Transverse
Lateral Right — Eyeballs-left
Lateral Left — Eyeballs-right
Back to Chest — Eyeballs-in
Chest to Back — Eyeballs-out
Note:
The accelerative force on the body acts in the same direction as the arrows
Sustained
Headward (+Gz)
Lateral Right (+Gy)
Back to Chest (Sternumward) (+Gx)
Chest to Back (Spineward) (-Gx)
Lateral Left (-Gy)
Tailward (-Gz)
Low Probability of
Life Threatening Injury
Voluntary Exposure
Deceleration, g
100
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20
10
5
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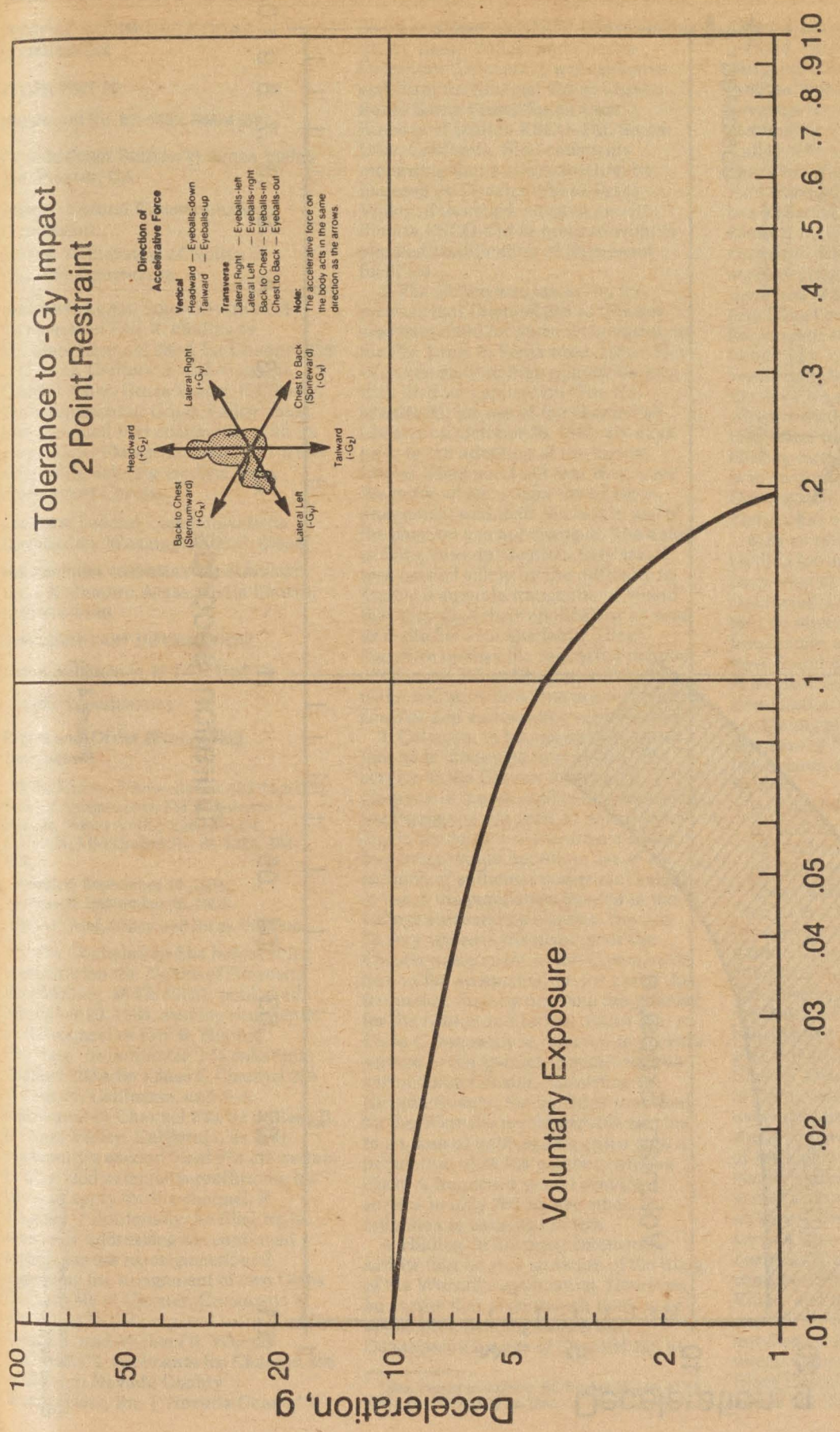
Duration, seconds

Figure 2


Tolerance to -Gy Impact
2 Point Restraint
Direction of Accelerative Force
Vertical
Headward — Eyeballs-down
Tailward — Eyeballs-up
Transverse
Lateral Right — Eyeballs-left
Lateral Left — Eyeballs-right
Back to Chest — Eyeballs-in
Chest to Back — Eyeballs-out
Note:
The accelerative force on the body acts in the same direction as the arrows.
Headward (+Gz)
Lateral Right (+Gy)
Chest to Back (Spineward) (-Gx)
Back to Chest (Sternumward) (+Gx)
Tailward (-Gz)
Lateral Left (-Gy)
Deceleration, g
100
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20
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1
Voluntary Exposure
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1.0
Duration, seconds

Figure 3

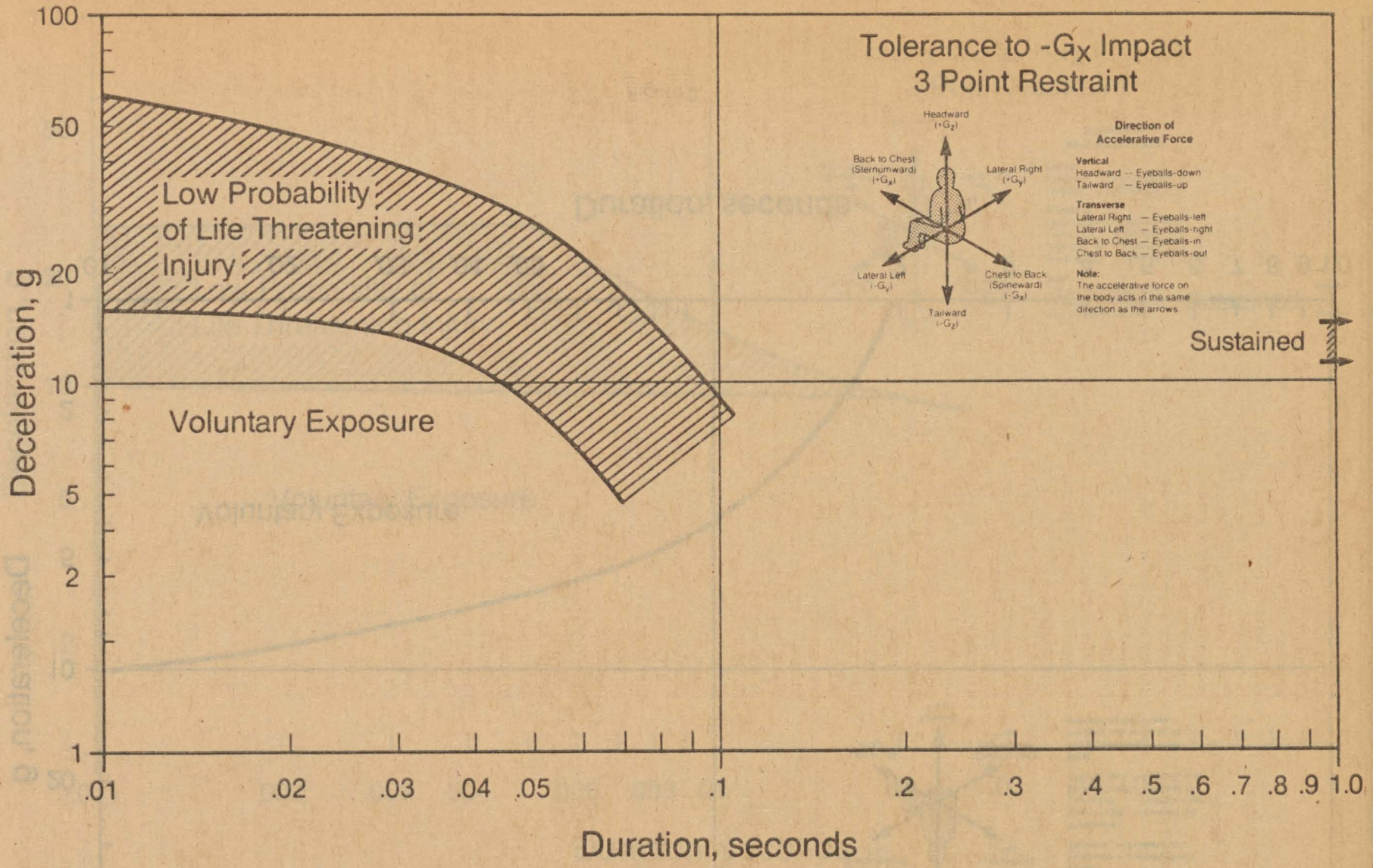


Figure 4

[FR Doc. 84–25025 Filed 9–20–84; 8:45 am]
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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MM Docket No. 83-1232; RM-4569]**

**FM Broadcast Station in Grass Valley and Chester, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Withdrawal of Notice of Proposed Rulemaking.

**SUMMARY:** Action taken herein denies the request of Eric R. Hilding to substitute Channel 280A for Channel 255 at Chester, California, and to assign Channel 256 to Grass Valley, California. The assignment at Grass Valley could have provided that community with its second local FM assignment (first wide-area) while deleting the first local allocation at Chester.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:**

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

Radio broadcasting.

**Report and Order (Proceeding Terminated)**

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Grass Valley and Chester, California) MM Docket No. 83-1232, RM-4569.

Adopted: September 12, 1984.
Released: September 18, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 53722, published November 29, 1983, seeking comments on the request of Eric R. Hilding ("Hilding" or petitioner") to substitute Channel 280A for Class C Channel 255 at Chester, California, and the assignment of Channel 256, as a Class B, to Grass Valley, California, as that community's second local FM allocation. Hilding filed comments reaffirming his intent to apply for the channel, if assigned. Additionally, he filed reply comments addressing his continued support for the reassignment and suggesting the assignment of two Class C2 channels at Chester. Comments in opposition to the proposal were filed by: Teresa R. and Michael E. Worrall ("Worralls"), applicants for Channel 255 at Chester; Nevada County Broadcasters, Inc. ("Nevada County"), licensee of Station KNCO-FM (Channel 232A), Grass Valley; and Chester Coleman ("Coleman"), a prospective applicant for Channel 255 at Chester. Radio Santa Cruz ("Santa Cruz"), licensee of Station KSCO-FM, Santa Cruz, California, filed comments requesting that a site restriction be imposed on Channel 256 at Grass Valley, if assigned, so as to permit Station KSCO-FM to proceed with its planned modification of its present facilities.

2. The *Notice* was issued on the premise that Channel 255 at Chester was unapplied for since its inclusion in the FM Table in September, 1982.[1] The Worralls state in their opposition that they filed an application (File No. 831026AH) for use of the channel at Chester on October 26, 1983, six days prior to the adoption of the instant *Notice*. They point out that they were the party which sought the Chester assignment and their interest in use of the channel has not changed. The delay in filing their application, they state, was caused solely by the difficulty in finding a suitable transmitter site and that they filed their application as soon as a site became available. They therefore oppose the requested deletion of Channel 255 at Chester, which they claim will provide a first aural service to Chester and surrounding communities.

3. Coleman, in his opposition, states that he is interested in providing FM service to the Chester area and is planning to file an application for use of the frequency. He goes on to state that due to the terrain of the area, a Class A frequency would not allow use of an antenna of sufficient power and height to reach the population located in the valleys surrounding Chester. Nevada County opposes the deletion of the Chester assignment as the Commission has on file an application for use of the frequency, thereby negating the premise for the *Notice* and further states that a Class C frequency is required to provide service to the sparsely populated area surrounding Chester. According to Nevada County, the facilities proposed by the Worralls would provide service to an area of 8,296 square miles with a population of 48,764 persons, while a Class A frequency would provide service to only 700 square miles, a reduction in coverage of 91%.

4. Hilding, in his reply comments, admits that he was unaware of the filing of the Worrall's application. However, he argues that even though there is an application pending before the Commission for use of Channel 255 at Chester, his request should still be granted. He states that a Class B assignment at Grass Valley would provide "certain 'regional' service coverage for the population base in community areas removed from Grass Valley with similar FM service terrain considerations, as in the Chester area". Additionally, as Grass Valley currently has assigned to it only one FM station, a Class A facility, it would provide the community with a needed diversity of service. He goes on to claim that since there are two expressed interests in providing Chester with FM service, his proposal of substituting two channels (albeit of a lower class) for Channel 255 would satisfy both interests and avoid the need for a comparative hearing which would delay a first local service to Chester for as long as three years. Hilding further states that his proposal is in conformance with the Commission's priorities in the assignment of FM channels.

5. In an effort to satisfy the desire of Hilding for the assignment of a Class B frequency at Grass Valley, the staff has conducted a channel search and found that no alternative Class B or B1 frequencies are available. However, we have found that there are several Class A frequencies for Grass Valley. The Commission's criteria for evaluating conflicting proposals was set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982), as follows:

(1) First full-time aural service.
(2) Second full-time aural service.
(3) First local service.
(4) Other public interest matters.

Grass Valley receives full-time service from both a local AM and FM station. Chester, on the other hand, will receive a first local service when Channel 255 is activated. As stated earlier, the Commission currently has on file an application by the Worralls and has been advised by Coleman that he is also planning to file an application for the Chester assignment. Therefore, we look to the petitioner to provide us with overriding reasons why Grass Valley should be preferred over Chester for use of the higher powered channel. Hilding merely states that the benefits which would accrue to Chester by utilization of a Class C channel, such as regional service to communities isolated from the community of license by terrain characteristics, is also present at Grass Valley and that the assignment would provide for a diversity of service. While not disputing the population and area which will receive service from the Class C facility at Chester, Hilding states that the population of Grass

[1] See, *Report and Order*, BC Docket 82-149, 47 FR 32541, published July 28, 1982.

Valley, which is the larger of the two, should additionally be combined with that of Nevada City, California, a community 5 miles away, but part of the Grass Valley "metro area." This area of 7,463 persons receives service from only one commercial FM station. We note that noncommercial educational Station KVMR–FM, Channel 208B, licensed to The American Victorian Museum, is licensed to serve Nevada City, thereby providing the "metro area" with local service from one full-time AM station and two full-time FM stations, albeit one a noncommercial facility. Hilding's argument that two channels (Class C2 or A) should be assigned to Chester to avoid a comparative hearing between the Worralls and Coleman is inappropriate. We have no expression of interest in a second FM channel at Chester and we would not ordinarily make an additional allotment without such interest.

6. Based on the above discussion, we find that Hilding has not met, the burden of justifying a reassignment of a channel for which an application is pending and for which no equivalent channel is available. See, *Martin and Salyersville, Kentucky*, 50 R.R. 2d 502 (1981). As stated in paragraph 4, *infra*, there are several Class A frequencies which are available for assignment at Grass Valley which could provide the diversity of service which Hilding states in needed. Therefore, we find that the public interest would best be served by retaining the Class C Channel 255 assignment at Chester, for which an application is pending. We will not assign a second Class A frequency to Grass Valley as neither Hilding nor any other party has expressed a desire to operate on such a frequency.

7. Accordingly, it is ordered, that the petition of Eric R. Hilding to assign Channel 256 to Green Valley is denied.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1068, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 84–25051 Filed 9–20–84; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 49, No. 185
Friday, September 21, 1984

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

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Western Spruce Budworm Insect Control; Pacific Northwest Region—Baker, Clackamas, Crook, Deschutes, Grant, Hood River, Harney, Jefferson, Morrow, Multnomah, Union, Umatilla, Wasco, Wheeler Counties, OR; Yakima, and Okanogan Counties, WA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for the control of Western Spruce Budworm Insect Infestations on National Forest lands; lands administered by the Bureau of Indian Affairs and The Bureau of Land Management, U.S. Department of Interior; certain other lands administered by the State of Oregon and State of Washington, and certain lands of cooperating private landowners.

A range of alternatives for control of the Western Spruce Budworm insect will be considered, including the application of chemical and/or biological insecticides and the alternative of taking no action for control.

Federal, State, and Local agencies, potential private cooperators, and individuals and organizations who may be interested in or affected by the decision will be invited to participate in the Scoping process.

This process will include:

1. Identification of those issues to be addressed.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

4. Determination of potential Cooperating agencies and the assignment of responsibilities.

The Bureau of Indian Affairs, and Bureau of Land Management, U.S. Department of Interior; The Department of Natural Resources, State of Washington; and the Department of Forestry, State of Oregon will be invited to participate as cooperating agencies to evaluate the potential impacts of the insect infestation and impacts of various control alternatives on the lands and resources managed by these agencies. Impacts considered will include economical, biological, physical and social effects of the various alternatives.

Public meetings may be held near population centers affected by the infestation, and if so, such meetings will be announced in newspapers of general circulation in the area.

Initial analysis will focus on the cost of control versus the benefit values. This analysis may show costs to be in excess of benefits. If so, or if other analyses indicate that an Environmental Impact Statement is not needed, this Notice will be cancelled. Full analysis is expected to take 3 months and a Draft Environmental Impact Statement should be available on or about January 1, 1985.

Written comments and questions about the proposed action and Environmental Impact Statement should be directed to V.R. Turnbull, La Grande Ranger Station, Wallowa-Whitman National Forest, Rt 2, Box 2108, La Grande, Oregon 97850, telephone (503) 963–7186.

Dated: September 14, 1984.

**James C. Space,**

*Acting Regional Forester.*

[FR Doc. 84–25189 Filed 9–20–84; 8:45 am]

BILLING CODE 3410–11–M

### Wolf Creek Valley Winter Sports Site; San Juan National Forest Mineral County, CO; Intent To Prepare an Environmental Impact Statement

The Forest Service, Department of Agriculture, with the Federal Highway Administration, Department of Transportation, in cooperation with other federal, state, and local agencies, will prepare an environmental impact statement concerning development of the proposed Wolf Creek Valley Winter Sports Site.

Westfork Investment, Ltd., proposes to develop an alpine skiing area with attendant facilities on both public and private lands. The area proposed for development, identified as Windy Pass in the San Juan National Forest Land and Resource Management Plan, is located 12 miles northeast of Pagosa Springs on U.S. Highway 160. Proposed development would occur in phases beginning with four lifts to accommodate 4000 skiers. At project completion, capacity would be 11,000 skiers, and would be served by 14 chairlifts and 3 gondolas.

The base area as proposed is located immediately adjacent to the skiing access lifts. About one mile of U.S. Highway 160 is proposed to be relocated or redesigned. The highway relocation would occur exclusively on private land owned by the proponent. The Federal Highway Administration is responsible for making a decision on this part of the proposed action.

The environmental analysis of the proposal is being assisted and coordinated by the Joint Review Committee, which was established and provided for in a Memorandum of Understanding dated August 27, 1984. Members of the Committee include representatives of the USDA Forest Service; State of Colorado; Mineral County, Colorado; Archuleta County, Colorado; and Westfork Investment, Ltd.

The altenatives of no action and of permitting development as proposed will be analyzed. Additional mountain development and transportation alternatives may also be identified and analyzed.

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process is called scoping. On July 25 and 26, 1984, the Joint Review Committee sponsored public scoping meetings in the Towns of Creede and Pagosa Springs, respectively, to identify issues and concerns related to the proposal. Scoping continued through the month of August with the Joint Review Committee receiving written responses from interested individuals. While no future scoping meetings are planned, issues and concerns relative to the proposal will continue to be received by the Joint Review Committee an additional 30 days from the date of this publication.

John R. Kirkpatrick, San Juan National Forest Supervisor, is the responsible official.

The draft Environmental Impact Statement is expected to be available for public review in June 1985. The final Environmental Impact Statement is scheduled to be filed by January 1986. A Record of Decision will be issued by the USDA Forest Service when the final Environmental Impact Statement is released. The Federal Highway Administration will release a Record of Decision approximately 30 days thereafter. If the decisions allow, construction could begin during the summer of 1986.

Questions about the proposed action and Environmental Impact Statement should be directed to Ron Doering, Pagosa Ranger District, San Juan National Forest, P.O. Box 310, Pagosa Springs, CO. 81147. Phone (303) 264–2268.

Dated: September 13, 1984.

**John R. Kirkpatrick,**

*Forest Supervisor.*

[FR Doc. 84–25194 Filed 9–20–84; 8:45 am]

BILLING CODE 3410–11–M

## Rural Electrification Administration

### Central Electric Power Cooperative, Inc.; Environmental Impact Statement

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to proposed financing assistance to Central Electric Power Cooperative, Inc. (Central), of Columbia, South Carolina, for the construction of 35 miles of 69 kV transmission line in Chester and Lancaster Counties, South Carolina. The FONSI includes a distribution substation to be constructed by the Fairfield Electric Cooperative, Inc., (Fairfield) of Winnsboro, South Carolina. Central's line will serve this substation.

**FOR FURTHER INFORMATION CONTACT:** REA's FONSI and Environmental Assessment and Central's Borrower's Environmental Report (BER) may be reviewed in the office of Chief, Distribution and Transmission Engineering Branch, Southeast Area—Electric, REA, Room 0262, South Agriculture Building, Washington, D.C. 20250, telephone (202) 382–8436, or at the office of Central (Mr. Patrick T. Allen, Manager), 121 Greystone Boulevard, Columbia, South Carolina 29202, telephone (803) 779–4975.

**SUPPLEMENTARY INFORMATION:** REA has reviewed the BER submitted by Central and has determined that it represents an accurate evaluation of the environmental impact of the proposed project. The project consists of the construction of a 35 mile, 69 kV transmission line using single pole and H-frame structures on a 100 foot wide right-of-way. The line will be connected at the existing Cauthen Substation near Lancaster, South Carolina, and the existing Chester Substation near Chester, South Carolina. At the approximate mid-point of the line, Fairfield proposes to construct a distribution substation near Richburg, South Carolina. The new substation will require a 2 acre site.

REA has prepared an Environmental Assessment concerning the proposed project including the new distribution substation. REA concluded that its proposed financing assistance would not be a major Federal action significantly affecting the quality of the human environment after considering the project's potential impacts on resources including federally listed threatened and endangered species, wetlands, floodplains, prime farmland and cultural resources. The project will have no impact to federally listed threatened and endangered species, coastal zone management areas, coastal barrier resource areas or wild and scenic rivers. The 100-year floodplain, wetlands, and prime farmland are within the proposed transmission line corridor, which includes the substation site, and will be affected by the placement of transmission line support structures. The proposed distribution substation to be constructed by Fairfield is not sited in the 100-year floodplain or wetlands but is located on prime farmland. REA has determined that there are no practicable alternatives for locating transmission line support structures in the 100-year floodplain or in wetlands and that all practicable measures to minimize harm to these areas will be implemented. REA has also determined that there is a demonstrated, significant need for locating these structures in prime farmlands and there is no practicable alternative to such usage. Prior to the approval of the construction of the distribution substation by Fairfield, REA will determine if a practicable alternative site that avoids prime farmland exists. The need for the substation has been demonstrated. The proposed corridor does not contain known resources listed or proposed to be listed on the National Register of Historic Places. Central has agreed to consult with the South Carolina State Historic Preservation Officer in the event any resources are discovered and to minimize any effects.

Alternatives to the proposed project were considered which included no action, new generation facilities, conservation, replacing conductors on existing lines to increase capacity, various line routes, and various construction methods and materials. REA has determined that the proposed project is an environmentally acceptable alternative because it best meets the needs of Central and its member system, Fairfield, with a minimum of adverse impacts.

REA has independently evaluated the proposed project and has concluded that approval of financing assistance for it would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement is not necessary.

This program is listed in the catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees.

Dated: September 18, 1984.

**Jack Van Mark,**

*Acting Administrator.*

[FR Doc. 84–25182 Filed 9–20–84; 8:45 am]

BILLING CODE 3410–15–M

### Oglethorpe Power Corporation; Environmental Impact Statement

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA's Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to possible financing assistance for proposed construction by Oglethorpe Power Corporation (OPC) of two 230 kV transmission lines from Plant Vogtle to Goshen Substation in Richmond and Burke Counties, Georgia.

**FOR FURTHER INFORMATION CONTACT:** REA's Finding of No Significant Impact and Environmental Assessment (EA) and OPC's Borrower's Environmental Report (BER) may be reviewed in the Office of the Chief, Distribution and

Transmission Engineering Branch, Southeast Area—Electric, Room 0262, South Agriculture Building, REA, Washington, D.C. 20250, telephone (202) 382-8436, or at the Office of OPC (Mr. F.F. Stacy, Jr., Manager), 2100 East Exchange Place, Tucker, Georgia 30085-1349, telephone (404) 496-7600.

**SUPPLEMENTARY INFORMATION:** REA has reviewed OPC's BER and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. The proposed lines will be 19.1 miles long and will be constructed in the existing cleared and maintained right-of-way of the Vogtle to Goshen Transmission Line No. 1. REA determined that the proposed project is not likely to affect any threatened or endangered species or critical habitat; will have no effect upon a river section in the Nationwide Inventory of Wild and Scenic Rivers; will not occur in a coastal barrier and will not directly affect the coastal zone.

The proposed transmission lines will cross approximately 30 acres of floodplains, 24 acres of wetlands, and 350 acres of prime farmland and forestland. Much of these areas can be spanned, however, there is no practicable alternative to locating in a wetland or floodplain and all practicable means to minimize harm will be taken. The proposed project also will convert a small amount of important farmland and forestland to other uses, but there is a demonstrated, significant need for and no practicable alternative to the proposed action.

No cultural resources, listed on the National Register of Historic Places, are on or near the proposed transmission corridor. The existing right-of-way is being surveyed for archeological resources, and if any resources are identified, the regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) will be followed. No construction will begin until the proposed project is in compliance with the Advisory Council regulations.

Alternative transmission connection plans to various substations were considered. Since at least three high capacity lines are needed to connect Plant Vogtle, Unit 1 to the system, the no action alternative was not considered. When Goshen was chosen as a connection for both lines, alternative routes for the proposed transmission lines were not considered since they could be constructed within the cleared and maintained right-of-way of Vogtle to Goshen Transmission Line No. 1.

Based upon OPC's BER and supporting documents, REA prepared an EA concerning the proposed project and its impacts. In accordance with REA's 7 CFR Part 1794, OPC advertised and requested comments on the environmental aspects of the proposed project. No comments were received. REA concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not necessary.

This program is listed in the Catalog of Federal Domestic Assistance as 18.850—Rural Electrification Loans and Loan Guarantees.

Dated: September 18, 1984.

Jack Van Mark,

*Acting Administrator.*

[FR Doc. 84-25180 Filed 9-20-84; 8:45 am]

BILLING CODE 3410-15-M

## CIVIL AERONAUTICS BOARD

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations; Week Ended September 14, 1984

#### Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings (See 14 CFR 302.1701 et. seq.)

| Date filed | Docket No. | Description |
|---|---|---|
| Sept. 11, 1984 | 42483 | Continental Air Lines, Inc., c/o Emory N. Ellis, Esq. Fulbright & Jaworski, 1150 Connecticut Avenue., NW., Washington, D.C. 20036<br>Motion of Continental Air Lines, Inc. to file late; and Application of Continental Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Regulations applies for a certificate of public convenience and necessity authorizing service between Houston, Texas, and London, United Kingdom (Gatwick).<br>Answers may be filed by September 25, 1984. |
| Sept. 12, 1984 | 42485 | Million Air, Inc., c/o Suzette Matthews, Straus and Matthews, P.C. 1001 Connecticut Avenue, NW., Suite 335, Washington, D.C. 20036.<br>Application of Milion Air, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Board's Regulations requests permanent authority to provide foreign air transportation of property and mail as follows: Between a point or points in the United States to Barranquilla, Bogota, Cali and Cartegna, Colombia.<br>Answers due October 10, 1984. |
| Sept. 10, 1984 | 42477 | Air Atonabee Limited, d/b/a City Express, c/o Victor Pappalardo, 545 Lakeshore Blvd., Toronto, Ontario Canada M5V 1A3.<br>Application of Air Atonabee Limited, d/b/a City Express pursuant to section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit authorizing non-scheduled or charter foreign air transportation between any point or points in Canada and any point or points in the United States using large aircraft.<br>Answers may be filed October 9, 1984. |

Phyllis T. Kaylor,

*Secretary.*

[FR Doc. 84-25185 Filed 9-20-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 42262]

**Westates Airlines; Fitness Investigation; Assignment of Proceeding**

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated: Washington, D.C., September 12, 1984.

**Elias C. Rodriguez,**

*Chief Administrative Law Judge.*

[FR Doc. 84-25184 Filed 9-20-84; 8:45 am]

BILLING CODE 6320-01-M

## CIVIL RIGHTS COMMISSION

**New Jersey Advisory Committee; Agenda and Notice of Public Meeting**

Notice is hereby given, the pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 6:30 p.m. and will end at 9:30 p.m., on October 10, 1984, at the Quality Inn, Route 1 South, North Brunswick, New Jersey 08902. The purpose of the meeting is to discuss updated information on training and trends related to domestic violence.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Eastern Regional Office at (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 18, 1984.

**John I. Binkley,**

*Advisory Committee Management Officer.*

[FR Doc. 84-25188 Filed 9-20-84; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### Bureau of the Census

**Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting**

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate meetings of the CAC of the AEA, CAC of the AMA, CAC or the ASA, and the CAC on Population Statistics. The joint meeting will convene on October 11, 1984, at the Twin Bridges Marriott Hotel, 333 Jefferson Davis Highway, Arlington, Virginia 22202.

The CAC of the AEA is composed of 15 members appointed by the President of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Bureau's programs; and advises on the role of analysis within the Bureau.

The CAC of the AMA is composed of 15 members appointed by the President of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 15 members appointed by the President of the ASA. It advises the Director, Bureau of the Census, on the Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of six members appointed by the Secretary of Commerce and nine members designated by the President of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the combined meeting that will begin at 9 a.m. and end at 12:15 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and Bureau organization, budget and program developments, and other topics of current interests: (2) upcoming Census Research Conference; (3) update on 1990 census planning and operations; (4) update on the Survey of Income and Program Participation; and (5) data user services program to disseminate information including a demonstration of the CENDATA on-line information retrieval system.

The agendas for the four committees in their separate meetings that will begin at 1:30 p.m. and end at 5 p.m. on October 11, 1984, are as follows:

*The CAC of the ASA:* (1) Census Bureau response to previous Committee recommendations and Bureau activities of special interest to the CAC of the ASA, (2) data collection in a changing environment (joint with the CAC on Population Statistics), (3) a structural system for editing economic data (joint with CAC of the AEA and CAC on Population Statistics), and (4) data suppression and confidentiality (joint with all committees).

The agenda for the October 12 meeting of the CAC of the ASA that will begin at 8:45 a.m. and adjourn at 3:15 p.m. is: (1) Requisite planning and research relating to a decision on census adjustment for 1990 (joint with the CAC on Population Statistics), (2) preliminary estimates for the National Crime Survey using regression and time series, (3) a linear model approach to the estimation of survey redesign effects, (4) development and discussion of Committee recommendations, and (5) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

*The CAC on Population Statistics:* (1) Bureau response to previous Committee recommendations and Bureau activities of special interest to the CAC on Population Statistics, (2) data collection in a changing environment (joint with the CAC of the ASA), (3) a structural system for editing economic data (joint with CAC of the AEA and CAC of the ASA), and (4) data suppression and confidentiality (joint with all committees).

The agenda for the October 12 meeting of the CAC on Population Statistics that will begin at 8:45 a.m. and adjourn at 3:15 p.m. is: (1) Requisite planning and research relating to a decision on census adjustment for 1990 (joint with the CAC of the ASA), (2) demographic research at the Census Bureau, (3) statistical programs on aging (joint with the CAC of the AMA), (4) development and discussion of Committee recommendations, and (5) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

*The CAC of the AMA:* (1) Bureau response to previous Committee recommendations and Bureau activities of special interest to the CAC of the AMA, (2) China industrial census workshop, (3) expanded services—research activities, (4) 1987 Standard Industrial Codes revision, and (5) data suppression and confidentiality (joint with all committees).

The agenda for the October 12 meeting of the CAC of AMA that will begin at 9 a.m. and adjourn at 3:15 p.m. is: (1) Ecomomic and agriculture

censuses—past accomplishments, future plans (joint with the CAC of the AEA); (2) proposes quality improvements in foreign trade statistics (joint with the CAC of the AEA); (3) how the Bureau markets its products; (4) statistical programs on aging (joint with CAC on Population Statistics); (5) development and discussion of Committee recommendations; and (6) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

*The CAC of the AEA:* (1) General discussion and Bureau activities of special interest—China workshop and the upcoming Economic Data Review Conference, (2) Quarterly Financial Report—new directions, (3) a structural system for editing economic data (joint with the CAC of the ASA and CAC on Population Statistics), and (4) data suppression and confidentiality (joint with all committees).

The agenda for the October 12 meeting of the CAC of the AEA that will begin at 9 a.m. and adjourn at 3:15 p.m. is: (1) Economic and agriculture censuses—past accomplishments, future plans (joint with the CAC of the AMA); (2) proposed quality improvements in foreign trade statistics (joint with the CAC of the AMA); (3) measuring capacity utilization—proposed improvements; (4) linking census of construction to value in place data; (5) development and discussion of Committee recommendations; and (6) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

All meetings are open to the public, and a brief period is set aside on October 12 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Committee Liaison Office at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact the Committee Liaison Office, Mr. Melvin Hendry, Bureau of the Census, Room 3061, Federal Building 3, Suitland Maryland. (Mailing address: Washington, D.C. 20233). Telephone (301) 763–3856.

Dated: September 17, 1984.

C. L. Kincannon,

*Deputy Director, Bureau of the Census.*

[FR Doc. 84–25072 Filed 9–20 84: 8:45 am]

BILLING CODE 3510–07–M

## Foreign-Trade Zones Board

**[Docket No. 40–84]**

### Foreign-Trade Zone 70, Detroit, MI; Application for Reorganization

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70 in Detroit, requesting authority to reorganize its zone project within the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 4, 1984. The applicant is authorized to make this proposal under Chapter 447, Act 154, Michigan Public Acts of 1963 (MSA 21.302(1)).

On July 21, 1981, the Board authorized GDFTZ to establish a foreign-trade zone project in the Detroit area (Board Order 176, 46 FR 38941, 7/30/81). General-purpose zone facilities are located at a 5-acre site within the Clark Street Port facility in downtown Detroit, and at a 5.5-acre distribution complex at 6700 Chase Road in Dearborn.

The reorganization would involve deleting the Dearborn site, expanding the Clark Street Port zone site, and adding two public warehousing sites. Added to the Clark Street Port site would be a 2-acre open-storage area on Scotten Street between Fort and Jefferson, and a 10-story, one million square foot warehouse at Clark and Jefferson Streets. The expanded areas will be operated by the present operator: Detroit Marine Terminals, Inc.

One of the new proposed zone sites is a 10,000 square foot warehouse at 28601 Hildebrandt, Romulus, near Detroit's Airport, operated by W.F. Whelan Company, Inc. The other new proposed zone facility involves the warehousing facilities of Lutheran Brothers, Inc., at 2030 Howard Street, within the Westside Industrial Park, Detroit, one half mile from the Ambassador Bridge to Canada. The facility involves a 30,000 square foot building and a 7-story, 1.2 million square foot building. The reorganization/expansion is being requested to improve zone services to the area's business firms.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; William Morandini, District Director, U.S. Customs Service, North Central Region, 477 Michigan Ave., Detroit, MI 48226; and Colonel Raymond T. Beurket, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231.

Comments concerning the proposed zone reorganization are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 22, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Federal Bldg., Room 445, 231 W. Lafayette St., Detroit, MI 48226

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: September 14, 1984.

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 84–25166 Filed 9–20–84; 8:45 am]

BILLING CODE 3510–DS–M

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**[Docket No. 41–84]**

### Foreign-Trade Zone 81, Portsmouth, NH; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the New Hampshire State Port Authority (Port Authority), grantee of Foreign-Trade Zone 81, requesting authority to expand the zone to include industrial park sites in Portsmouth and Dover, New Hampshire, adjacent to the Portsmouth Customs port of entry, and an industrial park site in Manchester, New Hampshire, adjacent to the Lawrence Customs port of entry.

The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 CFR Part 400). It was formally filed on September 5, 1984. The applicant is authorized to make this proposal under Section 271–A:11 of the New Hampshire RSA.

On January 20, 1983, the Board authorized the Port Authority to establish a foreign-trade zone in the Portsmouth area (Board Order 207, 48 FR 4308, 1/31/83). The general-purpose zone is at the Port Authority's deepwater port facility on Portsmouth Harbor.

The proposed zone expansion will provide industrial park space for zone users at three locations in southwestern

New Hampshire. The first proposed site is at the 175-acre Portsmouth Industrial Park on Lafayette Road in Portsmouth. The second expansion site is at the 50-acre Crosby Industrial Park on Crosby Road in Dover. The third new zone site involves a 1469-acre tract known as the Old Grenier Air Force Base in Manchester, which is being developed as an industrial/commercial complex.

The proposed zone expansion areas involve a mix of vacant and occupied space, with a number of the current tenants interested in using zone procedures. The Port Authority will administer zone operations throughout the zone project.

In accordance with the Board's regulations an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02210; and Colonel Carl B. Sciple, Division Engineer, U.S. Army Engineer Division New England, 424 Trapelo Rd., Waltham, MA 02254.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed below and postmarked on or before October 24, 1984.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 80 Daniel Street, P.O. Box 567, Portsmouth, NH 03801

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania, NW., Room 1529, Washington, D.C. 20230

Dated: September 14, 1984

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 84-25167 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

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[Docket No. 42-84]

## Foreign-Trade Zone 31, Granite City, IL (St. Louis Customs Port of Entry); Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Tri-City Regional Port District (Port District), grantee of Foreign-Trade Zone 31, requesting authority to expand the zone to include an additional warehouse building in Granite City, within the St. Louis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (18 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 7, 1984. The applicant is authorized to make this proposal under Section 1, Illinois P.A. 79–613.

The Port District received authority from the Board to establish a foreign-trade zone in the Illinois portion of the St. Louis port of entry area (Board Order 122, 42 FR 46568, 9/16/77). The zone project currently involves a 47-acre industrial tract in the Port District's harbor area and a 90,000 square foot warehouse at 1603 State Street, which was activated in March 1981.

The expansion would add to the zone's approved space a 330,000 square foot warehouse at 1100 Niedringhaus Avenue, Granite City, two blocks from the State Street zone site. The proposed zone facility is owned and operated by Fox Industries, the current zone operator. The purpose of the expansion is to provide zone space to users who cannot be accommodated at the current site.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; William L. Duncan, District Director, U.S. Customs Service, North Central Region, 120 South Central Av., St. Louis, MO 63105; and Colonel Gary D. Beech, District Engineer, U.S. Army Engineer District St. Louis, 210 Tucker Blvd., N., St. Louis, MO 63101.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 25, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Suite 400, 120 South Central Ave., St. Louis, MO 63105

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: September 14, 1984.

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 84-25168 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

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[Docket No. 43-84]

## Foreign-Trade Zone 86, Tacoma, WA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puget Sound Foreign-Trade Zone Association (PSFTZ), grantee of Foreign-Trade Zone 86 in Tacoma, requesting authority to expand its zone at the Port of Tacoma, within the Tacoma Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–82u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 10, 1984. The applicant is authorized to make this proposal under Section 24.46.020 of the Revised Code of Washington.

On July 20, 1983, the Board authorized PSFTZ to establish a foreign-trade zone in the Tacoma port of entry (Board Order 216, 48 FR 34794, 8/1/83). The zone currently involves 15.9 acres within the 2100 Port of Tacoma, a deepwater port terminal and industrial park complex.

PSFTZ is now requesting authority to expand its zone to include an additional 622 acres in the Port of Tacoma. The additional acreage involves the portions of the Port's Industrial Development District which have the most potential for zone development. It will allow PSFTZ to offer zone services to the prospective users which cannot be accommodated at the existing zone site. Among the prospective users is an automobile processing and accessorization operation, which will use 54 acres in the new area.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Robert Hardy, District Director, U.S. Customs Services, Pacific Region, 2039 Federal Office Bldg., 909 First Av., Seattle, WA 98174; and Colonel Roger F. Yankoupe, District Engineer, U.S. Army Engineer District Seattle, P.O. Box C-3755, Seattle, WA 98124.

Comments concerning the proposed zone expansion are invited in writing from interested persons and

organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 26, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Lake Union Bldg., Room 706, 1700 Westlake Ave., North, Seattle, WA 98109

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: September 14, 1984.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 84-25169 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

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**[Order No. 271]**

## Resolution and Order Approving the Application of the Oklahoma City Port Authority for a Foreign-Trade Zone in Oklahoma City, OK

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

### Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Oklahoma City Port Authority, filed with the Foreign-Trade Zones Board (the Board) on August 29, 1983, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Oklahoma City, Oklahoma, within the Oklahoma City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

### Grant To Establish, Operate and Maintain a Foreign-Trade Zone in Oklahoma City, OK

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Oklahoma City Port Authority (the Grantee) has made application (filed August 29, 1983, Docket 33–83, 48 FR 40289) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Oklahoma City, within the Oklahoma City Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations 915 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 106 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 14th day of September 1984, pursuant to Order of the Board.

Foreign-Trade Zones Board.

**Malcolm Baldrige,**

*Chairman and Executive Officer.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 84-25175 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

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**[Order No. 270]**

## Resolution and Order Approving the Application of the Rhode Island Port Authority and Economic Development Corporation for a Foreign-Trade Zone in Providence and North Kingstown, RI

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

### Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Rhode Island Port Authority and Economic Development Corporation, a Rhode Island public corporation, filed with the Foreign-Trade Zones Board (the Board) on July 7, 1983, and amended on February 13, 1984, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Providence and North Kingstown, Rhode Island, adjacent to the Providence Customs

port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Providence and North Kingstown, RI**

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Rhode Island Port Authority and Economic Development Corporation (the Grantee) has made application (filed July 7, 1983, Docket 21–83, 48 FR 32205; and amended February 13, 1984, 48 FR 5981) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Providence and North Kingstown, Rhode Island, adjacent to the Providence Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 105 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 13th day of September 1984, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

*Chairman and Executive Officer.*

Attest:

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 84-25174 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

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**International Trade Administration**

**[C-233-410]**

**Preliminary Affirmative Countervailing Duty Determination: Portland Hydraulic Cement From Costa Rica**

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

**ACTION:** Preliminary affirmative countervailing duty determination.

**SUMMARY:** We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to the manufacturers, producers, or exporters in Costa Rica of portland hydraulic cement, as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 15 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of portland hydraulic cement which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on this product in the amount equal to the estimated net bounty or grant. If this investigation proceeds normally, we will make our final determination by November 28, 1984.

**EFFECTIVE DATE:** September 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** Steven Morrison or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–3003 or 377–1778.

**SUPPLEMENTARY INFORMATION:**

**Preliminary Determination**

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Costa Rica of portland hydraulic cement (cement) as described in the "Scope of Investigation" section of this notice.

We find the net estimated bounty or grant to be 15 percent *ad valorem*.

**Case History**

On June 21, 1984, we received a petition from the Puerto Rican Cement Co., Inc. and the San Juan Cement Co., Inc. filed on behalf of the U.S. industry producing portland hydraulic cement.

The petition alleges that the government of Costa Rica bestows bounties or grants upon the production or exportation of cement within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and on July 11, 1984, we initiated a countervailing duty investigation (49 FR

29117). We stated that we would issue a preliminary determination on or before September 14, 1984.

Costa Rica is not a "country under the Agreement" within the meaning of section 701(b) of the Act and, therefore, section 303 of the Act applies to this investigation. Since the merchandise being investigated is nondutiable, but there is no "international obligation" within the meaning of section 303(a)(2) of the Act which requires an injury determination for nondutiable merchandise from Costa Rica, the domestic industry is not required to allege that, and the United States International Trade Commission is not required to determine whether, imports of this product cause or threaten to cause material injury to a U.S. industry.

On July 23, 1984, we presented questionnaires concerning the allegations in the petition to the governmnent of Costa Rica in Washington, D.C. On August 23, 1984, we received a response to our questionnaire from the government of Costa Rica and the only cement manufacturer in Costa Rica to export cement to the United States, Industria Nacional de Cemento, S.A.

**Scope of Investigation**

The product covered by this investigation is portland hydraulic cement, other than white non-staining portland cement which is currently imported under item 511.1440 of the *Tariff Schedules of the United States Annotated* (TSUSA).

The period for which we are measuring bounties or grants is October 1, 1982 to September 30, 1983. For the preliminary determination we are measuring bounties or grants on the basis of benefits received by Industria Nacional de Cemento, S.A.

**Analysis of Programs**

In its response, the government of Costa Rica provided data for the applicable period. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

*I. Program Preliminarily Determined To Confer Bounties or Grants*

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Costa Rica of portland hydraulic cement under the program discussed below:

A. *Tax Credit Certificates (CATS).* Petitioners alleged that in 1972 the government of Costa Rica passed Law 5162 to promote nontraditional exports by offering eligible companies tax credit certificates, in the amount of 15 percent of the f.o.b. value of the exported goods, that may be used in the payment of direct and indirect taxes.

The government of Costa Rica said the purpose of the CAT program is to enable domestic manufacturers who are subject to a high rate of taxation on income to compete in export markets with foreign firms with lower tax rates. Since the government of Costa Rica did not represent the program to be a non-excessive rebate of indirect taxes as permitted by the General Agreement on Tariffs and Trade, we preliminarily determine that the program is a bounty or grant as defined by the countervailing duty law. Accordingly, for the purpose of this preliminary determination we find the entire amount of the tax credit certificate, 15 percent, to be a bounty or grant as best information available.

*II. Program Preliminarily Determined Not To Confer Bounties Grants*

We preliminarily determine that the following program does not confer bounties or grants to cement manufacturers, producers or exporters in Costa Rica:

A. *Port Rates.* Petitioners allege that the cement company receives preferential port rates for exports of cement. According to the response of the government of Costa Rica, there are no preferential port rates. Port rates were said by the government of Costa Rica to be developed after surveying and analyzing costs. Rates for bagged merchandise, such as cement, were not provided to a specific enterprise, industry or group thereof. Therefore, we preliminarily determine that these port rates do not constitute a bounty or grant.

*III. Programs Preliminarily Determined Not To be Used*

We preliminarily determine that the following programs have not been used by cement manufacturers, producers, or exporters in Costa Rica:

A. *Export Processing Zones.* Petitioners allege that in 1981 the government of Costa Rica established a system of free tax zones for companies handling, processing, and manufacturing products for export. These companies are said to be exempt from taxes on profits derived from exports; taxes, duties and fees on the importation of raw materials, goods and packaging for use in the handling, processing or manufacture or products for export; export taxes and duties; taxes on capital and net assets; and sales taxes, consumer taxes and duties levied on remittances abroad.

The government response said that there was no company manufacturing, producing or exporting cement from an export zone and supplied a statement from the manager of Corporacion De La Zona Franca De Exportacion to that effect. The exporting cement company denied that it operated in a free trade zone.

B. *Preferential Interest Rates.* Petitioners allege that the cement company has received assistance in financing from the government of Costa Rica. According to the responses, no assistance in financing has been received by the cement company.

C. *Subsidized Warehousing.* Petitioners allege that the cement company used subsidized warehousing in exporting cement to the United States. According to the response warehousing is not used for the export of cement to the United States.

D. *Other Tax Reductions.* Petitioners allege that the government of Costa Rica provides tax reductions for the export of cement. According to the response, the cement company did not receive any tax reductions attibutable to its export shipments.

E. *Certificates for Increasing Exports (CIEX).* Petitioners allege that the government of Costa Rica promotes exports of domestic manufactured products by offering eligible exporters certificates for increasing exports (CIEX). A CIEX is a tax exempt, noninterest, freely negotiable, bearer document which is payable in cash for one year.

The government of Costa Rica response said that this program had never been funded by the Central Bank. It further said that there were never any beneficiaries of this program. The exporting cement company denied participating in this program.

F. *Accelerated Depreciation.* Petitioners allege that the government of Costa Rica provides benefits in the form of accelerated depreciation to the cement company. According to the response, the cement company used straight line depreciation, a standard depreciation schedule under the tax laws.

**Verification**

In accordance with section 776(a) of the Act, we will verify all information used in reaching our final determination.

**Suspension of Liquidation**

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cement from Costa Rica which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in

the Federal Register, and to require a cash deposit or bond for each such entry of the merchandise in the amount of 15 percent *ad valorem*.

This suspension will remain in effect until further notice.

**Public Comment**

In accordance with § 355.35 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on October 12, 1984, at the U.S. Department of Commerce, Room 3092, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by October 5, 1984. Oral presentations will be limited to issues raised in the briefs.

All written views by those not participating in the hearing should be filed in accordance with 19 CFR 355.46 within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: September 14, 1984.

**Alan F. Holmer,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 84-25163 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

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## Applications for Duty-Free Entry of Scientific Instruments; Wayne State University, et al.

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 § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Program 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 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 83-324R. Applicant: Wayne State University, Department of Chemistry, Detroit, MI 48202. Instrument: GC/Mass Spectrometer, MS80. Original notice of this resubmitted application was published in the Federal Register of October 31, 1983.

Docket No.: 84-267. Applicant: Albert Einstein Medical Center, Northern Division, York & Tabor Roads, Philadelphia, PA 19141. Instrument: Electron Microscope, Model H-600-2 with Accessories. Manufacturer: Hitachi, Japan. Intended use: Examination of biological material, human and animal tissues, for the purposes of (a) diagnosis of disease and (b) medical research. Experiments including animal experiments will be conducted to study ultrastructural changes occurring during disease, with the purpose of understanding human disease and improving treatment plans. In addition, the instrument will be used in teaching pathology fellows and residents the subcellular structure of tissue, the technical details of tisssue preparation and instrument operation. Application received by Commissioner of Customs: August 6, 1984.

Docket No.: 84-269. Applicant: University of Maryland, 5401 Wilkens Avenue, Catonsville, MD 21228. Instrument: Electron Microscope, Model EM 10CA/C/CR with Accessories. Manufacturere: Carl Zeiss, West Germany. Intended use: Study of biological cells, and more especially a part of the cell known as the cytoplasmic matrix and the study of biological tissues that have been embedded and cut into thin sections. Educational purposes—Provide instruction to biological science students in the basic principles of microscope design and operation. Application received by Commissioner of Customs: August 6, 1984.

Docket No.: 84-275. Applicant: Yale University, Department of Physiology, 333 Cedar Street, New Haven, CT 06510. Instrument: Micromanipulator, Model PM 20(B) with Accessories. Manufacturer: Vertrieb Biomedizinischer Geraete, West Germany. Intended use: Measurement of intracellular potentials in mammalian kidney cells. Experiments are designed to investigate how ions are transported across kidney tubules, e.g., how is sodium reabsorbed or potassium secreted by the distal tubule? Ion substitution experiments coupled with intracellular microelectrode studies will give an invaluable insight, and answer many questions related to this problem. Application received by Commissioner of Customs: August 6, 1984.

Docket No.: 84-281. Applicant: Research Foundation of SUNY, P.O. Box 9, Albany, NY 12201. Instrument: GC/Mass Spectrometer System, Model MS80. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended Use: Research purposes: Studies of metabolic, hormonal and immunologic factors connected with multiple systems organ failure in trauma septic patients. *In vivo* studies of the biosynthesis and genetics of hemoglobin using stable isotope labeled amino acid tracers. Structural studies on altered glycopeptide cell surface components and growth receptors. Characterization of the structure of glycosaminoglycans. Investigation of a series of modified oligonucleotides as anti-cancer drugs. Structural analysis of a synthetic peptide. Studies to determine the metabolism and toxicokinetics of TCDD involving both *in vivo* and *in vitro* experiments with animals with widely varying LD50s. Educational purposes: Provide students in biophysics courses with basic theoretical and practical understanding of the principles of modern GC-MS instruments. Application received by Commissioner of Customs: August 17, 1984.

Docket No.: 84-282. Applicant: Ames Laboratory—USDOE, Iowa State University, 152 Spedding Hall, Ames, IA 50011. Instrument: Inductively Coupled Plasma (ICP) Mass Spectrometer. Manufacturer: Sciex, Inc., Canada. Intended use: Research purposes:

(1) Elemental, isotopic, and organic analysis by ICP mass spectrometry.

(2) Chromatographic and batch-type sample introduction devices with ICP mass spectrometry.

(3) Atomization, ionization, and energy transfer processes in ICPs.

(4) Ion-electron recombination, oxide ion formation, charge transfer, and possible electron impact processes during extraction of the ion sample into the mass spectrometer.

Most of the above research will be performed by graduate students. Advanced undergraduate students will also use the instrument for research. Application received by Commissioner of Customs: July 25, 1984.

Docket No.: 84-283. Applicant: The University of Texas at Dallas, (Programs in Biology), P.O. Box 830688, Richardson, TX 75083-0688. Instrument: Circular Dichroism Spectrophotometer, Model J500C. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use: Studies of nucleic acids, proteins, and other biological molecules. Experiments are to be conducted to

place solutions of the biological molecules in the beam of the instrument and measure the circular dichroism at wavelengths in the range of 180 to 700 nm. The objectives to be pursued are:

i. To develop quantitative methods of assessing the structures of nucleic acids (DNA and RNA) and proteins.

ii. To study how small changes in the solution environment affects the structures of biological molecules.

iii. To study how the structures of nucleic acids and proteins depend upon the sequences of nucleotides and amino acids, respectively.

iv. To investigate the chemical interactions between the nucleotide and amino acid subunits in complexes of nucleic acids and proteins.

v. To compare the predicted and experimental structures of molecules such as DNA, RNA, and proteins.

Application received by Commissioner of Customs: August 24, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

**Frank W. Creel,**

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 84-25077 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

[A 475-017]

## Pads for Woodwind Instrument Keys From Italy; Antidumping Duty Order

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

**ACTION:** Antidumping Duty Order.

**SUMMARY:** In separate investigations, the United States Department of Commerce and the United States International Trade Commission (ITC) have determined that pads for woodwind instrument keys from Italy are being sold at less than fair value and that sales of pads for woodwind instruments keys from Italy are materially injuring a United States industry. Therefore all entries, or warehouse withdrawals, for consumption of pads for woodwind instrument keys from Italy made on or after April 25, 1984, the date on which the Department published its "Suspension of Liquidation"notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries of the subject merchandise, and withdrawals from warehouse, for comsumption made on or after the date of publication of this antidumping duty order in the Federal Register.

**EFFECTIVE DATE:** September 21, 1984.

**FOR FURTHER INFORMATION CONTACT:** Vincent P. Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5414.

**SUPPLEMENTARY INFORMATION:** The merchandise covered by this investigation is pads for woodwind instrument keys currently provided for under item number 726.70 of the Tariff Schedules of the United States (TSUS). These pads are affixed to the keys of various woodwind instruments, e.g., saxophones, clarinets, oboes, and flutes.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on April 25, 1984, the Department published its preliminary determination that there was reason to believe or suspect that pads for woodwind instrument keys from Italy are being sold at less than fair value (49 FR 17791). On Juuly 11, 1984, the Department published its final determination that these imports were being sold at less than fair value (49 FR 28295).

On August 23, 1984, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that imports of pads for woodwind instrument keys from Italy are materially injuring a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pads for woodwind instrument keys from Italy. The antidumping duties will be assessed on all instrument pads entered, or withdrawn from warehouse, for consumption on or after April 25, 1984, the date on which the Department published its "Suspension of Liquidation" notice in the Federal Register.

On and after the date of publication of this notice, United States Cusonms officers must require, at the same time as importers would normally deposit estimated Customs duties on the subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins set forth below:

| Manufacturers/producers/exporters | Weighted-average margin (percent) |
|---|---|
| Luciano Pisoni Fabbrica Accessori Strumenti Musicali | 1.16 |
| Pads Manufacture, s.r.l. | 1.03 |
| All other manufacturers/producers/exporters | 1.16 |

This determination constitutes an antidumping order with respect to pads for woodwind instrument keys from Italy, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), we hereby give notice that we are commencing an administrative review of this order on September 21, 1984. For further information regarding this review, contact Bill Matthews at (202) 377-3601.

We have deleted from the Commerce Regulations, Annex 1 to 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated lists of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Department of Commerce Regulations (19 CFR 353.48).

Dated: September 12, 1984.

**Alan F. Holmer,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 84-25090 Filed 9-20-84; 8:45]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### National Marine Fisheries Service; Receipt of Application for General Permit

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. fishery conservation zone during 1984 and 1985 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

The International Trading and Shipping Agency, Inc. of New York has applied on behalf of Portuguese ship owners for a Category 1: "Towed or Dragged Gear" general permit to take 20

small cetaceans, 40 northern sea lions, 4 northern fur seals and 20 harbor seals in the course of joint venture processing operations for pollock and cod in the North Pacific Ocean and Bering Sea.

The application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Interested parties may submit written comments on this application within 30 days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: September 17, 1984.

**Richard B. Roe,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 84-25173 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amending Import Restraint Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

September 17, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 21, 1984. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

**Background**

The Governments of the United States and Mexico have exchanged letters amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, to increase, among other things, the designated consultation level for men's and boys' wool suits in Category 443 to 3,500 dozen. Agreement was also reached to establish a designated consultation level of 435,000 pounds for cotton diapers in Category 359pt. (only T.S.U.S.A. number 383.5095) and a specific limit for Category 359pt. (other than diapers) at 900,000 pounds. All of these changes apply to goods produced or manufactured in Mexico and exported during 1984. Accordingly, the Chairman of CITA is directing the Commissioner of Customs to adjust the levels to the designated amounts.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

**Walter C. Lenahan,**

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

September 17, 1984.

**Committee for the Implemenation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury,*
*Washington, D.C.*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 9, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during 1984.

Effective on September 21, 1984, you are directed to amend the directive of December 9, 1983 to increase the level established for wool textile products in Category 443 to the following:

| Category | Amended 12-month restraint level [1] |
|---|---|
| 443 | 3,500 dozen. |

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1983.

Also effective on September 21, 1984, you are directed further to amend the directive of December 9, 1983 to establish separate restraint limits for cotton textile products in parts of Category 359, as follows:

| Category | Amended 12-month restraint level [1] |
|---|---|
| 359pt.[2] | 435,000 pounds. |
| 359pt.[3] | 900,000 pounds. |

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1983.
[2] In Category 359, only T.S.U.S.A. number 383.5095.
[3] In Category 359, all T.S.U.S.A. numbers except that listed in footnote 2.

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

Sincerely,

Walter C. Lenahan,

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

[FR Doc. 84-25082 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DR-M

### Amending the Export Visa and Quota Requirements for Certain Cotton and Man-Made Fiber Apparel Products Produced or Manufactured in the Philippines

September 17, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 21, 1984. For further information contact Carl Ruths, International Trade Specialist (202) 377-4212.

**Background**

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines provides, among our other things, that quotas for certain cotton and man-made apparel categories be charged on the basis of the size of the garment. Infants' garments, sizes 0-6X, are chargeable to the "traditional" (T) segment of certain categories, while girls' and women's garments, sized over 6X, are to be charged to the "non-traditional" (NT) segments of those categories.

A CITA directive of November 21, 1979 established, effective on January 1, 1980, a visa and exempt certification mechanism for cotton, wool and man-made fiber textile and apparel products exported from the Philippines which are subject to the terms of the bilateral agreement (See 44 FR 68005).

At the request of the Government of the Republic of the Philippines, CITA is directing the U.S. Customs Service to permit entry for the remainder of 1984 of boyswear in sizes 0-7, exported in 1983 and 1984, in Categories 335, 336, 337, 341, 342, 348, 352, 359, 635, 636, 637, 641, 642, 646, 648, 652 and 659, which is visaed with a "T", provided such goods are included in a shipment predominantly consisting of sizes 0-6X. For the remainder of 1984 these goods will be charged to the limits established for the "traditional" (T) segments of the indicated categories.

**Walter C. Lenahan,**

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

September 17, 1984.

**Committee for the Implementation of Textile Agreements**

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

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of November 21, 1979, as amended by directive of June 27, 1984, which directed you to charge apparel products in Categories 335, 336, 337, 341, 342, 348, 352, 359, 635, 636, 637, 641, 642, 646, 648, 652, and 659, produced or manufactured in the Philippines and exported on and after April 5, 1984, to the appropriate segment of these categories based on the sizes of the garments, rather than on the assignment of TSUSA numbers. It also further amends, but does not cancel, the directive of December 16, 1983, which established limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during 1984.

Effective on September 21, 1984 and extending through December 31, 1984, the directive of June 27, 1984, is amended to permit entry of boyswear in sizes 0–7, exported during 1983 and 1984 in Categories 335, 336, 337, 341, 342, 348, 352, 359, 635, 636, 637, 641, 642, 646, 648, 652, and 659, which is visaed with a "T", provided such goods are included in a shipment predominantly consisting of sizes 0–6X.

Also effective on September 21, 1984 and until December 31, 1984, the directive of December 16, 1983 is further amended to provide that charges for boyswear in sizes 0–7, exported during 1984, shall be charged to the limits established for the "T" segments of the affected categories.

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

Sincerely,

Walter C. Lenahan,

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

[FR Doc. 84–25078 Filed 9–20–84; 8:45 am]

BILLING CODE 3510–DR–M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1984 Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Addition to procurement list.

**SUMMARY:** This action adds to Procurement List 1984 a service to be provided by workshops for the blind and other severely handicapped.

**EFFECTIVE DATE:** September 21, 1984.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** C.W. Fletcher, (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On May 11, 1984, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (49 FR 20048) of proposed addition to Procurement List 1984, October 18, 1983 (48 FR 48415).

### Addition

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the service listed.

c. The actions will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1984:

SIC 7349

Janitorial/Custodial, Griffiss Air Force Base, New York

C.W. Fletcher,

*Executive Director.*

[FR Doc. 84–25116 Filed 9–20–84; 8:45 am]

BILLING CODE 6820–33–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Military Traffic Management Command; Directorate of Personal Property

**AGENCY:** Military Traffic Management Command (MTMC).

**ACTION:** Notice of announcement of an approved OMB number for Tender of Service and Letter of Intent for Personal Property Household Goods and Unaccompanied Baggage.

**SUMMARY:** Under the Paperwork Reduction Act of 1980, the Office of Management and Budget has approved the requirement and provided approval for OMB number 0702–0022, expiration date, May 31, 1987, for the Tender of Service (Appendix A) and the Letter of Intent (Appendix B) of the Personal Property Traffic Management Regulation (DOD 4500.34–R).

This OMB number covers all forms within both appendices. Therefore, carriers are not required to reflect this OMB number on LOIs filed at installations.

**FOR FURTHER INFORMATION CONTACT:** Mr. John W. Gaige, HQ, Military Traffic Management Command, ATTN: MT–PPM (Room 410), 5611 Columbia Pike, Falls Church, Virginia 22041, (202) 756–1600.

Nathan R. Berkley,

*Colonel, GS, Director of Personal Property.*

[FR Doc. 84–25157 Filed 9–20–84; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Army

### Army Medical Research and Development Advisory Committee; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, sections 1–15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Pharmacology.

Date of Meeting: 25 October 1984.

Time and Place: 0830 hours, Room 3092, Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: This meeting will be open to the public from 0830–0945 hours on 25 October for the administrative review and discussion of the scientific research program of the Pharmacology Group, Walter Reed Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), US Code, Title 5 and sections 1–15 of Appendix, the meeting will be closed to the public from 1000–1630 hours for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Bldg 40, Room 1111, Walter Reed Army Medical Center, Washington, DC 20307 (202/576–2436) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Philip Z. Sobocinski,

*Colonel, MSC Assistant Deputy Commander.*

[FR Doc. 84–25125 Filed 9–20–84; 8:45 am]

BILLING CODE 3710–08–M

### Army Medical Research and Development Advisory Committee; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, Sections 1–15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Trauma.

Date of Meeting: 18 and 19 October 1984.

Time and Place: 0830 hours, Room AS3102, Letterman Army Institute of Research, Presidio of San Francisco, CA.

Proposed Agenda: This meeting will be open to the public from 0830–1045 hours on 18 October for the administrative review and discussion of the scientific research program of the Trauma Group, Letterman Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), US Code, Title 5 and sections 1–15 of Appendix, the meeting will be closed to the public from 1100–1700 hrs on 18 October and from 0830–1645 hrs on 19 October for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Ryan Neville, Assistant Director, Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800 (415/561–4367) will furnish summary minutes, roster of Subcommittee members and substantive program information.

**Philip Z. Sobocinski,**

*Colonel, MSC, Assistant Deputy Commander.*

[FR Doc. 84–25124 Filed 9–20–84; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Navy

### Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet October 12, 1984, at the United States Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 11:55 a.m., October 12, 1984, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

The further information concerning this meeting contact: Rear Admiral Robert W. McNitt, U.S. Navy (Retired), Secretary to the Board of Visitors, Dean of Admissions, U.S. Naval Academy, Annapolis, Maryland 21402, (301) 267–4361.

Dated: September 17, 1984.

**William F. Roos, Jr.,**

*Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.*

[FR Doc. 84–24901 Filed 9–20–84; 8:45 am]

BILLING CODE 3810–AE–M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before October 22, 1984.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster, (202) 426–7304.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information requests prior to the submission of these requests to the OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting Burden; and/or (7) Recordkeeping Burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copie of the requests are available from Margaret Webster at the address specified above.

Dated: September 18, 1984.

**Ralph J. Olmo,**

*Acting Deputy Under Secretary for Management.*

**Office of Postsecondary Education**

Type of Review Requested: Extension
Title: Application for Grants under the Law School Clinical Experience Program
Agency Form Number: ED 595
Frequency: Annually
Affected Public: State or Non-Profit Institutions of Higher Education
Reporting Burden: Responses: 100; Burden Hours: 2,500
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The application is utilized to obtain information from institutions of higher education required by authorizing legislation and program regulations to conduct a competitive evaluation process and to award grant funds.

Type of Review Requested: Extension
Title: Application Form for the Strengthening, Special Needs, and Challenge Grant Programs
Agency Form Number: ED 851, 852, and 853
Frequency: Annually
Affected Public: State or Non-Profit Institutions of Higher Education
Reporting Burden: Responses: 1,000; Burden Hours: 20,000
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The information is needed in order for the Department to conduct a competition for the Program funds. Field readers and program officials will use the information to establish a rank-order of applications for funding purposes. The respondents are Institutions of Higher Education.

Type of Review Requested: Extension

Title: Financial Status and Performance Reports under the Veterans Cost-of-Instruction Program
Agency Form Number: ED 269–1 and 269–2
Frequency: Annually
Affected Public: State or Non-Profit Institutions of Higher Education
Reporting Burden: Responses: 862; Burden Hours: 862
Recordkeeping Burden: Recordkeepers: 862; Burden Hours: 3,448
Abstract: The Reports are used to obtain information from grant recipients to document that Federal funds were expended in accordance with all applicable laws and regulations and to assess the accomplishment of project goals and objectives.

Type of Review Requested: Extension
Title: Application for Grants under the Talent Search Program
Agency Form Number: ED 872
Frequency: Annually
Affected Public: Individuals or Households; Non-profit Institutions, State and Local Governments
Reporting Burden: Responses: 300; Burden Hours: 10,200
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The form requests programmatic and budgetary information from eligible applicants so that the Department of Education program officers and non-federal reviewers will have relevant information to make funding decisions. The collected information will also be used to determine compliance with funding criteria.

Type of Review Requested: Extension
Title: Application for Noncompeting Continuation Grants for the Special Services for Disadvantaged Students Program
Agency Form Number: ED 1251
Frequency: Annually
Affected Public: State or Local Governments; Non-Profit Institutions
Reporting Burden: Responses: 662; Burden Hours: 6,600
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: Information requested from eligible institutions of higher education is needed to provide Department program officers with necessary information to make funding decisions and to determine compliance with legislation and program regulations.

Type of Review Requested: Extension
Title: Application (Program Announcement) for Grants and Contracts for the Minority Institutions Science Improvement Program (MISIP)
Agency Form Number: ED 0007
Frequency: Annually
Affected Public: Businesses or Other Institutions; Non-profit Institutions
Reporting Burden: Responses: 150; Burden Hours: 6,450
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The application is utilized to obtain information from minority institutions, eligible non-profit scientific professional societies, and colleges and universities as required by authorizing program regulations to conduct a competitive evaluation process and to award grants and contracts.

Type of Review Requested: Extension
Title: Application for Grants for the Education for the Public Service Fellowships Program
Agency Form Number: ED 404
Frequency: Annually
Affected Public: Non-Profit Institutions; Individual or Households
Reporting Burden: Responses: 117; Burden Hours: 2,340
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The application is utilized to obtain information from institutions of higher education required by authorizing law and program regulations in order to conduct a competitive evaluation process and to award grant funds.

Type of Review Requested: Extension
Title: Application for Fulbright Seminars Abroad Program
Agency Form Number: ED 356 and 356–1
Frequency: On Occasion
Affected Public: Individuals or Households
Reporting Burden: Responses: 1,000; Burden Hours: 1,000
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: This information collection instrument will be used by applicants under the Fulbright Seminars Abroad Program which provides opportunities for U.S. educators to participate in a variety of topical, short-term training seminars worldwide.

Type of Review Requested: Revision
Title: Evaluation Training Activities on the Title IV Student Financial Assistance Programs
Agency Form Number: ED 786
Frequency: On Occasion
Affected Public: Individuals or Households
Reporting Burden: Responses: 42,420; Burden Hours: 10,605
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: Collection of this information helps to determine the effectiveness of student financial aid training activities and whether the activities are being targeted to the group(s) with the greatest need. Participants in training activities include high school counselors and financial aid, fiscal, and administrative officials at postsecondary educational institutions.

Type of Review Requested: Revision
Title: Application for the Educational Opportunity Centers Program
Agency Form Number: ED 343
Frequency: Annually
Affected Public: Individuals or Households; Non-Profit Institutions
Reporting Burden: Responses: 120; Burden Hours: 4,080
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The information is needed in order to conduct a national competition for the Educational Opportunity Centers Program funds. Field readers and program staff will use the information to evaluate applications, establish a slate, and award grants.

Type of Review Requested: Revision
Title: Application for the Supplemental Funds Program for Cooperative Education
Agency Form Number: ED 524
Frequency: Annually
Affected Public: Non-Profit Institutions
Reporting Burden: Responses: 524; Burden Hours: 786
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The application is needed by colleges and universities to apply for funds authorized under Title IV-C, H.E.A. of 1965, as amended. Application information is used to reallot unused College Work-Study funds to colleges and universities to initiate, improve, or expand cooperative education projects.

Type of Review Requested: Reinstatement
Title: Continuation Application for Grants Under Upward Bound Program
Agency Form Number: ED 1251
Frequency: Annually
Affected Public: State or Local Governments; Non-profit Institutions
Reporting Burden: Responses: 423; Burden Hours: 6,345
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The application is needed to conduct a continuation competition for program year 1985–86 for the 423 multi-year Upward Bound projects.

**Office of Postsecondary Education**

Type of Review Requested: Extension
Title: Program Announcement—Mina Shaughnessy Scholars Program
Agency Form Number: ED 0006

Frequency: Annually
Affected Public: State or Local Governments; Non-profit institutions; Small businesses or organization
Reporting Burden: Responses: 722; Burden Hours: 19,300
Recordkeeping Burden: Recordkeepers: 722; Burden Hours: 19,300

Abstract: This program is an annual grant competition designed to solicit applications from postsecondary institutions which propose to designate a Shaughnessy Scholar to improve educational practice through individual projects. This information request is necessary to determine which applications will receive grant awards.

[FR Doc. 84-25183 Filed 9-20-84; 8:45 am]
BILLING CODE 4000-01-M

## Intergovernmental Advisory Council on Education

**AGENCY:** Department of Education.
**ACTION:** Notice of Hearing.

**SUMMARY:** This notice sets forth the schedule of a hearing of the Intergovernmental Advisory Council on Education. Notice of this hearing is required under section 10(a)(2) of the Federal Advisory Committee Act.

**DATE:** October 26, 1984.

**ADDRESS:** Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, Washington 98104.

**FOR FURTHER INFORMATION CONTACT:** Laverne Johnson, Intergovernmental Advisory Council on Education, Department of Education, 300 7th Street SW., Room 513, Washington, D.C. 20202 (202) 472-6464.

**SUPPLEMENTARY INFORMATION:** The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The Intergovernmental Advisory Council on Education will conduct a Public Hearing on October 26, 1984. The hearing schedule is as follows:

9:30 a.m.—Educational Partnerships
11:00 a.m.—Student Achievement and Discipline
2:00 p.m.—Higher Education Reauthorization Proposals
3:30 p.m.—Press Availability

Individuals, organizations, and associations need to register for the October 26 hearing. To register due to limited space and time, write or call Ms. Laverne Johnson, Intergovernmental Advisory Council on Education, 300 7th Street SW., Room 513, Washington, D.C. 20202, (202) 472-6464. (Testifers will be limited to five (5) minutes. Each testifier must provide written comments. Those wishing to submit comments only may do so by mailing them to Ms. Johnson.)

Records are kept of all Council proceedings and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 300 7th Street SW., Room 513, Washington, D.C. 20202.

Signed at Washington, D.C. on Monday, September 17, 1984.

**A. Wayne Roberts,**
*Deputy Under Secretary for Intergovernmental and Interagency Affairs.*

[FR Doc. 84-25066 Filed 9-20-84; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

**[BPA File No. INCENT]**

### Implementation of the Industrial Incentive Rate for the Direct-Service Industrial Customers of the Bonneville Power Administration

**AGENCY:** Bonneville Power Administration (BPA), DOE.
**ACTION:** Notice of Industrial Incentive Rate Implementation.

**SUMMARY:** BPA took final action on September 1, 1984, to implement the Industrial Incentive Rate for a 6-month period for its direct service industrial customers (DSIs). The Industrial Incentive Rate is a reduced rate which was designed to increase BPA's revenues during periods of adverse market conditions for the aluminum industry. The incentive rate was also intended to stimulate industrial production in the Pacific Northwest. This incentive rate represents a discount averaging 5 mills per kilowatthour from the Standard Industrial Rate, the industrial rate currently in effect. BPA's industrial customers have committed to purchasing 2640 megawatts on a take-or-pay basis under the Industrial Incentive Rate. BPA projects that implementation of this rate will increase total BPA revenues by $7.5 million during the 6-month period over what they would otherwise have been expected to be. This notice is not required by statute and is provided simply as a courtesy.

*Responsible Official:* Janet W. McLennan, Assistant Power Manager for Natural Resources and Public Services, is the official responsible for implementaion of the Industrial Incentive Rate.

**DATES:** The rate will be in effect from September 1, 1984, through February 28, 1985.

**FOR FURTHER INFORMATION CONTACT:** Lynn W. Baker, Bonneville Power Administration, Public Involvement—ALP, P.O. Box 12999, Portland, Oregon 97212. Portland callers should dial 230-3478. Oregon callers outside of Portland may use the toll-free line 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Arthur A. Harlow, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4131.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-434-6228, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

**SUPPLEMENTARY INFORMATION:**

I. Background

Since January, U.S. market aluminum prices have fallen from approximately 77¢ per pound to current levels of 50-55¢ per pound. As a result of these poor market conditions, several of BPA's DSI customers curtailed from earlier production levels and were considering further reductions in load. The Industrial Incentive Rate was provided in BPA's 1983 Wholesale Power Rate Schedules to protect BPA's revenues should economic conditions adversely affect the DSIs and cause them to curtail their purchases from BPA.

The 1983 General Rate Schedule Provisions state that BPA is to apply the rate only if total BPA revenues under the Industrial Incentive Rate are projected to be greater than they would be if the DSIs were served under the Standard Industrial Rate. To make that determination BPA is to conduct a

study. If that study demonstrates that adoption of a reduced rate would increase total BPA revenues, the rate identified in the study would be BPA's proposed Industrial Incentive Rate.

On August 2, 1984, BPA published an initial Industrial Incentive Rate feasiblity study which concluded that it was appropriate for BPA to propose to implement the Industrial Incentive Rate at a level equivalent to a 5-mill discount from the Standard Industrial Rate. BPA then solicited comments on its proposal for a 3-week period, August 2, 1984, through August 24, 1984. BPA also held a public information and comment forum on August 15, 1984, to discuss the proposal.

Following the comment period, BPA evaluated the comments received on the proposal and a draft incentive rate contract. An Evaluation of the Record and a revised contract were subsequently prepared. BPA then solicited committed load levels from the DSI's. Upon receipt of those commitment levels, BPA conducted a final revenue analysis to determine the projected impact of those commitments on BPA's total revenues. The revenue analysis showed that BPA's total revenues would increase by $7.5 million if BPA were to adopt the Industrial Incentive Rate. BPA then issued the Administrator's Record of Decision (ROD) which concluded that BPA should implement the Industrial Incentive Rate at the level proposed in the initial feasibility study.

### II. Final Action

On September 1, 1984, BPA adopted an Industrial Incentive Rate which results in a discount of approximately 5 mills per kilowatthour from the average Standard Industrial Rate. The Industrial Incentive Rate will be in effect for 6 months, beginning September 1, 1984. During this time the DSI's have committed to purchasing 2640 megawatts on a take-or-pay basis. In December 1984, BPA will review the appropriateness of making a new incentive rate offer for the period March 1, 1985, through June 30, 1985.

Copies of the feasibility study, the incentive rate contract, the transcript from the public hearing, and the ROD are available from the BPA Public Involvement office, at the address and phone numbers listed above.

Issued in Portland, Oregon, on September 11, 1984.

Peter T. Johnson,

*Administrator.*

[FR Doc. 84-25061 Filed 9-20-84; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

### Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective October 1, 1984. These prices are based on the prices of alternative fuels.

**FOR FURTHER INFORMATION CONTACT:** Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE-034, Washington, D.C. 20585, Telephone: (202) 252-6077.

### Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

| State | Dollars per million Btu's |
|---|---|
| Alabama | 4.01 |
| Arizona [1] | 4.01 |
| Arkansas [1] | 3.86 |
| California | 3.91 |
| Colorado [2] | 3.96 |
| Connecticut [1] | 4.30 |
| Delaware [1] | 4.16 |
| Florida | 4.15 |
| Georgia [1] | 4.26 |
| Idaho [2] | 3.96 |
| Illinois [1] | 4.20 |
| Indiana [1] | 4.20 |
| Iowa [1] | 3.96 |
| Kansas [1] | 3.96 |
| Kentucky [1] | 4.20 |
| Louisiana [1] | 3.86 |
| Maine [1] | 4.30 |
| Maryland [1] | 4.16 |
| Massachusetts | 4.06 |
| Michigan [1] | 4.20 |
| Minnesota | 3.79 |
| Mississippi [1] | 4.26 |
| Missouri [1] | 3.96 |
| Montana [2] | 3.96 |
| Nebraska [1] | 3.96 |
| Nevada [1] | 4.01 |
| New Hampshire [1] | 4.30 |
| New Jersey [1] | 4.16 |
| New Mexico | 3.60 |
| New York | 4.10 |
| North Carolina [1] | 4.26 |
| North Dakota [1] | 3.96 |
| Ohio | 4.03 |
| Oklahoma [1] | 3.86 |
| Oregon [1] | 4.01 |
| Pennsylvania | 4.12 |
| Rhode Island [1] | 4.30 |
| South Carolina [1] | 4.26 |
| South Dakota [1] | 3.96 |
| Tennessee [1] | 4.26 |
| Texas | 3.68 |
| Utah [2] | 3.96 |
| Vermont [1] | 4.30 |
| Virginia [1] | 4.26 |
| Washington [1] | 4.01 |
| West Virginia [1] | 4.20 |
| Wisconsin [1] | 4.20 |
| Wyoming [2] | 3.96 |

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM-79-21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

### Section II—Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during July 1984 was $32.24 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective October 1, 1984, is $7.23 per million BTU's.

### Section III—Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the

price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous states on a permament basis.

*A. Data Collected*

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industiral users in the months of May 1984, June 1984, and July 1984.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

*B. Method Used To Determine Alternative Price Ceilings*

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective October 1, 1984 (shown in Section I), are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, May 1984, June 1984, and July 1984. Reported prices for sales in May 1984 were ajdusted by the percent change in the natiowide volume-weighted average price from May 1984 to July 1984. Prices for June 1984 were similarly adjusted by the percent change in the nationwide volume-weighted average price from June 1984 to July 1984. The volume-weighted 3-month average of the adjusted May 1984 and June 1984, and the reported July 1984 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of May 1984, June 1984, and July 1984. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending September 14, 1984, and dividing that price by the corresponding weighted average price computed from prices published by *Platt's* for the month of July 1984. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

**Listing of States by Region**

States were grouped by the FERC to form eight distinct regions as follows:

| *Region A* | *Region B* |
|---|---|
| Connecticut | Delaware |
| Maine | Maryland |
| Massachusetts | New Jersey |
| New Hampshire | Pennsylvania |
| New York | |
| Rhode Island | |
| Vermont | |

| *Region C* | *Region D* |
|---|---|
| Alabama | Illinois |
| Florida | Indiana |
| Georgia | Kentucky |
| Mississippi | Michigan |
| North Carolina | Ohio |
| South Carolina | West Virginia |
| Tennessee | Wisconsin |
| Virginia | |

| *Region E* | *Region F* |
|---|---|
| Iowa | Arkansas |
| Kansas | Louisiana |
| Missouri | New Mexico |
| Minnesota | Oklahoma |
| Nebraska | Texas |
| North Dakota | |
| South Dakota | |

| *Region G* | *Region H* |
|---|---|
| Colorado | Arizona |
| Idaho | California |
| Montana | Nevada |
| Utah | Oregon |
| Wyoming | Washington |

Issued in Washington, D.C., September 18, 1984.

**Albert H. Linden, Jr.,**

*Deputy Administrator, Energy Information Administration.*

[FR Doc. 84–25205 Filed 9–20–84; 8:45 am]

BILLING CODE 6450–01–M

[1] Large Industiral User—A person/firm which purcahses No. 6 fuel oil in quantites of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

## Federal Energy Regulatory Commission

**[Docket No. CP83–532–002]**

## ANR Pipeline Co.; Tariff Filing Pursuant to Order Issuing Certificate of Public Convenience and Necessity

September 18 1984.

Take notice that on September 11, 1984, ANR Pipeline Company (ANR) (formerly Michigan Wisconsin Pipe Line Company) tendered for filing Original Sheet Nos. 2149 through 2157 to be designated as Rate Schedule X–141

under First Revised Volume No. 2 of its FERC Gas Tariff.

ANR states that Rate Schedule X–141 has been filed pursuant to authorization granted April 17, 1984, in Docket No. CP83–532–000. Pursuant to such authorization, ANR will transport up to 25,000 Mcf of natural gas per day on a contract demand basis for Mid Louisiana Gas Company (Mid Louisiana). The terms of the transportation agreement dated June 20, 1983, between ANR and Mid Louisiana, provide for ANR to receive up to 25,000 Mcf of natural gas per day at an existing undersea valve on ANR's 20-inch offshore pipeline system in Eugene Island Block 34, offshore Louisana. From such point, ANR will transport the gas onshore and deliver thermally equivalent volumes to Mid Louisiana, reduced by three percent for compressor fuel usage. The points of redelivery are: (1) An existing interconnection between the pipeline systems of ANR and Mid Louisiana in Franklin Parish, Louisiana, and (2) an existing meter station located in Tensas Parish, Louisiana, where ANR will cause Locust Ridge Gas Company to make redeliveries to Mid Louisiana for ANR's account. ANR will charge Mid Louisiana $5.21 per month for each Mcf of contract demand as modified by the settlement of Docket No. RP82–80–000, pursuant to ordering paragraph (c) in the order issued April 17, 1984, in Docket No. CP83–532–000.

ANR has requested that Rate Schedule X–141 be accepted for filing and made effective June 5, 1984, the date of commencement of firm transportation service.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426 in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determing the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 84–25127 Filed 9–20–84; 8:45 am]

BILLING CODE 6712–01–M

[Docket Nos. CP82–542–008]

## ANR Pipeline Co.; Tariff Filing Pursuant to Order Approving Settlement Agreement

September 18, 1984.

Take notice that on September 11, 1984, ANR Pipeline Company ("ANR") (formerly Michigan Wisconsin Pipeline Company) tendered for filing First Revised Sheet Nos. 19a, 19b, 57, 58 and 59 to its F.E.R.C. Gas Tariff, Original Volume No. 1, proposed to be effective August 21, 1984.

ANR states that the purpose of this filing is to reflect the Federal Energy Regulatory Commission's ("Commission") approval on August 21, 1984 of a Stipulation and Agreement filed on June 26, 1984. Essentially, the settlement provides that ANR shall be granted a certificate to sell gas under the DF–1 rate schedule for a trial period beginning on the date the Commission approves the settlement and ending on October 31, 1984, or such later date as the Commission may prescribe. The Commission's approval specified the October 31, 1984 date. Any participant, including ANR, may petition the Commission to extend the term of service under the DF–1 rate schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 84–25128 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP84–658–000]

## ANR Pipeline Co., Application

September 18, 1984.

Take notice that on August 22, 1984, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84–658–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to provide a gas transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application indicates that Shell Onshore Partnership (Shell) has committed to Southern production from its interest in the natural gas reserves in the Alcorn filed in Clairborne and Jefferson Counties, Mississippi. The application further indicates that the Alcorn field is remotely located relative to Southern's facilities and Southern has solicited the assistance of both ANR and Locust Ridge Gas Company (Locust Ridge) to assist in the receipt of the Alcorn gas supplies. The arrangement contemplates transportation of the gas supplies through the existing facilities of Locust Ridge between the Alcorn field and the easterly terminus of ANR's Holly Ridge lateral in Tensas Parish, Louisiana, and from such point, ANR's redelivering the supplies by displacement to Southern's Shadyside compressor station in St. Mary Parish, Louisiana.

ANR states that its portion of the arrangement is set forth in transportation agreement dated September 12, 1983, which provides that ANR will take receipt of up to 4,000 Mcf of natural gas per day (the contract demand). Concurrently, ANR states, it will redeliver by displacement thermally equivalent volumes to Southern which will be reduced by one percent of the quantities received as compensation for its compressor fuel usage. As consideration for providing the service, ANR states, Southern has agreed to pay it $2.36 per month for each Mcf of contract demand.

On January 12, 1984, ANR and Locust Ridge commenced the transportation service pursuant to ANR's blanket certificate in Docket No. CP81–504–000 and Locust Ridge's blanket certificate in Docket No. CP80–561–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be

taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise adivsed, it will be unnecessary for ANR to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25129 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER81-179-023]**

## Arizona Public Service Co.; Compliance Filing

September 18, 1984.

Take notice that on July 26, 1984, Arizona Public Service Company (APS) submitted for filing its compliance report pursuant to the Commission's Opinions Nos. 193 and 193-A issued October 19, 1983 and December 19, 1983, respectively.

APS states that pursuant to the instruction in the Commission's Letter of Acceptance and as ordered in Opinion No. 193, the required refunds (including interest) have been forwarded to each entitled customer.

APS further states that although the Commission's acceptance letter of June 12, 1984 contained no mention of the disposition of rates for the Town of Wickenburg, a refund has been made to Wickenburg in accordance with the Company's intent as stated in our June 27, 1984 letter to the Director, Office of Electric Power Regulation.

APS also submitted a copy of the report showing the computation of refund amounts and a summary showing the total refund due each customer.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 3, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25130 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER84-638-000]**

## Central Vermont Public Service Corp.; Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 30, 1984, Central Vermont Public Service Corporation (CVPS) tendered for filing as an initial rate schedule a System Sales Agreement (the Agreement) between the Central Maine Power Company (CMP) and CVPS. The Agreement, dated April 1, 1984, provides for the sale of energy (a Transaction) from the CVPS system to CMP and the purchase by CMP of energy from the CVPS system.

CVPS states that the Agreement provides that the parties will determine prior to 11:00 AM daily and weekly at 11:00 AM on Saturday during the term of the Agreement whether it is economically advantageous to the parties that a sale, pursuant to the Agreement, take place during that day of the week.

CMP shall pay CVPS monthly an amount determined by multiplying the megawatt hours delivered by CVPS and received by CMP for the preceding month by the energy reservation charge in dollars/MWH for each transaction occurring in that month plus an energy charge. The energy charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month by the energy rate for each transaction occurring in that month. The energy charge shall be based upon the forecasted incremental energy cost adjusted for transmission losses to the delivery point.

CVPS requests an effective date of April 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the respective jurisdictional customers of the parties hereto, as well as their respective Public Service Boards. CVPS further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25131 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER84-648-000]**

## Central Vermont Public Service Corp.; Filing

September 19, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 88. The proposed changes would increase revenues from jurisdictional sales and service by $204,130 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Vermont Electric Generation and Transmission Cooperative, Inc. which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Vermont Electric Generation and Transmission Cooperative, Inc. and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary*

[FR Doc. 84-25132 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER84-649-000]**

## Central Vermont Public Service Corp.; Filing

September 19, 1984

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 107. The proposed changes would decrease revenues from jurisdictional sales and service by $239 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article III of Central Vermont's Power Transmission Contract with Village of Johnson Water and Light Department which provides that charges will be updated annually to incorporate Central Vermont's cost experience for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Village of Johnson Water and Light Department and Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25133 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER84-650-000]**

## Central Vermont Public Service Corp.; Filing

September 19, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 102. The proposed changes would decrease revenues from jurisdictional sales and service by $324 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article III of Central Vermont's Power Transmission Contract with Rochester Electric Light and Power Company which provides that charges will be updated annually to incorporate Central Vermont's cost experience for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Rochester Electric Light and Power Company and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25134 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER84-651-000]**

## Central Vermont Public Service Corp.; Filing

September 19, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 101. The proposed changes would decrease revenues from jurisdictional sales and service by $671 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article III of Central Vermont's Power Transmission Contract with Allied Power and Light Department which provides that charges will be updated annually to incorporate Central Vermont's cost experience for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Allied Power and Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25135 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP84-105-001]**

## Columbia Gas Transmission Corp.; Amendment to Request Under Blanket Authorization

September 18, 1984.

Take notice that on August 24, 1984, Columbia Gas Transmission Coporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-105-001 a request pursuant to § 157.205 of the

Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to continue to transport natural gas on behalf of Certainteed Corporation (Certainteed) under the authorization issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

By request noticed on December 22, 1983, in Docket No. CP84–105–000, pursuant to the prior notice and protest procedure set forth in § 157.205 of the Commission's Regulations, Columbia was authorized to transport up to 645 dt equivalent of natural gas per day through October 10, 1984, to Certainteed's Milan, Ohio plant. Columbia proposes to continue the transportation through June 30, 1985 on the same terms and conditions as the existing transportation authority.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25138 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP84–663–000]**

## Columbia Gas Transmission Corp.; Request Under Blanket Authorization

September 18, 1984.

Take notice that on August 24, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84–663–000 a request pursuant to 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Fostoria Glass Company (Fostoria) under the authorization issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 518 dt equivalent of natural gas per day for Fostoria through June 30, 1985. Columbia states that the gas to be transported would be purchased from ANR Gathering Company (ANR Gathering) and would be used as process gas and boiler fuel in Fostoria's Moundsville, West Virginia, plant.

Columbia states that it would receive the gas at existing delivery points on its system from ANR Gathering and redeliver the gas to Mountaineer Gas Company (Mountaineer), the distribution company serving Fostoria, near Moundsville, West Virginia. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent exclusive of company-use and unaccounted-for gas, or (2) its average system-wide storage, transmission and gathering charge, currently 44.93 cents per dt equivalent exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Rate Schedule TS–1 of Columbia's FERC Tariff, Original Volume No. 1–A. Columbia also states that it would collect the GRI funding unit charge of 1.21 cents per dt.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25137 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ES84–71–000]**

## Consumers Power Co.; Application

September 18, 1984.

Take notice that Consumers Power Company ("Consumers Power") on September 10, 1984, filed an application for authority to issue securities under section 204 of the Federal Power Act.

Consumers Power proposes to enter into a Construction Financing Agreement (the "Construction Financing Agreement") with a special purpose corporation (the "Company") for the purpose of financing various items of property intended to be used in the operation of Consumers Power's business. The Company will enter into a Credit Agreement (the "Credit Agreement") with the Toronto-Dominion Bank, Chicago Branch ("Toronto-Dominion"). Pursuant to the Credit Agreement, Toronto-Dominion will accept a note from the Company which in aggregate amount will not exceed $55,000,000. The commitment will be available to the Company until 364 days from the date of execution and delivery of the Construction Financing Agreement.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such petitions or protests shall be filed on or before October 9, 1984. The application is on file with the Commission and is available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25138 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ES84–72–000]**

## The Kansas Power and Light Co.; Application

September 18, 1984.

Take notice that on September 10, 1984, the Kansas Power and Light Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than 1,000,000 shares of Common Stock, par value $5.00 per share, pursuant to Applicant's Automatic Dividend Reinvestment and Stock Purchase Plan.

Any person desiring to be heard or to make any protest with reference to the

application should file a motion to intervene or protest on or before October 3, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25139 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP84-677-000]**

## K N Energy, Inc.; Request Under Blanket Authorization

September 18, 1984

Take notice that on August 30, 1984, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP84-677-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add two delivery points to Peoples Natural Gas Company, a Division of InterNorth, Inc. (Peoples), under the certificate issued in Docket Nos. CP83-140-000 and CP83-140-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to add for two years two delivery points to Peoples to the already existing two delivery points for the sale and delivery of Peoples' present contract demand of 8,000 Mcf per day at Goodland and Garden City, Kansas. Applicant states that the proposed delivery points would be located where Applicant's facilities presently interconnect with pipeline facilities of Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), in Seward and Kearny Counties, Kansas. Applicant indicates that it would deliver the gas to Northern for the account of Peoples at these two proposed delivery points.

Applicant states that the total contract demand to be delivered to Peoples would not change under the subject proposal and that Applicant's existing tariff does not prohibit the addition of delivery points. It is further stated that the proposal would be accomplished without detriment or disadvantage to Applicant's other customers and that it would have no impact on Applicant's peak day and annual deliveries. It is indicated that no new facilities would be required for this proposal.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25140 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA84-2-55-000 and Docket No. TA84-2-55-001]**

## Mountain Fuel Resources, Inc.; Tariff Filing

September 18, 1984.

Take notice that on September 12, 1984, Mountain Fuel Resources, Inc. (Resources) tendered for filing and acceptance Second Substitute Twenty-First Revised Sheet No. 7 to its FERC Gas Tariff, Original Volume No. 1 and Substitute Original Sheet No. 13 to its FERC Gas Tariff, First Revised Volume No. 1.

Resources states that it has agreed to revise its calculation of the Unrecovered Purchase Gas Cost Adjustment to reflect the exclusion of $39,000 of Order No. 93 costs for the months of September, October, and November, 1983, and to include $3,340 in carrying charges related to Order No. 93 retroactive payments booked to Account No. 191, but never paid.

Resources states that Second Substitute Twenty-First Revised Sheet No. 7 of Original Volume No. 1 reflects a change in the amortization rate to $(0.2042)/Mcf from the $(0.1877)/Mcf rate shown on Twenty-First Revised Sheet No. 7.

Resources states that Substitute Original Sheet No. 13 of First Revised Volume No. 1 reflects a change in the amortization rate to $(0.01877)/Dth from the $(0.01726)/Dth rate shown on Original Sheet No. 13.

Resources further states that it has revised its Base Cost of Purchased Gas as Adjusted downward by a net of $2,364,000 to reflect, in its forecast of gas costs, the exclusion of certain tax reimbursements included in the original filing. This results in a reduction in the commodity component of the Gas Cost Adjustment shown on Substitute Original Sheet No. 13 of $(0.03193)/Dth from $(0.22218)/Dth to $(0.25411)/Dth.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25141 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP84-368-000]**

## Northwest Central Pipeline Corp.; Application

September 18, 1984.

Take notice that on April 26, 1984, Northwest Central Pipeline Corporation (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP84-368-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment by reclaim of a 71 horsepower compressor unit and appurtenant facilities in Franklin County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authority to abandon by reclaim a 71 horsepower rental compressor unit and appurtenant facilities which were installed in 1977 to compress gas purchased from E.W. Hawes in Franklin County, Kansas. It is stated that such facilities are no longer necessary as E.W. Hawes informed Applicant of his intent to abandon the sale to Applicant by letter dated February 16, 1984. Subsequent to said date, it is stated, Applicant was informed that E.W. Hawes was

succeeded in interest by Texxon Energy Corporation.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25142 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP84-665-000]**

## Northwest Central Pipeline Corp.; Request Under Blanket Authorization

September 18, 1984.

Take notice that on August 24, 1984, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP84-665-000 a request pursuant to § 157.205 of the Regulations Under the Natural Gas Act (18 CFR 157.205) that Northwest Central proposes to abandon in place or by reclaim approximately 4.0 miles of 12-inch lateral line and appurtenant facilities in Oklahoma County, Oklahoma, and the transportation of gas through said facilities under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central states that its West Edmond 12-inch pipeline and appurtenant facilities are no longer required as a part of its transmission system. The estimated cost to reclaim these facilities is $8,000 with an estimated salvage value of $1,965. The pipeline was originally constructed in 1946 and is obsolete. Customers affected by this proposal have either requested that their service be terminated or they would continue to be serviced by a local natural gas transmission company, it is alleged.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25143 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. EC84-21-000]**

## PacifiCorp, Doing Business as Pacific Power & Light Co.; Application

September 18, 1984.

Take notice that on September 10, 1984, PacifiCorp, doing business as Pacific Power & Light Company (Pacific), a Maine corporation, qualified to transact business in the states of Oregon, Wyoming, Washington, California, Montana, and Idaho, with its principal business office in Portland, Oregon, filed an application with the Federal Energy Regulatory Commission, pursuant to section 203 of the Federal Power Act, seeking an order authorizing it to purchase from the General Service Administration the Cottage Grove substation in the vicinity of Cottage Grove, Oregon.

Any person desiring to be heard or to make any protest with reference to this application should, on or before October 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to this proceeding. Persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25144 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP84-656-000]**

## Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

September 18, 1984.

Take notice that on August 21, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-656-000 a request pursuant to § 157.206 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of a shipper end-user under its certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle requests authority to transport gas on behalf of Sherex Chemical Company, Inc. (Sherex), pursuant to a transportation agreement dated July 12, 1984, among Panhandle, Sherex, and Central Illinois Light Company (CILCO). The agreement provides for Panhandle to receive from Consolidated Fuel Supply, Inc. (Consolidated), from which Sherex purchases the gas, a transportation quantity of up to 900 Mcf per day on an interruptible basis at an existing point of interconnection between Panhandle and Mobil Oil Corporation (Mobil) at the tailgate of Mobil's Northeast Trail Plant in Dewey County, Oklahoma, and at a proposed to-be-constructed receipt point between Panhandle and Consolidated.

or its designee, in Ellis County, Oklahoma. Panhandle would then transport and redeliver such gas, less a four percent reduction for fuel, to an existing point of interconnection between the facilities of Panhandle and CILCO in Tazewell County, Illinois. CILCO would make ultimate delivery of the gas to Sherex for use at its Mapleton, Illinois, plant. An affidavit is included in the request wherein Sherex states that the gas will be used to provide process heating, to produce steam, and to generate nitrogen for chemical production.

Sherex is an existing end-user customer of CILCO, and CILCO is an existing jurisdictional customer of Panhandle. Sherex purchases the gas under a June 14, 1984, contract on a first sale basis from Consolidated. Consolidated in turn purchases the gas from Mobil in Dewey County and from Hawkins Oil & Gas, Inc., in Ellis County.

Panhandle proposes an initial transportation rate of 42 cents plus a 1.24-cent GRI surcharge per MMBtu transported. The transportation agreement provides for such rate (the OST rate) to be charged for volumes transported within the contract entitlement transportation quantity (CETQ). Volumes transported in excess of the CETQ would be billed at the OST–E rate, currently 87 cents plus the 1.24-cent GRI surcharge for each MMBtu. The OST and OST–E rates are effective pursuant to Panhandle's FERC Gas Tariff, Original Volume No. 1, Rate Schedules OST and OST–E, respectively.

Additionally, Panhandle requests "flexible authorization" to add or delete sources of supply or receipt/delivery points.

The interconnection and measuring station proposed to be constructed in Sec. 19, T.19N., R.24W., Ellis County, Oklahoma, is estimated by Panhandle to cost approximated $19,000. Sherex is required by the transportation agreement to reimburse Panhandle for all such costs which are incurred in establishing the points(s) of receipt and/or redelivery.

Any person or the Commission's staff may, within 45 day safter issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25145 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. EF84–4011–000]**

## Southwestern Power Administration; Filing

September 18, 1984.

Take notice that on August 3, 1984, the Deputy Secretary by Delegation Order No. 0204–108, confirmed and approved on an interim basis effective August 1, 1984, on extension of the Southwestern Power Administration (SWPA) System rates. This approval extends through September 30, 1984.

Southwestern's System rates were approved on a final basis in Docket No. EF83–4011–000 by the Federal Energy Regulatory Commission (FERC) by Order isued August 1, 1983, for a period to end July 31, 1984.

Southwestern has proposed an extension of the existing rate for the period ending September 30, 1986. To allow sufficient time for internal review of this proposal at the departmental level, this interim extension was approved for a limited time.

Confirmation and approval of the extension of existing rates on a final basis is requested pursuant to authority granted the FERC by Delegation Order No. 0204–108, for a period ending September 30, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commisssion's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25146 Filed 9–20–84; 8:45 am]

Billing Code 6717–01–M

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**[Docket No. EF84–4012–000]**

## Southwestern Power Administration, Filing September 17, 1984.

Take notice that the Deputy Secretary, U.S. Department of Energy, on August 29, 1984, submitted to the Commission for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108, extension of the following Southwestern Power Administration System rates:

Rate Schedule P–4, Peaking Power
Rate Schedule F–4A, Firm Power
Rate Schedule F–4B, Firm Power through Oklahoma Companies
Rate Schedule EE–2 (Revised), Excess Energy
Rate Schedule IC–2 (Revised), Interruptible Capacity

The existing System rates were confirmed and approved on a final basis by the Commission in Docket No. EF83–4011–000 for the period August 1, 1983, through July 31, 1984, and were extended on an interim basis by the Deputy Secretary of Energy through September 30, 1984, in Rate Order No. SWPA–15. The Deputy Secretary of Energy has confirmed and approved an extension of the rates on an interim basis for the period October 1, 1984, through September 30, 1986, in Rate Order No. SWPA–16 and has submitted the rates to the Commission for confirmation and approval on a final basis for the same period.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 384.214). All such petitions or protests should be filed on or before October 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25147 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP80-65-058]

## Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Filing

September 18, 1984.

Take notice that on September 7, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following proposed tariff sheets to its FERC Gas Tariff:

**Original Volume No. 1**

Second Revised Sheet Nos. 86 and 402
Third Revised Sheet No. 400
Fourth Revised Sheet No. 78

Tennessee states that the purpose of these tariff sheets is to reflect the substitution of EnergyNorth as the recipient of certain natural gas sales and transportation services previously provided for Gas Service Inc. and Manchester Gas Company and to revise and consolidate existing Daily Volume Limits by Delivery Point.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25148 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP73-297-004]

## Texas Eastern Transmission Corp.; Petition to Amend

September 17, 1984.

Take notice that on August 23, 1984, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP73-297-004 a petition to amend the order issued December 10, 1973,[1] as amended, in Docket No. CP73-297 pursuant to section 7 of the Natural Gas Act so as to authorize the exchange of natural gas between Texas Eastern and Natural Gas Pipeline Company of America (Natural) at additional points of delivery in Kenedy and Wharton Counties, Texas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Texas Eastern states that the December 10, 1973, order, as amended, authorizes Texas Eastern and Natural to exchange up to 15,000 Mcf of natural gas per day. Texas Eastern proposes that the order further be amended to provide two additional points of delivery, as follows: (1) Pursuant to a January 4, 1983, amendment Texas Eastern would deliver exchange gas to Natural at the inlet of Natural's existing measuring facilities on the outlet of the Sarita Gasoline Plant in Kenedy County, Texas, and (2) pursuant to a September 15, 1983, amendment, Texas Eastern would deliver exchange gas to Natural at an existing point of interconnection between the pipeline facilities of Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Natural located near Hungerford, Wharton County, Texas. Exchange of natural gas at the Wharton delivery point was implemented under Order No. 60, it is explained.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25149 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. RP84-124-000]

## Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

September 18, 1984.

Take notice that on September 10, 1984 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Thirty-First Revised Sheet No. 15 to its FERC Gas Tariff, Second Revised Volume No. 1. The Tariff Sheet is proposed to be effective September 10, 1984.

Transco states that the submitted tariff sheet is being filed in compliance with the provisions of § 154.111(a)(3) of the Commission's Regulations recently adopted pursuant to Order No. 380 issued May 25, 1984 in Docket No. RM83-71-000. Said provisions require pipelines to file revised tariff sheets to separately state the cost of purchased gas and fuel. Transco further states that it has reflected on Sheet No. 15 its adjusted unit current gas cost per dt which includes the cost of purchased gas and fuel included in its rates which became effective May 1, 1984.

Transco states that copies of the filing are being mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25150 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01

[Docket No. RP84-126-000]

## Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

September 18, 1984.

Take notice that on September 11, 1984, Transcontinental Gas Pipe Line Corporation (Transco) filed certain tariff sheets to its FERC Gas Tariff, Original

Volume No. 2, proposed to be made effective October 11, 1984. Transco states that such tariff sheets provide for changes in the rates applicable to Transco's Rate Schedules X–152, X–197, X–215, X–218 and X–246 under which Transco provides transportation services to Florida Gas Transmission Company, Amoco Production Company and Southern Natural Gas Company. Transco further states that the tariff filing is being made to bring the subject rate schedules into harmony with Transco's currently effective rates for upstream deliveries within Transco's production area and that the proposed rate changes will eliminate inequities in the rates Transco charges for the same or similar services.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 2.14 and Rule 2.11 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25151 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP84–687–000]**

## Trunkline Gas Co. Application

September 18, 1984.

Take notice that on September 4, 1984, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84–687–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application on file with the Commission and open for public inspection.

The application states that pursuant to a transportation agreement dated January 30, 1984, Trunkline has agreed to transport up to 30,000 Mcf of natural gas per day on an interruptible basis on behalf of Columbia. Trunkline would receive the gas for Columbia's account on High Island Offshore System. Trunkline would deliver gas to Columbia at an existing point of interconnection with Columbia Gulf Transmission Company (Columbia Gulf) in St. Mary Parish, Louisiana. Columbia would pay Trunkline 24.41 per Mcf for this service.

It is stated that the term of the transportation agreement is from the date of execution of the service proposed herein until January 30, 1986.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the approproate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commision by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25152 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER84–656–000]**

## Union Electric Co.; Filing

September 19, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Union Electric Company (Union) tendered for filing a Letter Agreement revising the Seasonal Base Amount under Service Schedule C to the Interconnection Agreement dated November 1, 1969 between the Tennessee Valley Authority and Central Illinois Public Service Company, Illinois Power Company, and Union.

Union requests an effective date of November 1, 1984, and indicates that the Letter Agreement provides for reducing the Seasonal Base Amount available capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25153 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER83–429–001]**

## Wisconsin Power & Light Co.; Compliance Refund Filing

September 18, 1984.

Take notice that on August 3, 1984, Wisconsin Power and Light Company (Wisconsin Power) submitted for filing its compliance refund report pursuant to the Commission's settlement approval dated June 21, 1984.

The refund report consists of:

*Section*

A—Refund

B—Monthly Revenue/Refund Summary by W–1, W–2 and W–3 Customers

C—Monthly Revenue Determination by Customers at Under Bond Rates

D—Monthly Revenue Determination by Customer at Settlement Rates Approved June 21, 1984
E—Rate Schedules and Fuel Adjustment Factors Used to Compute: Under Bond Revenues; June 21, 1984 Approved Revenues
F—Proration of Nuclear Fuel Disposal Costs to W–2 Customers
G—Description of Interest Calculation

Wisconsin Power states that the refunds due each customer were delivered on July 20, 1984, with interest paid through July 20, 1984.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, on or before October 3, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25154 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER84–654–000]**

## Yankee Atomic Electric Co.; Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Yankee Atomic Electric Company (Yankee) tendered for filing proposed changes in its rate scheduled related to increased estimates of the costs of decommissioning the Yankee facility in Rowe, Massachusetts. The proposed changes would increase revenues from jurisdictional sales and service by $497,000 based on the 12-month period ending December 31, 1985. Yankee also proposes to obtain approval for automatic future adjustments to reflect changes in certain elements of the cost of decommissioning the Yankee plant and to discontinue collecting from ratepayers amounts representing federal income taxes on decommissioning expenses. Yankee proposes to amend the trust indenture to expand the range of permissible investments.

The sponsoring utilities of the Yankee plant are:

New England Power Company
Connecticut Light & Power Company
Boston Edison Company
Central Maine Power Company
Western Massachusetts Electric Company
Public Service Company of New Hamsphire
Montaup Electric Company
Cambridge Electric Light Company
Central Vermont Public Service Corporation
Commonwealth Electric Company

Yankee proposes an effective date of November 1, 1984.

Copies of the filing were served upon Yankee's sponsoring utilities and the pertinent state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25155 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. CP84–646–000 and CP83–464–001]**

## Zenith Natural Gas Co.; Application and Petition to Amend

September 17, 1984.

Take notice that on August 13, 1984, Zenith Natural Gas Company (Applicant), South Hutchinson, Kansas 67505, filed in Docket No. CP84–646–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport natural gas and construct and operate metering facilities necessary to make a direct sale of natural gas, and in Docket No. CP83–464–001 a petition to amend Applicant's blanket certificate issued in Docket No. CP84–464–000 pursuant to Subpart F of Part 157 of the Commission's Regulations, all as more fully set forth in the application and petition which are on file with the Commission and open to public inspection.

Applicant proposes to transport natural gas and to construct and operate metering facilities necessary to make a new direct end-user sale to Doskocil Companies Incorporated (Doskocil) for use in Doskocil's plant in Reno County, Kansas. Applicant states that it would deliver the gas to Panhandle Eastern Pipe Line Company (Panhandle) for transportation to a delivery point connection to Doskocil. Applicant further states that Doskocil would reimburse Applicant for such facilities. Estimated daily and annual deliveries are stated to be 750 Mcf land 180,000 Mcf of gas, respectively, and would be made from the general system supply of Applicant. It is further submitted that Applicant has adequate supplies of gas for its existing customers and Doskocil.

Applicant, in addition, requests amendment of its blanket certificate issued in Docket No. CP83–464–000 which would permit prior-notice authorization pursuant to § 157.205 of the Commission's Regulations of sales and taps and related facilities, as well as construction and operation thereof where new service to new customers is involved. Applicant states that it operates a small natural gas system within a limited geographic area, and use of the notice procedure for sales taps for new service would expedite future authorization to sell its limited amount of available gas supply.

Any person desiring to be heard or to make any protest with reference to said application and petition should on or before October 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if

the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 84-25156 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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[Project Nos. 1930-001, et al.]

## Hydroelectric Applications (Southern California Edison Co., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Amendment of License.

b. Project No: 1930-001.

c. Date Filed: February 16, 1984.

d. Applicant: Southern California Edison Company.

e. Name of Project: Kern River No. 1 Project.

f. Location: On Kern River, near Bakersfield, in Kern County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert E. Umbaugh, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

i. Comment Date: October 25, 1984.

j. Description of Project: The proposed amendment to Southern California Edison Company's (SCE) existing licensed Project No. 1930 would consist of: (1) Adding four generating units with a total installed capacity of 300 kW to the existing Kern River No. 1 Powerhouse; (2) raising by approximately 5 feet the existing tailrace wall; and (3) adding a 200-foot-long, 12-kV transmission line to connect to an existing SCE transmission line. The project cost has been estimated to be about $1.08 million. No additional recreational facilities are proposed by SCE.

k. This notice also consists of the following standard paragraphs: B, C and D1.

2a. Type of Application: Amendment of License.

b. Project No: 2515-000.

c. Date Filed: March 12, 1984.

d. Applicant: The Potomac Edison Company.

e. Name of Project: Harper's Ferry.

f. Location: On the Potomac River in Jefferson County, West Virginia and Washington County, Maryland.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert R. Winter, The Potomac Edison Company, Downsville Pike, Hagerstown, Maryland 21740.

i. Comment Date: October 29, 1984.

j. The Proposed Amendment: The Licensee requests revision of the project description and project boundary to reflect: (1) Sale of two 1-acre parcels of land to 2 adjacent land owners; (2) sale to the United States, to be used by the National Park Service as part of its adjacent Harper's Ferry National Historical Park of all project civil works, including the dam, canal, and tailrace, and all remaining project lands with the exception of that land surrounding the powerhouse. The total land to be conveyed is about 50 acres. The conveyance of civil works and lands would not result in any change in project works or project operation.

k. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: Amendment of License.

b. Project No: 2574-000.

c. Date Filed: March 23, 1984.

d. Applicant: Milstar Manufacturing Corporation.

e. Name of Project: Lockwood.

f. Location: Kennebec River in Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-925(r).

h. Contact Person: Mr. John S. Readnour, Assistant General Counsel, Central Maine Power Company, Edison Drive, Augusta, Maine 04336.

i. Comment Date: October 26, 1984.

j. Description of Project: The existing project consists of: (1) A 225-foot-long concrete overflow dam and a 650-foot-long concrete overflow dam, connected by a small island, each dam being 14.3 feet high, topped by 15-inch flashboards; (2) an 81.5-acre reservoir at an elevation of 52.16 feet m.s.l.; (3) headgates; (4) a 450-foot-long forebay canal; (5) a 50-foot by 170-foot powerhouse containing six turbine/generator units having an installed capacity of 5.4 MW, operating under a 21-foot head; and (6) appurtenant facilities.

The licensee proposes to costruct the following new facilities: (1) An intake gate; (2) a 36.5-foot by 34-foot powerhouse containing one turbine/generator unit rated at 1,750 kW, to be located near the southwest corner of the existing forebay canal; (3) a 110-foot-long tailrace; (4) a 1,000-foot-long, 12.47-kV transmission line; and (5) appurtenant facilities.

The additional hydraulic capacity (1,200 cfs) provided by the proposed expansion would allow use of a greater range of river flows. This addition would not alter the existing dams or raise the reservoir beyond the level currently licensed. The project will continue to operate as a run-of-river facility.

The proposed facilities would add 22,000 MWh to the average annual generation of the project. Total annual generation would be approximately 53,000 MWh.

k. Purpose of Project: Project power is and will continue to be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D1.

4a. Type of Application: License (5 MW or Less).

b. Project No: 3610-005.

c. Date Filed: April 6, 1984.

d. Applicant: Banister Development Ltd.

e. Name of Project: Banister Hydroelectric Project.

f. Location: On the Banister River in Halifax County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Peter C. Lesch, Gallagher, Boland, Meiburger & Brosnan, 821-15th Street, NW., Washington, D.C. 20005.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam which is approximately 669 feet long and 41 feet high; (2) an existing reservoir with a surface area of 355 acres and a storage capacity of 3,510 acre-feet at normal powerpool elevation of 350 feet m.s.l.; (3) an existing powerhouse which would contain 2 generating units rated at 320 kW and 1 generating unit rated at 780 kW, for a total installed capacity of 1,420 kW; and (4) a proposed 400-foot, 4,160 volt transmission line, which would be connected to Virginia Electric Power Company's substation located adjacent to the dam; and (5) appurtenant facilities. The estimated average annual energy output for the project is 5,500,000 kWh.

Banister Dam is owned by the County of Halifax, Virginia.

k. Purpose of Project: Power generated at the project would be sold to Virginia Electric Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

5a. Type of Application: License (Over 5 MW).

b. Project No.: 4620–001.
c. Date Filed: November 30, 1983.
d. Applicant: Carrasan Power Company.
e. Name of Project: Horsepasture Hydroelectric Power Project
f. Location: On the Horsepasture River in Transylvania County, North Carolina.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Keith Guthrie, VanNess, Feldman, Sutcliffe, Curtis, & Levenberg, 1050 Thomas Jefferson Street, NW., Washington, D.C. 20007.
i. Comment Date: November 19, 1984.
j. Description of Project: The proposed project would consist of: (1) A proposed reinforced concrete diversion structure, which would be 140 feet long and 14.5 feet high. The diversion structure would contain a 24-inch by 24-inch opening controlled by a sluice gate to maintain the minimum flow and to reduce sediment build-up. The diversion structure would be constructed integrally with an intake structure, which would be 40 feet long and 20 feet high. The water would be diverted pass the diversion structure, through the intake structure, to the penstock; (2) a proposed impoundment or reservoir created by the diversion and intake structure, with a surface area of 6.15 acres and a storage capacity of 29 acre-feet at powerpool elevation of 2,860 feet m.s.l.; (3) a proposed reinforced concrete training (retaining) wall, which would be 60 feet long and 14.25 feet high. The training wall would be located east of the intake structure, and would be used to divert fish, sediment, logs, aquatic organisms and other objects away from the intake structure; (4) a proposed 54-inch-diameter steel penstock, which would be approximately 13,140 feet long. The penstock diverges into two penstocks just before entering the powerhouse; (5) a proposed cast-in-place concrete powerhouse containing 2 generating units rated at 5.87 MW each for a total installed capacity of 11.74 MW; (6) a proposed tailrace, which consist of a stilling basin and a spillway. The tailrace water empties into a trapezoidal canal, which is approximately 190 feet long and 11.5 feet deep; (7) a proposed 44-kV transmission line, which would be approximately 10 miles long; and (8) appurtenant facilities. The estimated average energy output for the project is 36,803 MWh.
k. Purpose of Project: The power generated at the project would be sold to Duke Power Company and North Carolina Power and Light Company.
l. This notice also consists of the following standard paragraphs: A3, A9, B & C.

6a. Type of Application: Exemption (5 MW or Less).
b. Project No.: 6228–002.
c. Date Filed: April 10, 1984.
d. Applicant: Charter Township of Cascade, Kent County, Michigan.
e. Name of Project: Cascade Dam.
f. Location: On the Thornapple River in Kent County, Michigan.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Michael J. Zimmer, Wickwire, Gavin & Gibbs, P.C., Suite 700, 1819 L Street, NW., Washington, D.C. 20036.
i. Comment Date: October 25, 1984.
j. Description of Project: The proposed project would consist of: (1) An existing dam consisting of two earthen embankments and a concrete spillway. The dam is approximately 41 feet high and 550 feet long; (2) an existing reservoir with a surface area of 300 acres and a storage capacity of 2,800 acre-feet at powerpool elevation of 663.5 feet m.s.l.; (3) an existing powerhouse that would contain 1 proposed generating unit rated at 1,000 kW; (4) a proposed 300-foot, 46–kV transmission line; and (5) appurtenant facilities.
The dam is owned by the Charter Township of Cascade, Kent County , Michigan.
The estimated average annual energy output for the project is 7,500,000 kWh.
k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.
l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

7a. Type of Application: Exemption (5MW or Less).
b. Project No.: 6757–003.
c. Date Filed: May 7, 1984.
d. Applicant: C.T.I.P., Inc.
e. Name of Project: Dog River Project.
f. Location: On the Dog River in the Village of Northfield, Washington County, Vermont.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*
h. Contact Person: Robert P. Lord, Sr., C.T.I.P., Inc., 7 Belknap Avenue, Northfield, Vermont 05663.
i. Comment Date: October 25, 1984.
j. Description of Project: The proposed project would consist of: (1) An existing 22-foot-high, 90-foot-long concrete dam; (2) a reservoir with a surface area of 1.6 acres, a storage capacity of 8 acre-feet, and a normal water surface elevation of 689 feet m.s.l.; (3) an existing intake structure; (4) an existing 7-foot-diameter, 40-foot-long steel penstock; (5) an existing powerhouse containing two generating units (one proposed, one existing) with a total installed capacity of 228 kW; (6) an existing tailrace; (7) an existing transmission line; and (8) appurenant facilities. The Applicant estimates the annual generation would be 200,000 kWh.
k. Purpose of Project: All project energy generated would be sold to a local utility.
l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3A.
m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and oepration of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

8a. Type of Application: License (5 MW or Less).
b. Project No.: 7490–001.
c. Date Filed: February 2, 1984.
d. Applicant: Commonwealth Hydroelectric, Inc.
e. Name of Project: Embrey Dam Hydroelectric Project.
f. Location: On the Rappahannock River in Stafford and Spotsylvania Counties, Virginia.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C.791(a)–825(r).
h. Contact Person: John K. Pollock, President, Commonwealth Hydroelectric, Inc., Route 1, Box 413, Afton, Virginia 22920.
i. Comment Date: November 8, 1984.
j. Description of Project: The proposed project would consist of: (1) An existing reinforced concrete dam, which is approximately 22 feet high and 769 feet long; (2) an existing reservoir with a surface area of 60 acres and a storage capacity of 750 acre-feet at elevation of 52 feet m.s.l.; (3) a proposed reinforced concrete powerhouse containing 2 generating units rated at 1,500 kW each for a total installed capacity of 3,000 kW; (4) an existing power canal, which is 200 feet long and 24 feet high; (5) a proposed 34.5–kV transmission line that will interconnect with Virginia Electric & Power Company's line; and (6) appurtenant facilities. The estimated average annual energy output for the project is 13,000,000 kWh.
The Embrey Dam is owned by the City of Fredericksburg, Virginia.
k. Purpose of Project: Power generated at the project would be sold to Virginia Electric & Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

9a. Type of Application: License (Under 5 MW).

b. Project No: 7978–000.

c. Date Filed: January 12, 1984 and supplemented May 21, 1984.

d. Applicant: Boulder Hydro.

e. Name of Project: Boulder Hydro Project.

f. Location: On the Boulder Creek and Copper Creek near Maxville, Granite County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. F. Lee Tavenner, Star Route, Hall, Montana 59837.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed run-of-river project would be located on 875 acres of federal lands entirely within the Deerlodge National Forest, Philipsburg District, Montana, and would consist of: (1) The proposed Boulder Creek diversion dam facilities consisting of a wooden dam approximately 1-foot-high and 15-foot-long having a small impoundment with negligible storage capacity and a proposed 6,400-foot-long and 18-inch diameter pipeline segment; and (2) the proposed Copper Creek diversion dam facilities consisting of a wooden dam approximately 1-foot-high and 12-foot-long having a small impoundment with negligible storage capacity and a proposed 1,750-foot-long and 15-inch diameter pipeline segment. At a point approximately 2,800 feet from the proposed powerhouse, the proposed Boulder Creek and Copper Creek pipeline segments join together and feed water into: (3) a third proposed segment of 3,000-foot-long and 18-inch diameter pipeline. This third pipeline segment leads to: (4) A proposed concrete powerhouse which would return the water back into Boulder Creek and which would contain one Pelton-type turbine and generator with an installed capacity of 500 kW; (5) a proposed 500-foot-long 25-kV transmission line to be connected into Montana Power Company's distribution system; and (6) appurtenant facilities. The Applicant estimates an average annual generation of 1,700 MWh. All project energy would be sold to Montana Power Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

10a. Type of Application: Exemption Under 5MW.

b. Project No: 8122–001.

c. Date Filed: August 16, 1984.

d. Applicant: R & D Power Company.

e. Name of Project: Placerville.

f. Location: On Iowa Canyon Creek, near Placerville, in El Dorado County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Mr. Ronn Coldiron, R & D Power Company, P.O. Box 4254, Mountain View, California 94040.

i. Comment Date: October 26, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) An intake structure at an existing pool on Iowa Canyon Creek at elevation 2,000 feet msl; (2) a 40-inch-diameter, 11,080-foot-long headrace; (3) a 4-foot-deep, 12-foot-square concrete surge tank; (4) a 24-inch-diameter, 680-foot-long penstock; (5) a powerhouse containing a single turbine-generator unit with a rated capacity of 450 kW and an average annual generation of 0.656 GWh; (6) a concrete tailrace discharging to the South Fork American River; and (7) 1,000 feet of 12.0 kV transmission line to connect the project to a Pacific Gas and Electric Company (PG&E) line. Project power would be sold to PG&E. The project would be located on lands of Eldorado National Forest.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

11a. Type of Application: Preliminary Permit.

b. Project No: 8283–000.

c. Date Filed: May 3, 1984.

d. Applicant: Winnepisseoge Power Corporation.

e. Name of Project: Tilton/Northfield.

f. Location: Winnipesaukee River in Belknap County, New Hampshire.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Anthony Turchin, Winnepisseoge Power Corporation, P.O. Box 134, Franklin, New Hampshire 03235.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed project would consist of: (1) Reconstruction of a breached, 140-foot-long, 10-foot-high, log crib and timber dam with 4-foot-high flashboards owned by the Applicant; (2) restoration of the historical 8.1-acre reservoir at an elevation of 456.25 m.s.l. from the current 452.25 m.s.l. elevation with virtually no pondage; (3) two proposed 6-foot high rip rap walls, with the northern wall being 584 feet long and the southern wall being 320 feet long; (4) a proposed powerhouse on the northern side containing three 200-kW turbine/generator units and a proposed powerhouse on the southern side containing two 200/kW turbine/generator units, for a total installed capacity for the development of 1.0 MW; (5) a proposed underground, 4.16–kV, 30-foot-long transmission line; and (6) appurtenant facilities. The estimated average annual generation would be 4,500 MWh.

k. Purpose of Project: Project power would be sold to Public Service Company of New Hampshire.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $22,000.

12a. Type of Application: Preliminary Permit.

b. Project No: 8306–000.

c. Date Filed: May 14, 1984.

d. Applicant: Donald K. Szarmach and Edward D. Szarmach.

e. Name of Project: Beardsley Park.

f. Location: On the Pequonnock River in Fairfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Donald K. Szarmach, 2295 Nichols Avenue, Stratford, Connecticut 06497.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 23.3-foot-high and 151-foot-long Beardsley Park Dam with a crest elevation of 48.37 feet mean sea level; (2) new 2-inch-high flashboards; (3) a small reservoir with a surface area of 2.67 acres; (4) an existing 103-foot-long channel at the west side of the dam; (5) a new concrete powerhouse with an installed capacity of 111 kW; (6) a new 250-foot-long and 1308-kV transmission line; and (7) other appurtenances. Existing facilities are owned by the City of Bridgeport. Applicant estimates an average annual generation of 350,049 KWh.

k. Purpose of Project: Project energy would be sold to Connecticut Light and Power or to United Illuminating.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 1 year during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,500.

13a. Type of Application: Preliminary Permit.

b. Project No: 8322–000.

c. Date Filed: May 25, 1984.

d. Applicant: China Flat Company.

e. Name of Project: Corona Power Project.

f. Location: On Cedar Creek, near town of Salyer, within the Six Rivers National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Albert E. Hodgson, China Flat Company, P.O. Box 269, Willow Creek, California 95573.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 10-foot-long diversion dam on Cedar Creek at elevation 3,350 feet msl; (2) a 3-foot-diameter, 13,000-foot-long diversion conduit; (3) a 2-foot-diameter, 6,500-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 3,000 kW operating under a head of 2,600 feet; and (5) an approximately 4,000-foot-long, 12.5-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 18 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

14a. Type of Application: Preliminary Permit.

b. Project No: 8326–000.

c. Date Filed: May 29, 1984.

d. Applicant: Windsor Machinery Company, Inc. and GSA International Corporation.

e. Name of Project: Hollowbrook Project.

f. Location: On the Hollow Creek in City of Peekskill, Westchester County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert A. Olson, ELI Corporation, 21 Green Street, Concord, New Hampshire 03301.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 75-foot-long concrete gravity dam; (2) a reservoir having a surface area of 4 acres, a storage capacity of 16-acre-feet, and normal water surface elevation of 35 feet msl; (3) a proposed 5-foot-diameter, 92-foot-long reinforced concrete penstock; (4) a proposed powerhouse containing one generating unit with an installed capacity of 75 kW; (5) an existing 4.8-kV transmission line 60 feet long; and (6) appurtenant facilities. The Applicant estimates the annual generation would be 350,000 kWh. The existing dam and project facilities are owned by the City of Peekskill, New York.

k. Purpose of Project: All project energy generated would be sold to Consolidated Edison Company of New York.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $14,000.

15a. Type of Application: Preliminary Permit.

b. Project No: 8346–000.

c. Date Filed: June 4, 1984.

d. Applicant: Charleroi Associates.

e. Name of Project: Monongahela Lock & Dam No. 4.

f. Location: On the Monongahela River in the Charleroi, Washington and Westmoreland Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Joel Kirk Rector, Charleroi Associates, CFS Financial Corporation, 324 South State Street No. 500, Salt Lake City, Utah 84111.

i. Comment Date: November 8, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Monongahela Lock & Dam No. 4 and Reservoir and would consist of: (1) A 12-foot-diameter, 10-foot-long steel penstock; (2) a proposed powerhouse containing two generating units having a total installed capacity of 10,000 kW; (3) existing tailrace; (4) a proposed 2,500-foot-long, 12.5-kV transmission line; and (5) appurtenant facilities. The Applicant estimates the annual generation would be 50 GWh.

k. Purpose of Project: All project energy generated would be sold to either a local utility or a municipality.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $115,000.

16a. Type of Application: License (Under 5 MW).

b. Project No: 8350–000.

c. Date Filed: June 6, 1984.

d. Applicant: Littleville Power Company, Inc.

e. Name of Project: Littleville Dam.

f. Location: Middle Branch of the Westfield River in Hampden and Hampshire Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Peter Tucker, 9 Orange Street, Marcellus, New York 13108 and David Newman, P.O. Box 550, Westfield, Massachusetts 01086.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers' Littleville Lake Dam and outlet works and would consist of: (1) New trashracks; (2) a new 4-foot-diameter and 52-foot-long steel penstock; (3) a new reinforced concrete powerhouse, with 2 turbine-generator units, with a total installed capacity of 1,060 kW; (4) a new 200-foot-long tailrace; (5) a new substation; (6) a new 13.8-kV and 3,500-foot-long transmission line; and (7) other appurtenances.

Applicant estimates an average annual generation of 3,050,000 kWh.

k. Purpose of Project: Project energy would be sold to Western Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

17a. Type of Application: Preliminary Permit.

b. Project No: 8368–000.

c. Date Filed: June 18, 1984.

d. Applicant: Seaward Development-Hart Island Associates.

e. Name of Project: Hart Island Project.

f. Location: On the Connecticut River in Sullivan County, New Hampshire and Windsor County, Vermont.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: E.J. Garceau, Seaward Construction Co., Inc., P.O. Box 1011, Portsmouth, NH 03801.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A new 50-foot-high and 1300-foot-long concrete dam with a gated spillway; (2) a proposed reservoir having a surface area of 850 acres, a storage capacity of 12,500-acre-feet and a normal water surface elevation of 325.0 feet msl; (3) a proposed intake structure; (4) a proposed powerhouse containing one generating unit having an installed capacity of 20 MW; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The Applicant estimates the annual generation would be 95,000 MWh.

k. Purpose of Project: All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $400,000. In the work plan, the Applicant proposes to take a few drill holes and auger holes to determine the character and depth of overburden and bedrock. The applicant does not expect to disturb or alter any lands or water but if any lands should become altered or disturbed it would be adequately restored.

18a. Type of Application: Preliminary Permit.

b. Project No: 8384–000.

c. Date Filed: June 22, 1984.

d. Applicant: Bel Air Hydropower Associates.

e. Name of Project: Atkisson Dam Project.

f. Location: On the Winters Run and the Plumb Tree Run, in Harford County, Maryland.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert Hedden, Hedden Group, Ltd., 1701 Frederick Road, Baltimore, MD 21228.

i. Comment Date: November 13, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Atkisson Dam and Reservoir and would consist of: (1) A proposed 6-foot-diameter, 30-foot-long steel penstock; (2) a proposed powerhouse containing two generating units having a total installed capacity of 250 kW and; (3) appurtenant facilities. The Applicant estimates the annual generation would be 800,000 kWh.

k. Purpose of Project: All project energy generated would be sold to Baltimore Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $25,000.

19a. Type of Application: Preliminary Permit.

b. Project No: 8387–000.

c. Date Filed: June 22, 1984.

d. Applicant: PRODEK, Inc.

e. Name of Project: Vega Dam.

f. Location: On Plateau Creek, in Mesa County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Flake H. Wells, III, PRODEK, Inc., P.O. Box 12608, El Paso, Texas 79912.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation's Vega Dam and Reservoir and would consist of: (1) A new powerhouse located at the stilling basin of the dam; (2) a second powerhouse located at the existing concrete wasteway with the total rated capacity of both powerhouses—each containing one or more generating units—being 650 kW; (3) an existing 7.2-kV, 14-mile long transmission line owned by Grand Valley Rural Power Lines, Inc.; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2.3 GWh.

k. Purpose of Project: The energy derived from the proposed project would be sold to an established electric utility.

l. This notice also consists of the following standard paragraphs: A5, A7, B, D, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates the cost of the work to be performed under the preliminary permit would be $90,000.

20a. Type of Application: Preliminary Permit.

b. Project No: 8390–000.

c. Date Filed: June 22, 1984.

d. Applicant: PRODEK, Inc.

e. Name of Project: Paonia Dam.

f. Location: On Muddy Creek in Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Flake H. Wells, III, Post Office Box 12608, El Paso, Texas 79912.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation Paonia Dam and would consist of: (1) A welded steel pressure pipe extending the existing pipe; (2) a new powerhouse containing one or more generating units having a total rated capacity of 1,670 kW; (3) an existing 7.2 kV, 3-mile-long transmission line owned by Delta-Montrose Rural Power Lines Association; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7.7 GWh.

k. Purpose of Project: The most likely market for the energy derived from the proposed project would be an established electric utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would consist of engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $60,000 to $90,000.

21a. Type of Application: Preliminary Permit.

b. Project No: 8391–000.

c. Date Filed: June 22, 1984.

d. Applicant: PRODEK, INC.

e. Name of Project: Silver Jack Dam.

f. Location: On Cimarron Creek, in Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Flake H. Wells, III, PRODEK, INC., P.O. Box 12608, El Paso, Texas 79912.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation's Silver Jack Dam and reservoir and would consist of: (1) A new powerhouse containing one or more generating units having a total rated capacity of 1 MW; (2) an existing 7.2–kV, 3-mile-long transmission line owned by Delta-Montrose Electric Association; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2.5 GWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be an established operating utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $85,000.

22a. Type of Application: Preliminary Permit.

b. Project No: 8429–000.

c. Date Filed: July 13, 1984.

d. Applicant: Aliceville Hydro Associates.

e. Name of Project: Aliceville Lock and Dam Hydro Project.

f. Location: On the Tombigbee River near Pickensville, Pickens County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David M. Coombe, Synergics, Inc., 410 Severn Ave., Suite 409, Annapolis, Maryland 21403.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Aliceville Lock and Dam and an existing 6,000-foot-long and 180-foot-wide diversion channel, and would consist of: (1) A new powerhouse approximately 200 feet by 200 feet located on the west side of the river in the existing diversion channel; (2) a proposed 44–kV transmission line approximately 10 miles long interconnecting with Alabama Power Company's transmission system; and (3) appurtenant facilities. The Applicant estimates the total installed plant capacity to be 10 MW with an annual power generation of approximately 27 GWh. All power generated would be sold to Alabama Power Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $150,000.

23. a. Type of Application: Preliminary Permit.

b. Project No.: 8432–000.

c. Date Filed: July 17, 1984.

d. Applicant: Cook Electric.

e. Name of Project: Hurricane Creek.

f. Location: In Wallowa National Forest, On Hurricane Creek a tributary of the Wallowa River, in Wallowa County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Dale Hatch, Cook Electric Incorporated, P.O. Box 1071, Twin Falls, Idaho 83303–1071.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high concrete intake at elevation 5,120 feet; (2) a 11,880-foot-long, 48-inch-diameter penstock; (3) a powerhouse containing four generating units with a capacity of 3,950 kW and an average annual generation of 16,230 MWh; and (4) a 16,900-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $27,600. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Pacific Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

24. a. Type of Application: Preliminary Permit.

b. Project No.: P–8437–000.

c. Date Filed: July 16, 1984.

d. Applicant: Jerry B. Buckley.

e. Name of Project: Devils Gate Water Power.

f. Location: On Clear Creek, in Clear Creek County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: William J. Kenney, Esq., Suite 209, 2600 Virginia Ave., NW., Washington, D.C. 20037.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of all new construction facilities as follows: (1) A concrete overflow structure, approximately 25-feet long by 5-feet high; (2) an impoundment of approximately 0.2 acre-feet and normal water surface elevation of approximately 9040 feet, m.s.l.; (3) approximately 7200 feet of penstock, 42-inches in diameter; (4) a powerhouse approximately 20-feet by 40-feet, housing four turbine/generator units with a total installed capacity of 3,000 kW; (5) a tailrace channel about 50-feet long; (6) about 300-feet of 25-kV transmission line; and (7) appurtenant facilities. Applicant estimates that the average annual energy generation would be 8,000,000 kWh.

k. Purpose of Project: The applicant anticipates that project energy will be sold to the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $15,000 to $25,000.

25a. Type of Application: Preliminary Permit.

b. Project No: 8443–000.

c. Date Filed: July 17, 1984.

d. Applicant: Poorman Hydro.

e. Name of Project: Poorman Creek.

f. Location: On Poorman Creek, South Fork Poorman Creek, Devil Canyon and Deadman Canyon in Nevada County, California; within Tahoe National Forest.

g. Filed Pursuant to: 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James Haggard, 748 West Street, Redding, California 96001.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) An intake structure diverting water from Poorman Creek at elevation 3,470-foot into a 12,600-foot-long, 42-inch-diameter conduit; (2) an intake structure diverting water from South Fork Poorman Creek at elevation 3,400 feet, into a 4,800-foot-long, 30-inch-diameter conduit; (3) a 700-foot-long, 42-inch-diameter penstock; (4) Powerhouse No. 1 at elevation 3,015 feet; (5) an intake structure diverting water from Poorman Creek at elevation 3,005 feet, into a 10,500-foot-long, 48-inch-diameter conduit which would also carry the discharge from Powerhose No. 1; (6) an intake structure diverting water from Devil Canyon at elevation 3,200 feet, into a 6,800-foot-long conduit; (7) an intake structure diverting water from Deadman Canyon at elevation 3,185 feet into a 100-foot-long conduit; (8) a 2,700-foot-long, 42-inch-diameter penstock, (9) Powerhouse No. 2 at elevation 2,700 feet; and (10) a 0.625-mile-long transmission line connecting Powerhouse No. 1 and a 0.825-mile-long transmission line connecting Powerhouse No. 2 to an existing Pacific Gas and Electric Company (PG&E) transmission line. The total installed capacity of Powerhouse No. 1 and Powerhouse No. 2 would be 2,000 kW.

k. Purpose of Project: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would conduct engineering, hydrological, economic and environmental studies; conduct negotiations with the utility; and prepare FERC license application. No new roads are required to conduct the studies. The cost of studies to be completed for preliminary permit is estimated to be $25,000.

The estimated 20 million kWh generated annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

26 a. Type of Application: Preliminary Permit.

b. Project No: 8451–000.

c. Date Filed: July 20, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Upper Power Project.

f. Location: On Slate Creek, near town of Lamoine, within Shasta-Trinity National Forest, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, Mega Renewables, 2576 Hartnell Avenue, Redding, California 96002–2319.

i. Comment Date: November 23, 1984.

k. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 60-foot-long diversion dam on Slate Creek at elevation 4,000 feet; (2) a 3-foot-diameter, 21,000-foot-long diversion conduit; (3) a 3-foot-diameter, 7,600-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 5,000 kW operating under a head of 1,880 feet; and (5) an approximately 5.5-mile-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 14 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $127,600.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

27 a. Type of Application: Preliminary Permit.

b. Project No: 8452–000.

c. Date Filed: July 20, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: South Power Project.

f. Location: On South Fork Slate Creek, near town of Lamoine, within Shasta-Trinity National Forest, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, Mega Renewables, 2576 Hartnell Avenue, Redding, California 96002–2319.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 42-foot-long diversion dam on South Fork Slate Creek at elevation 2,680 feet; (2) a 20-inch-diameter, 2,060-foot-long diversion conduit; (3) a 20-inch-diameter, 3,065-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 450 kW operating under a head of 520 feet; and (5) an approximately 5-mile-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 1.2 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $61,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

28 a. Type of Application: Preliminary Permit.

b. Project No: 8453–000.

c. Date Filed: July 20, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: North Power Project.

f. Location: On North Fork Slate Creek, near town of Lamoine, within the Shasta-Trinity National Forest, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, Mega Renewables, 2576 Hartnell Avenue, Redding, California 96002–2319.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 36-foot-long diversion dam on North Fork Slate Creek at elevation 3,150 feet; (2) a 14-inch-diameter, 1,015-foot-long diversion conduit; (3) a 14-inch-diameter, 5,696-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 450 kW operating under a head of 1,230 feet; and (5) an approximately 4.5-mile-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric

Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 1.2 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application estimated cost of $58,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

29 a. Type of Application: Preliminary Permit.

b. Project No: 8472–000.

c. Date Filed: July 30, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Kutras Power Project.

f. Location: On Clear Creek, near French Gulch, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, 2576 Hartnell Ave., Redding, California 96002–2319.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 86-foot-long diversion dam on Clear Creek at elevation 2,860 feet; (2) a 42-inch-diameter, 3,850-foot-long diversion conduit; (3) a 42-inch-diameter, 26,700-foot-long penstock; (4) a powerhouse with a total installed capacity of 4,960 kW operating under a head of 840 feet; and (5) an approximately 14-mile-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 13.9 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $191,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

a. Type of Application: Preliminary Permit.

b. Project No: 8476–000.

c. Date Filed: July 30, 1984.

d. Applicant: Gardner O. Davis & Anne Davis.

e. Name of Project: Davis Hydroelectric Project.

f. Location: On Mill Seat Creek, near Shingletown, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gardner & Anne Davis, P.O. Box 354, Shingletown, California 96088.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A 12-foot-long, 4-foot-deep inlet structure on Mill Seat Creek at an approximate elevation of 3,540 feet; (2) a 3-foot-diameter, 290-foot-long conduit; (3) a 3-foot-diameter, 40-foot-long penstock; (4) a powerhouse with a total installed capacity of 15 kW operating under a head of 5.5 feet; and (5) an approximately 600-foot-long, 12-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 79,000 kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of an 18-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $30,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

a. Type of Application: Preliminary Permit.

b. Project No: 8485–000.

c. Date Filed: August 1, 1984.

d. Applicant: Rocky Mountain Hydro, Inc.

e. Name of Project: Bradbury.

f. Location: At Bradbury Dam on the Santa Ynez River, near Santa Ynez, in Santa Barbara County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael L. Raisch, 4065 South Roslyn Street, Denver, Colorado 80237

i. Comment Date: November 16, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's (USBR) Bradbury Dam (formerly Cachuma Dam) outlet works and would consist of: (1) Modification of the existing valve house to divert flow normally discharged through hollow jet valves to a hydraulic turbine; (2) a powerhouse containing a single turbine-generator unit with an installed capacity of 500 kW and producing an estimated average annual generation of 3.0 GWh; and (3) a 0.3-mile-long, 12.5-kV transmission line. The proposed project would be located entirely on USBR lands. Project power would be sold to a private or public utility. All reservoir releases through the powerhouse will be determined by the USBR and Santa Ynez Water Conservation Districts release requirements.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 24-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $100,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

32a. Type of Application: Preliminary Permit.

b. Project No: 8499–000.

c. Dated Filed: August 7, 1984.

d. Applicant: City of Redding, California.

e. Name of Project: Spring Creek Pumped Storage.

f. Location: On Spring Creek and Sacramento River, near Keswick, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Courtney, City Manager, City of Redding, 760 Parkview Avenue, Redding, California 96001.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed pumped storage project would consist of: (1) a storage reservoir on Spring Creek formed behind a 120-foot-high dam with a surface area of 33 acres, an active storage capacity of 1,700 acre-feet, and a normal surface elevation between 1,760 and 1,640 feet msl; (2) an 8-foot-wide, 10-foot-high, 660-foot-long intake structure; (3) a 200-foot-long intake conduit with a hydraulic capacity of 1,650 cfs; (4) a 20-foot-diameter, 8,800-foot-long penstock; (5) a powerhouse/pump station containing motor/generator and pump/turbine units with a total installed capacity of 110 MW and producing an estimated average annual generation of 480 GWh; and (6) a 3-mile-long, 115-kV transmission line to interconnect the project to an existing 60-kV City of Redding line which would be upgraded to 115-kV. The project would pump water from Lake Keswick on the Sacramento River to supplement Spring Creek's inflow to the proposed reservoir. Stored water would be released for power generation during peak demand periods. The project would be partially located on U.S. Bureau of Reclamation lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies of $590,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

33a. Type of Application: Preliminary Permit.

b. Project No: 8503–000.

c. Dated Filed: August 9, 1984.

d. Applicant: Noble Ridge Hydro, Ltd.

e. Name of Project: Noble Ridge.

f. Location: On Beegum Creek, near Platina, in Tehama County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) a 5-foot-high diversion weir located across Beegum Creek at elevation 1,855 feet msl; (2) a 9,150-foot-long pipeline with a hydraulic capacity of 170 cfs; (3) a 48-inch-diameter, 475-foot-long penstock; (4) a powerhouse with an installed capacity of 3.2 MW located at elevation 1,630 feet msl; and (5) 2.0 miles of 12.5-kV transmission line to interconnect the project with an existing Pacific Gas and Electric Company (PG&E) line. Project power would be sold to PG&E. The project would generate an average 15.8 GWh of energy annually. The project would occupy Bureau of Land Management and Trinity National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies of $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

34a. Type of Application: Preliminary Permit.

b. Project No: 8518–000.

c. Date Filed: August 13, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Hamilton Branch.

f. Location: On Hamilton Branch, near Westwood, in Lassen County, California.

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, 2576 Hartnell Avenue, Redding, California 96002.

i. Comment Date: November 16, 1984.

j. Description or Project: The proposed project would consist of: (1) An intake structure located 300 feet southwest of Indian Ole Dam at elevation 5, 043 feet msl; (2) a screened siphon inlet structure constructed within Mountain Meadows Reservoir; (3) utilization of the existing Pacific Gas and Electric Company's (PG&E) intake tower and discharge gate located at Indian Ole Dam as an alternative to (1) and (2) above; (3) and 84-inch-diameter, 5,560-foot-long diversion conduit; (4) and 84-inch-diameter, 5,420-foot-long steel pipe penstock; (5) a powerhouse located on Hamilton Branch at elevation 4,925 feet msl with an installed capacity of 1,600 kW and producing an estimated average annual generation of 11.2 GWh; and (6) 1,000 feet of 12.0-kV transmission line to interconnect to an existing PG&E line. The project would utilize waters released from Mountain Meadows Reservoir by PG&E for use in their existing Hamilton Branch powerhouse and would be designed so as to not interfere with existing reservoir operations.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $76,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

35 a. Type of Application: Preliminary Permit.

b. Project No: 8537–000.

c. Date Filed: August 20, 1984.

d. Applicant: Pure Energy Company.

e. Name of Project: Patria.

f. Location: On Wolf Creek, near Bridgeport, in Mono County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Roy McDonald, P.O. Box 11154, Beverly Hills, California 90213.

i. Comment Date: November 13, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 5-foot-high diversion weir located across Wolf Creek at elevation 8,200 feet msl; (2) a 12-inch-diameter, 6,400-foot-long penstock; (3) a powerhouse with an installed capacity of 450 kW located at elevation 6,850 feet msl; and (4) 2.0 miles of 12.5-kV transmission line to interconnect the project with an existing Southern California Edison Company (SCEC) line. Project power would be sold to SCEC. The project would generate an average 1.3 GWh of energy annually. The project would occupy Toiyabe National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

**Competing Applications**

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary

permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either: (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from

the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*)–Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 18, 1984.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84–25159 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

## Bonneville Power Administration

### Residential Weatherization Contract Amendments Containing Retroactive Reimbursement Provisions

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of Residential Weatherization Contract Amendments.

**SUMMARY:** In accordance with the terms of the Settlement Agreement in *Pennwalt* v. *Johnson,* Docket Nos. 83–7732 and 84–7050, U.S. Court of Appeals for the Ninth Circuit, Bonneville Power Administration gives notice that it intends to issue an amendment to its existing Long-Term Residential Weatherization Contract That provides for retroactive payment for wall insulation and previously restricted house tightening measures for the period beginning December 5, 1980, to the effective date of the amendment.

*Responsible Official:* Mr. Steven G. Hickok, Assistant Administrator for Conservation, is the official responsible for Conservation Acquisition Contracts.

**DATES:** BPA intends to issue Residential Weatherization Contract Amendment containing retroactive reimbursement provisions no later that September 28, 1984.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon, 97212; telephone 503–230–3478. Oregon callers outside of Portland may use the toll-free number 800-452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. Paul Johnson, Program Manager for Residential Weatherization, 1002 NE Holladay Street, Portland, Oregon 97208, 503–230–4125.

Issued in Portland, Oregon on September 14, 1984.

**Robert E. Ratcliffe,**

*Acting Administrator.*

[FR Doc. 84–22013 Filed 9–20–84; 11:33 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–2676–2]**

### Availability of Environmental Impact Statements Filed September 10, 1984, Through September 14, 1984 Pursuant to 40 CFR 1506.9

*Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.*

EIS No. 840408, Draft, FHW, MN, TH–33 Improvements, I–35 to TH–53, Carlton and St. Louis Counties, Due: November 5, 1984, Contact: Roger Borg (612) 725–7001.

EIS No. 840409, Final, FHW, CO, South Platte River Crossing, Construction, Platte Canyon Road to Santa Fe Drive, Arapahoe and Jefferson Counties, Due: October 22, 1984, Contact: Kenneth Downey (303) 234–4425.

EIS No. 840410, Final, FHW, FL, 39th Avenue Improvement, I–75 to Gainesville Regional Airport, Alachua County, Due: October 22, 1984, Contact: P.E. Carpenter (904) 681–7223.

EIS No. 840411, Final, BLM, NV, Egan Resource Area, Resource Management Plan, White Pine, Nye and Lincoln Counties, Due: October 22, 1984, Contact: Howard Hedrick (702) 289–4865.

EIS No. 840412, Final,EPA, KS, Metropolitan Topeka Wastewater Treatment Facilities, Grant, Shawnee County, Due: October 22, 1984, Contact: Mary O'Donnell (816) 375–5593.

EIS No. 840413, Final, FHW, OR, Corvallis-Lebanon Highway/OR–34 Improvements, Lake Creek to Pacific Highway/I–5, Linn County, Due: October 22, 1984, Contact: Dale Wilken (503) 399–5749.

EIS No. 840414, Draft, USN, ATL, VA, Navy Electromagnetic Pulse Radiation Environment Simulator for Ships (EMPRESS II), Operation, Chesapeake Bay and Atlantic Ocean, Due: November 5, 1984, Contact: Lt. Cdr. Arnold R. Gritzke (202) 692–2096.

EIS No. 840415, DSuppl, COE, CA, Walnut Creek Flood Control Plan, Contra Costa County, Due: November 21, 1984, Contact: Mike Welsh (916) 840–2456.

EIS No. 840416, DSuppl, COE, CA, Sacremento River Bank Protection, Project, Butte and Glenn Counties, Due: November 21, 1984, Contact: Mike Welsh (916) 440–2456.

*Amended Notices:*

EIS No. 840392, Draft, FS, UT, WY, Wasatch-Cache National Forest Land and Resource Management Plan, Published FR 9–7–84—Officially WITHDRAWN.

EIS No. 810577, Draft, SCS, IA, Hacklebarney Watershed Protection Plan, Adams and Montgomery Counties, Published FR 7–31–81—Officially Withdrawn.

Dated: September 21, 1984.

Dave Davis,

*Acting Director, Office of Federal Activities.*

[FR Doc. 84–25126 Filed 9–20–84; 8:45 am]

BILLING CODE 6560–50–M

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[AH–FRL 2676–4]

## Air Pollution Control; Control Techniques Guideline Document VOC Emissions From Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks

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

**ACTION:** Release of final control techniques guideline (CTG) document.

**SUMMARY:** Final CTG documents for control of volatile organic compounds (VOC) from volatile organic liquid (VOL) storage in floating and fixed roof tanks is available. The final CTG document provides guidance for the States in determining reasonably available control technology (RACT) for VOC emissions from VOL storage in floating and fixed roof tanks.

**ADDRESSES:** Copies of the final CTG document may be obtained by contacting the Environmental Research Library (MD–35), (919) 541–2777, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Please refer to "Guideline Series—Control of Volatile Organic Compound Emissions from Volative Organic Liquid Storage in Floating and Fixed Roof Tanks," EPA–450/3–84–005. Comments received on the draft CTG document are attached as an appendix to the final CTG document and are also available for public inspection and copying between 8:30 a.m. and 4:00 p.m., Monday through Friday, at the Chemicals and Petroleum Branch, Room 730, U.S. Environmental Protection Agency, 411 West Chapel Hill Street, Durham, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Mr. J.F. Durham, (919) 541–5671, Chemicals and Petroleum Branch (MD–13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** On August 22, 1983 (45 FR 38086), the EPA announced the availability for public review of the draft CTG document for VOC emissions from internal and external floating roof tanks and fixed roof tanks storing VOL.

The draft CTG defined reasonably available control technology (RACT) for fixed roof tanks as the installation of an internal roof with gasketed fittings. For tanks which already have internal floating roofs, the draft CTG defined RACT as gasketed fittings on the roof. For external floating roof tanks RACT was defined as the installation of secondary seals. The RACT size cutoff for fixed and internal floating roof tanks was 40,000 gallons and the vapor pressure cutoff was 1.0 psia. The RACT size and vapor pressure cutoffs for external floating roof tanks were 40,000 gallons and 1.5 psia, respectively.

Twenty-eight comment letters were received from industry representatives, trade groups, and State regulatory agencies. The major comments concerned the annual turnover rate used in determining the RACT tank size and vapor pressure cutoffs. Several commenters stated that the emission estimates in the draft CTG for some fixed roof tanks are too high because they are based on uncharacteristically high turnover rates. The cost effectiveness of RACT for fixed roof tanks is sensitive to the number of turnovers, the tank size, the product vapor pressure, and the product value. These parameters can vary considerably from tank to tank. For these reasons, the final CTG provides States with procedures for calculating emissions reductions and cost effectiveness of RACT for individual tanks. States are given the discretion to establish their own cutoffs based on their control needs and their judgments about reasonable cost effectiveness.

Other changes made to the draft CTG document in response to comments primarily concerned the cost of the seals used in the cost-effectiveness calculations. These changes included an increase in the installed capital cost for liquid-mounted primary seals and a decrease in the lifetime of the primary seal.

The CTG document is part of the third group of CTG documents published to assist the States in determining RACT for various stationary sources of VOC emissions. CTG documents provide State and local air pollution control agencies with an initial information base for proceeding with their own analysis of RACT for specific source categories of VOC emissions located within areas where an extension was granted for the attainment of the national ambient air quality standard (NAAQS) for ozone. The CTG documents review existing information and data concerning the technology and cost of various control techniques to reduce VOC emissions.

This CTG is not a "rule" as defined by the Administrative Procedure Act (5 U.S.C. 551 et seq.). It is a "rule" for purposes of Executive Order 12291, because it is designed to implement an EPA policy. Under Executive Order 12291, the EPA must judge whether a rule is "major" and, therefore, subject to the requirements of a regulatory impact analysis. The CTG documents are not "major rules" because they do not impose any new requirements. This notice and the final CTG document were submitted to the Office of Management and Budget (OMB) for review. Any comments from the OMB to the EPA and any EPA responses to those comments are available for public inspection. See the **ADDRESSES** section of this notice for the times and addresses.

Dated: July 25, 1984.

**John C. Topping, Jr.,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 84–25108 Filed 9–20–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP-00182; PH-FRL 2677-2]

## State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meetings of Working Committees

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

**ACTION:** Notice.

**SUMMARY:** There will be a 2-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Registration and Classification to discuss various aspects of pesticides. The meetings will be open to the public.

**DATES:** The Working Committee on Enforcement and Certification will meet on Tuesday and Wednesday, October 9 and 10, 1984. The Working Committee on Registration and Classification will meet on Thurday and Friday, October 11 and 12, 1984. The meetings of both committees will start at 8:30 a.m. each day. The final meeting will conclude by 12 noon Friday, October 12.

**ADDRESS:** The meetings will be held at: Econo Lodge, 1076 Williston Rd., South Burlington, VT, (802–863–1125).

**FOR FURTHER INFORMATION CONTACT:**

By mail: Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7096.

**SUPPLEMENTARY INFORMATION:** The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Authority of State inspectors with EPA credentials on Federal lands.
2. Wood preservatives certification and training.
3. Compound 1080 certification and training update.
4. Proposed University of Minnesota and Texas A&M University grain fumigation symposium.
5. Disposal matters, including EPA-State Ad Hoc Group activities and January 1985 symposium.
6. Ground water protection matters, including EPA strategy, pesticide label requirements, and joint EPA-State protocol for priority concerns.
7. Chemigation matters, including the planned EPA policy statement, the proposed survey, and the proposed training manual.
8. OPP comments on AAPCO bulk pesticide storage guidelines.
9. Vegetable oil as a diluent: status of EPA policy document.
10. Guideline air levels for termiticides and fumigants.
11. Agricultural worker protection fact sheets status report.
12. Training material repository status report.
13. Suspended and cancelled pesticide publication status report.
14. Certification and training funding concerns.
15. Other topics as appropriate.

The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Registration of chlorine gas for swimming pools.
2. Use of termiticides at less than label dosage.
3. LIP Notice for currently registered grain fumigants.
4. Standard Operating Procedure for the rescission of Restricted Use Pesticide classification.
5. Labeling of products used in irrigation systems.
6. Development of a policy to strengthen EPA's oversight of advertising of pesticide registrations and land uses.
7. Procedures for transmitting Experimental Use Permit information to the States.
8. Clarification of the definition of plant growth regulators.
9. Use of vegetable oil as a diluent: status of EPA policy document.
10. Unenforceable label language.
11. Establishment of group tolerances by the rulemaking process.
12. Classification of granular formulations of certain agricultural pesticides; classification of uses of certain grain fumigants.
13. Audit of section 24(c) registrations issued by States.
14. Agricultural worker protection fact sheets status report.
15. Availability of the final printed label to the States.
16. Section 18 negotiated rulemaking.
17. Status of data requests for use of chlordane/heptachlor to control termites in institutional structures.
18. Tamper proof bait boxes.
19. Other topics as appropriate.

Dated: September 13, 1984.

**Steven Schatzow,**

*Director, Office of Pesticide Programs.*

[FR Doc. 84-25217 Filed 9-20-84; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

**[MM Docket Nos. 84-865, et al.; File Nos. BPCT-831205KH, et al.]**

## Agape Communications, Inc. et al.; Hearing Designation Order

In re Applications of Scott Neisler (MM Docket No. 84–865, File No. BPCT–831205KH), Agape Communications, Inc. (MM Docket No. 84–866, File No. BPCT–840313KE), Jimmy Allison (MM Docket No. 84–867, File No. BPCT–840404KG), Gabriel Broadcasting Company, Inc. (MM Docket No. 84–868, File No. BPCT–840413KF), State W. Alexander, III, et. al. d/b/a Piedmont Crescent Broadcasting Company (MM Docket No. 84–869, File No. BPCT–840413KH), Lenore Tucker and Poplar Apartment, Inc. d/b/a Belmont Telecasters, Ltd. (MM Docket No. 84–870, File No. BPCT–840413LA), Elyse G. Wander d/b/a Wander Broadcasting of Belmont (MM Docket No. 84–871, File No. BPCT–840413LB), Acts of Metrolina, Inc. (MM Docket No. 84–872, File No. BPCT–840413LC), Metro Broadcasting, Ltd. (MM Docket No. 84–873, File No. BPCT–840413LD), For construction permit, Belmont, North Carolina.

Adopted: August 31, 1984.

Released: September 14, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 46, Belmont, North Carolina: petitions to deny the applications of Scott Neisler (Neisler), Gabriel Broadcasting Company, Inc. (Gabriel),[1] Piedmont Crescent Broadcasting Company (Piedmont) and Belmont Telecasters, Ltd. (Telecasters) filed by WCCB–TV, Inc. (VCCB), licensee of Station WCCB–TV, Charlotte, North Carolina; and related pleadings.

2. Charlotte is within the predicted Grade A contour of Neisler's, Piedmont's and Telecaster's proposed facilities. Therefore, WCCB claims standing as a "party in interest" under Section 309(d) of the Communications Act, as amended, on the grounds that it would compete with the successful applicant for audience and revenues. Piedmont and telecasters dispute WCCB's claim of standing, contending that WCCB has not demonstrated that it will suffer economic harm by a grant of either application. Since WCCB and the applicants will compete in the same

[1] WCCB's petition to deny Gabriel's application states that Gabriel's proposed transmitter site is short-spaced under Section 73.610 of the Commission's Rules. Gabriel amended its application on June 4, to comply with § 73.610. Accordingly, the petition will be dismissed as moot, as to Gabriel.

market, WCCB may suffer a diversion of revenues to the successful applicant for Channel 46. Therefore, we find that WCCB has standing. *F.C.C.* V. *Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693 (1940); *Marion U. Moore*, 16 FCC 2d 351, 352 (1969).

3. WCCB filed the petition to deny Neisler's application on April 16, 1984. The petitioner alleges that Neisler has not answered item 5(a), Section II, FCC Form 301, as to each general and limited partner and has, therefore, failed to establish his legal qualifications. WCCB further alleges that Neisler is in violation of § 73.3518 of the Commission's Rules as to inconsistent applications, because Neisler has filed a low power television application for Channel 46, Belmont, North Carolina. Finally, WCCB contends that Neisler's staffing proposal is unrealistic because it cannot be effectuated with a staff of less than 5 full-time employees.

4. Neisler's low power television application was dismissed for lack of the engineer's original signature. However, even if that were not the case, the filing of a full service television application and a low power television application is not inconsistent with the Commission's Rules. If the low power station were to go on the air first, it would provide service until a full service station was granted authorization. With reference to Neisler's staffing proposal, the application form no longer asks for the total number of employees, indicating a lessened Commission interest in this area. Clearly, the experience of the broadcaster after the beginning of operation will dictate the precise number of employees. In some cases, however, staffing issues have been specified where applicants coupled long broadcast weeks, including extensive local originations, with a staffing plan of less than five employees. A concern in such cases is that the low number of employees may have been selected to avoid filing Section VI of the application as to equal employment opportunities. We believe EEO programs should be considered at the application stage. In this case, however, Neisler reviewed his staffing plans, submitted an amendment stating that he will increase the number of employees to meet his needs, and submitted a Section VI for review. Given the Commission's lessened concern in this area, we conclude that no staffing issue is warranted in the circumstances presented.

5. In Section I, item 1. Neisler indicates that the applicant is a limited partnership. Neisler is a 55% general partner and, by amendment on April 13, 1984, Jigger Robinson is shown as a 45% general partner. Neisler did not indicate that the partnership had changed from a limited to a general partnership, nor has he identified the limited partners. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Corporate Ownership and Disclosure*, 55 R.R. 2d 1465 (1984) (reconsideration pending), the Commission stated that henceforth limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and" if the limited partner is not involved in any material respect in the business or operation of the station." *Id.* at 1485 and § 73.3615(a)(2). Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1493. Although changes in the form have not yet been made, there may be no need to provide information as to the limited partners if Neisler can submit the necessary certifications and other information as to any cross-interests as described below. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1490. Accordingly, Neisler will be required either to state that the limited partners have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature or extent of the limited partner's interest.

6. WCCB alleges that Piedmont's application violates the "one-to-a-market" rule (§ 73.3555 of the Commission's Rules) as well as the television-cable TV cross-ownership rule (§ 76.501 of the Rules). Robert R. Hilker and William R. Rollins are limited partners in Piedmont, each having a 40% equity interest. Hilker is also Chief Executive Officer, Treasurer, Assistant Secretary, Director and 51.68% stockholder of Central Broadcasting Company (Central), licensee of Station WCGC(AM), Belmont, North Carolina. Rollins is Chief Operating Officer, President, Secretary, Assistant Treasurer, Director and 18.16% stockholder of Central. Hilker also owns 10% of the stock of Lake Cable TV, Inc., operator of cable television systems in various communities which would be within the predicted Grade B contour of the proposed Belmont television station. WCCB also asserts that, under Note 4 to Section 73.3555 of the Rules, those seeking new UHF stations in a market, and who control an existing radio station in that market, must submit a showing as to why common ownership of the radio station and the proposed new UHF station would be consistent with the public interest. No such showing has been submitted in this case, so WCCB urges that the application must be dismissed. WCCB also notes that Messrs. Hilker and Rollins will contribute 80 percent of the equity for the new station, another limited partner will pay in 15 percent, while the general partner will contribute only five percent. Given the large amount of equity contributed by Messrs. Hilker and Rollins, WCCB concludes that they will be able to control the finances of the proposed station and hence should be considered to have control. Last, WCCB asserts that the Commission has reviewed in hearing putative passive interests to determine whether there is a violation of the multiple ownership rules and their underlying policies. WCCB urges such a hearing in this case.

7. In opposition, Piedmont observes that passive investment interests are considered nonattributable under the multiple ownershp rules. It has certified that its limited partnership agreement is consistent with the ULPA, so Piedmont concludes that the investment of Messrs. Hilker and Rollins must be considered passive. Piedmont also asserts that the petitioner's allegations have become moot because of an amendment to the application in which Messrs. Hilker and Rollins state that if Piedmont is the successful applicant in the comparative proceeding, they will divest all interests in station WCGC "if such a divestiture is required by the Commission's Rules." Such representations, according to Piedmont, have been found sufficient to remove any attribution of the Hilker-Rollins interests for the purposes of the comparative hearing.

8. As noted the Commission has expressly held that limited partnership interests are nonattributable where the limited partnership agreement comports with the ULPA and the limited partner is not "involved in any material respect in the business or operation of the station." Para. 5, *supra*. Although Piedmont has certified as to its conformance to the ULPA, it has not shown that the limited partners will not be "materially

involved." Accordingly, an issue will be specified. However, the issue need not be tried if the neccessary certification is submitted. In setting its new attribution standards, however, the Commission did not revise its cross-interest policy. *Id.* at 1490. The Commission has previously reviewed in a hearing the passive investments of the owner of a radio station in a new UHF station in the same area. *Cleveland Television Corporation*, 91 FCC 2d 1129 (Rev. Bd. 1982), *aff'd*, FCC 83–235, released May 18, 1983, aff'd, 732 F.2d, 962 (D.C. Cir. 1984). In that case, the owner of a radio station would be contributing up to 44 percent of the paid-in capital for a new UHF station in the same market, but held only nonvoting stock.[2] Another experienced broadcaster, but without any broadcast interests in the area of the proposed new television station, would be contributing up to 55 percent of the paid-in capital. It was the intention of the majority owner to insulate totally the nonvoting shareholder from "any responsibility for or involvement in the operation" of the proposed station. 732 F.2d at 967–68. In these circumstances, the Commission and the court affirmed the Review Board's finding of no violation of the cross-interest policy.

9. In this case, the general partner will provide only five percent of the paid-in capital, while the two limited partners of concern here will provide 80 percent. According to Section II of the application, the limited partners are also officers, directors and shareholders of several other broadcast licensees and appear to be actively engaged in the day-to-day operation of those stations, serving as chief executive and operating officers. The general partner is a news director at one of those stations and does not appear to have any other broadcast interests. There is nothing to indicate, as there was in *Cleveland Television*, that Messrs. Hilker and Rollins will be "totally insulated" from the operation of the proposed station. Although the ULPA does provide significant insulation by itself, limited partners are not "totally insulated" from the affairs of the partnership. Specifically, Section 303 of the ULPA permits limited partners to be contractors, agents or employees of the partnership, and further permits "consulting with and advising the general partner with respect to the business of the limited partnership" by the limited partners. In the circumstances presented, we believe that a full record, developed in a hearing, is required. Given the control of station WCGC(AM) by Messrs. Hilker and Rollins, a cross-interest issue will be specified.

10. That conclusion is not altered by the offer of Messrs. Hilker and Rollins to divest their interests in the Belmont radio station "if required by the Commission's Rules." The Rules do not *require* divestiture. Instead, they provide that the owners of a radio station may apply for a new UHF station in the same area, if they accompany the application with a showing that the public interest will be served by the combined ownership. As noted above, we believe that there is a concern on that question in this case, and we cannot rule that the public interest will be served without the benefit of the hearing record. Further, the goal of Piedmont appears to be not to have the interest in the Belmont radio station attributable under the comparative issue. We note, in that regard, that even where the interests are found not to contravene the cross-interest policy and the public interest, the interests in the Belmont station may still weigh in the comparative balance. *Cleveland Television Corp.*, above.

11. An extensive discussion of the applicability of the cross-interest policy to Mr. Hilker's ten percent interest in the cable television systems is not needed. We know of no case where the Commission applied the cross-interest policy where both interests were nonattributable under the multiple ownership rules. As stated previously, Mr. Hilker's interest as a limited partner in Piedmont is nonattributable. His interest in the cable television systems appears nonattributable as well. The application sets out Mr. Hilker's ownership interest in Lake Cable TV, Inc, but no position as an officer or director is indicated. For the communities listed,[3] our records list the franchise holder to be Lakeside Cable TV, Inc., which we assume to be the same entity. It appears, however, that Lakeside Cable is controlled by an 80 percent shareholder. Because a greater than 50 percent interest exists, Mr. Hilker's ten percent interest is nonattributable. *Corporate Ownership and Disclosure*, 55 RR 2d at 1475. We conclude that no cross-interest issue should be raised as to the cable television interest. If our assumption as to the ownership of the cable system is materially in error, a motion to enlarge issues by competitors may be in order.

12. In its petition to deny Telecasters' application, WCCB alleges that a grant of the application would violate the duopoly and concentration of control provisions of the multiple ownership rule, Section 73.3555. The allegation is based on the following facts. Telecasters is a limited partnership. Ms. Lenore Tucker is its sole general partner with a 20 percent equity interest. Its single 80 percent limited partner is Poplar Apartments, Inc., which in turn is owned 50 percent each by Katherine R. Everett and her son, Robinson O. Everett. In addition, the Everetts each own 15.9 percent of the stock of Guilford Telecasters, Inc., licensee of Station WGGT(TV), Greensboro, North Carolina. The Grade B contours of Station WGGT(TV) and the proposed station will overlap, forming the basis for the alleged duopoly violation. Further, the Everetts have a combined controlling interest in American Telecasters, Inc., which in turn is the sole stockholder of the permittees of Stations WKJA(TV), Wilmington, North Carolina, and WFCT(TV), Fayetteville, North Carolina. The petitioner asserts that the grant of Telecasters' application would place the Everetts in the position of having substantial interests in four North Carolina television stations. These four stations, when all are operational, will reach an estimated 31 percent of the population of North Carolina, allegedly resulting in an undue concentration of control.

13. As noted above, the Everetts' interests in Telecasters' application is as limited partners, which do not trigger the duopoly rule. Further, in its recent action repealing the regional concentration of control rule, *Multiple Ownership—Regional Concentration of Control*, 55 RR 2d 1389 (1984), the Commission stated:

> We believe that the significant expansion in both broadcast and non-broadcast media voices documented herein substantially alters the delicate balance of competing interests that underlies the current regional concentration of control provisions. In our view, this development, taken together with the effectiveness of our other multiple ownership rules in preventing adverse diversity and economic competition effects in regional markets, convinces us that the clear costs associated with our regional ownership limitations are no longer warranted.

Although the quotation is directed at the precise language of the former regional concentration rule, the thoughts expressed are also relevant here. WCCB's allegations go solely to the ownership of television stations. It does

[2] Although *Cleveland Television* involved nonvoting preferred shares, we believe that the underlying analysis is fully applicable to this case, which involves limited partners.

[3] The communities are Cornelius, Davidson and Hunterville, North Carolina. Commercial publications consolidated all these communities under the heading for Mooresville, North Carolina.

not allege that the Everetts and their associates control other broadcast, newspaper or cable television interests in the state. There are at least 20 commercial and ten noncommercial educational television stations operating within the state in which the Everetts have no interest. The four stations, when all are operational, will reach only 31 percent of the State's population. Even if we were to assume, for the purpose of discussion, that all four stations will be entirely controlled by the Everetts, the low percentage of the State's population covered, the absence of any interests in other media, and the numerous other competing television stations compel a conclusion that no undue concentration of control contrary to the public interest will result.

14. An 80 percent limited partnership interest in the applicant, which is nonattributable, coupled with the combined 31.8 percent interest held by the Everetts in the licensee of WGGT(TV), could raise cross-interest questions in some circumstances. In revising its attribution standards, however, the Commission stated that all cross interests are reportable, if they fall "within the geographic limits of the cross-interest policy." *Corporate Ownership and Disclosure,* 55 RR 2d at 1490. The "geographic limits" have never been precisely stated, but the Commission has generally referred to stations "in substantially the same market" or in "substantially the same area." *See, e.g., Farmville Broadcasting Co.,* 47 FCC 2d 463, 464 (1974); *Guy S. Erway,* 90 FCC 2d 750, 752 (Rev. Bd. 1980). In this case, the transmitter locations of the two stations are about 85 miles apart. The proposed Belmont station will be located in the Charlotte-Gastonia Standard Metropolitan Statistical Area (SMSA), while Station WGGT(TV) is in the Greensboro/High Point/Winston-Salem SMSA. These two SMSA's are separated by the Salisbury-Concord SMSA. Further, Arbitron and our own cable television rules treat Charlotte and Greensboro/High Point/Winston-Salem as separate markets. 47 CFR 76.51(a). Neither the applicant nor the petitioner has provided figures as to the degree of overlap, but it appears that WGGT(TV)'s Grade B contour will encompass roughly no more than 15 percent of the area within the Grade B contour of the proposed station. Because cross-interest concerns are limited to stations serving substantially the same market or the same area, we cannot find, in the circumstances presented, that the cross-interest policy applies in this case. Accordingly no issue will be specified.

15. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve.[4] Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

16. No determination has been made that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

17. Since grant of either Agape Communications, Inc.'s (Agape) or Telecasters' applications would constitute a major environmental action as defined by § 1.1305(a) of the Commission's Rules, Agape and Telecasters are each required to submit the environmental impact information described in § 1.1311. Accordingly, Agape and Telecasters will each be required to file, within 20 days of the release of this Order, its environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Television Branch, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.,* 71 F.C.C. 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.,* 83 FCC 2d 337 (1980).

18. Jimmy Allison proposes to mount his antenna on the tower of WLTC(AM), Gatonia, North Carolina. Accordingly, in the event of a grant of Allison's application, the construction permit will be conditioned to require Allison to demonstrate that installation of his antenna will not alter the radiation pattern of Station WLTC(AM).

19. Jimmy Allison is a limited partnership. However, only the general partners have been identified. Allison will be required to submit the certification, statement and/or information required by paragraph 5, above, to the presiding Administrative Law Judge within 20 days after this Order is released.

20. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

21. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by each applicant would consitute a hazard to air navigation.

2. If a final environmental impact statement is issued with respect to Agape Communications, Inc. or Belmont Telecasters, Ltd. which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether either proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1.1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, either applicant is qualified to construct and operate as proposed.

3. To determine with respect to Piedmont Crescent Broadcasting Co., whether grant of the application would be consistent with § 73.3555 of the Commission's Rules and with the Commission's cross-interest policy and, if not, whether the ownership, operation or control of WCGC(AM) and the proposed television station would be consistent with the public interest.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

22. It is further ordered, that the Federal Aviation Administration is

[4] Piedmont has not submitted the area and population within its predicted Grade B contour (Section V–C, Item 10, FCC Form 301). Telecasters has not submitted the population within its predicted Grade B contour. Piedmont and Telecasters will each be required to submit an amendment showing the required information, to the presiding Administrative Law Judge, within 20 days after this Order is released.

made a party respondent to this proceeding with respect to issue 1.

23. It is further ordered, that the petition to deny filed by WCCB–TV against the Scott Neisler application is denied and the petition to deny filed by WCCB–TV against the Piedmont Crescent Broadcasting Co. application is granted to the extent indicated and otherwise is denied.

24. It is further ordered, That WCCB–TV, Inc.'s petition to deny Gabriel Broadcasting Co., Inc.'s application is dismissed as moot.

25. It is further ordered, That WCCB–TV, Inc.'s petition to deny Belmont Telecasters, Ltd.'s application is denied.

26. It is further ordered, That Piedmont Crescent Broadcasting Company and Belmont Telecasters, Ltd. shall each, within 20 days after this Order is released, submit an amendment showing the information required by Section V–C, Item 10(e), FCC Form 301, to the presiding Administrative Law Judge.

27. It is further ordered, That Agape Communications, Inc. and Belmont Telecasters, Ltd. shall each, within 20 days after this Order is released, submit an amendmetn with an environmental narrative statement in accordance with Section 1.1311 of the Commission's Rules, to the presiding Administrative Law Judge, with a copy to the Chief, Television Branch.

28. It is further ordered, That in the event of a grant of Jimmy Allison's application, the construction permit shall be conditioned as follows:

During installation of the antenna authorized herein, AM station WLTC, Gastonia, North Carolina, shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements of the AM antenna shall be made. The results shall be submitted to the Commission, along with a tower sketch of the installation, in an application for the AM station to return to the direct method of power determination.

29. It is further ordered, that Scott Neisler and Jimmy Allison shall each submit the certification, statement and/or information required by paragraphs 5 and 15, respectively, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

30. It is further ordered, That WCCB–TV, Inc. is made a party respondent in this proceeding with respect to the application of Piedmont Crescent Broadcasting Co.

31. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

32. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 84–25057 Filed 9–20–84; 8:45 am]

BILLING CODE 6712–01–M

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**[File Nos. BPH–830421AF; MM Docket Nos. 84–75, et al.]**

## New FM Stations; Dragon Communications, Inc.; Applications for Consolidated Hearing

(1) The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and city, and State | File No. | MM Docket No. |
|---|---|---|
| A. Dragon Communications, Inc.; Ocean View, DE. | BPH–830421AF | 84–875 |
| B. Suzanne E. Purcell dba. Mid-Ocean Broadcasting; Ocean View, DE. | BPH–831201AF | 84–876 |
| C. Honeycomb Broadcasting, Inc.; Ocean View, DE. | BPH–831201AH | 84–877 |
| D. Daryl Hagans and Dain Schult, dba. Ocean View Broadcasting; Ocean View, DE. | BPH–831202AE | 84–878 |
| E. Susan Marie Beth Romaine; Ocean View, DE. | BPH–831202AH | 84–879 |
| F. Seashore Broadcasting Co.; Ocean View, DE. | BPH–831202AM | 84–880 |
| G. DGR Communications, Inc.; Ocean View, DE. | BPH–831202AO | 84–881 |
| H. Susan S. Liberman and Wanda Lynne Dayton dba. Ocean View Broadcasting Co.; Ocean View, DE. | BPH–831202AR | 84–882 |
| I. Leigh Sandoz Leverrier; Ocean View, DE. | BPH–831202AS | 84–883 |

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue is question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Air Hazard, A, D, H
2. (See Appendix), I
3. Comparative, All
4. Ultimate, All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

### Appendix

2. If a formal environmental impact statement is issued with respect to (I) Leverrier which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301–1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 84–25058 Filed 9–20–84; 8:45 am]

BILLING CODE 6712–01–M

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## Hearing Designation Order; Full Gospel Church of the Living God, Inc., et al.

In re Applications of Full Gospel Church of the Living God, Inc. (File No. BPET–831104KE), Palm Beach County Educators Broadcasting, Inc. (MM Docket No. 84–863, File No. BPET–840103KH), Acorn TV in Action for Communities (MM Docket No. 84–864, File No. BPET–840104KF), For Construction Permit for New TV Station, Boca Raton, Florida.

Adopted: August 30, 1984.

Released: September 14, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it: (1) The above-captioned mutually exclusive applications of Full Gospel Church of the Living God, Inc. (Full Gospel), Palm Beach County Educators Broadcasting,

Inc. (Educators), and Acorn TV in Action for Communities (Acorn) for authority to construct a new noncommercial educational television station on Channel 63, Boca Raton, Florida; and (2) informal objections to the Full Gospel and Acorn applications, filed by Goldcoast Educational Television System, Inc. (Goldcoast), a consortium of public agencies.

2. In its informal objection, Goldcoast charges that the Full Gospel and Acorn applications should be dismissed because those applicants do not propose a cognizable educational purpose as defined in Section 73.621 of the Commission's Rules for noncommercial educational broadcast stations. Goldcoast also claims that neither applicant has demonstrated its financial qualifications.

3. Channel 63, Boca Raton, Florida, is reserved for use by a noncommercial educational broadcast station only, and only non-profit educational institutions or organizations are eligible to apply, the latter upon a showing that the proposed station will be used for the advancement of an educational program. Neither applicant purports to qualify as an educational institution (school). As an organizational applicant, Full Gospel has not demonstrated that its proposed facilities would be used in the furtherance of an overall educational objective. An organization with religious purposes can qualify as an educational applicant if its primary purpose is educational, albeit with a religious aspect to the educational activity, *Bible Moravian Church, Inc.*, 28 FCC 2d 1 (1971). We look to the application as a whole to determine, as between the religious purposes and the educational purposes, which is essential and which is incidental. If, as in *Bible Moravian Church, supra*, the educational thrust is but incidental to and supportive of the religious function, the organization is not an educational one. An applicant must also submit evidence that its officers, directors, and members of its governing board are broadly representative of the educational, cultural, and civic groups in the community. Section II, Question 10, FCC Form 340. Based on the information contained in the application, it appears that Full Gospel's board members are all of the same profession.[1] The applicant says that the board members are "actively involved in the cultural and civic groups in the community," but this does not meet the standard that the members of the board must be "broadly representative" of the civic cultural, and educational elements of the community. Such statements are not sufficient to meet the Commission's requirements. For the reasons stated, Full Gospel has failed to show that it is qualified to operate on a reserved channel. Accordingly, its application will be dismissed.

4. In support of its contention that it is a qualified educational organization, Acorn has set forth a statement showing that it has an educational goal and that the proposed station would be used to further an educational program. It has furnished a proposed weekly program schedule clearly indicating its educational nature. Its governing board consists of persons who appear to be broadly representative of the educational cultural and civic segments of the community. We conclude, therefore, that Acorn qualifies as an educational organization and is eligible to operate on a reserved channel.

5. Goldcoast's effort to have Acorn's application dismissed on the grounds that Acorn is not financially qualified must fail. Acorn has certified that it is financially qualified and Goldcoast has alleged no facts to show that the certification is false. Goldcoast's allegations are the result of speculation. Consequently, no financial issue will be specified.

6. Goldcoast alleges that the engineering data in the Full Gospel and Acorn applications are identical. Goldcoast has not indicated the significance of this fact and we find none. It is not alleged that any Commission rule or policy has been violated. Moreover, since both specified the same site, it should not be surprising that the engineering data is identical or similar.

7. Section 73.685(f) of the Commission's rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Acorn has not supplied this data. Accordingly, Acorn will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

8. Applicants for new broadcast stations are required to give local notice of the filing of their applications, in accordance with Section 73.3580 of the Commission's Rules. They must then file proof of publication of such notice or certify that they have or will comply with the public notice requirement. We have no evidence, however, that Acorn has done either. If it has not already done so, Acorn will be required to file a statement that it has or will comply with the public notice requirement with the Administrative Law Judge within 20 days of the release of this Order.

9. No determination has been made that the tower height and location proposed by Educators would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

10. Educators' antenna is to be mounted on the existing tower of AM station WSBR, Boca Raton, Florida. Therefore, in order to ensure that the AM pattern will not be adversely affected, a grant of the application will be appropriately conditioned.

11. Acorn proposes a directional antenna and electrical beam tilt, but does not provide the exhibits required by Item 9, Section V–G, FCC Form 340. Accordingly, the applicant will be required to submit the appropriate exhibits to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

12. The applications of Educators and Acorn propose transmitters which will generate a field strength in excess of 50 mV/m over the Commission's Fort Lauderdale, Florida, monitoring station. There is, therefore, a potential for serious adverse effects on our monitoring operations. In the event of a grant of either application, the construction permit shall be appropriately conditioned.

13. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

14. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications of Educators and Acorn are designated for hearing in a consolidated proceeding before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Educators would constitute a hazard to air navigation.

[1] There are three board members, all clergymen.

2. To determine the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants;

3. To determine the manner in which each applicant's proposed operation meets the needs of the community to be served;

4. To determine whether the factors in the record demonstrated that one applicant will provide a superior non-commercial educational broadcast service.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

15. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

16. It is further ordered, that the application of Full Gospel is dismissed.

17. It is further ordered, that the objection filed by Goldcoast is granted to the extent indicated herein and otherwise IS DENIED.

18. It is further ordered, that Acorn shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge within 20 days of the date of the release of this Order.

19. It is further ordered, that Acorn shall file a certification with the presiding Administrative Law Judge, within 20 days after this Order is released, that it has or will comply with § 73.3580 of the Commission's Rules.

20. It is further ordered, that Acorn shall submit the appropriate exhibit to Section V–G, Item 9, FCC Form 340, to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

21. It is further ordered, that grant of a construction permit to Educators will be subject to the following condition:

During installation of the antenna authorized herein, AM station WSBR shall determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point values within authorized limits. Upon completion of the installation, common point impedance measurements on the AM antenna shall be made and a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

22. It is further ordered, that in the event of a grant of either application, the construction permit shall contain the following condition:

The authority granted herein is subject to the condition that, in the event of interference to monitoring, direction finding, or related operations at the Federal Communications Commission's Fort Lauderdale Monitoring Station, caused by either spurious or harmonic radiation, the permittee shall take such immediate corrective action as is necessary to eliminate the interference. This shall include responsibility for furnishing, installing and adjusting filter circuits, shielding, or other corrective devices which may be necessary to minimize harmonic or spurious radiation. If these measures fail to eliminate the interference, the permittee shall either reduce power or cease operation immediately.

23. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

24. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 84–25056 Filed 9–20–84; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0018.

Title: National Flood Insurance Program Annual Report (Biennial Report).

Abstract: The Federal Emergency Management Agency (FEMA) requires that community participating in the National Flood Insurance Program, submit a biennial report on progress made in local floodplain management. Ths use of a simple, standard format facilitates FEMA's reporting of response, thus enhancing the reports value as management tool.

Type of respondents: Individuals or households, State or Local governments.

Number of respondents: 17,600.

Burden hours: 8,800.

Copies of the above information collection request and supporting statement can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm., 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 12, 1984.

**Walter A. Girstantas,,**

*Director, Administrative Support.*

[FR Doc. 84–25046 Filed 9–20–84; 8:45 am]

BILLING CODE 6718–01–M

### Colorado; Amendment to Notice of a Major-Disaster Declaration

[FEMA–719–DR]

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the Notice of a major disaster for the State of Colorado (FEMA–719–DR), dated July 27, 1984, and related determinations.

**DATED:** September 14, 1984.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

Notice: The notice of a major disaster for the State of Colorado, dated July 27, 1984, 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 27, 1984: Dolores, Hinsdale, Montrose, and Saguache Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718–02)

**Dennis H. Kwiatkowski,**

*Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 84–25045 Filed 9–20–84; 8:45 am]

BILLING CODE 6718–02–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 14.

**Public Health Service**

*National Institutes of Health*

Subject: NON-A NON-B Hepatitis: Donor Survey—New
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

*Centers for Disease Control*

Subject: Monitoring System for Adverse Events following Immunization (Revision)—(0920–0039)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

*Food and Drug Administration*

Subject: Medical Device Reporting (0910–0156(c))—New Collection
Respondents: Manufacturers or importers of medical devices
OMB Desk Officer: Bruce Artim

**Health Care Financing Administration**

Subject: Post Certification Revisit Report
Respondents: State survey agencies
Subject: Statement of Deficiencies and Plan of Corrections (HCFA 2567) and Continuation Sheet (HCFA 2567A)
Respondents: State agency surveyors
Subject: Survey of Independent Health Plans
Respondent: Independent Insurers
OMB Desk Officer: Fay S. Iudicello

**Human Development Services**

Subject: Quarterly Statement of Expenditures for Foster Care and Adoption Assistance (0980–0131)—Extension
Respondents: States
Subject: Quarterly Estimate of Expenditures for Foster Care and Adoption Assistance (0980–0130)—Extension
Respondents: States
Subject: WIN Certification Report (117–A), Certification Record (SAU–4); WIN Grant Change Report (117–B); WIN Grant Change Record (IM–9)–(0980–0157)—Extension
Respondents: States
OMB Desk Officer: Robert Fishman

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: September 11, 1984.

**Wallace O. Keene,**

*Acting Deputy Assistant Secretary for Management Analysis and Systems.*

[FR Doc. 84–24620 Filed 9–20–84; 8:45 am]

BILLING CODE 4150–04–M

### Centers for Disease Control

### Mine Health Research Advisory Committee Diesel Subgroup and X Ray Surveillance Subgroup; Open Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meetings:

**Diesel Subgroup of the Mine Health Research Advisory Committee**

Date: October 10, 1984.

Time: 9:00 a.m. to 12:00 noon.

Place: Meeting Room B–2, Sheraton Inn Lakewood, 360 Union Boulevard, Lakewood, Colorado 80228.

Purpose: This Committee subgroup is charged with determining if there is a scientific basis for developing a recommendation on the use of diesel equipment in underground mining operations and defining the limitations of current knowledge, and recommending areas of research for NIOSH, if any, taking into account other investigators' ongoing and planned research.

Viewpoints and suggestions from users of diesel equipment, manufacturers of diesel equipment, industry, labor, academia, other government agencies, and any other interested parties are invited. Interested parties wishing to participate in the meeting are requested to contact Dr. Roy Fleming at the address below in order to be assured appropriate time for presentation. Four copies of the text of the presentation should be provided to the subgroup chairperson, Mr. William Burgess, Polaroid Corporation, 300 Fifth Avenue—5H, Waltham, Massachusetts 20054, prior to or at the subgroup meeting.

**X-Ray Surveillance Subgroup of the Mine Health Research Advisory Committee**

Date: October 10, 1984.

Time: 9:00 a.m. to 12:00 noon.

Place: Meeting Suite 312, Sheraton Inn Lakewood, 360 Union Boulevard, Lakewood, Colorado 80228.

Purpose: This Committee subgroup is charged with determining if a recommendation should be made to NIOSH for the Institute to conduct the entire x-ray surveillance program for coal miners. If so, the subgroup is to define the criteria that should be met to justify the initiation and continuation of this program by NIOSH in terms of factors such as participation rate, detection rate of disease, and transfer rate to less dusty jobs. Other issues, such as quality of films and linkage of the surveillance program with a compensation program, are also to be discussed.

Viewpoints and suggestions from manufacturers of x-ray equipment, industry, labor, academia, other government agencies, and any other interested parties are invited. Interested parties wishing to participate in the meeting are requested to contact Dr. Roy Fleming at the address below in order to be assured appropriate time for presentation. Four copies of the text of the presentation should be provided to the subgroup chairperson, Dr. Nicholas Sargent, University of Southern California, School of Medicine, Department of Radiology, 1200 North State Street, Los Angeles, California 90033, prior to or at the subgroup meeting.

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, MHRAC, NIOSH, CDC, Building 1, Room 3053, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Phone: (404) 329–3343.

The Mine Health Research Advisory Committee (MHRAC) was established by the Federal Mine Safety and Health Act of 1977. The Committee is charged with advising the Secretary of Health

and Human Services on matters involving or related to mine health research. The subgroups, composed of members of the MHRAC, will provide reports to the full Committee at a future meeting. Each subgroup will give a status report on its activities to the MHRAC in the afternoon of October 10, 1984, during the Committee's October 10–11, 1984, meeting.

Dated: September 17, 1984.

**Jeffrey P. Koplan, M.D.,**

*Acting Director, Centers for Disease Control.*

[FR Doc. 84–25043 Filed 9–20–84; 8:45 am]

BILLING CODE 4160–19–M

## Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: October 10–11, 1984.

Place: Meeting Room B–2, Sheraton Inn Lakewood, 360 Union Boulevard, Lakewood, Colorado 80228.

Time and Type of Meeting:

Closed, 1:00 p.m. to 1:30 p.m.—October 10

Open, 1:30 p.m. to 4:30 p.m.—October 10

Open, 9:00 a.m. to 4:30 p.m.—October 11

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, MHRAC, NIOSH, CDC, Building 1, Room 3053, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Phone: (404) 329–3343.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda

Agenda items for the meeting will include announcements; consideration of minutes of previous meeting and future meeting dates; status reports from diesel and x-ray surveillance subgroups; update on NIOSH mining research; and a comprehensive discussion of silicosis as a health hazard in mining, including historical perspective, sources of exposure, analytical procedures, epidemiologic studies, animal studies, diagnosis of silicosis, prevention strategies, and research needs. Beginning at 1:00 p.m. through 1:30 p.m., October 10, the Committee will be performing the final review of the mine health research grant applications for Federal assistance. This portion of the meeting will not be open to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and paticipation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: September 17, 1984.

**Jeffrey P. Koplan, M.D.,**

*Acting Director, Centers for Disease Control.*

[FR Doc. 84–25044 Filed 9–20–84; 8:45 am]

BILLING CODE 4160–19–M

## Food and Drug Administration

**[Docket No. 77P–0403 et al.]**

## Availability of Approved Variances for Laser Light Shows

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for six organizations that manufacture and produce laser light shows, light show projectors, or both. The projector provides a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

**DATES:** The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information".

**ADDRESS:** The applications and all correspondence on the various applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

**SUPPLEMENTARY INFORMATION:** Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), each of the six organizations listed in the table below has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the table below, and the effective date of the variance as specified in the table below.

| Docket No. | Manufacturing organization | Demonstration laser product | Effective date/termination date |
|---|---|---|---|
| 77P-0403 (extension) | Laser Productions, 3075 Blaine St., Coconut Grove, FL 33133. | Laser Productions projectors, models 2001 and Orion, and laser light shows incorporating these projectors assembled and produced by Laser Productions. | June 18, 1984 to May 1, 1986. |
| 79P-0346 (extension) | Laser Vision Productions, Inc., 132½ West 24th St., New York, NY 10017. | Laser Vision Productions, Inc. laser light shows incorporating the firm's class IV model ALVA 2000 series and/or IKON L-174 series, laser projectors or display devices. | July 2, 1984 to May 19, 1986. |
| 80P-0350 (extension) | Agence Publicitaire Le P.G., de Granby, Inc., 89, rue Alexandra, Granby (Quebec), Canada J2G2PH. | Super Laser Light Show, assembled and produced by Agence Publicitaire Le P.G. de Granby, Inc. | July 18, 1984 to July 18, 1985. |
| 83V-0385 | Red Parrott Caberet, Inc., 617 West 57th St., New York, NY 10019. | Red Parrott Gaberet, laser light show incorporating the class IV Foursight Visual System Model 118 ion laser projector and control console. | July 18, 1984 to July 18, 1986. |
| 84V-0190 | Quadram Corp., 4355 International Blvd., Norcrost, GA 30093. | Quadram Corp., laser light displays using the Ad Laser ALS-5100-2B laser projector. | June 22, 1984 to June 22, 1986. |
| 84V-020 | Alaska Laser Knights, Inc., d.b.a. Spenardo divinci's 8241 Summerset Drive, Anchorage, AK 99502. | Alaska Laser Knights, Inc. laser light shows using the Laser Media LMS projector system. | June 28, 1984 to June 28, 1986. |

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket numbers in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 17, 1984.

**William F. Randolph,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 84-25033 Filed 9-20-84; 8:45 am]

**BILLING CODE 4160-01-M**

**[Docket No. 84P-0280]**

## Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Allen Canning Co. and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

**DATES:** The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 20, 1984.

**FOR FURTHER INFORMATION CONTACT:** F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Allen Canning Co., 305 East Main, P.O. Box 250, Siloam Springs, AR 72761, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904-2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Allen Canning Co. plant, Siloam Springs, AR 72761.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 20, 1984.

Dated: September 12, 1984.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 84-25102 Filed 9-20-84; 8:45 am]

**BILLING CODE 4160-01-M**

## Fulvidex® Otic Suspension; Withdrawal of Approval of NADA

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Schering Corp. providing for use of Fulvidex® Otic Suspension (dexamethasone acetate, nitrofurathiazide, griseofulvin, undecylenic acid, tetracaine hydrochloride) for treating cats for acute otitis externa and adjunctive therapy in treating choronic otitis externa complicated by sensitive organisms. The sponsor requested the withdrawal of approval.

**EFFECTIVE DATE:** October 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** John K. Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

**SUPPLEMENTARY INFORMATION:** Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033, is sponsor of NADA 12-890. The NADA provides for prescription use of Fulvidex® (dexamethasone acetate, nitrofurathiazide, griseofulvin, undecylenic acid, tetracaine hydrochloride) Otic Suspension to treat cats for acute otitis externa and as adjunctive therapy in treating chronic otitis externa complicated by sensitive organisms. The NADA was originally approved November 30, 1961, for treating dogs and cats.

By letter of May 2, 1984, the sponsor requested withdrawal of approval of the NADA because the drug is no longer being manufactured or marketed, and waived an opportunity for hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR. 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR

514.115), notice is given that approval of NADA 12–890 and all supplements for Fulvidex® Otic Suspension is hereby withdrawn, effective October 1, 1984.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the regulation that reflects this approval.

Dated: September 14, 1984.

**Lester M. Crawford,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 84-25100 Filed 9-20-84; 8:45 am]

BILLING CODE 4160-01-M

## International Multifoods' Tevcocin® (Chloramphenicol) Oral Solution; Withdrawal of Approval of NADA

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by International Multifoods Corp. providing for use of Tevcocin® (chloramphenicol) Oral Solution for prescription use in dogs for treatment of infections of the respiratory and urinary tract, and enteritis and tonsillitis caused by susceptible organisms. The sponsor requested the withdrawal of approval.

**EFFECTIVE DATE:** October 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** John K. Augsburg, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

**SUPPLEMENTARY INFORMATION:** International Multifoods Corp., P.O. Box 2942, 8th & Marquette Sts., Minneapolis, MN 55402, is sponsor of NADA 55–003 providing for use of Tevcocin® (chloramphenicol) Oral Solution for prescription use in dogs for treatment of infections of the respiratory and urinary tract, and enteritis and tonsillitis caused by susceptible organisms. The NADA was originally approved June 24, 1969.

Approval of this NADA has been codified in the Code of Federal Regulations in 21 CFR 555.110c. In its letter of February 27, 1984, to the Center for Veterinary Medicine, International Multifoods voluntarily requested withdrawal of approval of the NADA under 21 CFR 514.115(d) because the sponsor is discontinuing marketing of the product.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 55–003 and all supplements for International Multifoods' Tevcocin® (chloramphenicol) Oral Solution is hereby withdrawn, effective October 1, 1984.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the regulation that reflects this approval.

Dated: September 14, 1984.

**Lester M. Crawford,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 84-25098 Filed 9-20-84; 8:45 am]

BILLING CODE 4160-01-M

## National Institutes of Health

### Filing of Annual Reports

Pursuant to sections 10(d) and 13 of the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the annual reports for the committees listed below have been filed with the Library of Congress. Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or on weekdays, at the Department Library, North Building, Room 1436, Washington, D.C. 20201, between 9:00 a.m. and 4:30 p.m.

Ad Hoc Working Group to Develop Radioepidemiological Tables
Advisory Committee to the Director, NIH
Aging Review Committee
Allergy and Immunology Study Section
Allergy, Immunology, and Transplantation Research Committee
Animal Resources Review Committee
Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee
Bacteriology and Mycology Study Section
Behavioral and Neurosciences Study Section
Behavioral Medicine Study Section
Biochemical Endocrinology Study Section
Biochemistry Study Section
Biomedical Library Review Committee
Biomedical Sciences Study Section
Biometry and Epidemiology Contract Review Committee
Bio-Organic and Natural Products Chemistry Study Section
Biophysical Chemistry Study Section
Biopsychology Study Section
Biotechnology Resources Review Committee
Blood Diseases and Resources Advisory Committee
Board of Regents of the National Library of Medicine
Board of Scientific Counselors, Division of Cancer Biology and Diagnosis
Board of Scientific Counselors, Division of Cancer Etiology
Board of Scientific Counselors, Division of Cancer Prevention and Control
Board of Scientific Counselors, Division of Cancer Treatment
Board of Scientific Counselors, National Eye Institute
Board of Scientific Counselors, National Heart, Lung, and Blood Institute
Board of Scientific Counselors, National Institute on Aging
Board of Scientific Counselors, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases
Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases
Board of Scientific Counselors, National Institute of Child Health and Human Development
Board of Scientific Counselors, National Institute of Dental Research
Board of Scientific Counselors, National Institute of Environmental Health Sciences
Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke
Board of Scientific Counselors, National Library of Medicine
Breast Cancer Task Force Committee
Cancer Center Support Review Committee
Cancer Clinical Investigation Review Committee
Cancer Control Grant Review Committee
Cancer Control Intervention Programs Review Committee
Cancer Education Review Committee
Cancer Preclinical Program Project Review Committee
Cancer Regional Studies Review Committee
Cancer Research Manpower Review Committee
Cancer Resources and Repositories Contracts Review Committee
Cancer Therapeutics Program Project Review Committee
Cardiology Advisory Committee
Cardiovascular and Pulmonary Study Section
Cardiovascular and Renal Study Section
Cellular and Molecular Basis of Disease Review Committee
Cellular Biology and Physiology Study Section
Chemical Pathology Study Section
Clinical Applications and Prevention Advisory Committee
Clinical Cancer Program Project Review Committee
Clinical Sciences Study Section
Clinical Trials Committee
Clinical Trials Review Committee
Communicative Disorders Review Committee
Developmental Therapeutics Contracts Review Committe, NCI
Diagnostic Radiology Study Section
Endocrinology Study Section
Environmental Health Sciences Review Committee
Epidemiology and Disease Control Study Section
Epilepsy Advisory Committee
Experimental Cardiovascular Sciences Study Section
Experimental Immunology Study Section
Experimental Therapeutic Study Section
Experimental Virology Study Section
Frederick Cancer Research Facility Advisory Committee

General Clinical Research Centers Committee
General Medical A Study Section
General Medical B Study Section
General Research Support Review Committee
Genetic Basis of Disease Review Committee
Genetics Study Section
Hearing Research Study Section
Heart, Lung, and Blood Research Review Committee A
Heart, Lung, and Blood Research Review Committee B
Hematology Study Section
Human Development and Aging Study Section
Human Embryology and Development Study Section
Immunobiology Study Section
Immunological Sciences Study Section
Mammalian Genetics Study Section
Maternal and Child Health Research Committee
Medicinal Chemistry Study Section
Mental Retardation Research Committee
Metabolism Study Section
Metallobiochemistry Study Section
Microbial Physiology and Genetics Study Section
Microbiology and Infectious Diseases Advisory Committee
Minority Access to Research Careers (MARC) Review Committee
Molecular and Cellular Biophysics Study Section
Molecular Biology Study Section
Molecular Cytology Study Section
National Advisory Allergy and Infectious Diseases Council
National Advisory Child Health and Human Development Council
National Advisory Council on Aging
National Advisory Dental Research Council
National Advisory Environmental Health Sciences Council
National Advisory Eye Council
National Advisory General Medical Sciences Council
National Advisory Neurological and Communicative Disorders and Stroke Council
National Advisory Research Resources Council
National Arthritis Advisory Board
National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council
National Cancer Advisory Board
National Diabetes Advisory Board
National Digestive Diseases Advisory Board
National Heart, Lung and Blood Advisory Council
National Institute of Dental Research Programs Advisory Committee
National Institute of Dental Research Special Grants Review Committee
NCI Thyroid/Iodine—131 Assessments Committee
Neurological Disorders Program—Project Review A Committee
Neurological Disorders Program—Project Review B Committee
Neurological Sciences Study Section
Neurology A Study Section
Neurology B Study Section
Nutrition Study Section
Oral Biology and Medicine Study Section
Orthopedics and Musculoskeletal Study Section
Pathobiochemistry Study Section
Pathology A Study Section
Pathology B Study Section
Pharmacological Sciences Review Committee
Pharmacology Study Section
Physical Biochemistry Study Section
Psysiological Chemistry Study Section
Physiology Study Section
Population Research Committee
President's Cancer Panel
Pulmonary Diseases Advisory Committee
Radiation Study Section
Recombinant DNA Advisory Committee
Reproductive Biology Study Section
Research Manpower Review Committee
Respiratory and Applied Physiology Study Section
Scientific Programs Advisory Committee, NINCDS
Sensory Disorders and Language Study Section
Sickle Cell Disease Advisory Committee
Social Sciences and Population Study Section
Surgery and Bioengineering Study Section
Surgery, Anesthesiology and Trauma Study Section
Toxicology Study Section
Tropical Medicine and Parasitology Study Section
Virology Study Section
Vision Research Program Committee
Visual Sciences A Study Section
Visual Sciences B Study Section

Dated: September 14, 1984.

**James B. Wyngaarden, M.D.,**

*Director, NIH.*

[FR Doc. 84-25087 Filed 9-20-84; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Allergy and Infectious Diseases; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees of the National Institute of Allergy and Infectious Diseases for October 1984.

These meetings will be open to the public to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. Portions of these meetings will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual grant applications and contract proposals. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Thomas Flavin, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496-5717, will provide summaries of the meetings and rosters of the committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Microbiology and Infectious Diseases Research Committee.

Executive Secretary: Dr. M.S. Quraishi, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20205. Telephone: (301) 496-7465.

Dates of Meeting: October 4-5, 1984.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

Open: October 5, 1984, 8:30 a.m.—10:30 a.m.

Agenda: Reports by Program Director and Branch Chief on Committee concerns followed by Program concept clearances.

Closed: October 4, 1984, 8:30 a.m.—recess. October 5, 1984, 10:45 a.m.—adjournment.

Closure Reason: To review grant applications.

Name of Committee: Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee.

Executive Secretary: Dr. Nirmal Das, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20205. Telephone: (301) 496-7966.

Date of Meeting: October 18-19, 1984.

Place of Meeting: Building 60, Choir Room, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

Open: October 19, 1984, 9:55 a.m.—adjournment.

Agenda: Reports by Program Director and Branch Chief on Committee concerns.

Closed: October 18, 1984, 8:30 a.m.—adjournment. October 19, 1984, 8:30 a.m.-9:55 a.m.

Closure Reason: To review grant applications.

Name of Committee: Transplantation Biology and Immunology, Subcommittee of the Allergy, Immunology, and Transplantation Research Committee.

Executive Secretary: Dr. Nirmal Das, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20205. Telephone: (301) 496-7966.

Dates of Meeting: October 22-23, 1984.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health, Bethesda, MD 20205.

Open: October 22, 1984–3:15 p.m.—adjournment.

Agenda: Reports of Program Director and Branch Chief on Committee concerns.

Closed: October 22, 1984, 8:30 a.m.—3:15 p.m. October 23, 1984, 8:30 a.m.—adjournment.

Closure Reason: To review grant applications and contract proposals.

Dated: September 12, 1984.

(Catalog of Federal Domestic Assistant Programs Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institute of Health)

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 84-25084 Filed 9-20-84; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Neurological and Communicative Disorders and Stroke; Epilepsy Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Epilepsy Advisory Committee, National Institute of Neurological and Communicative Disorders and Stroke, October 29 and 30, 1984, in Room B119, Federal Building, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 3:00 p.m. on October 29, 1984, to discuss research progress and research plans related to the Institute's epilepsy program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 3:00 p.m. on October 29, 1984, to adjournment on October 30, 1984, for review of preclinical and clinical compounds of the Antiepileptic Drug Development Program. This review and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. B.G. White, Acting Chief, Epilepsy Branch, Convulsive, Developmental, and Neuromuscular Disorders Program, NINCDS (Federal Building, Room 114), National Institutes of Health, Bethesda, MD 20205; telephone 301/496–6691, will provide summaries of the meeting, rosters of the committee members, and substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research.)

Dated: September 12, 1984.

**Betty Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 84-25085 Filed 9-20-84; 8:45 am]

Billing Code 4140-01-M

## National Library of Medicine; Board of Regents, the Extramural Programs Subcommittee, and the Lister Hill Center Subcommittee; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on October 18–19, 1984, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meetings of the Extramural Programs Subcommittee of the Board of Regents and the Lister Hill Center Subcommittee on the preceding day, October 17, 1984, from 2:00 to 4:00 p.m., in the 5th-floor Conference Room, and from 2:00 to 5:00 p.m., in the 7th-floor Conference Room of the Lister Hill Center Building, respectively. The meeting of the Board will be open to the public from 9:00 a.m. to 3:30 p.m. on October 18 and from 9:00 a.m. to 11:30 a.m. on October 19 for administrative reports and program discussions. The entire meeting of the Lister Hill Center Subcommittee will be open to the public for a discussion of goals and objectives of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on October 17 will be closed to the public, and the regular Board meeting on October 19 will be closed from 11:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: September 12, 1984.

**Betty J. Beveridge,**

*NIH Committee Management Officer.*

[FR Doc. 84-25083 Filed 9-20-84; 8:45 am]

BILLING CODE 4140-01-M

## Review of Grant Applications and Contract Proposals; Meetings

Pursuant to Pub. L 92–463, notice is hereby given for meetings of several committees of the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will furnish summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Biometry and Epidemiology Contract Review Committee.

Dates: October 25–26, 1984.

Place: National Institutes of Health, Building 31A, Conference Room 4, 9000 Rockville Pike, Bethesda, MD 20205.

Times: Open: October 25, 8:30 a.m.—9:00 a.m.

Agenda: A review of administrative details.

Closed: October 25, 9:00 a.m.—recess. October 26, 8:30 a.m.—adjournment.

Closure Reason: To review contract proposals.

Executive Secretary: Dr. Wilna Woods, Westwood Building, Room 807, National Institutes of Health, Bethesda, MD 20205. Phone: 301/496–7153.

Name of Committee: Clinical Cancer Program Project Review Committee.

Dates: November 29–30, 1984.

Place: Biscayne Bay Marriott Hotel and Marina, 1600 North Bayshore Boulevard, Miami, Florida 33132.

Times: Open: November 29, 8:30 a.m.—10:00 a.m.

Agenda: Reports by the Director, Division of Extramural Activities; the Chief, Grants Review Branch; the Executive Secretary; and the Chairman; and a review of administrative details.

Closed: November 29, 10:00 a.m.—recess. November 30, 8:30 a.m.—adjournment.

Closure Reason: To review grant applications.

Executive Secretary: Dr. M. Wayne Hurst, Westwood Building, Room 848, National Institutes of Health, Bethesda, MD 20205. Phone: 301/496–7924.

(Catalog of Federal Domestic Assistance Number 13.397, project grants in cancer center support, National Institutes of health)

Dated: September 12, 1984.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 84–25086 Filed 9–20–84; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Auburn Dam Task Force Committee; Public Hearing

Notice is hereby given in accordance with the Federal Advisory Committee Act, as amended, that a meeting of the Auburn Dam Task Force Committee will be held at 3 p.m., Thursday, October 4, 1984, in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California. The purpose of this meeting is to present an overview of the project and receive public comments.

The meeting will be open to the public.

Further information concerning this meeting may be obtained from Richard Atwater, Special Assistant to the Commissioner, Bureau of Reclamation, 18th and C Streets, NW., Washington, D.C. 20240 (202–343–4115).

Dated: September 14, 1984.

**Jed Christensen,**

*Deputy Assistant Secretary for Water and Science.*

[FR Doc. 84–25268 Filed 9–20–84; 8:45 am]

BILLING CODE 4310–09–M

### Fish and Wildlife Service

### Receipt of Application for Permit; Cincinnati Zoo

Notice is hereby given that an applicant has applied in due form for a permit to import polar bears (*Ursus maritimus*) as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations governing the taking and importing of Marine Mammals (50 CFR Part 18).

1. Applicant: Cincinnati Zoo, 3400 Vine Street, Cincinnati, OH 45220.

2. Type of Permit: Public display and propagation.

3. Name and Number of Animals; polar bear (*Ursus maritimus*) 1.1.

4. Type of Activity: Import.

5. Location of Activity: Import from the Vienna Zoo, Austria.

6. Period of Activity: 1 year.

The purpose of this application is to import for public display and enhancement of propagation and survival.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned APP# 0917BM. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hering on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statement and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in room 601, 1000 N. Glebe Road, Arlington, VA.

Dated: September 19, 1984.

**R.K. Robinson,**

*Chief, Permit Branch, Federal Wildlife Permit Office.*

[FR Doc. 84–25094 Filed 9–20–84; 8:45 am]

BILLING CODE 4310–55–M

### Receipt of Application for Permit; Torrence M. Hunt, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Torrence M. Hunt, Pittsburgh, PA; APP No. 5611BM

The applicant requests a permit to import one male bontebok (*Damaliscus d. dorcas*) trophy culled from the ranch of M. J. D'Alton, Bredasdorp, South Africa for enhancement of propagation and survival of the herd.

Applicant: Bertha Daharsh, Gothenburg, NE; APP No. 5480BM

The applicant request a permit to import 10–12 specimens of the following pheasants: bar-tailed (*Syrmaticus humiae*), Elliot's (*S. elliotl*) and brown-eared (*Crossoptilon crossoptilon*) from Marsh Barton, Lakefield, Ontario, Canada, for enhancement of propagation and survival.

Applicant: Los Angeles Zoo, Los Angeles, CA; APP No. 4558BM

The applicant requests a permit to import nine radiated tortoises [*Geochelone* (=*Testudo*)*radiata*] from Jersey Wildlife Preservation Trust, Channel Islands, Great Britain for enhancement of propagation.

Applicant: Hubert Wells Thousand Oaks, CA; APP No. 4577BM

The applicant requests a permit to export 14 captive-bred wolves [*Canis lupus*) to Canada to film a movie, "Clan of the Cave Bear" for the purpose of conservation education.

Applicant: William Gruenerwald, Colorado Springs, CO: APP No. 5651BM

The applicant requests a permit to import one captive-bred African wild ass (*Equus africanus somalicus*) from Stuttgart, West Germany for enhancement of propagation and survival.

Applicant: New England Regional Primate Research Center, Harvard Medical School, Southborough, MA; APP No. 5703BM

The applicant requests a permit to import ten wild caught cotton-top

tamarins (*Saguinus oedipus*) from the University of Bristol Medical School, Bristol, England for scientific research and enhancement of propagation and survival.

Applicant: Puerto Rico Department of Natural Resources, Pta. de Tierra, PR; APP No. 9715BL

The applicant requests an amendment to his application for a permit to take (capture, tag and release) specimens of the following sea turtles: Kemp's (=Atlantic) Ridley (*Lepidochelys kempii*), leatherback (*Dermochelys corriacea*), loggerhead (*Caretta carretta*), green (*Chelonia mydas*) and Olive (=Pacific) Ridley (*Lepidochelys olivacea*) for scientific research and enhancement of propagation and survival.

Applicant: Department of Natural Resources, Division of Sanctuaries and Wildlife Refuges, San Juan, PR; APP No. 9716BL

The applicant requests a permit to take (capture, band, release) Mona Island yellow-shouldered black birds (*Agelaius xanthamos monensis*) for scientific research and enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 601, 1000 North Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT 2/APP number when submitting comments.

Dated: September 17, 1984.

R.K. Robinson,

*Chief, Branch of Permits, Federal Wildlife Permit Office.*

[FR Doc. 84-25095 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-55-M

## Receipt of Application for Permit; Knoxville Zoological Park

Notice is hereby given that an applicant has applied in due form for a permit to import a polar bear as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations governing the taking and importing of Marine Mammals (50 CFR Part 18).

1. Applicant: Knoxville Zoological Park, P.O. Box 6040, Knoxville, TN 37914.

2. Type of Permit: Import.

3. Name and Number of Animals: Polar bear (*Ursus Maritimus*)-1-.

4. Type of Activity: Public display.

5. Location of Activity: Knoxville Zoological Park.

6. Period of Activity: One year.

The purpose of this application is to import one captive-born male polar bear cub from the Moscow Zoo, USSR for public display and captive propagation.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned APP# 3479BM. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statement and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in room 601, 1000 N. Glebe Road, Arlington, VA.

Dated: September 18, 1984.

**R.K. Robinson,**

*Chief, Permit Branch, Federal Wildlife Permit Office.*

[FR Doc. 84-25093 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-55-M

## Bureau of Land Management

## Intent To Hold Scoping Meetings

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to hold scoping meetings and extension of comment period.

**SUMMARY:** This notice announces the intent of the Department of the Interior to hold additional scoping meetings for the preparation of the supplement to the *Federal Coal Management Program Environmental Statement* (EIS). The notice of intent to prepare this supplement appeared in the **Federal Register** (Vol. 49, page 34976) on September 4, 1984, under the heading of the Department of the Interior, Office of the Secretary. Scoping meetings will be held on September 25, 1984, at the Clarion Hotel, 3203 Quebec Street, Denver, Colorado, and in Room 7000, Main Interior Building, 18th and C Streets, NW., Washington, DC, on October 2, 1984. This notice announces expansion of the scoping meeting sites to include Santa Fe, New Mexico and Billings, Montana on October 9, 1984, and Salt Lake City, Utah on October 10, 1984.

**DATES:** October 9, 1984, (Santa Fe, New Mexico and Billings, Montana) at 1:00 p.m. and October 10, 1984, (Salt Lake City, Utah) at 9:00 a.m. and 1:00 p.m. The afternoon sessions will continue until all persons who wish to speak have had an opportunity to do so.

**ADDRESS:** The meetings will be held at the following locations:

Santa Fe, New Mexico
Sheraton Inn, 750 North Saint Francis Drive

Billings, Montana
Bureau of Land Management, Granite Tower Building, 222 North 32nd Street, 6th floor conference room

Salt Lake City, Utah
Bureau of Land Management, University Club Building, 136 East South Temple, 13th floor conference room

**FOR FURTHER INFORMATION CONTACT:** Andrew Strasfogel, (202) 343-4537.

**SUPPLEMENTARY INFORMATION:** On August 30, 1984, the Department of the Interior announced its intent to prepare a supplement to the *Federal Coal Management Program Environmental Statement* (April 1979). The supplement will analyze as its proposed action the potential impacts on the human environment of continuing the coal program identified in the 1979 EIS as the Preferred Program and revised to reflect rule changes promulgated in 1982 and 1983, changes in policies and procedures resulting from recent program reviews, and current projections of national and regional needs for coal. Proposed alternatives are emergency and preference right leasing only, leasing by application, and no Federal leasing. The draft is expected to be available for public comment on February 1985.

Preliminary concerns identified by the Department to date include the demand and production projections and their role in the coal program, the role of preference right lease applications in the program, and enviromental protection provisions of the preferred program.

Public involvement is invited to determine the scope and significant issues to be analyzed in this

supplement. Public participation has been invited in requests for written comments on the range of issues to be addressed and the significant issues relating to the proposed action. The comment period, originally scheduled to end October 4, 1984, is hereby extended to October 12, 1984. Comments are to be addressed to Director (650), Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240. Comments may be hand-delivered to Room 3610 in the Main Interior Building at that address.

The Department is soliciting oral comments through scoping meetings to be held in Denver, Colorado, on September 25, 1984, and in Washington, DC, on October 2, 1984. In additon to these meetings, the Department has also decided to hold scoping meetings at three additional locations at the places and times noted above. Members of the public, special interest groups, State and local government representatives, and representatives of other Federal agencies are invited.

The following procedures are requested:

Individuals who wish to speak are to register in person prior to the start of the meeting at which they wish to speak.

Each person may speak only once.

Speakers are to limit comments to 10 minutes.

Speakers are asked to provide a written text of their comments, either at the meetings or by October 12, 1984.

The order of speakers will be selected at random from the register.

Dated: September 20, 1984.

**Robert F. Burford,**

*Director, Bureau of Land Management.*

[FR Doc. 84-25319 Filed 9-20-84; 9:54 am]

BILLING CODE 4310-84-M

## Federal Coal Management Program Environmental Statement; Intent To Hold Scoping Meetings

**AGENCY:** Interior.

**ACTION:** Notice of intent to hold scoping meetings.

**SUMMARY:** This notice announces the intent of the Department of the Interior to hold additional scoping meetings for the preparation of the supplement to the *Federal Coal Management Program Environmental Statement* (EIS). The notice of intent to prepare this supplement appeared in the **Federal Register** (Vol. 49, page 34976) on September 4, 1984, under the heading of the Department of the Interior, Office of the Secretary. These scoping meetings will be held in Washington, D.C., on October 2, 1984. The notice for the scoping meetings to be held on September 25, 1984, in Denver, Colorado, was printed in the **Federal Register** (Vol. 49, page 36021) on September 13, 1984.

**DATES:** October 2, 1984, at 9:00 a.m. and 1:00 p.m. The afternoon session will continue until all persons who wish to speak have had an opportunity to do so.

**ADDRESS:** The meetings will be held in Room 7000, Main Interior building, 18th and C Streets NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Andrew Strasfogel, (202) 343-4537.

**SUPPLEMENTAL INFORMATION:** On August 30, 1984, the Department of the Interior annunced its intent to prepare a supplement to the *Federal Coal Management Program Environmental Statement* (April 1979). The supplement will analyze as its proposed action the potential impacts on the human environment of continuing the coal program identified in the 1979 EIS as the Preferred Program and revised to reflect rule changes promulgated in 1982 and 1983, changes in policies and procedures resulting from recent program reviews, and current projections of national and regional needs for coal. Proposed alternatives are emergency and preference right leasing only, leasing by application, and no Federal leasing. The draft is expected to be available for public comment in February 1985.

Preliminary concerns identified by the Department to date include the demand and production projections and their role in the coal program, the role of preference right lease applications in the program, and environmental protection provisions of the preferred program.

Public involvement is invited to determine the scope and significant issues to be analyzed in this supplement. Public participation has been invited in requests for written comments on the range of issues to be addressed and the significant issues relating to the proposed action. These comments were invited by October 4, 1984, and are to be addressed to Director (650), Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240. Comments may be hand-delivered to Room 3610 in the Main Interior Building at that address.

The Department is also soliciting oral comments through scoping meetings to be held in Denver, Colorado, on September 25, 1984. In addition, the Department has decided, in response to extensive requests, to hold scoping meetings in Washington, D.C., at the place and time noted above. Members of the public, special interest groups, State and local government representatives, and representatives of other Federal agencies are invited.

The following procedures are requested:

Individuals who wish to speak are to register in person prior to the start of the meeting at which they wish to speak.

Each person may speak only once.

Speakers are to limit comments to 10 minutes.

Speakers are asked to provide a written text of their comments, either at the meeting or by October 4, 1984.

The order of speakers will be selected at random from the register.

Dated: September 14, 1984.

**Robert F. Burford,**

*Director, Bureau of Land Management.*

[FR Doc. 84-25037 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-84-M

[S 811, S 1201, and S 3733A]

## California; Termination of Classifications for Multiple Use Management

September 14, 1984.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action terminates in their entirety three classifications of public land for multiple use management, affecting a total of approxiamtely 73,422 acres located in areas of the Ukiah District of the Bureau of Land Management.

**FOR FURTHER INFORMATION CONTACT:** Dianna Storey, California State Office, (916) 484-4431.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated January 3, 1983, the Bureau of Land Management's classifications for multiple use management, the descriptions of which are contained in the following previously published **Federal Register** notices, are hereby terminated in their entirety:

**Ukiah District**

*S 811* dated March 29, 1968.
33 FR 5371 ((Apr. 4, 1968) FR Doc. 68-4000).

The lands described in the above-referenced document aggregate approximately 30,133 acres in Lake, Colusa, Yolo, and Napa Counties, lying south of the Mendicino National Forest and north of Lake Berryessa in the Knoxville, Rocky/Cache Creek and Indian Valley areas.

*S 1201* dated March 29, 1968.
33 FR 5371 ((Apr. 4, 1968) FR Doc. 68-4001).

The lands described in the above-referenced document aggregate approximately 37,685 acres in Lake, Napa, Yolo, Solano, Sonoma, and Mendicino Counties in the Geysers Geothermal Area around Mount St. Helena and the Calistoga Area, and lands aroung Lake Berryessa, including Cedar Roughs and Berryessa Peak.

*S 3733 A* dated October 30, 1970.
35 FR 17064 ((Nov. 5, 1970) FR Doc. 70–14842).

The lands described in the above-referenced document aggregate approximately 5,604 acres of scattered tracts located throughout Napa, Yolo, Solano, Lake and Colusa Counties.

1. All lands are located in the Mount Diablo Base Meridian. Specific land description of each classification is available for inspection at the California State Office in Sacramento and Ukiah District Office of the Bureau of Land Management.

2. The classification orders segregated the public lands from appropriation under the agricultural land laws (43 U.S.C., Chs. 7 and 9; 25 U.S.C. sec. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171), including approximately 1,415 acres from mining. A modification, published in the **Federal Register** on March 11, 1981, Vol. 46, No. 47, at pages 16137 and 16138, subsequently terminated the aforementioned mineral entry segregation (affecting S 811). The orders, otherwise, did not segregate from mining and mineral leasing.

3. At 10:00 a.m. on October 29, 1984, the segregative effect imposed by the classifications will terminate.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

**Ed Hastey,**

*State Director.*

[FR Doc. 84–25071 Filed 9–20–84; 8:45 am]

BILLING CODE 4310–40–M

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[R 573, R 598, S 965, S 2404, and S 3579]

## California; Partial Termination of Classifications for Multiple Use Management

September 14, 1984.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action terminates five classifications of public land for multiple use management as they affect approximately 232,920 acres in areas of the Bakersfield and Carson City Districts of the Bureau of Land Management.

**FOR FURTHER INFORMATION CONTACT:** Dianna Storey, California State Office, (916) 484–4431.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated January 3, 1983, the Bureau of Land Management's classifications for multiple use management, the descriptions of which are contained in the following previously published **Federal Register** notices, are hereby terminated in their entirety *except* as otherwise indicated below.

*R 573 and R 598* dated March 19, 1968.
33 FR 4997 ((Mar. 26, 1968) FR Doc. 68–3579).

The lands described in the above-referenced document aggregate approximately 24,821.68 acres in Kern County within the South Sierra Foothills Planning Area of the Caliente Resource Area (over a broad area near Lake Isabella).

The classification will remain in effect as to the following described land:

**Mount Diablo Meridian**

T. 26 S., R. 32 E.,
Sec. 25, SE¼;
Sec. 36, N½NE¼ and SE¼.

Containing 400 acres of public land.

*S. 965* dated January 10, 1968.

33 FR 704 ((Jan. 19, 1968) FR Doc. 68–664), as amended on July 16, 1970, by **Federal Register** publication of July 23, 1970, Vol. 35, No. 142 at page 11823; September 14, 1970, by **Federal Register** publication of September 22, 1970, Vol. 35., No. 184, at page 14732, as corrected; November 20, 1970, by **Federal Register** publication of November 26, 1970, Vol. 35, No. 230, at page 18130.

The lands described in the above-referenced document aggregate approximately 123,963 acres in San Benito, Fresno, Monterey, Madera, and Merced Counties.

The classification will remain in effect as to the following described land:

**Mount Diablo Meridian**

All public lands in:
T. 9 S., R. 22 E.,
Secs. 26, 27, 33, 34, and 35.
T. 10 S., R. 22 E.,
Secs. 1, 2, 3, 4, 9, 10, 11, and 15.
T. 18 S., R. 11 E.,
Sec. 1, S½S½SW¼;
Sec. 10, S½SE¼SE¼;
Sec. 11, lots 3, 4, NE¼SW¼, S½SW¼, and NW¼SE¼;
Sec. 12, lots 1, 2, 3, and NE¼;
Sec. 14, N½NW¼NW¼;
Sec. 15, N½NE¼ and E½NE¼NW¼.
T. 18, S., R. 12 E.,
Sec. 4, NW¼SW¼, S½SW¼, and SW¼SE¼;
Sec. 5, lots 5 and 12;
Sec. 7, lot 2, S½SW¼NE¼, SE¼NE¼, SE¼NW¼, N½NE¼SW¼, and N½N½SE¼;
Sec. 8, lots 5, 7, 9, and N½NW¼SW¼;
Sec. 9, lots 1 to 11, inclusive, and lots 14 to 17, inclusive;
Sec. 10, lots 4, 5, 6, 7, S½SW¼NW¼NW¼, SW¼NW¼, S½NE¼SE¼NW¼, NW¼NW¼SE¼NW¼, S½NW¼ SE¼NW¼, S½SE¼NW¼, S½SW¼, and SE¼SE¼;
Sec. 14, lots 2, 3, and NW¼.

Containing approximately 8,619 acres in Fresno, Merced, and San Benito Counties.

*S 2404* dated March 27, 1969.
34 FR 6124 ((Apr. 4, 1969) FR Doc. 69–3926).

The lands described in the above-referenced document aggregate approximately 38,815 acres in Alpine and Mono Counties.

The classification will remain in effect as to the following described land:

**Mount Diablo Meridian**

All public lands in:
T. 10 N., R. 20 E.,
Sec. 3, lots 2 and 3, W½ lot 9, W½E½ lot 9, lots 10 to 14, inclusive, W½SW¼, and W½E½SW¼;
Sec. 4, lots 5 to 8, inclusive, E½ lot 9, E½ lot 10, E½ lot 11, lots 17 and 18, and S½SE¼;
Sec. 8, NE diagonal ½ of SE¼;
Sec. 9, SW¼;
Sec. 10, E½SE¼SE¼;
Sec. 11, W½NW¼NE¼, NE¼NW¼, E½NW¼NW¼, E½SW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, E½NW¼SW¼, SW¼SW¼, and W½SE¼SW¼;
Sec. 14, W½NW¼NW¼;
Sec. 15, NE¼NE¼ and E½NE¼SW¼;
Sec. 22, SW¼SE¼;
Sec. 26, NW¼NW¼;
Sec. 27, N½NE¼.
T. 11 N., R. 20 E.,
Sec. 32, W½SW¼.

Aggregating approximately 2,120 acres in Alpine County.

*S 3579* dated October 15, 1970.
35 FR 6598 ((Oct. 24, 1970) FR Doc. 70–14334).

The lands described in the above-referenced document aggregate approximately 56,619 acres in Mono County.

The classification will remain in effect as to the following described land:

**Mount Diablo Meridian**

T. 4 N., R. 25 E.,
Sec. 26, SW¼SW¼;
Sec. 27, SE¼SE¼;
Sec. 34, NE¼NE¼;
Sec. 35, NW¼NW¼.

Aggregating 160 acres of public land.

1. Land description of the terminated portions of the classifications is

available for inspection at the California State Office in Sacramento and respective District Offices.

2. The above-referenced classification orders segregated the public lands from appropriation under the agricultural land laws (43 U.S.C., Chs. 7 and 9; 25 U.S.C. sec. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171), including approximately 7,966 acres from mining. The orders, otherwise, did not segregate from mining and mineral leasing.

3. Except for the lands that remain classified, as described above, at 10:00 a.m. on October 29, 1984, the segregative effect imposed by the above-referenced classification orders will terminate.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

**Ed Hastey,**

*State Director.*

[FR Doc. 84–25070 Filed 9–20–84; 8:45 am]

BILLING CODE 4310–40–M

## Preparation of a Resource Management Plan/Environmental Impact Statement for Box Elder County, UT

September 14, 1984.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management (BLM) Salt Lake District, intends to prepare a Resource Management Plan/ Environmental Impact Statement for Box Elder County in northern Utah. Of the county's 3,580,160 acres, there are 1,043,926 acres of BLM lands, 172,413 acres of State lands, 1,971,245 acres of private lands, and 392,576 acres of other Federal lands. The RMP/EIS will analyze planning alternatives for the public lands in Box Elder County.

Three issues have been identified and will be addressed in the RMP/EIS along with others that may be identified. The issues are: (1) Land-ownership/use conflicts; (2) livestock grazing/wildlife habitat/watershed; (3) mineral development.

The disciplines to be represented on the interdisciplinary team are range conservationist, wildlife biologist, recreation planner, realty specialist, geologist, and watershed specialist.

Public participation activities will include requests for written comments, a public hearing, review of the preliminary RMP/draft EIS and a 30 day protest period after the proposed RMP/final EIS is released. The dates, times and locations of public participation activities will be announced through the media and mailings to interested parties prior to each activity.

**FOR FURTHER INFORMATION CONTACT:** Dennis Oaks, Team Leader for the Box Elder RMP/EIS, Salt Lake District Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

Planning criteria and other documents relevant to the planning and EIS process can be examined at the Salt Lake District during regular business hours from 7:30 a.m. to 4 p.m., Monday through Friday.

**Frank W. Snell,**

*District Manager.*

[FR Doc. 84–25067 Filed 9–20–84; 8:45 am]

BILLING CODE 4310–DQ–M

## Revocation of the Beckwourth Peak Known Geothermal Resources Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Revocation of the Beckwourth Peak Known Geothermal Resources Area.

**SUMMARY:** Pursuant to the authority vested in the Secretary of the Interior by Section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and degelations of authority in 220 Departmental Manual 4.1 H, and Secretarial Orders 3071 and 3087, the following described lands are hereby revoked as the Beckwourth Peak Known Geothermal Resources Area, effective August 17, 1984:

(5) California

**BECKWOURTH PEAK KNOWN GEOTHERMAL RESOURCES AREA**

**Mount Diablo Meridian, California**

T. 22 N., R. 14 E.,
Sec. 3, 4, 9, inclusive.
T. 23 N., R. 14 E.,
Sec. 34, inclusive.

The revoked area described contains 2,558 acres, more or less

The subject lands will be made available to the first qualified applicant under regulations appearing in 43 CFR Part 3210 beginning with the first calendar month following the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, California State Office, Division of Mineral Resources, 2800 Cottage Way, Sacramento, California 95825, (916) 484–4515.

Dated: September 13, 1984.

**Robert M. Anderson,**

*Deputy State Director, Mineral Resources.*

[FR Doc. 84–25069 Filed 9–20–84; 8:45 am]

BILLING CODE 4113–1291–M

**[Serial No. C–38485]**

## Realty Action; Determination of Land Suitable for Exchange

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, Determination of land suitable for exchange under the authority of sections 205, 206, 302(b), and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732, and 1740).

**SUMMARY:** Approximately 355 acres of public land under the jurisdiction of the Bureau of Land Management located near Burns, Colorado, in Eagle County have been determined suitable for exchange. The determination of suitability has abeen made in response to a Bureau-benefiting exchange proposal received from Mr. John Benton on behalf of Benton Land and Livestock Company. In the proposal, Mr. Benton has offered to exchange approximately 340 acres located near Burns, Colorado, in Eagle County. The exchange proposal has been made to facilitate the consolidation of land holdings and thus increase managerial efficiency and the public values of natural resources found on the land being considered for exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The following is a list of public land determined suitable for exchange.

OFFERED PRIVATE LAND

| Parcel and legal description | Acres |
|---|---|
| Sixth Principal Meridian: | |
| A—T. 2 S., R. 84 W., sec. 31, W1/2SW1/4, S1/2NW1/4 | 160 |
| B—T. 2 S., R. 85 W., sec. 24, NW1/4SE1/4; sec. 13, SE1/4SE1/4; sec. 24, E1/2 NE1/4 | 160 |
| C—T. 2 S., R. 85 W., sec. 4, lots 20 and 22 of tract 41 | 20.27 |
| Total Acres Offered Private Land | 340.27 |

SELECTED BLM LAND

| Parcel, and legal description | Acres |
|---|---|
| Sixth Principal Meridian: | |
| 1—T. 2 S., R. 85W., Sec. 9, lots 1 and 4 | 55.12 |
| 2—T. 2 S., R. 85 W., sec. 7, lot 20; sec. 8 lots 1, 2, and 3; sec. 17, lots 1, 2, and 3 | 73.62 |

SELECTED BLM LAND—Continued

| Parcel, and legal description | Acres |
|---|---|
| 3—T. 2 S., R. 84 W., sec. 17, lot 4, SW1/4 NE1/4 | 50.68 |
| 4—T. 3 S., R. 85 W., sec. 1, lots 5, 6, 7, 8, and 9 | 130.28 |
| 5—T. 3 S., R. 85 W., sec. 12, SE1/4NW1/4 | 40.00 |
| 6—T. 2 S., R. 85 W., sec. 13, lot 11 | 5.47 |
| Total Acres BLM Selected Land | 355.17 |

**Terms and Conditions**

The following reservations for existing uses and users will be made in the patent issued for public lands.

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1980 (43 U.S.C. 945).

2. Oil and Gas leases: C–38980, C–20818, C–36936, C–33608, and C–34926

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered at filed and shall be returned to the applicant. This segregation will expire two years form the date of publication of this notice.

Those non-Federal lands described above subject to prior Federal reserved minerals are hereby segregated to the extent that such interests will not be subject to appropriation under the mining laws until a notice pursuant to 43 CFR 2200.3(a) is issued.

**Further Information and Public Comment**

Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, Glenwood Springs, Colorado. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue his final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Dated: August 29, 1984.

**Dick Freel,**

*Associate District Manager, Grand Junction Office.*

[FR Doc. 84–25190 Filed 9–20–84; 8:45 am]

BILLING CODE 4310–58–M

## Salt Lake District; District Multiple Use Advisory Council Meeting

September 14, 1984.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of District Multiple Use Advisory Council Meeting.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Salt Lake District Multiple Use Advisory Council will be held on October 18, 1984.

The meeting will consist of a tour of the public lands in Tooele County and will begin at 8:30 a.m. at the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119. It is open to the public.

Anyone wishing to attend should contact Scott Brayton at (801) 524–5348 by October 14, 1984 so adequate transportation arrangements can be made.

**Frank W. Snell,**

*District Manager.*

[FR Doc. 84–25040 Filed 9–20–84; 8:45 am]

BILLING CODE 4310–DQ–M

[W–86214]

## Wyoming; Realty Action Exchange of Public Land in Cherry County, Nebraska for Private Lands in Cherry County, NE

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, W–86214.

**SUMMARY:** The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

**Sixth Principal Meridian**

T. 33 N., R. 33N., R. 32 W.,
Sec. 31, Lots 1, 3, 4.
Total: 118.83 Acres.

Only the surface and not the mineral estate will be exchanged on the public land.

In exchange for these lands, the United States will acquire from Marvin C. Westcott, West Speer Ranch, P.O. Box 530, Holdrege, NE 68949 the surface estate of the following described lands:

**Sixth Principal Meridian**

T. 31 N., R. 31 W.,
Sec. 6, Lots 5, 6; E1/2 SW1/4.
Total: 109.36 Acres.

The purpose of the exchange is to consolidate the surface estate of both the Federal Government and Marvin C. Westcott, and eliminate private inholdings within the Samuel R. Mckelvie National Forest. The exchange is consistent with the Bureau's planning for the land involved. The public interest will be served by completing the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money up to 25 percent of the total value will be used to equalize the values upon completion of the final appraisal of the lands.

**Exchange Terms and Conditions**

Any patent issued will be subject to all valid existing rights. Patent Reservations include:

(1) A reservation for ditches and canals by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 USC 945).

(2) All minerals shall be reserved to the United States, together with the right to prospect for, mine or remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document is available for review at the Newcastle BLM Office, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701 (phone (307) 746–4453).

(3) Any patent issued will be subject to oil and gas lease W–63962.

Publication of this Notice in the **Federal Register** segregates the public lands described above from appropriation under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the Notice segregates the lands from the use applied for in the application. The segregation effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such lands upon publication in the **Federal Register** of a termination of the segregation or two (2) years from the date of publication, whichever occurs first.

**Date**

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Casper District Office, 951 Rancho Road, Casper Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and will issue a final determination.

Dated: September 14, 1984.

**Leslie A. Olver,**

*Acting District Manager.*

[FR Doc. 84-25074 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-22-M

## Minerals Management Service

### Development Operations Coordination Document; Tenneco Oil Exploration and Production

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4822, Block 274, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on September 14, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 14, 1984.

**John L. Rankin,**

*Regional Manager, Gulf of Mexico OCS Region.*

[FR Doc. 84-25066 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

**[Decision-Notice OP2 MCF-15925; Vol. OP2-456]**

### Motor Carriers; Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

*Amendments to the request for authority will not be accepted after the date of this publication.* However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

*We find,* with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: September 14, 1984.

By the Commission.

**James H. Bayne,**

*Secretary.*

**Volume OP2–456**

MC–F–15925 BLUE & WHITE LINES, INC. (BLUE) (516 West Plank Road, Altoona, PA 16602)—CONTROL—LINCOLN COACH LINES (LCL) and LINCOLN COACH TRAVEL, INC. (LCT) (12681 Route 30 West, Irwin, PA 15642–0369) Filed September 12, 1984. Representative: S. Berne Smith, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108–1166. Blue, a motor common carrier, seeks authority to acquire control of LCL and LCT through the purchase of the issued and outstanding capital stock of the two motor carriers. Dennis R. Long, who controls Blue through ownership of a majority of its issued and outstanding capital stock, seeks approval to acquire control of LCL and LCT through the transaction. LCL holds authority under No. MC–120083 and subs thereunder to transport passengers over regular routes between various points in Pennsylvania, and passengers over irregular routes, in charter and special operations, between points in the United States. LCT holds authority under No. MC–157167 (Sub–No. 1) to transport passengers over irregular routes, in charter and special operations, between points in the United States.

Dennis R. Long controls Blue and Blue & White Lines of Florida, Inc., both of which operate as motor common and contract carriers of passengers, in interstate or foreign commerce, under authorities issued in No. MC–46614 and subs and No. MC–158455, respectively.

Note.—This notice does not purport to be a complete description of the operating rights of the carriers involved.

[FR Doc. 84–25096 Filed 9–20–84; 8:45 am]

BILLING CODE 7035–01–M

## Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Brooks Associates, Inc., a Pennsylvania corporation, 3445 S. Front Street, Philadelphia, PA 19148.

2. Wholly-owned subsidiaries which will participate in the operations and States of incorporation:

(i) Brooks Provisions, Inc., a Pennsylvania corporation

(ii) DeBro Transporation Co., Inc., a New Jersey corporation.

1. Parent company and address of principal office: Foodland Distributors, 12701 Middlebelt Road, Livonia, MI 48150.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: (i) Foodland Transportation, Inc.; Michigan.

**James H. Bayne,**

*Secretary.*

[FR Doc. 84–25097 Filed 9–20–84; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Consent Decree Lodging Pursuant to Clean Air Act; Armstrong World Industries, Inc.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *Armstrong World Industries, Inc.* (Armstrong) Civil Action No. 84–1554 was lodged on September 4, 1984, with the United States District Court for the Eastern District of Pennsylvania.

This case arises under the Clean Air Act wherein the United States filed the complaint to enjoin Armstrong from operating certain sources, i.e., surface coating processes and graphic arts systems, that emit volatile organic compounds in violation of the Clean Air Act of the Pennsylvania State Implementation Plan as found at 25 Pa. Code sections 129.52(b) and 129.66(a). The proposed decree sets forth schedules whereby Armstrong will install and equip the appropriate sources with pollution control equipment. The decree also provides for the replacement of non complying coatings with complying coatings as an alternative means of compliance.

Please note that Appendix A to the Proposed Consent Decree was ordered filed under seal by the Court on September 4, 1984. As such, copies of the proposed decree will not contain Appendix A.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Armstrong World Industries, Inc.*, D.J. Ref. 90–5–2–652.

The proposed decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, attention: Margaret L. Hutchinson, Esq., 3310 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 and at the Region III Office of the Environmental Protection Agency, attention: James Baker, Esq., 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1714, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, include a check in the amount of $2.60 ($0.10) per page reproduction charge payable to the Treasurer of the United States.

**F. Henry Habicht, II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 84–25088 Filed 9–20–84; 8:45 am]

BILLING CODE 4410–01–M

### First Modification To Consent Decree Pursuant to the Clean Water Act; City of Sandpoint and the State of Idaho

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 22, 1984 a proposed First Modification to the Consent Decree entered on November 12, 1981, in *United States* v. *City of Sandpoint and The State of Idaho*, Civil Action No. 78–2095 was lodged with the United States District Court for the District of Idaho. The November 12, 1981, Consent Decree required the City of Sandpoint to, *inter alia*, employ 5 full-time personnel to operate the municipal sewage plant and pump stations, insure that at least one of the five operators was certified by the State of Idaho as a "level four" operator, perform specific plant maintenance at intervals specified in Appendix A to the Decree, comply with interim effluent limitations until December 31, 1984, at which time the City would be required to comply with more stringent limitations contained in its NPDES permit, and complete construction of improvements to the City's treatment plant by September 30 1984. The proposed First Modification to the Consent Decree reduces the number of plant operators required from five to four, defers the requirement for a "level four" operator until March 15, 1985 the date upon which the upgraded treatment facilities are expected to be in full

operation, revises maintenance requirements, extends the date for completion of the upgraded treatment facilities to November 30, 1984, extends the date for final compliance with the City's NPDES permit until March 15, 1985, and provides for stipulated penalties in varying amounts for any failures by the City to comply with the provisions of the Decree.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed First Modification to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *The City of Sandpoint and The State of Idaho*, DJ Reference 90-5-1-1-1114A.

The proposed First Modification to the Consent Decree may be examined at the Office of the United States Attorney, Federal Building, 550 West Fort Street, Boise, Idaho, and at the Region X Office of the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington. Copies of the proposed First Modification to the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, 9th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed First Modification to the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *City of Sandpoint and The State of Idaho*, DJ Reference 90-5-1-1-1114A, and include a check in the amount of $2.80 (0.10 per page reproduction charge) payable to the United States Treasury.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 84-25089 Filed 9-20-84; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under section 1-5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register** February 27, 1980 (45 FR 12769), will meet on October 10, 1984, starting at 10:00 a.m. in Room C2318, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. The meeting will be open to the public.

The agenda provides for:

I. Call to Order
II. Approval of Minutes of last meeting
III. Election of Vice Chairman
IV. Announcements
  A. Reappointments
  B. 39th Annual Federal Safety and Health Conference
V. Medical Records Retention system
VI. Reports:
  A. Interdisciplinary Committee on Fleet Safety
  B. Interdisciplinary Committee on Hazard Abatement
  C. Interdisciplinary Committee on Education
  D. President's 3% Reduction Goal
VII. Proposed change to FACOSH's Articles of Organization
VIII. New Business
IX. Adjournment

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business October 5, 1984, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business October 5, 1984. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, 200 Constitution Avenue, NW., Room N3613, Washington, D.C. 20210, telephone (202) 523-9329.

Signed at Washington, D.C. this 18 day of September 1984.

**Robert A. Rowland,**

*Assistant Secretary.*

[FR Doc. 84-25207 Filed 9-20-84; 8:45 am]

### Office of Pension and Welfare Benefit Programs

**[Prohibited Transaction Exemption 84-138; Exemption Application No. D-5043 et al.]**

### Grant of Individual Exemptions; Randall W. Smith, M.D., A.P.C., et al.

**AGENCY:** Pension and Welfare Benefit Programs, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**Randall W. Smith, M.D., A.P.C., Defined Benefit Pension Plan (the Plan) Located in San Diego, California**

[Prohibited Transaction Exemption 84–138; Exemption Application No. D–5043]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed lease (the Lease) by the Plan of a six acre parcel of unimproved real property (the Property) to Randall W. Smith, M.D. and Florence E. Smith (the Smiths), disqualified persons with respect to the Plan; (2) the possible purchase by the Plan of the Smiths' leasehold interest in the Property pursuant to the terms of the Lease; and (3) a guarantee by the Smiths to the Plan with respect to the future disposition of the Property by the Plan, provided that the terms of such transactions are at least as favorable to the Plan as those which the Plan could receive in similar transactions with an unrelated party.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 13, 1984 at 49 FR 32278.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

**MJM Investments, Inc. Money Purchase Pension Plan and Defined Benefit Trust (the Plans) Located in Los Altos, California**

[Prohibited Transaction Exemption 84–139; Exemption Application No. D–5232]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the sale by the Plans of a parcel of real property (the Property) located in Los Altos Hills, California, to John and Susan J. Barbour (the Barbours) for $330,000, provided this amount is not less than the fair market value of the Property at the time of the sale; and (2) the extension of credit by the Plans to the Barbours in connection with the sale, under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party at the time of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 14, 1984 at 49 FR 32477.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Money Purchase Pension Plan of Charles C. Osborn, M.D., Inc. (the Plan) Located in Verdugo City, California**

[Prohibited Transaction Exemption 84–140; Exemption Application No. D–5306]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of $62,000 on October 1, 1983 by the Plan to Kathleen Eason and David Anthony Yaniro (the Borrowers), to enable the Borrowers to purchase certain property from Dr. Charles C. Osborn, under the terms described in the notice of proposed exemption, provided the terms of the loan were not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of the loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 13, 1984 at 49 FR 32283.

Effective Date: This exemption is effective October 1, 1983.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Dalton Obstetrics & Gynecology, P.C. Money Purchase Pension Plan and Dalton Obstetrics & Gynecology, P.C. Profit Sharing Plan (the Plans) Located in Dalton, Georgia**

[Prohibited Transaction Exemption 84–141; Exemption Application No. D–5355 and D–5356]

*Exemption*

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a certain parcel of real property (the Property) by the individually directed accounts (the Accounts) of J. Larry Sanders, M.D. in the Plans to Dr. Sanders, a trustee of the Plans, at the higher of: (a) The appraised fair market value of the Property or (b) the total expenditures incurred by the Accounts in connection with the acquisition and holding of the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 13, 1984 at 49 FR 32284.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

[1] Since Dr. Smith is the sole shareholder of Randall W. Smith, A.P.C. and the only participants in the Plan are Dr. Smith and Florence E. Smith, his wife, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act), pursuant to 29 CFR 2510.3–3(c)(1). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transactions which is the subject of the exemption.

Signed at Washington, D.C., this 18th day of September 1984.

**Elliott I. Daniel,**

*Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.*

[FR Doc. 84-25186 Filed 9-20-84; 8:45 am]

BILLING CODE 4510-29-M

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[Application No. D-3450]

## Proposed Exemptions; Southmark Realty Advisers, Inc.

**AGENCY:** Pension and Welfare Benefit Programs, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

*Written Comments and Hearing Requests*

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

*Notice to Interested Persons*

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Southmark Realty Advisers, Inc. (Southmark) Located in Dallas, Texas**

[Application No. D-3450]

*Proposed Exemption*

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I—Exemption for Certain Transactions Involving the Purchase and Sale of Units of the Funds

The restrictions of section 406(a)(1)(A) through (D) of the Act and section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase and sale of units of the Funds between Southmark and an employee benefit plan that is participating in the Fund (Participating Plan) where Southmark provides or will provide investment management services and therefore is or will be a fiduciary, provided that:

(a) Each purchase and sale is authorized in writing by a fiduciary of a Participating Plan who is independent of Southmark and any of its affiliates;

(b) Not more than 5 percent of a Participating Plan's assets are invested in the Fund; and

(c) The applicable conditions set forth in Section V of this exemption are met.

Section II—Exemption for Certain Transactions Involving Collective Investment Funds Sponsored by Southmark

(a) *General Exemption.* The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section V are met.

(1) *Transactions Between Parties in Interest and the Funds.* Any transaction between a party in interest with respect to a Participating Plan and the Fund, or any acquisition, sale, leasing or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition, sale, lease or holding—

(A) The party in interest is not Southmark or one of its affiliates, and

(B) The interest of the Participating Plan together with the interests of any other plans maintained by the same employer or employee organization in the Fund does not exceed 10 percent of the total of all assets in the Fund.

(2) *Acquisitions, Sales, Leasing or Holding of Employer Securities and Employer Real Property.*

(A) Except as provided in subparagraph (B) of this paragraph, any acquisition, sale, leasing or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraph (a)(1) of this Section II, if no commission is paid to Southmark or to any affiliate of Southmark or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property, and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The employer real property of the Fund that is leased or held for lease to

others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither Southmark nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either

(1) The Fund owns the obligation at the time the Participating Plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

(2) Immediately after acquisition of the obligation by the Fund: (AA) Not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by a Participating Plan, and (BB) at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Southmark, its affiliates and any Fund maintained by Southmark or its affiliates shall be considered to be persons independent of the issuer if Southmark is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subparagraph (A) of this paragraph shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Southmark or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Southmark or its affiliate has investment discretion.

(C) For the purposes of the exemption contained in subparagraph (A) of this paragraph, the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party in interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) *Special Exemptions.* The restrictions of section 406(a) and section 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) shall not apply to the transactions described below, if the conditions of Section V are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party in interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party in interest and the incidental furnishing of goods to such party in interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund,

(B) The party in interest is not Southmark, any affiliate of Southmark, or another Fund, and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Management of Real Property.* Any services provided to the Fund by Southmark or by an affiliate of Southmark in connection with the management of the real property owned by the Fund, if:

(A) The compensation paid to Southmark or its affiliate does not exceed the compensation charged by qualified, unaffiliated persons for performing similar services in the area in which the Fund property is located; and

(B) The provision of such services and the fees paid are negotiated, approved and monitored by a majority of the independent Fund trustees (the Independent Trustees).

(3) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party in interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) *Brokerage Fees.* The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (F) shall not apply to any services provided to the Fund by Southmark or by an affiliate of Southmark in connection with the acquisition or sale by the Fund of real property, if:

(1) The commission paid to Southmark or its affiliate either by the Fund or a third party seller does not exceed the commission that would be paid to an unrelated third party in an arm's-length transaction; and

(2) The provision of such services and the commissions paid by the Fund are negoitiated, approved and monitored by a majority of the Independent Trustees.

Section III—Excess Holding Exemption For Participating Plans

The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if—

(a) The acquisition or holding contravenes the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by the Fund,

(b) The requirements of either paragraph (a) (1) or (2) of Section II of this exemption are met, and

(c) The applicable conditions set forth in Section V of this exemption are met.

Section IV—Transactions With Persons Who Are Parties in Interest With Respect to a Participating Plan Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers

The restrictions of section 406(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the code by reason of section 4975(c)(1) (A) through (D) of the code shall not apply to any transaction between the fund and a person who is a party in interest with respect to a Participating Plan that has an interst in the Fund, if—

(a) The person is a party in interest (including a fiduciary) soley by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both , and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(b) The person is not southmark or any affiliate thereof; and

(c) The person is a party in interest with respect to a Participating Plan, which Participating Plan's interest in the Fund, together with the interest(s) held by any other plans maintained by the same employer or employee

organization, does not exceed 20 percent of the total assets fo the Fund.

Section V—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires that consent of Southmark or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) Southmark or its affiliate maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in subsection (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Southmark or its affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subsection (c) below.

(c)(1) Except as provided in paragraph (2) below and notwithstanding any provisions of subsections (a)(2) and (b) of section 503 of the Act, the records referred to in subsection (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan, or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) above shall be authorized to examine trade secrets of Southmark or its affiliates, or commercial or financial information which is privileged or confidential.

Section VI—Defintions and General Rules

For purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partners in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

For the purposes of this subsection (a), the term "affiliate" shall not be limited to persons or entities that are in existence on the effective date of this exemption.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(d) The term "Fund" means any collective investment fund that is currently managed by Southmark or its affiliates and any collective investment fund that may hereafter be established and managed by Southmark or its affiliates, provided that in all material respects such Funds will be similar. The term "Funds" shall mean all of the collective investment funds.

(e) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or any acquisition is made, on or after the date of granting of this exemption, or a renewal that requires the consent of the Fund occurs on or after the date of granting of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction or holding exempt by virtue of Section II(a)(1) and IV at such time as the interest of any Participating Plan exceeds the percentage interest limitations of Sections II(a)(1) and IV respectively, unless no portion of such excess results from the purchase of an additional interest in the Fund by such Participating Plan. For this purpose, purchases do not include the reinvestment of Fund earnings. Nothing in this subsection (e) shall be construed to exempt a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(f) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

(g) The term "Independent Trustee" means a party who: (1) Is not otherwise affiliated with the Fund's investment manager, broker or property manager, (2) is not a fiduciary of any Participating Plan, (3) is not subject to the authority or control of the Fund's investment manager, broker or property manager or their affiliates, and (4) has acknowledged in writing his or her acceptance of the fiduciary obligations and agreed not to participate in any decision with respect to any transaction in which the Independent Trustee has an interest that might affect his or her best judgment.

**Preamble**

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption (PTE) 80-51, (45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicant has requested relief are similar to those which are the subject of PTE 80-51.

The Department stated in PTE 80-51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was

insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

On March 13, 1984, the Department granted class relief (PTE 84–14, 49 FR 9494) for a number of transactions where the subject plan assets were under the management of a qualified professional asset manager (QPAM) which is independent of the parties in interest with whom it will deal. Southmark has reviewed the terms of this class exemption and represents that neither Southmark itself nor its affiliates qualify as a QPAM as defined by that exemption.

**Summary of Facts and Representations**

1. Southmark, a Texas corporation with its principal offices in Dallas, Texas, was formed in 1982 for the purpose of managing and operating real estate investments owned by the Funds described herein. It is an investment advisor that is registered under the Investment Advisors Act of 1940. Southmark is a wholly-owned subsidiary of Southmark Corporation, a Georgia corporation with assets of approximately $458,000,000 and shareholders' equity exceeding $149,000,000 as of June 30, 1982.

Neither Southmark nor any of its affiliates currently acts as an investment manager or advisor of any pension plan or other entity that is a potential investor in the Funds. If Southmark or an affiliate does become an investment manager or advisor of a potential investor to the Funds, it will not in such fiduciary capacity place managed assets or give investment advice to such potential investor to purchase units in the Funds. An affiliate of Southmark had previously acted as a general partner in a real estate limited partnership that was intended to have as limited partners pension plans and other entities that would have been potential investors in the Funds. While this limited partnership did not commence investment activities and was terminated, Southmark expects that it or an affiliate may in the future again act as a general partner in a similar investment vehicle. If Southmark or an affiliate does act as general partner in a similar investment vehicle, it will not invest any of the investment vehicle's assets in the Funds. Similarly, it will not cause the Funds to invest in such investment vehicle.

2. The first Fund, Southmark Realty Investors Equity Fund-I (Fund-I) will offer tax exempt entities, principally Participating Plans, a vehicle whereby they can make equity investments in a large (initially at least $20,000,000) diversified portfolio of improved real property. Southmark expects to organize additional Funds with substantially the same terms and conditions as Fund-I.

3. Fund-I will be organized in the form of a group trust as defined in Rev. Rul. 81–100, IRB 1981–13, 32. Each investor must be an employee benefit trust exempt from tax under section 501(a) of the Code as a trust qualified under section 401(a) of the Code and must have total net assets of at least $10,000,000. Each investing plan must also represent, in accordance with Federal securities law, that its investment in Fund-I (or in any subsequent Fund) constitutes no more than 5 percent of the plan's total assets. Pursuant to the proposed subscription agreement, Fund-I will be adopted as part of each Participating Plan. Interests in Fund-I will be evidenced by units of beneficial interest. Fund-I will receive income from the properties in which it invests and pass through the entire amount thereof, less expenses, to the Participating Plans.

4. Fund-I will be a closed-end fund with a minimum capitalization of $20,000,000 and a maximum of $100,000,000. The price per unit will be $500,000 and the minimum purchase will be two units.[1] The offering period for Fund-I units will commence at a future date as yet unspecified. If Southmark participates in the placement of Fund-I units, no commissions or fees will be paid to Southmark for such services. No investments will be made by Fund-I until subscriptions for units have reached $20,000,000. Subscription proceeds received during the offering period will be held by a bank or trust company and invested in short term securities (other than securities issued by Southmark or its affiliates). If Fund-I does not receive the minimum amount of subscriptions within the offering period, it will refund all subscription proceeds, plus interest, as soon as practicable. The offering memorandum by which interests in Fund-I will be offered to employee benefit plans which are potential investors will describe the management, operation, investment objectives and income tax consequences of Fund-I and the compensation received by Southmark and its affiliates. The offering memorandum will be provided to the appropriate plan fiduciary prior to such plan's investment in Fund-I.

5. Fund-I will have a definite term which will expire approximately 10 years after it becomes operational unless shortened or lengthened by the consent of investors owning at least 60 percent of the outstanding units of Fund-I. On the expiration of this term, the Trustees will liquidate the remaining assets and distribute the net proceeds to Fund-I investors. As required by Rev. Rul. 81–100, the interest of any Participating Plan in Fund-I is not transferable or assignable to third parties. Plan fiduciaries desiring to invest assets in Fund-I will be fully advised that only long-term investment in Fund-I should be considered. If a Participating Plan wishes to dispose of its investment, it may apply to the Trustees for redemption of its units beginning approximately three (3) years after the close of the offering period. Redemption will be made at the unit values as of the valuation date preceding the date on which redemption occurs. Redemption may take up to 30 months at the discretion of Southmark. In addition, Participating Plans may acquire additional units in Fund-I from a redeeming plan.[2] A Participating Plan seeking to purchase such additional units will make a cash contribution to Fund-I equal to the redemption value of the units to be redeemed.

6. The Fund-I Group Trust Agreement provides for seven Trustees initially. At least four of the initial Trustees (and at all times a majority of the Trustees) will be unaffiliated with Southmark or its affiliates (Independent Trustees). Those persons selected by Southmark to be Independent Trustees will have substantial real estate or economics experience and have held either a senior executive or academic position in one of these fields. In the event that one or more of the Independent Trustees resigns or otherwise ceases to serve in such capacity, those remaining Independent Trustees must select a successor Independent Trustee(s). If at any time there are no remaining

[1] If a potential Participating Plan's assets are less than $20,000,000, the 5 percent plan asset investment limit will control. Such plan would, at Southmark's discretion, be permitted to purchase a single $500,000 unit.

[2] The Department would note, however, that Section I(b) of the proposed exemption would limit the availability of relief to situations where a Participating Plan's investment does not exceed 5 percent of its assets. Additionally, the relief under Sections II(a) and IV is limited to where a Participating Plan's investment (together with the investment of any plan sponsored by the same employer or employee organization) does not exceed 10 percent or 20 percent respectively of all assets in the Fund.

Independent Trustees, the successor Independent Trustees will be selected by a majority of the Trustees then in office. Neither Southmark nor its affiliates will have any authority to remove the Independent Trustees. Under the Fund-I Group Trust Agreement, any Trustee can be removed only by the vote or consent of the Participating Plans holding 60 percent or more of the outstanding units. Compensation for services to Fund-I by the Independent Trustees will be calculated under a formula contained in the Group Trust Agreement ($20,000 per year plus $1,000 for each meeting in excess of 10 meetings per year). After five years, the fees will increase in proportion to the annual increase in the Consumer Price Index for the prior year. To insure that the Independent Trustees understand their role and accept their fiduciary obligations, the applicant agrees that it will cause each Independent Trustee to acknowledge in writing his or her acceptance of the fiduciary responsibilities that an Independent Trustee will incur. This written acknowledgement will include a statement that an Independent Trustee will not participate in any decision with respect to any transaction in which the Independent Trustee has an interest which might affect his or her best judgement.

7. None of the Trustees nor any of the employees, officers or directors or shareholders of Southmark will own equity interests in Fund-I. Also, there are no interlocking directorships involved, that is, none of the individual Trustees nor any of the employees, officers, directors or shareholders of Southmark serve as fiduciaries of the Participating Plans, or as directors or officers of the sponsors of such plans.

8. Southmark's duties as investment manager of Fund-I will include the management and operation of Fund-I and the acquisition and disposition of all properties on behalf of Fund-I. For its services as investment manager, Southmark will be paid a fee of 1.2 percent per annum of the aggregate purchase price of units subscribed for in Fund-I for a period ending with the earlier of the following two events—either the subscription to a percentage as stated in Fund-I documents or the third anniversary of the last day of the offering period for such fund. On the expiration of the earlier of the two periods, Southmark will be paid a fee of 1.2 percent per annum of the net asset value of Fund-I as of December 31 of the prior year. For the purposes of this net asset value computation:

(a) Properties will be valued on the basis of the most recent appraised value determined by an independent appraiser, or if any properties have not theretofore been appraised, such properties shall be valued at cost; and (b) all other assets of Fund-I shall be valued at fair market value as of fee computation date.

9. Southmark proposed to have its affiliates provide real estate brokerage services in connection with properties purchased, owned or sold by Fund-I. Brokerage services would include screening, qualifying, soliciting and negotiating with potential sellers, buyers and lessees of properties owned or desired by Fund-I and negotiating with actual lessees of properties owned by Fund-I that desire to renew their leases.[3] The applicant represents that for a brokerage firm to effectively represent its client and find suitable sellers, buyers and lessees, that firm must first expend a substantial amount of time, effort and energy to learn the investment needs and criteria of the client. It is further represented that many firms do not have the sophistication or financial capacity to become sufficiently knowledgeable about Fund-I's affairs in the anticipation of possibly earning one or two future brokerage fees. The applicant states that Southmark's affiliates already would have the necessary level of sophistication and knowledge of Fund-I's needs and would provide it immediately whenever Fund-I needed it.

10. Southmark would also proposed to provide real property management services including contracting for property maintenance and repair, tenant supervision, periodic property inspection, rent collection, bookkeeping and lease preparation. Southmark believes that it would be in the best interests of the Participating Plans for its affiliates which are experienced property managers to provide property management services to Fund-I. Many unaffiliated property management companies are merely independent real estate brokers who maintain limited property management departments. Southmark must make frequent demands for market information, budgets and comparative cost information as required for new tenants. Slow response times from small unsophisticated or disinterested property management companies would decrease the efficiency of the operation of Fund-I and therefore, the net return to the Participating Plans.

11. The Independent Trustees, however, are free to consider any property manager or real estate broker and are not required to consider Southmark or an affiliate as the first choice for any particular service. In the event Southmark or an affiliate is chosen to perform property management and/or real estate brokerage services, all such transactions between Southmark or its affiliates and Fund-I must be conducted on an arm's-length basis and reflect the best interests of Fund-I. Accordingly, the Independent Trustees will have the authority and obligation to negotiate, approve and monitor each property management and brokerage agreement. Specifically, the majority of the Independent Trustees must approve the appointment of Southmark or an affiliate as a real estate manager or real estate broker with respect to each property, and must negotiate and approve the terms of each appointment, including the term of any property management contract or real estate brokerage agreement between Fund-I and Southmark or its affiliates. The Independent Trustees may retain consultants unrelated to Southmark or its affiliates to assist in carrying out the full range of their responsibilities including, but not limited to, the gathering of information and presenting recommendations upon which the Independent Trustees will base their decisions regarding the terms or compensation schedules of such agreements. The compensation paid will not exceed that charged by qualified, unaffiliated persons performing similar services for similar properties in the geographical area where the property is located. The Independent Trustees will also monitor the performance standards negotiated under the property management and real estate brokerage agreements to ensure that they are adhered to. All agreements will be "reasonable" as that term is used in section 408(b)(2) of the Act and its accompanying regulations,[4] including the ability of the Independent Trustees to terminate such agreements.

With regard to property management, in accordance with what the applicant represents is standard real estate practice, the real property manager will receive a fixed percentage of the rents from the property plus reimbursement for direct expenses. In determining the percentage of rents to be paid, the Independent Trustees will survey unrelated management firms that

[3] However, real estate brokerage commissions will only be earned on purchases and sales of property by the Fund. See paragraph 13 below for a discussion of leasing commissions.

[4] 29 CFR 2550.408b-2, 42 FR 32389, June 24, 1977.

manage property of the same type in the area in which the property is located. Based on the survey and on their own real estate expertise, the Independent Trustees will determine the rates to be paid to the affiliated property manager and the terms of the management agreement.

With regard to brokerage commissions, in accordance with what the applicant represents is standard real estate practice, such commissions will be negotiated and approved by the Independent Trustees based upon similar commissions for similar properties in the same geographical area and also based upon their real estate expertise. Since brokerage commissions are paid by the seller of the subject property, such commissions may be paid either by the Fund or by a third party, depending upon who is the seller.

12. In any year in which any of the Trustees is affiliated with Southmark or in which Southmark or one of its affiliates provides property management or real estate brokerage services, the Independent Trustees will review the fee and/or commission structure being charged by Southmark. If the Independent Trustees determine that such fees and/or commissions are (or are likely to be) greater than the amount of fees and/or commissions being paid to investment managers of other income-producing real estate funds for tax-exempt investors, then the Independent Trustees must cause Southmark to employ an independent consultant to review each of the fees and/or commissions being paid to Southmark and make recommendations for modification. In addition, at the request of Participating Plans holding not less than 60% of the outstanding units of Fund-I (but not more often than annually), an independent consultant selected by the investors may review the management fees being charged by Southmark. Any such consultant report shall be circulated to each Participating Plan. No statutory or administrative exemptive relief would be available for the receipt of any fees by Southmark which are determined to be in excess of reasonable fees.

13. Finally, Fund-I may not pay Southmark or an affiliate leasing commissions or lease renewal commissions, regardless of whether Southmark or an affiliate is hired as a real property manager, a real property broker, or both. The applicant represents that such commissions are normally paid to independent property managers and brokers. Thus, the applicant represents that since independent property managers and brokers usually receive lease commissions and lease renewal commissions, the appointment of Southmark or an affiliate as property manager or broker should create a benefit to the Fund-I in addition to those described above.

14. The properties in which Fund-I will invest will be leased to various tenants which may include employers or their affiliates whose plans have invested in Fund-I, persons providing services to such plans and fiduciaries of such plans. While any given lease typically would account for a small percentage of rental income to Fund-I, and the participation of a party in interest is proportionately small, it would be necessary without an exemption to examine every prospective tenant or property in which Fund-I has an interest to ascertain whether that tenant is a party in interest with respect to any Participating Plan. The applicant represents that the end result of the failure to grant the proposed exemption could be the denial of leases to qualified tenants or the failure to purchase valuable properties, with a commensurate injury to the Participating Plans.

15. Any employees benefit plan that considers investment in Fund-I will receive a copy of the notice of pendency and the exemption with the offering memorandum and an accompanying letter that states how fees and/or commissions to affiliated property managers and brokers will be determined. Neither statutory nor administrative exemptive relief would be available for the receipt of any fees and/or commissions by an affiliated property manager or broker that are determined to be in excess of reasonable compensation.

16. Within 120 days after the end of each fiscal year, each Participating Plan will receive from the Trustees a balance sheet, profit and loss statement, and statement of change in financial position of Fund-I as prepared by a certified public accountant who is unrelated to Southmark and its affiliates. The Participating Plans will also receive a statement of fees and/or commissions paid to Southmark. Within 60 days of the end of each quarter, the Trustees will distribute a quarterly balance sheet and a statement of all realty purchased during that quarter. From time to time, the Trustees will provide whatever other information is reasonably requested by a Participating Plan. Appraisals of Fund-I properties will be made at least annually by independent appraisers. These appraisals will be included in the above-described annual reports.

17. Fund-I will be audited annually by an independent, national accounting firm and the Participating Plans will be provided with reports containing the audited financial statements. The independent accountant will also: (a) Recompute Southmark's investment management fee to confirm that it is in compliance with the investment management agreement; (b) perform reasonableness tests on property management fees and real property brokerage commissions to confirm that these fees and/or commissions conform to the terms of the respective service contracts and agreements; (c) confirm all aspects of sales of properties to Fund-I; and (d) perform tests to ensure compliance with the Act, the Code, and any applicable prohibited transaction exemption. Furthermore, because Southmark will be a registered investment advisor under the Investment Advisors Act of 1940, certain of its activities and operations are regulated by the Securities and Exchange Commission and subject to periodic examination.

18. It is contemplated that one or more additional Funds similar to Fund-I will be organized from time to time. The Trustees may serve in the same capacity for some of the additional Funds. Other persons, who also would be officers and/or directors of Southmark or their affiliates, may also be appointed as Trustees. Southmark will be the investment manager for each of the additional Funds to be covered by the requested exemption. The applicants state that such additional Funds will, in all material respects, be similar to Fund-I.

19. In summary, the applicant represents that the subject transactions meet the criteria of section 408(a) of the Act because: (a) All decisions to invest in the Funds will be made by knowledgeable fiduciaries of large employees benefit plans who are unrelated to Southmark or its affiliates on the basis of a detailed private placement memorandum supplied to them prior to investment; (b) an independent accountant will audit the operation of the Funds on an annual basis; (c) Participating Plans will annually be provided with certian investment performance information; (d) all services to be performed by Southmark and its affiliates will be subject to and controlled by agreements, the terms of which (including fees and/or commissions) will be disclosed to investors prior to initial investment, and negotiated, approved and monitored by the Independent Trustees; and (e) each of the protections provided to the

Participating Plans and their participants and beneficiaries by PTE 80–51 will be satisified for transactions involving parties in interest with respect to such plans, except that the Funds are privately maintained.

Notice to Interested Persons: Because all plan participants and beneficiaries whose plans participate in the Funds could conceivably be interested persons, the Department has determined that the only practical form of notice is by publication in the **Federal Register.**

For Further Information Contact: Mr. Paul R. Antsen of the Department, telephone (202) 523–6915. (This is not a toll-free number).

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately described all material terms of the transactions which is the subject of the exemption.

Signed at Washington, D.C., this 18th day of September, 1984.

**Elliot I. Daniel,**

*Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.*

[FR Doc. 84–25187 Filed 9–20–84; 8:45 am]

BILLING CODE 4510–29–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–54]**

### Final Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R–81; Union Carbide Subsidiary B, Inc.

The Nuclear Regulatory Commission (the Commission) is considering issuance of an Amendment to Facility Operating License No. R–81 for the Union Carbide Subsidiary B, Inc. (UCS) research reactor located in Sterling Forest, New York.

The amendment will renew the Operating License until June 30, 2000, in accordance with the licensee's application dated May 23, 1980, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Issuance published in the **Federal Register** on August 1, 1980 at 45 FR 51320.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

**Finding of No Significant Impact**

The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

**Summary of Environmental Impacts As Described in the Environmental Assessment**

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since 1961. The environmental impacts associated with the continued operation of the UCS facility are discussed in an Environmental Assessment associated with this action. The Assessment concluded that continued operation of the UCS reactor for an additional 16 years will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the Technical Specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding;

(b) The expected consequences of a broad spectrum of postulated credible accidents have been considered, emphasizing those likely to cause loss of integrity of fuel-element cladding. The staff performed conservative analyses of the most serious credible accidents and detemined that the calculated potential radiation doses in unrestricted areas are small fractions of 10 CFR Part 20 allowable doses;

(c) The systems provided for control of radiological effluents can be operated to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA); and

(d) The licensee's Technical Specifications, which provide limiting conditions for the operation of the facility, are such that there is a high degree of assurance that the facility will be operated safely and reliably.

For further details with respect to this proposed action, see the application for license renewal dated May 23, 1980, as supplemented, the Environmental Assessment, and the Safety Evaluation Report prepared by the staff (NUREG–1059).

The Environmental Assessment is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTENTION: Director, Division of Licensing.

Copies of NUREG–1059 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 14th day of September 1984.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 84–25158 Filed 9–20–84; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

[File No. 22–13258]

### Continental Home Finance Corp.; Application and Opportunity for Hearing

September 18, 1984.

Notice is hereby given that Continental Home Finance Corporation (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of First National Bank of Minneapolis ("First Minneapolis") under an existing indenture that has been qualified under the Act and another indenture which will be qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First Minneapolis from acting as trustee under either such indenture.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within 90 days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding.

However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) The Applicant has entered into an Indenture, dated as of May 1, 1982, as amended (the "Indenture"), with First Minneapolis, as trustee. Pursuant to such Indenture, the Applicant issued on June 17, 1982, July 29, 1982, November 8, 1982, January 13, 1983, April 15, 1983, June 23, 1983, August 18, 1983, December 22, 1983, February 24, 1984 April 12, 1984, and July 6, 1984, respectively, $6,400,000 principal amount of its 14¾% Insured Mortgage Backed Bonds, Series A, $5,600,000 principal amount of its 14½% Insured Mortgage Backed Bonds, Series B, $1,777,000 principal amount of its 13% Insured Mortgage Backed Bonds, Series 1982 III, $9,350,000 principal amount of its 12% Insured Mortgage Backed Bonds, Series C, $14,110,000 principal amount of 12% Insured Mortgage Backed Bonds, Series D, $8,590,000 principal amount of its 12% Insured Mortgage Backed Bonds, Series E, $8,820,000 principal amount of its 13% Insured Mortgage Backed Bonds, Series F, $10,065,000 principal amount of its 12.9% Insured Mortgage Backed Bonds, Series G, $10,830,000 principal amount of its 12⅝% Insured Mortgage Backed Bonds, Series H, $10,485,000 principal amount of its 12⅞% Insured Mortgage Backed Bonds, Series I, $8,580,000 principal amount of its 13⅞ Insured Mortgage Backed Bonds, Series J. All such bonds are registered under the Securities Act of 1933.

(2) Each of the above referenced series of bonds is secured by separate collateral consisting principally of a group of mortgage loans. The Indenture requires that the mortgage loans deposited as collateral for each series have on the issue date an aggregate principal balance and an aggregate Mortgage Value (as defined in the Indenture) both equal to at least 100% of the aggregate principal amount of the bonds of the series. The mortgage loans produce, together with other collateral required to be deposited as a condition to issuance of the series, a cash flow sufficient to amortize the bonds of the series through redemption and payment at their stated maturity (30 years from the date of issuance) and to support all interest payments required to be made on the bonds of the series while they are outstanding in accordance with the amortization thus provided. Blanket Mortgage Insurance, Special Hazard Insurance, a Fidelity Bond and an Errors and Omissions Policy are required to be maintained with respect to the mortgage loans securing all series of bonds as a pool under the Indenture. The Indenture expressly prohibits any of the mortgage loans pledged thereunder as security for one series of bonds to be pledged as security for any other series or any other indebtedeness of the Applicant.

(3) The Applicant plans to continue issuing, from time to time, additional series of such bonds. In connection therewith, the Applicant anticipates filing with the Commission a registration statement on Form S–3 within the next few weeks. Such registration will refer to an Indenture, to be dated as of September 1, 1984 ("Indenture #2"), proposed to be entered into between the Applicant and First Minneapolis, as trustee. Each series of bonds will be secured by separate collateral consisting principally of a group of mortgage loans. Indenture #2 will require that the mortgage loans deposited as collateral for each series of bonds will have, on the issue date, an aggregate Mortgage Loan Value (as defined in Indenture #2), together with other funds held or to be received by the Trustee with respect to such series of bonds, at least equal to 100% of the aggregate principal amount of the bonds of the series. The mortgage loans will produce, together with other collateral required to be deposited as a condition to the issuance of the series, a cash flow sufficient to amortize the bonds of the series through redemption and payment at their stated maturity. It is anticipated that Blanket Mortgage Insurance, Special Hazard Insurance, a Fidelity Bond and an Errors and Omissions Policy shall be required to be maintained with respect to the mortgage loans securing all series of bonds as a pool under Indenture #2 . Indenture #2 will expressly prohibit any of the mortgage loans pledged thereunder as security for one series of bonds to be pledged as security for any other series or any other indebtedness of the Applicant.

(4) The Applicant is not in default under the Indenture.

(5) Such differences as exist between the Indenture and Indenture #2 are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First Minneapolis from acting as Trustee under Indenture #2.

(6) The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the

Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested person may, not later than October 15, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Shirley E. Hollis,**

*Acting Secretary.*

[FR Doc. 84-25160 Filed 9-20-84; 8:45 am]

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**[Release No. 931; 803-38]**

## TCW Asset Management Co.; Filing of Application for an Order for Exemption Granting Confidential Treatment of an Exhibit to the Application

September 14, 1984.

Notice is hereby given that TCW Asset Management Company ("Applicant"), a California corporation, 400 South Hope Street, Los Angeles, CA 90071, filed an application on May 15, 1984, and an amendment thereto on September 10, 1984, requesting an order of the Commission pursuant to section 206A of the Investment Advisers Act of 1940 (the "Act"), exempting certain performance-based fee arrangements entered into by a limited partnership of which TCW Partners (a general partnership composed of Applicant and certain of its officers will be the general partner from the provisions of section 205(a) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of its relevant provisions.

Applicant states that it is an investment adviser registered with the Commission and a wholly-owned subsidiary of Trust Company of the West, a trust company organized under the laws of the State of California. Applicant and certain of its associated persons propose to establish the TCW Special Placements Fund I, a California limited partnership (the "Partnership"). Applicant will manage the Partnership through TCW Partners, a California general partnership which will act as the general partner (the "General Partner") of the Partnership. Applicant will be the managing partner of the General Partner and will have full charge of the overall management, conduct, administration and operation of the Partnership's investments. Several of Applicant's officers will be the individual general partners of the General Partner. Except in certain limited circumstance involving a change in control of Applicant, the individual partners of the General partner will not have authority to manage the Partnership except in their capacities as officers of Applicant.

Applicant states that the investment objective of the Partnership is to provide its limited partners with a current return on investment with the opportunity for substantial capital appreciation. The Partnership will invest primarily in: (1) Convertible debt, (2) debt purchased in conjunction with equity securities, and (3) equity securities, all of which will be purchased in private placement transactions. Up to 5% of the Partnership's assets may be invested in other types of investments. It is anticipated that a substantial portion of the Partnership's assets may be invested in securities issued in transactions involving leveraged buyouts.

Applicant states that securities purchased by the Partnership will be sold at such times as the General Partner deems advantageous to the Partnership. It in anticipated that a substantial portion of the investments of the Partnership will be disposed of between 4 to 7 years after the establishment of the Partnership. Proceeds from the sale of the Partnership's will not be reinvested but will be distributed to the partners. The Partnership will have a limited term of up to 12 years which may be extended for a period of up to 3 years with the approval of limited partners holding two-thirds of the Units of the Partnership. Investments not sold by the termination of the Partnership will be distributed in kind upon termination.

Applicant states that participation in the Partnership will consist of no more than 300 units (the "Units") of $1 million each, with a minimum subscription in the Partnership by each prospective limited partner of 2 Units. Transfer of Units in the Partnership will be restricted, and no limited partner will be allowed to withdraw its capital before the termination of the Partnership. The General Partner will contribute in cash to the capital of the Partnership the greater of $450,000 or 1% of the total capital contributed to the Partnership. Thus the General Partner's capital account will be allocated at least 1% of the Partnership's profits and losses.

Applicant represents that Units will be offered and sold pursuant to Regulation D under the Securities Act of 1933, as amended (the "Securities Act"). Limited partners will be sophisticated institutional investors that regularly deal in investments of this type, such as pension plan trusts, charitable trusts, foundations and endowments and insurance companies. Each limited partner will qualify as an accredited investor within the meaning of Regulation D under the Securities Act. Units may also be sold to sophisticated individual investors who have a net worth (or a joint net worth with their spouse) at the time of investment in excess of $10,000,000 and whose investment in the Partnership represents no more than 15% of the gross value of the assets in which such investors (and spouse) have a beneficial interest. The Partnership will be exempt from registeration as an investment company by reason of section 3(c)(1) of the Investment Company Act of 1940 as amended (the "Investment Company Act"). The total number of limited partners will not exceed 100 persons and no limited partner will be permitted to contribute more than 10% of the Partnership's initial capital if such an investment would cause the Partnership to be required to register under the Investment Company Act.

Applicant states that the General Partner will value the assets of the Partnership quarterly and each time an investment sold by the Partnership generates capital gains of more than $5 million. In the latter case, and for the year-end valuation of the Partnership, the General Partner will engage nationally recognized independent appraisers or investment bankers to value the non-publicly traded assets of the Partnership. At least once a quarter, limited partners will receive distributions of their allocations of cash revenues of the Partnership including proceeds from repayments of debt principal; dispositions of investments, and interest and dividend payments

(reduced by expenses of the Partnership and the General Partner's management fees), all calculated on a cash basis.

Applicant states that the General Partner's management fee will be 1¾% of each contribution to the Partnership per year for the first three years thereafter, and 1% per year of the lesser of the cost or value of the assets held by the Partnership derived from the contribution after that. The management fee will be payable quarterly in advance. All expenses, other than organizational expenses, incurred in connection with the business of the Partnership, including legal and auditors' fees, costs of valuing the assets of the Partnership, insurance costs, finders' and brokers' fees and all other transactional costs associated with the purchase and sale of investments, will be borne by the Partnership.

Applicant states that in addition to its share of the Partnership's profits and losses based on its capital contribution, the General Partner will receive 20% of each realized capital gain of the Partnership and 20% of all unrealized capital gains at the time of termination of the Partnership; provided, however, that in no event will the 20% of realized or unrealized capital gains allocated to the General Partner exced 20% of the amount, if any, by which the value of the assets of the Partnership (as of the date of allocation), plus the amount of proceeds from the sale of assets of the Partnership previously distributed by the Partnership to the limited partners and plus the amount of capital contributions previously returned to the limited partners exceeds the total amount of capital contributions originally contributed to the Partnership. The limited partners will be allocated the balance of all profits and losses of the Partnership in accordance with the number of Units each of them holds. If debt and equity securities are purchased in a single transaction, then the cost of that investment will be allocated to the debt securities up to their face amount solely for the purpose of determining capital gains. Applicant requests an exemption from the provisions of section 205(l) of the Act to the extent necessary to permit it and its associated persons to receive the proposed share of the profits of the Partnership.

Applicant also requests an order under section 210 of the Act for confidential treatment of the Partnership Agreement designated as Exhibit A to the application. Applicant states that the essential terms of the Partnership Agreement have been disclosed in this application; the Partnership Agreement itself constitutes trade secret or commercial or financial information that is provileged and confidential; there will be no public offering of the partnership interests and prospective investors will be provided with a copy of the Partnership Agreement.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 9, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Secrurities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

*Acting Secretary.*

[FR Doc. 84-25161 Filed 9-20-84; 8:45 am]

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**[Release No. 21329; SR-PSE-84-14]**

## Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

September 17, 1984.

The Pacific Stock Exchange, Inc. ("PSE") 618 South Spring Street, Los Angeles, CA 90014, submitted on July 31, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend its procedures pertaining to its securities communication, order routing and execution system (SCOREX).[1] The PSE, on a one-year pilot basis, is decreasing the time during which the specialist may remove an order from the system for manual execution from the current thirty second exposure time to fifteen seconds.[2] The Exchange has stated that if a specialist elects to remove an order from the system for manual execution, the specialist will be obligated, as is currently the practice, to provide a price which is as least as good as the price assigned by the system at the time the order is removed.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 21206, August 3, 1964) and by publication in the **Federal Register** (49 FR 31971, August 14, 1984). No comments were received with respect to the proposed rule change.

The Commission understands that SCOREX orders on the PSE will continue to be subject to all PSE rules governing the conduct of its auction market. In this regard, the Commission expects that SCOREX orders will be executed pursuant to the PSE's rules governing the priority of bids and offers on its floor (*e.g.*, PSE Rule 1, Section 12(e)). The Commission believes the proposed reduction of SCOREX's exposure period theoretically could diminish opportunities for SCOREX orders to interact with interest on the PSE floor. For this reason, the Commission believes that approval of the proposed rule change on a pilot basis is appropriate. In this regard, the Commission will conduct discussions with the PSE during the one year pilot program in an attempt to assess the effect of the 15 second exposure period.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

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[1] As described in Rule III, Section 12(a) of the PSE rules, the SCOREX system currently is available to all members organizations and provides automatic executions of market orders up to 1099 shares at the best available price represented by all Intermarket Trading System ("ITS") exchange participants.

A portion of the proposed rule change relating to an increase in the size of market orders which may be automatically executed in SCOREX from 599 to 1099 shares was granted accelerated approval in Securities Exchange Act Release No. 21206, August 3, 1984; 49 FR 31971, August 9, 1984.

[2] *See* letter from Jerry M. Gluck, Vice President and General Counsel, PSE, to Richard T. Chase, Associate Director, Division of Market Regulation, dated September 11, 1984. In its letter, the PSE states that it does not object to implementing a one-year pilot program providing that it retains the right to request permanent approval of this portion of the proposed rule change prior to the expiration of the pilot program.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

**Shirley E. Hollis,**

*Acting Secretary.*

[FR Doc. 84-25162 Filed 9-20-84; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 21324; File No. SR-BSE-84-5]**

## Self-Regulatory Organizations; Proposed Change by Boston Stock Exchange, Inc.; Relating to an Amendment to the Rule Governing Dealings on the Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), Notice is hereby given that on August 23, 1984 the Boston Stock Exchange Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange Inc. proposes to amend Chapter I-B, Section 3, of its Rules relating to Dealings on the Floor of the Exchange to allow orders to be transmitted to the Floor of the BSE directly from foreign exchanges approved by the Board of Governors.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) The proposed rule change is designed to allow orders transmitted directly from the trading floor of a foreign exchange approved by the BSE Board of Governors to the trading floor of the BSE for execution. Transactions will be limited to those transmitted by foreign brokers doing business on the floor of a recognized foreign exchange. If the proposed rule is approved the BSE is considering establishing an electronic linkage with the floor of a Canadian stock exhange. The BSE has reached agreement, in principle, with The Montreal Exchange to establish such a linkage.

Under the proposed arrangement members of The Montreal Exchange will direct orders to the floor of the BSE through electronic terminals located on the Floor of The Montreal Exchange. Such orders shall be received at the BSE on an electronic terminal and directed to the appropriate BSE specialist for execution. A report of each trade shall then be issued to the Montreal member through the same facilities. Trade recording and comparison shall be at the BSE. However, clearing of all trades performed shall be performed by the National Securities Clearing Corp. ("NSCC"). Each Montreal member shall maintain membership at NSCC either directly or through representation by the Canadian Depository System ("CDS"). It is understood that CDS and NSCC have reached agreement whereby CDS will act as clearing representative for certain Canadian broker/dealers. In either case the BSE trade report will be transmitted to NSCC and reported to the appropriate account for settlement at NSCC pursuant to a standard RIO agreement. The BSE shall bill the Montreal member for standard trade recording and value charges. The Montreal Exchange has agreed to guarantee the trade obligations of its members.

The BSE and The Montreal Exchange each maintain surveillance programs to safeguard the integrity of the trading process. Both have agreed to cooperate fully in the investigation of questions regarding the propriety of any trade. In addition it is contemplated that The Montreal Exchange and the BSE shall establish a joint committee to oversee implementation of the linkage and resolve any disputes which may arise.

Initially, the linkage will entail the routing of orders in Canadian national stocks to the BSE. The BSE expects that, if operationally successful, the program would be expanded to include order flow in other securities eligible for trading on the BSE. The rule change and linkage will enable the BSE to attract additional orderflow which in turn enhances the depth and liquidity of the markets of BSE specialists.

(b) The bases under the Act for the proposed Rule change are section 6(b)(5) and 11(b) since the Rule change will serve to enhance the national market system by enabling the Boston Stock Exchange Specialists to attract order flow and thereby make more liquid and competitive markets in securities in which they are registered.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The BSE does not believe the proposed amendment imposes any burden on competition. The BSE believes that additional orders generated by this proposal will enhance competition in the market place and thus result in a direct benefit to the investing public.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, participants, or Others*

No comments were solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by October 12, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 14, 1984.

Shirley E. Hollis,

*Acting Secretary.*

[FR Doc. 84-25092 Filed 9-20-84; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-21327 File No. SR-NYSE-84-27]

## Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.; Proposed New Rule 476A, Providing for the Imposition of Fines for Minor Violations of Rules of the New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statements of the Terms of Substance of the Proposed Rule Change

The proposed rule change authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a Hearing Panel, to impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature. Under the proposal, the Exchange will serve on the person to be fined a written statement setting forth the rule violated, the act or omission constituting the violation, the fine imposed, and the date by which the fine must be paid or the person must contest the matter. The person may pay the fine, thereby waiving his right to a discplinary proceeding under Rule 476 and any review of the matter by a Hearing Panel or the Exchange Board of Directors, or he may contest the fine by submitting a written answer. If the fine is contested, the matter becomes a "disciplinary proceeding" before a Hearing Panel under Rule 476. The Hearing Panel will then determine guilt or innocence and will be free to impose any disciplinary sanction permitted under Rule 476. In such a case, the Hearing Panel will also determine whether the rule violation was minor in nature.

The Exchange will not publicize any matter in which a fine is imposed under Rule 476A, or any matter where a person contests a fine imposed under that Rule and is found guilty of a minor violation by the Hearing Panel, except that the Exchange will make any filing required by Rule 19d-1 under the Securities Exchange Act of 1934 (the Act).

From time to time, the Exchange will prepare and announce to its members and member organizations a list of the Exchange Rules as to which the exchange may impose fines as provided in Rule 476A and such list shall also indicate the fine that may be imposed with respect to the violation of any such rule. The Exchange is not required to impose a fine pursuant to proposed Rule 476A with respect to any violation of any rule included in such list and shall be free, whenever it determines that a rule violation is not minor in nature, to commence a disciplinary proceeding under Rule 476.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The Text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to provide the Exchange with an efficient means for imposing appropriate and meaningful sanctions for minor rule violations that do not warrant the commencement of a disciplinary proceeding before a Hearing Panel under existing Rule 476. While a full disciplinary proceeding is appropriate where relative significant regulatory violations are concerned, the effort, time and expense of those proceedings may be disproportionately burdensome where the rule infraction is clearly minor in nature and is not contested. The proposed rule change is intended to fill this regulatory gap.

Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(6) which requires that Exchange Rules provide that its members and persons associated with its members shall be appropriately disciplined for violation of its rules. Section 6(b)(7) also requires Exchange Rules to provide a fair procedure for the disciplining of members and persons associated with its members and to be in accordance with the provisions of section 6(d) of the Act. The proposed rule change is consistent with these provisions of the Act.

*(B) Self-Regulatory Organization's Statement on Burden of Competition*

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received any written comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 12, 1984. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 14, 1984.

**Shirley E. Hollis,**

*Acting Secretary.*

[FR Doc. 84-25081 Filed 9-20-84; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

**[CM-8/768]**

### Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas; Partially Closed Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that a meeting of the Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas will be held on October 9, 1984, from 9:30 a.m. to 5:00 p.m., and on October 10, 1984, from 9:30 a.m. to 12:00 p.m., and from 1:30 p.m. to 5:00 p.m. at the Woodward Room of the National Wildlife Federation, 1412 16th Street, NW., Washington, D.C.

The October 9 meeting and the morning session of the October 10 meeting will be open to the public, and the public may participate in the discussions subject to instructions of the Committee Chairman. Subjects to be discussed include: Overview of U.S. preparations for the Standing Committee on Research and Statistics (SCRS); Review of research concerning tropical tunas; Report of the Meeting of the Working Group on Juvenile Tropical Tunas; Review of research concerning Billfish; Review of research concerning Bluefin tuna; Report of Bluefin Tuna fishery conducted in the U.S. EEZ and in the Candian Zone; and estimates of Japanese harvest of Tuna and Billfish in the U.S. Atlantic EEZ.

The Advisory Committee will meet in closed session on the afternoon of October 10, 1984. At this session documents classified in accordance with Executive Order 12356 of April 2, 1982 will be circulated and discussed and matters will be considered which the public interest requires be withheld from disclosure. Accordingly, a determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, S10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information of meeting should be directed to Barbara Rothschild, Office of International Fisheries Affairs, National Marine Fisheries Service, Department of Commerce. She may be reached by telephone on (202) 634-7257.

Dated: September 6, 1984.

**Edward E. Wolfe,**

*Deputy Assistant Secretary for Oceans and Fisheries Affairs.*

[FR Doc. 84-25122 Filed 9-20-84; 8:45 am]

BILLING CODE 4710-07-M

**[CM-8/767]**

### Shipping Coordinating Committee; National Committee for the Prevention of Marine Pollution Working Group on Reception Facilities; Two Meetings

The Working Group on Reception Facilities of the National Committee for the Prevention of Marine Pollution will conduct an open meeting at 10:00 AM on Friday October 12, 1984 in Room 2415 at Coast Guard Headquarters 2100 2nd Street, SW., Washington, D.C.

The purpose of this meeting is to discuss comments to a notice of proposed rulemaking on regulations implementing MARPOL 73/78 Reception Facilities, published in the **Federal Register** of June 19, 1984 (49 FR 25196).

Members of the public may attend up to the seating capacity of the room.

For further information contact Lieutenant Ellis H. Davison, U.S. Coast Guard Headquarters (G-WPE-3), 2100 2nd Street, SW., Washington, D.C. 20593. Telephone (202) 462-9578.

### Subcommittee on Safety of Life at Sea Working Group on Safety of Navigation

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will hold an open meeting at 9:30 AM on Tuesday, November 27, 1984, in Room 6319 of the U.S. Coast Guard Headquarters, Transpoint Building, 2100 Second Street, SW., Washington, D.C.

The purpose of the meeting will be to prepare the U.S. position relating to the below listed agenda items to be considered at the 30th Session of the Subcommittee on Safety of Navigation of the International Maritime Organization to be held in London, December 17-21, 1984.

—Routing of Ships
—1972 Collision Regulations
—Standard Marine Navigational Vocabulary
—Search and Rescue
—Ship reporting systems
—Navigational aids and related equipment
—Navigating bridge visibility

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. E.J. LaRue, Jr., U.S. Coast Guard (G-WWM), 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-4958.

Dated: September 11, 1984

**Samuel V. Smith,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 84-25121 Filed 9-20-84; 8:45 am]

BILLING CODE 4710-07-M

**[CM-8/766]**

### Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Ship Design and Equipment; Two Meetings

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on October 25, 1984 at 9:30 AM in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The purpose of this meeting will be to formulate and discuss the United States' positions for the upcoming Twenty-Eighth Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment to be held in March, 1985.

The agenda for this meeting includes the following items:

—Requirements for machinery and electrical installations;
—Maneuverability of ships;
—Safety measures for diving systems;
—Revised standards for Mobile Offshore Drilling Units;
—Helicopter facilities for all types of ships;
—Operating mechanisms and procedures for watertight doors.

Members of the public may attend up to the seating capacity of the room.

For further information contact Captain A.E. Henn, U.S. Coast Guard Headquarters, (G-MTH/12), 2100

Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426–2167.

**Working Group on the Carriage of Dangerous Goods**

The Working Group on the Carriage of Dangerous Goods will conduct an open meeting on October 31, 1984 at 10:00 AM in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The purpose of this meeting is to discuss:

—Report of the 36th Session of the International Maritime Organization (IMO) Subcommittee on the Carriage of Dangerous Goods held 25 to 29 June 1984;
—Possible United States proposals to the 37th Session of the IMO Subcommittee on the Carriage of Dangerous Goods;
—The United States position on the rewrite of the International Maritime Dangerous Goods (IMDG) Code Stowage and segregation requirements;
—IMO activities of a continuing nature.

Members of the public may attend up to the seating capacity of the room.

For further information contact Lieutenant John P. Aherne, U.S. Coast Guard Headquarters, (G–MTH–3/12), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426–1577.

Dated: September 4, 1984.

**Samuel V. Smith,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 84–25120 Filed 9–20–84; 8:45 am]

BILLING CODE 4710–07–M

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[CM–8/769]

## Study Groups 10 and 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Groups 10 and 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet jointly on October 11, 1984 in Room 330, 1200 19th Street, NW., Washington, D.C., from 9:30 a.m. until 4:30 p.m.

Study Group 10 deals with questions relating to sound broadcasting; Study Group 11 deals with questions relating to television broadcasting. The purpose of the meeting is to discuss the status of preparation and submission of U.S. documents to the final meetings of Study Groups 10 and 11, scheduled for October 16–November 1, 1984 in Geneva. The meeting will take into account all aspects of Study Groups 10 and 11 activities including satellite services and other joint matters of the Study Groups.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520; telephone (202) 632.2592.

Dated: September 10, 1984.

**Richard E. Shrum,**

*Chairman, U.S. CCIR National Committee.*

[FR Doc. 84–25123 Filed 9–20–84; 8:45 am]

BILLING CODE 4710–07–M

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## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: September 14, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

**U.S. Customs Service**

*OMB Number:* 1515–0140
*Form Number:* None
*Type of Review:* Revision
*Title:* Customs Regulations' Amendments Relating to Textiles and Textile Products
*Clearance Officer:* Vince Olive (202) 566–9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, NW., Washington, D.C. 20229
*OMB Reviewer:* Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

**Alcohol, Tobacco and Firearms**

*OMB Number:* New
*Form Number:* ATF Reporting Requirement Letter Notice 5000/5
*Type of Review:* New
*Title:* Implementation of Electronic Fund Transfer (Section 27(c) of the Deficit Reduction Act of 1984, Pub. L. 98–369)
*Clearance Officer:* Howard Hood (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

**Joseph Maty,**

*Departmental Reports Management Office.*

[FR Doc. 84–25176 Filed 9–20–84; 8:45 am]

BILLING CODE 4810–25–M

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## Bureau of Alcohol, Tobacco and Firearms

**[Notice No. 544; Ref: ATF O 1100.76A]**

### Authority To Administer Seized Personal Property Program in 27 CFR Part 72, Disposition of Seized Personal Property, and 26 CFR Part 601, Statement of Procedural Rules; Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Law Enforcement) and permits redelegation to other Law Enforcement personnel.

2. *Cancellation.* ATF 0 1100.76, Delegation Order—Authority to Affix Signature—Petitions for Remission or Mitigation of Forfeiture, dated January 6, 1977, is canceled.

3. *Background.* Under the current regulations, certain personnel in the regional offices have responsibility for administering the seized property function. In the interest of efficiency, the responsibility for this function has been centralized in ATF Bureau Headquarters' Office of Law Enforcement, and the regulations are being revised accordingly.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221 dated June 6, 1972, and by 26 CFR 301.7701–9, authority to take final action on the following matters is delegated to the Associate Director (Law Enforcement):

a. To administer the regulations governing the seizure, forfeiture, and disposition of property taken into Bureau custody with respect to liquor, firearms, explosives, ammunition, and tobacco violations.

b. To sign all documents and correspondence relating to petitions for remission or mitigation of forfeiture.

5. *Redelegation.*

a. The authorities in paragraph 4a above may be redelegated to personnel in Bureau Headquarters not lower than

the position of seized property examiner.

b. The authorities in paragraph 4b above may be redelegated to personnel in Bureau Headquarters not lower than the position of division chief.

6. *For Information Contact.* Frank W. Nickell or Gayle P. Miller, Planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–566–7123).

7. *Effective Date.* This delegation order becomes effective on September 21, 1984.

**Robert J. Maxwell,**

*Acting Director.*

[FR Doc. 84–25055 Filed 9–20–84; 8:45 am]

BILLING CODE 4810–13–M

## Customs Service

### Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Certain Imported Athletic Shoes

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of receipt of domestic interested party petition.

**SUMMARY:** Customs has received a petition submitted on behalf of a domestic interested party with respect to the tariff classification of certain imported athletic shoes to be donated to the Special Olympics. The petitioner contends that the merchandise is currently incorrectly classified under a duty-free provision of the Tariff Schedules of the United States, and should be reclassified under any of various provisions of the tariff schedules for shoes which carry a specific duty rate. This document invites comments with respect to the correctness of the current classification of the footwear.

**DATE:** Comments must be received on or before November 20, 1984.

**ADDRESS:** Comments (preferably in triplicate) may be submitted to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8237).

**FOR FURTHER INFORMATION CONTACT:** Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8181).

**SUPPLEMENTARY INFORMATION:**

#### Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to the tariff classification of certain imported athletic shoes which are to be donated to the Special Olympics.

The subject merchandise is currently classified as being "regalia" under item 851.30, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), a duty-free provision pursuant to a ruling issued by Customs on June 28, 1983 (Headquarters Ruling 071226/171356 TL). Under that ruling, the shoes will be given to children who participate in Special Olympics athletic activities. They will remain the property of the Special Olympics and may be used by the participants for the duration of their involvement in Special Olympics programs. Each pair of shoes is stenciled with the Special Olympics logo. The petitioner contends that the imported athletic shoes do not qualify as "regalia" and should instead be classified under an appropriate tariff provision in Schedule 7, Part 1, Subpart A, TSUS, depending upon the characteristics of the particular shoe. The provisions urged by the petitioner all carry duty rates.

Item 851.30, TSUS, is governed by the headnotes to Part 4, Schedule 8, TSUS. Those headnotes set forth qualifying conditions to be met for all articles classifiable in that Part, including articles considered "regalia." The arguments made by the petitioner against classification of the shoes as "regalia" are all directly reflective of either those headnote requirements, or the superior heading to item 851.30, TSUS, itself. The arguments are:

(1) Special Olympics is not a "nonprofit" institution established for educational scientific, literary, or philosophical purposes, or for the encouragement of the fine arts within the meaning of the superior heading to item 851.30, TSUS;

(2) The imported footwear are articles of "regular wearing apparel" which are not included within the purview of the term "regalia";

(3) They are not "such insignia of rank or office, emblems, or other articles as may be worn upon the person or borne in the hand during public exercises" of an eligible institution within the meaning of Headnote 2, Part 4, Schedule 8, TSUS;

(4) There is no proof that such footwear satisfies the condition that they be worn only during public exercises of the Special Olympics; and

(5) They are not exclusively for the use of the Special Olympics but are for distribution other than by way of transfer permitted by Headnote 1, Part 4, Schedule 8, TSUS.

#### Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter Customs invites written comments from interested parties on the classification and appraisement issues.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. and 4:30 p.m. on regular business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, Washington, D.C. 20229.

#### Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

#### Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved: September 12, 1984.

**William von Raab,**

*Commissioner of Customs.*

**Edward T. Stevenson,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 84–25111 Filed 9–20–84; 8:45 am]

BILLING CODE 4820–02–M

## VETERANS ADMINISTRATION

### Agency Forms Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

**SUMMARY:** The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the item on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

**DATES:** Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 17, 1984.

By direction of the Administrator.

**Dominick Onorato,**

*Associate Deputy Administrator for Information Resources Management.*

**Reinstatement**

1. Department of Medicine and Surgery
2. Comprehensive Evaluation of Health Services
3. VA Forms 10–1465a and 10–1465b
4. Biannually
5. Individuals or households
6. 37,500 responses
7. 7,980 hours
8. Not Applicable

[FR Doc. 84–25104 Filed 9–20–84; 8:45 am]

BILLING CODE 8320–01–M

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## Health Services Research and Development Scientific Review and Evaluation Board; Availability of Annual Report

Under section 10(d) of Pub. L. 92–463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Veterans Administration Health Services Research and Development Service Scientific Review and Evaluation Board for calendar year 1983 has been issued.

This report summarizes activities of the Board on matters related to the review of health services research and development proposals submitted by VA field staff. It is available for inspection at two locations:

Library of Congress, Serial and Government Publications, Reading Room, LM 133, Madison Building, Washington, DC 20540; and

Veterans Administration, Office of the Director, Health Services Research and Development Service, Room 653, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 17, 1984.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 84–25106 Filed 9–20–84; 8:45 am]

BILLING CODE 8320–01–M

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## Advisory Committee on Structural Safety of Veterans Administration Facilities; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration facilities will be held in Room 442, of the Lafayette Building, 811 Vermont Avenue, NW, Washington, DC on October 26, 1984, at 10 a.m. The committee members will review Veterans Adminstration construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Richard D. McConnell, Director, Civil Enginering Service, Office of Construction, Veterans Administration Central Office (phone 202–389–2864) prior to October 19, 1984.

Dated: September 17, 1984.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 84–25107 Filed 9–20–84; 8:45 am]

BILLING CODE 8320–01–M

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## Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, October 11, 1984, at 2:30 p.m.
Thursday, October 25, 1984, at 2:30 p.m.
Thursday, November 8, 1984, at 2:30 p.m.
Wednesday, November 21, 1984, at 2:30 p.m.
Thursday, December 6, 1984, at 2:30 p.m.
Thursday, December 20, 1984, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 17, 1984.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 84–25105 Filed 9–20–84; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 49, No. 185
Friday, September 21, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

### FEDERAL COMMUNICATIONS COMMISSION

September 19, 1984.

FCC to hold open commission meeting, Wednesday, September 26, 1984

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 26, 1984, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

*Agenda, Item No., and Subject*

General—1—Title: Reallocation of additional frequencies in the 470–512 MHz band for public safety use in the Los Angeles area. Summary: The FCC will consider proposing to reallocate Channel 19 frequencies for immediate use by the Los Angeles County Sheriff's Department.

Private Radio—1—Title: Amendment of Part 90 of the Commission's Rules and Regulations to Reserve Frequencies for Emergency Electrical Alarm Protection. Summary: The Commission is considering a request to designate frequencies for use by the central station electrical alarm industry and to allow the use of antenna heights exceeding current limitations.

Private Radio—2—Title: Amendment of Parts 2 and 87 of the Commission's rules regarding aeronautical flight test telemetry (RM–4077). Summary: The Commission will consider whether to adopt a Report and Order regarding the expansion of aeronautical flight test telemetering operations to the 2310–2390 MHz band and the modification of the technical criteria that govern such operations.

Common Carrier—1—Title: Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore: Sixth Report and Order (CC Docket No. 79–252). Summary: The Commission will consider whether to adopt a Report and Order that outlines steps for further implementation of its policy of forbearance from requirement of tariffs and facilities authorizations applications from carriers subject to competition.

Common Carrier—2—Title: Memorandum Opinion and Order in the Matters of Pacific Bell, Southern Bell and South Central Bell, Southwestern Bell, New York Telephone and New England Telephone, New Jersey Bell, Northwestern Bell, and Pacific Northwest Bell Petitions for Waiver of Section 64.702 of the Commmission's Rules and Regulations To Provide Certain Types of Protocol Conversion Within Their Basic Telephone Networks. Summary: The Commission will consider whether to waive the *Computer II* Rules to enable the petitioning Bell Operating Companies to provde certain types of protocol conversion within their telephone networks, specifically X.25-to-X.75 protocol conversion.

Common Carrier—3—Title: Second Report and Order, General Docket No. 80–112. Summary: The Commission will consider adopting rules to allow the use of lotteries for the selection of Multichannel Multipoint Distribution Service Licensees.

Common Carrier—4—Title: American Telephone and Telegraph Co., Ameritech, Bell Atlantic, Bellsouth, NYNEX, Pacific Telesis, Southwestern Bell and U.S. West—Accounting instructions for the judgment and other costs associated with the *Litton Systems* antitrust lawsuit. Summary: The Commission will consider the adoption of an Order to establish the proper accounting for an antitrust judgment and to clarify the accounting and disclosure requirements for litigation costs.

Common Carrier—5—Title: Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands (CC Docket No. 83–1376). Summary: The Commission will consider the Petition filed by General Communication Incorporation seeking interim relief pending the development of a long term resolution of the issues raised in the *Notice of Inquiry* in this Docket.

Mass Media—1—Title: Application for Review of a Bureau ruling denying a Fairness Doctrine complaint, filed by Charles E. Littlejohn. Summary: The Mass Media Bureau found that WGTV, Athens, Georgia, made reasonable, good faith efforts to inform the public on Proposed Constitution Amendment 1, which was a ballot issue in the November 2, 1982, Georgia general election.

Mass Media—2—Title: A petition for reconsideration filed by KDBS, Inc., licensee of Stations KDBS and KRRV(FM), Alexandria, Louisiana. Summary: the Commission considers a petition in which the licensee of KDBS and KRRV(FM) seeks reconsideration of the Commission's grant of renewal for less than a full term.

Mass Media—3—Title: Amendment of Parts 2, 73 and 76 of the Commission's Rules to Authorize the Transmission of Teletext by TV Stations. Summary: The Commission will consider a *Memorandum Opinion and Order* to address petitions for reconsideration filed by sixteen parties concerning its *Report and Order* authorizing television stations to operate teletext services (BC Docket 81–741).

Mass Media—4—Title: Application for Review (CSR–2543) filed May 7, 1984, by Service Electric Cable TV of New Jersey, Inc. Summary: Service Electric Cable TV of New Jersey, Inc. seeks Commission review of a delegated decision denying Service Electric's request for waiver of the mandatory signal carriage rules.

Mass Media—5—Title: Three Petitions for Reconsideration (CSR–2378) filed by the Council of UHF Broadcasting; by University Television Inc.; and by the Association of Maximum Service Telecasters, Inc., Association of Independent Television Stations, and the National Association of Broadcasters, all seeking reconsideration of the Commission decision in *Monterey Peninsula* TV Cable, 56 RR 2d 159 (1984). Petition for declaratory ruling (CSR–2362), filed by University Television, Inc., licensee of Station KUSI-TV, San Diego, California. Summary: The Commission will consider whether its original decision granting a cable system authority to relocate a UHF television station with mandatory carriage rights to the expanded portion of a cable system's basic tier is in the public interest.

Mass Media—6—Title: Application for review of the Bureau's action denying the application of Holt-Robinson of Texas, Inc. to move the main studio of station KMLT-TV, Marshall, Texas, outside the community of license. Summary: The Commission will consider whether the Bureau properly determined that the applicant failed to demonstrate how moving its main studio outside of Marshall would be in the public interest.

Mass Media—7—Title: Applications of CBS, Inc., Direct Broadcast Satellite Corporation, Graphic Scanning Corporation, RCA American Communications, Inc., and Western Union Telegraph Company for modification of their construction permits to establish Interim Direct Broadcast Satellite Systems and those parties' demonstrations of due diligence in the implementation of their proposed systems, and requests of Satellite Television Corporation, United States Satellite Broadcasting Co., Inc. and Dominion Video Satellite, Inc. for further modification of their Direct Broadcast Satellite System construction permits. Summary: The Commission considers these modification applications and due dilingence demonstrations to determine which of the

applicants have met the Commission's requirements and will be assigned DBS channels and orbital positions, as well as the further modification requests by three permittees already assigned channels and orbital positions. The Commission also considers comments by various parties regarding the sufficiency of some of the due diligence demonstrations.

Mass Media—8—Title: Application for Review of the Mass Media Bureau's action filed by Holston Valley Broadcasting Corporation. Summary: The Commission will consider an Application for Review of the Mass Media Bureau's action returning the television translator application of Holston Valley Broadcasting Corporation as unacceptable for filing.

Mass Media—9—Title: Application for review of the Mass Media Bureau's action denying a petition for reconsideration and returning the low power television application of Kinetications, Inc. Subject: The Commission will consider whether the Bureau properly returned the application of Kinetications for a new low power television station as unacceptable for filing.

Mass Media—10—Title: Application for review of Mass Media Bureau action denying a request for reconsideration and reinstatement by numerous low power television applicants for channel 7, Honolulu, Hawaii. Summary: The Commission will consider whether the Mass Media Bureau properly returned 44 low power television applications that lacked supplemental certifications as incomplete.

Mass Media—11—Title: In reapplication by North Texas Media, Inc. for a construction permit for a new FM Station on Channel 256C to serve Lake Dallas-Denton, Texas. Summary: The Commission considers the aforementioned application and an application for review filed by North Texas Media, Inc. seeking reversal of the Mass Media Bureau's action returning the application as unacceptable for filing.

Mass Media—12—Title: The license renewal application of WJRL (AM), Calhoun City, Mississippi; license renewal application of WCSA (AM), Ripley, Mississippi; mutually exclusive application for a construction permit specifying WCSA's frequency and facilities; construction permit application for FM Channel 272, a petition to deny that application and related pleadings; and an application for consent to the assignment of the license of WJRL. Summary: The Commission considers various broadcast applications filed by or associated with Jesse R. Williams, related pleadings, and a mutually exclusive application

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

**William J. Tricarico,**

*Secretary, Federal Communications Commission.*

[FR Doc. 84–25255 Filed 9–19–84; 3:53 pm]

BILLING CODE 6712–01–M

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**2**

**FEDERAL COMMUNICATIONS COMMISSION**

September 19, 1984.

FCC to hold a closed Commission meeting Wednesday, September 26, 1984

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Wednesday, September 26, 1984, following the Open Meeting, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

*Agenda, Item No., and Subject*

Hearing—1—Petition for Extraordinary Relief by Shurberg Broadcasting of Hartford, Inc. and Petition for Special Relief filed by Faith Center, Inc., in the Hartford, Connecticut television renewal proceeding (BC Docket No. 80–730).

Hearing—2—Petition for Allowance of Interlocutory appeal, and request for consent procedures in the A.S.D. Answer Service, Inc., DPLMRS proceeding (Docket Nos. 82–587–90).

Hearing—3—Application for Review in the United Broadcasting Company, Inc., Washington, D.C. FM radio comparative renewal proceeding (BC Docket Nos. 80–479 to 80–481).

Hearing—4—Application for Review in the Pittsfield, Massachusetts, comparative TV proceeding (Docket Nos. 82–420 and 82–421).

These items are closed to the public because they concern Adjudicatory Matters See 47 CFR 0.603(j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission September 18, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider these items in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

**William J. Tricarico,**

*Secretary, Federal Communications Commission.*

[FR Doc. 84–25256 Filed 9–19–84; 3:53 pm]

BILLING CODE 6712–01–M

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**3**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, September 17, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of an application relating to an assisted merger-type transaction (Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii))).

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: September 18, 1984.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 84–25233 Filed 9–19–84; 1:23 pm]

BILLING CODE 6714–01–M

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**4**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open

meeting held at 2:00 p.m. on Monday, September 17, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,106-L, Girod Trust Company, San Juan, Puerto Rico

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: September 18, 1984.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 84-25234 Filed 9-19-84; 1:23 pm]

BILLING CODE 6714-01-M

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5

**FEDERAL ENERGY REGULATORY COMMISSION**

September 19, 1984.

**TIME AND DATE:** September 26, 1984, 10:00 a.m.

**PLACE:** 825 North Capitol Street, NE., 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:** Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

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 Division of Public Information.

**Consent Power Agenda**

*798th Meeting—September 26, 1984*

Regular Meeting (10:00 a.m.)

CAP-1: Project No. 4472-003, Niagara Mohawk Power Corporation

CAP-2:
Project No. 8156-001, James W. Caples
Project No. 8157-001 and 002, Warren Osborne

CAP-3: Project No. 6939-002, city of Jackson, Ohio

CAP-4: Project No. 7923-002, Magic Water Company, Inc.

CAP-5: Project No. 7737-002, WP, Inc.

CAP-6: Project No. 7592-001, Faulkner Land and Livestock Company, Inc.

CAP-7: Project Nos. 6566-005 and 7348-000, Aquenergy Systems, Inc.

CAP-8: Project No. 2959-006, city of Seattle, Washington

CAP-9: Project No. 7272-000, Atlantic Power Development Corporation

CAP-10: Project No. 108-000, 108-009 and 8286-000, Northern States Power Company (Wisconsin) and Lac Courte Oreilles Band of Lake Superior Chippewa Indians

CAP-11: Docket No. QF84-314-000, Poppy Ridge Partners

CAP-12:
(A) Docket No. QF84-391-000, Waré Cogen Limited Partnership
(B) Docket No. QF84-395-001, city of Harrisburg
(C) Docket No. QF84-396-000, International Business Machines Corporation
(D) Docket No. QF84-409-000, Cogentrix of North Carolina, Inc.
(E) Docket No. QF83-425-001, Electrodyne Research Corporation

CAP-13: Docket No. ER84-576-000, Wisconsin Power and Light Company

CAP-14: Docket No. ER84-569-000, Interstate Power Company

CAP-15: Docket Nos. ER84-587-000, ER84-588-000, ER84-589-000, ER84-590-000, ER84-591-000 and ER84-592-000, Indiana & Michigan Electric Company

CAP-16: Docket No. ER84-584-000, Central Power and Light Company

CAP-17: Docket No. ER84-568-000, Gulf States Utilities Company

CAP-18: Docket No. ER84-594-000, Kansas City Power and Light Company

CAP-19: Docket No. ER84-177-003, Duke Power Company

CAP-20: Docket No. ER79-182-009, ER80-106-006, ER82-146-010, EL82-16-002, EL82-27-002 and ER83-437-000, Commonwealth Edison Company

**Consent Miscellaneous Agenda**

CAM-1: Docket No. RM84-21-000, Rules of Practice and Procedure: Interlocutory Appeals

CAM-2: Docket No. RM83-71-032 and 033, Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions

CAM-3: Docket No. GP83-36-000, State of New Mexico, Section 108 NGPA Determination, Mobil Producing Texas and New Mexico, Inc., Brunson Argo No. 9 Well, FERC JD. No. 82-21685

CAM-4: Docket No. GP83-45-000, State of New Mexico, Section 108 NGPA Determination, Tahoe Oil & Cattle Company, Ramsey State No. 1 Well, FERC JD No. 79-09123

CAM-5: Docket No. GP83-53-000, State of Oklahoma, Section 108 NGPA Determination, Ladd Petroleum Corporation, Toews "B" #1 Well, FERC No. JD81-27360

CAM-6: Docket No. GP84-6-000, State of New Mexico, Section 108 NGPA Determination, Marathon Oil Company, L.G. Warlick "C" Well No. 2, FERC JD No. 82-06096

CAM-7: Docket No. GP84-35-000, State of Oklahoma, Oklahoma Corporation Commission, NGPA Section 103 Determination, Southwestern Exploration Consultants, Inc., Audrey No. 2 Well, FERC JD No. 84-0765

CAM-8: Docket Nos. GP83-46-000, State of Oklahoma, Section 108 NGPA Determination, Phillips Petroleum Company, Bacon No. 1 Well, FERC JD No. 83-39094

CAM-9: Docket Nos. RM79-76-205 (Louisiana-2 Addition II), High-Cost Gas Produced From Tight Formations

**Consent Gas Agenda**

CAG-1: Docket Nos. TA85-1-7-000 and 001 (PGA85-1), Southern Natural Gas Company

CAG-2: Docket Nos. TA85-1-31-000 and 001 (PGA85-1 and IPR85-1), Arkansas Louisiana Gas Company

CAG-3: Docket Nos. TA85-1-32-000 and 001 (PGA85-1), Colorado Interstate Gas Company

CAG-4: Docket Nos. TA85-1-33-000 and 001 (PGA85-1, IPR85-1), El Paso Natural Gas Company

CAG-5: Omitted

CAG-6: Docket Nos. TA85-1-42-000 and 001 (PGA85-1 and IPR85-1), Transwestern Pipeline Company

CAG-7: Docket Nos. TA85-1-62-000 and 001 (PGA85-1), Pacific Offshore Pipeline Company

CAG-8: Docket No. RP84-99-001, Texas Eastern Transmission Corporation

CAG-9: Docket No. RP82-54-014, Colorado Interstate Gas Company

CAG-10: Docket Nos. TA84-2-17-002 and TA84-2-17-003, Texas Eastern Transmission Corporation

CAG-11: Docket Nos. RP83-137-008, TA83-2-29-001, (PGA83-2a, IPR83-2a), TA84-1-29-001 (PGA84-1, IPR84-1, DCA84-1), and TA84-1-29-002 (PGA84-1a), Transcontinental Gas Pipe Line Corporation

CAG-12: Docket No. TA81-1-21-021 and TA81-2-21-021, Columbia Gas Transmission Corporation

CAG-13: Docket No. TA84-2-49-000, Montana Dakota Utilities Company

CAG-14: Docket No. TA84-2-61-000, Bayou Interstate Pipeline Corporation

CAG-15: Docket No. TA84-2-33-007 (PGA84-2b), El Paso Natural Gas Company

CAG-16: Docket Nos. TA84-2-16-001 and TA84-2-16-002 (PGA84-2a), National Fuel Gas Supply Corporation

CAG-17: Docket Nos. TA84-2-40-002 and TA84-2-40-000 (PGA84-2b), Raton Natural Gas Company

CAG-18: Docket No. FA84-8-000, High Island Offshore System

CAG-19: Docket Nos. ST83-692-001, ST83-717-001, ST83-719-001, ST83-720-001, ST83-721-001, ST83-738-001, ST84-14-001, ST84-104-001, ST84-114-001, ST84-157-001, ST84-293-001, ST84-396-001, ST84-427-001, ST84-522-001 and ST84-951-001, Northern Natural Gas Company, Division of Internorth, Inc.

CAG-20: Docket No. ST84-803-000, Delhi Gas Pipeline Corporation

CAG-21: Docket Nos. ST81-260-003 and CP82-206-000, Mustang Fuel Corporation

CAG-22: Docket No. SA82-29-001, W.B. McCarter, Jr., et al.
CAG-23: Docket No. CI84-557-000, Arco Oil and Gas Company, a Division of Atlantic Richfield Company
CAG-24: Docket No. CI84-510-000, Sun Exploration and Production Company
CAG-25: Docket No. CI84-485-000, Amoco Production Company
CAG-26: Docket Nos. RI74-188-039 and RI75-21-034, Independent Oil & Gas Association of West Virginia
CAG-27: Docket No. CP74-314-012, El Paso Natural Gas Company
CAG-28: Omitted
CAG-29: Docket No. CP84-539-000, El Paso Natural Gas Company
CAG-30: Docket Nos. CP81-19-000 Through CP81-19-006, Northwest Pipeline Corporation
Docket No. TC84-8-000, Southwest Gas Corporation
CAG-31: Docket No. CP84-374-000, United Gas Pipe Line Company
CAG-32: Docket No. CP84-274-000, Consolidated Gas Transmission Corporation
CAG-33: Docket No. CP84-448-000, United Gas Pipe Line Company
CAG-34: Docket No. CP81-188-005, Consolidated Gas Transmission Corporation

*I. Licensed Project Matters*

P-1: Omitted
P-2: Project No. 3509-006, Little Falls Hydroelectric Associates, a Limited Partnership
P-3:
Project Nos. 2482-008 and 009, Niagara Mohawk Power Corporation
Project Nos. 4128-002, 003, 4331-002 and 003, Long Lake Energy Corporation

*II. Electric Rate Matters*

ER-1: Docket No. ER84-560-000, Union Electric Company
ER-2: Docket No. ER84-574-000, Holyoke Water Power Company and Holyoke Power and Electric Company
ER-3: Docket No. ER84-579-000, AEP Generating Company
ER-4: Omitted

Miscellaneous Agenda

M-1: Docket No. RM84-16-000, Methodology for Sales of Electric Power to Bonneville Power Administration
M-2: Omitted

Gas Agenda

*I. Pipeline Rate Matters*

RP-1: Omitted
RP-2: Docket No. RP84-85-000, Gas Research Institute
RP-3: Docket Nos. RP84-16-002, RP84-21-003 and RP84-86-001, Locust Ridge Gas Company
RP-4:
Docket No. ST84-630-001, Delhi Gas Pipeline Corporation
Docket No. ST84-698-001, PGC Pipeline, a Division of LPC Energy, Inc.
RP-5: Docket Nos. ST81-260-001, 002 and CP82-206-000, Mustang Fuel Corporation

*II. Producer Matters*

CI-1: Reserved

*III. Pipeline Certificate Matters*

CP-1: Docket Nos. RP83-14-001, RP83-81-000, CP83-254-000, CP83-254-006, CP83-335-000 and CP83-335-006, Montana Dakota Utilities Company
CP-2: Docket Nos. G-2569-001, G-2569-002, CI64-612-001 and CI64-612-002, Aminoil, Inc.
CP-3:
Docket No. CP81-107-000, et al., Boundary Gas, Inc.
Docket Nos. CP84-318-000 and CP84-318-001, Ohio Interstate Pipeline Company
Docket Nos. CP84-325-000 and CP84-325-001, Natural Gas Pipeline Company of America
Docket No. CP84-363-000, ANR Pipeline Company
Docket No. CP84-407-000, Northern Border Pipeline
Docket No. CP84-540-000, Great Lakes Gas Transmission Company
CP-4: Docket No. CP84-2-000, Columbia Gas Transmission Corporation
CP-5:
Docket Nos. CI83-269-000 Through 023, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., Tinco, Ltd., and Tenneco West, Inc.
Docket Nos. RP83-11-000 Through 026 and RP83-30-000, Transcontinental Gas Pipe Line Corporation
Docket No. CP83-279-002, Producer-Suppliers of Transcontinental Gas Pipe Line Corporation
Docket No. CP83-340-003, Producer-Suppliers of Transco Gas Supply Company
Docket Nos. CP83-428-001 and 002, Producer-Suppliers of Transco Supply Company and Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83-452-000 Through 015, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
Docket Nos. CP83-502-000 Through 004, 008 and 013, Tennessee Gas Pipe Company, a Division of Tenneco Inc.
Docket Nos. CP83-333-000 Through 018, Panmark Gas Company
Docket No. CP83-342-000, Trunkline Gas Company
Docket No. CP83-343-000, Panhandle Eastern Pipe Line Company
Docket No. CP83-354-000, Trunkline Gas Company and Panmark Gas Company
Docket No. CP83-355-000, Panhandle Eastern Pipe Line Corporation and Panmark Gas Company
Docket Nos. CP84-244-000 and 001, Texas Eastern Transmission Corporation and Producer-Suppliers of Texas Eastern Transmission Corporation
Docket Nos. CI84-332-000 Through 003, Cities Service Oil and Gas Corporation, Cities Offshore Producton Company and Oxy Petroleum, Inc.
Docket No. CI84-374-000, TXP Operating Company
Docket No. CI84-485-000, Amoco Production Company
Docket No. CP84-539-000, El Paso Natural Gas Company
CP-6: Docket Nos. CP75-23-021 and CP75-120-014, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-25257 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

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6

**LEGAL SERVICES CORPORATION**

Operations and Regulations Committee Meeting

**TIME AND DATE:** It will commence at 1:30 p.m. and continue until all official business is completed; Saturday, September 29, 1984.

**PLACE:** Key Bridge Marriott, Potomac Ballroom, 1401 Lee Highway, Arlington, Virginia 22209.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of Agenda
2. Approval of Minutes
— August 8, 1984
3. Report from Office of Field Services
4. Report from Office of Information Management
5. Report from Office of General Counsel
— Regulation 1630

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Opsut, Executive Office, (202) 272-4040.

**DATE ISSUED:** September 19, 1984.

**Donald P. Bogard,**

*President.*

[FR Doc. 84-25254 Filed 9-19-84; 3:33 p.m.]

BILLING CODE 6820-35-M

federal register

Friday
September 21, 1984

Part II

# Department of Labor

**Employment Standards Administration, Wage and Hour Division**

**Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice**

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

### Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order, 6–84. 49 FR 32473 (1989). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Government Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

### Modifications to General Wage Determination Decisions

The Numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

| | |
|---|---|
| Alabama: | |
| AL83-1010 | Feb. 2, 1983. |
| AL84-1030 | Sept. 7, 1984. |
| Arkansas: AR84-4091 | Jan. 13, 1984. |
| Connecticut: CT84-3016 | June 8, 1984. |
| Delaware: DE82-3015 | June 4, 1982. |
| District of Columbia: DC84-3009 | Apr. 6, 1984. |
| Kentucky: | |
| KY84-1006 | Mar. 16, 1984. |
| KY84-1003 | Jan. 9, 1984. |
| KY84-1010 | Mar. 30, 1984. |
| KY84-1007 | Mar. 16, 1984. |
| KY84-1011 | Mar. 23, 1984. |
| Maryland: MD83-3010 | June 3, 1983. |
| Mississippi: | |
| MS83-1015 | Apr. 1, 1983. |
| MS83-1014 | Mar. 3, 1983. |
| New Jersey: | |
| NJ84-3019 | July 6, 1984. |
| NJ84-3020 | July 27, 1984. |
| New Mexico: NM84-4027 | May 18, 1984. |
| Oklahoma: | |
| OK84-4049 | Sept. 7, 1984. |
| OK84-4050 | Do. |
| Oregon: OR84-5020 | June 22, 1984. |
| Pennsylvania: | |
| PA84-3012 | May 4, 1984. |
| PA84-3017 | June 15, 1984. |
| Texas: | |
| TX84-4005 | Feb. 22, 1984. |
| TX84-4037 | May 25, 1984. |
| TX84-4045 | Aug. 10, 1984. |
| TX84-4046 | Do. |
| TX84-4047 | Do. |
| Washington: WA83-5110 | June 3, 1983. |

### Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of Publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

| | |
|---|---|
| Pennsylvania: PA83-3048 (PA84-3035) | Oct. 7, 1983. |
| Texas: | |
| TX83-4058 (TX84-4056) | Aug. 5, 1983. |
| TX83-4079 (TX84-4057) | Oct. 21, 1983. |
| TX80-4088 (TX84-4058) | Nov. 7, 1980. |

Signed at Washington, D.C., this 14th day of September 1984.

**James L. Valin,**

*Assistant Administrator.*

BILLING CODE 4510-27-M

DECISION NO. AL83-1010
Mod. # 1
(48 FR 7364-February 2, 1983)
Baldwin, Choctaw, Clarke, Conecuh, Escambia, Marengo, Monroe, Mobile, Washington and Wilcox Counties, Alabama

CHANGE:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CARPENTERS | $12.88 | $1.62 |
| ELECTRICIANS: Wiremen | 14.46 | 2.35+ 3% |
| IRONWORKERS | 13.39 | 1.62 |
| PLUMBERS & PIPEFITTERS | 14.13 | 2.58 |
| PILEDRIVERMEN | 13.21 | 1.62 |
| TRUCK DRIVERS: | | |
| 1. Truck Drivers up to but not including 1½ tons | 9.37 | 1.62 |
| 2. Truck Drivers 1½ tons up to but not including 5 tons | 10.11 | 1.62 |
| 3. Truck Drivers on rated 5 tons or 6 yards and over including heavy equipment such as pole truck, miss or corning wagons, dumpsters, semi drivers, agitators, ross carriers, dempsey dump, euclid trucks, forklift trucks in warehouse and similar equipment such as tractors, ten wheelers, jeeps, or dump trucks, pickup trucks pulling two (2) or four (4) wheel trailers hauling equipment (not applicable to pulling equipment which rolls on its own wheels). | 11.81 | 1.62 |

Dec. No. AL83-1010
Mod. # 1 Con't

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| Truck Drivers Con't | | |
| 4. Truck and Auto Mechanics | $12.74 | $1.62 |

DECISION NO. AL84-1030
Mod # 1
(49 FR 35481 - September 7, 1984)
Blount . . . Winston Cos., Alabama

CHANGE:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| Boilermakers - Storage Tank Erection & Storage Tank Repair | $12.96 | 3.375 |

DECISION #AR84-4091-MOD.#6
(49 FR 1845-Jan. 13, 1984)
UNION AND OUACHITA COUNITES, ARKANSAS

CHANGE:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| ELECTRICIANS: | | |
| Electrical Contracts $20,000 or less | | |
| Electricians | $14.71 | 3-1/4% + 1.00 |
| Cable Splicers | 15.01 | 3-1/4% + 1.00 |
| Electrical Contracts over $20,000 | | |
| Electricians | 15.50 | 3-1/4% + 1.00 |
| Cable Splicers | 15.80 | 3-1/4% + 1.00 |



DECISIONMNO. KY84-1006
Mod # 3
(49 FR 9997 - March 16, 1984)
WARREN COUNTY, KENTUCKY

CHANGE:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| BOILERMAKERS | $ 18.05 | 3.52 |
| IRONWORKERS | 10.35 | 2.17 |
| LABORERS: | | |
| Group 1 | 10.75 | 2.20 |
| Group 2 | 10.90 | 2.20 |
| Group 3 | 11.25 | 2.20 |
| LINE CONSTRUCTION: | | |
| Linemen, line truck, hole digger & cable splicer | 13.95 | 1.05 + 3½% |
| Groundmen-truck driver with winch | 11.86 | 1.05 + 3½% |
| Groundmen-truck driver | 11.16 | 1.05 + 3½% |
| PAINTERS: | | |
| Industrial: | | |
| Brush & Roller | 11.85 | 1.55 |
| Spray & Drywall Finishing | 12.10 | 1.55 |
| Structural Steel, Swing Stage & Chair, Motor Stage | 12.20 | 1.55 |
| Paperhanger | 12.35 | 1.55 |
| Commercial: | | |
| Brush | 10.00 | 1.55 |
| Spray, Sandblast, Boswain Chair or heights over 50' | 10.50 | 1.55 |
| PIPEFITTERS | 16.25 | 3.35 |
| POWER EQUIPMENT OPERATORS: | | |
| CLASS A | 14.67 | 2.48 |
| CLASS B | 11.93 | 2.48 |
| CLASS C | 11.16 | 2.48 |
| ROOFERS: | | |
| Roofers | 10.60 | 1.51 |
| Precast Slab, Slate, Asbestos, Tile | 10.85 | 1.51 |
| Coal Tar Pitch | 11.00 | 1.51 |
| SHEET METAL WORKERS: | | |
| Light Commercial *(See scope of work) | 9.00 | 2.706 |
| ALL Other Bldg. Constr. | 17.71 | 3.26 |

DECISION NO. KY84-1006
Mod # 3 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| * | | |

SCOPE OF WORK

SHEET METAL WORKERS:
Light Commercial - Defined as single buildings not inside or adjoining an industrial complex and that type work in the following categories: Bowling alleys, chapels, churches, funeral homes, restaurants, service stations, night clubs, pool rooms, nursing homes, skating rinks, storage facilities (45,000 sq. ft. or less), community/all porpose blgs., recreation bldgs.(gyms, spas), branch banks, barber & beauty shops, stores (45,000 sq. ft. or less), garages (body, tire, muffler & service shop), dance halls, nurseries, kindergarden & pre-school centers, open faced shopping centers(10 stores or less), office facilities (less than 45,000 sq.ft. & less than 4 floors above grade), and any other bldg. with 20 tons or less HVAC not exceeding 45,000 sq. ft.

MODIFICATIONS P. 3

DECISION NO. KY84-1003
Mod # 4
(49 FR 9057 - January 9, 1984)
McCracken County, Kentucky

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| BOILERMAKERS | $ 18.05 | 3.52 |
| CARPENTERS & LATHERS | 14.30 | 2.17 |
| ELECTRICIANS: | | |
| Industrial: | | |
| Wireman | 16.24 | 1.25 + 13¼% |
| Cable Splicer | 16.49 | 1.25 + 13¼% |
| IRONWORKERS | 15.55 | 2.45 |
| LABORERS: | | |
| Group 1 | 10.75 | 2.20 |
| Group 2 | 10.95 | 2.20 |
| Group 3 | 11.25 | 2.20 |
| MILLWRIGHTS & PILEDRIVERMEN | 14.80 | 2.17 |
| PLUMBERS & PIPEFITTERS: | | |
| Light Commercial *(See Scope of Work) | 11.06 | 2.63 |
| All Other Building Const. | 17.51 | 2.63 |
| POWER EQUIPMENT OPERATORS: | | |
| CLASS A | 14.67 | 2.48 |
| CLASS B | 11.93 | 2.48 |
| CLASS C | 11.16 | 2.48 |

* SCOPE OF WORK

PLUMBERS & PIPEFITTERS:
Light Commercial - Defined as Construction, remodeling, repairs & service work to commercial bldgs., not to exceed 12 plumbing fixtures per store, plus kitchen equipment for resturants (floor drains & hot water heaters not to be considersd as plumbing fixtures); excluding complete shopping centers under initial construction; any single office suite or store for leasor or leasee in any building.

DECISION NO. KY84-1010
Mod # 2
(49 FR 12888 - March 30, 1984)
Fort Campbell (Christian County, Kentucky & Montgomery County, Tennessee)

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| BOILERMAKERS | $ 18.05 | 3.52 |
| CARPENTERS, LATHERS & SOFT FLOOR LAYERS | 14.30 | 2.17 |
| ELECTRICIANS: | | |
| KENTUCKY PORTION: | | |
| Industrial: | | |
| Wireman | 16.24 | 1.25 + 13¼% |
| Cable Splicer | 16.49 | 1.25 + 13¼% |
| ELEVATOR CONSTRUCTORS: | | |
| Mechanics | 12.18 | 3.00 + a |
| Helpers | 8.53 | 3.00 + a |
| Probationary Helpers | 6.09 | 3.00 + a |
| IRONWORKERS | 10.35 | 2.17 |
| LABORERS: | | |
| Group 1 | 10.75 | 2.20 |
| Group 2 | 10.90 | 2.20 |
| Group 3 | 11.25 | 2.20 |
| MILLWRIGHTS & PILEDRIVERMEN | 14.80 | 2.17 |
| PAINTERS: | | |
| Industrial: | | |
| Brush & Roller | 11.85 | 1.55 |
| Spray & Drywall Finishing | 12.10 | 1.55 |
| Structural Steel, Swing Stage & Chair, Motor Stage | 12.20 | 1.55 |
| Paperhanger | 12.35 | 1.55 |
| Commercial: | | |
| Brush | 10.00 | 1.55 |
| Spray, Sandblast, Bosswain Chair or heights over 50' | 10.50 | 1.55 |
| POWER EQUIPMENT OPERATORS: | | |
| KENTUCKY PORTION: | | |
| CLASS A | 14.67 | 2.48 |
| CLASS B | 11.93 | |
| CLASS C | 11.16 | |
| SHEET METAL WORKERS | 14.93 | |

MODIFICATIONS P. 4

DECISION NO. KY84-1007
Mod # 4
(49 FR 9999 - March 16, 1984)
HARDIN, JEFFERSON, & MEADE COS., KENTUCKY

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| BOILERMAKERS | $ 18.05 | 3.52 |
| PLUMBERS & PIPEFITTERS: | | |
| Area 1: | | |
| Pipefitters | 16.25 | 3.35 |
| Area 2: | | |
| Pipefitters | 16.85 | 3.35 |
| Area 3: | | |
| Pipefitters | 17.10 | 3.35 |
| POWER EQUIPMENT OPERATORS: | | |
| CLASS A | 14.67 | 2.48 |
| CLASS B | 11.93 | 2.48 |
| CLASS C | 11.16 | 2.48 |
| SHEET METAL WO | | |
| Light Commercial *(See scope of work) | 9.00 | 2.706 |
| All Other Building Const. | 17.71 | 3.76 |

*
SCOPE OF WORK

SHEET METAL WORKERS:
Light Commercial - Defined as single buildings not inside or adjoining an industrial complex and that type work in the following categories: Bowling alleys, chapels, churches, funeral homes, restaurants, service stations, night clubs, pool rooms, nursing homes, skating rinks, storage facilities (45,000 sq. ft. or less), community/all porpose blgs., recreation bldgs.(gyms, spas), branch banks, barber & beauty shops, stores (45,000 sq. ft. or less), garages (body, tire, muffler & service shop), dance halls,

DECISION NO. KY84-1007
Mod # 4 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| SCOPE OF WORK - SHEET METAL WORKERS (Light Commercial) (Cont'd) | | |
| nurseries, kindergarden & pre-school centers, open faced shopping centers(10 stores or less), office facilities (less than 45,000 sq.ft. & less than 4 floors above grade), and any other bldg. with 20 tons or less HVAC not exceeding 45,000 sq. ft. | | |

DECISION NO. KY84-1011
Mod # 1
(49 FR 11066 - March 23, 1984)
FAYETTE & FRANKLIN COS., KENTUCKY

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| BOILERMAKERS | $ 18.05 | 3.52 |
| BRICKLAYERS & STONEMASONS | 13.20 | 1.50 |
| MARBLE, TILE & TERRAZZO WORKERS | 12.60 | 1.50 |
| PUMBERS & PIPEFITTERS: | | |
| Franklin Co. (W 2/3, incl. the City of Frankfurt): | | |
| Pipefitters | 17.10 | 3.35 |
| Plumbers - | | |
| Contracts $100,000 or less | 10.68 | 3.65 |
| Contracts over $100,000.00 | 16.01 | 3.65 |
| POWER EQUIPMENT OPERATORS: | | |
| CLASS A | 14.67 | 2.48 |
| CLASS B | 11.93 | 2.48 |
| CLASS C | 11.16 | 2.48 |
| SHEET METAL WORKERS: | | |
| Light Commercial *(See scope of work) | 9.00 | 2.706 |
| All Other Bldg. Constru. | 17.71 | 3.76 |

DECISION NO. KY84-1011
Mod # 1 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|

*

SCOPE OF WORK

SHEET METAL WORKERS:
Light Commercial - Defined as single buildings not inside or adjoining an industrial complex and that type work in the following categories: Bowling alleys, chapels, churches, funeral homes, restaurants, service stations, night clubs, pool rooms, nursing homes, skating rinks, storage facilities (45,000 sq. ft. or less), community/all porpose blgs., recreation bldgs.(gyms, spas), branch banks, barber & beauty shops, stores (45,000 sq. ft. or less), garages (body, tire, muffler & service shop), dance halls, nurseries, kindergarden & pre-school centers, open faced shopping centers(10 stores or less), office facilities (less than 45,000 sq.ft. & less than 4 floors above grade), and any other bldg. with 20 tons or less HVAC not exceeding 45,000 sq. ft.

DECISION NO. MD83-3010-
MOD. #7
(48 FR 25100-June 3,1983)
ANNE ARUNDREL (EXCLUDING THE D.C. TRAINING SCHOOL) BALTIMORE & BALTIMORE CITY MARYLAND, & FOR HEAVY CONSTRUCTION IN HARFORD & HOWARD COUNTIES, MARYLAND

CHANGE:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| BRICKLAYERS | $12.21 | 2.29 |

DECISION NO. MS83-1015
Mod # 6
(48 FR 14312 - April 1, 1983)
Hinds County, Mississippi

CHANGE:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| IRONWORKERS: | | |
| Ironworkers | $12.51 | 2.29 |
| Rodmen | 9.00 | 2.29 |

DECISION NO. MS83-1014
Mod # 4
(48 FR 12646 - March 3, 1983)
Warren County, Mississippi

CHANGE:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| IRONWORKERS: | | |
| Ironworkers | $12.51 | 2.29 |
| Rodmen | 9.00 | 2.29 |



DECISION NO. NJ84-3019 -
MOD. #3
(49 FR 27883 - July 6, 1984)
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset Sussex, Union and Warren Counties, New Jersey

CHANGE:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| BRICKLAYERS, STONEMASONS, CEMENT MASONS AND PLASTERERS: | | |
| Zone 4: | | |
| Bricklayers and Stonemasons | 16.80 | 5.05 |
| Zone 6 | 17.07 | 3.69 |
| Zone 10 | 17.08 | 3.79 |
| Zone 11 | 17.40 | 3.37 |
| Zone 12 | 17.70 | 4.57 |
| ELECTRICIANS AND CABLE SPLICERS: | | |
| Zone 1 | 18.78 | 27.25% |

ZONE DESCRIPTION
Bricklayers Stonemason and Plasterers
Zone 6:
Essex (Millburn Twp.) Morris (Gillette and Sterling, Shore Hills Twps.) Union (New Providence, Springfield and Union Twps.)

DECISION NO. NM84-4027 -
MOD. #5
(49 FR 21263 - 5/18/84)
Statewide (excluding Eddy & Lea Cos. for building construction) New Mexico

Add City of Albuquerque to Basing Points for Plumbers-pipefitters classification

CHANGE:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| Power Equipment Ops. | | |
| Heavy Construction: | | |
| Group I | $11.03 | 2.15 |
| Group II | 12.17 | 2.15 |
| Group III | 12.25 | 2.15 |
| Group IV | 12.46 | 2.15 |
| Group V | 12.52 | 2.15 |
| Group VI | 12.62 | 2.15 |
| Group VII | 12.72 | 2.15 |
| Group VIII | 13.90 | 2.15 |

DECISION NO. NJ84-3019-
MOD. #3 (CONT'D)

ADD:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| BRICKLAYERS, STONEMASONS, CEMENT MASONS AND PLASTERERS: | | |
| Zone 13 | 17.45 | 3.32 |

Zone Descriptions:
Zone 13:
Morris (Morristown Twp.)

DECISION NO. NJ84-3020 -
MOD. #3
(49 FR 30280 - July 27, 1984)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem Counties, New Jersey

CHANGE:

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| ROOFERS: | | |
| Zone 2: | | |
| Composition | 16.50 | 3.50 |
| Slate & Tile | 16.625 | 3.50 |
| IRONWORKERS: | | |
| Zone 2 | 19.43 | 7.70 |

Zone Descriptions:
Carpenters, Millwrights and Insulators:
Zone 2:
Burlington County
Zone 4:
Remainder of Mercer County

| DECISION NO. OR84-5020 - Mod #2 (49 FR 25821 - June 22, 1984) Statewide Oregon | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| BRICKLAYERS; STONEMASONS: | | |
| Area 2: | | |
| Projects over $1 million | $17.10 | $3.27 |
| CARPENTERS: | | |
| All projects involving the construction, alteration, or repair of buildings, bridges or other structures under $1.5 million not including the cost of utilities; and all projects other than the above, under $1 million excluding the cost of utilities | | |
| Group 1 | 13.07 | 4.02 |
| Group 2 | 13.19 | 4.02 |
| Group 3 | 13.27 | 4.02 |
| Group 4 | 13.39 | 4.02 |
| Group 5 | 13.15 | 4.02 |
| Group 6 | 13.23 | 4.02 |
| CEMENT MASONS: | | |
| Cement Masons | 16.49 | 3.22 |
| Composition Workers and Power Machinery Operators | 16.80 | 3.22 |
| GLAZIERS | 16.97 | 2.88 |
| LATHERS: | | |
| Area 1 | 13.55 | 4.87 |
| MASON TENDERS: [1] | | |
| Tenders to bricklayers, tile setters, marble setters and terrazzo workers; topping for cement finishers and mortar mixer (exclude plasterer tender) | 14.05 | 4.06 |
| PAINTERS: | | |
| Area 1: | | |
| Painters and tapers | 12.25 | 1.78 |
| PLASTERERS: | | |
| Area 1 | 15.30 | 3.57 |
| PLUMBERS: | | |
| Areas 4, 5, 7, 8: (combined due to merger) | 20.48 | 3.70 |
| Area 1 | 16.30 | 4.16 |
| ROOFERS: | | |
| Area 1: | | |
| Roofers | 14.60 | 2.90 |
| Handling coal tar, pitch | 16.06 | 2.90 |
| SPRINKLER FITTERS | 19.17 | 3.23 |
| LINE CONSTRUCTION: | | |
| Area 2: | | |
| Cable Splicers | 17.81 | 2.00+3½% |
| Journeyman Lineman | 16.17 | 2.00+3½% |
| Line Equipment Mechanic (right-of-way) | 15.30 | 2.00+3½% |
| LINE CONSTRUCTION (Cont'd) | | |
| Line Equipment Mechanic (Base Shop) | 14.32 | 2.00+3½% |
| Line Equipment Serviceman | 14.32 | 2.00+3½% |
| Line Equipment Operator | 14.56 | 2.00+3½% |
| Groundman | 11.30 | 2.00+3½% |
| DREDGING: | | |
| Leverman, Hydraulic | 17.83 | 4.35 |
| Leverman, Dipper | 18.57 | 4.35 |
| Assistant Engineer (including Watch Engineer, Welder, Mechanic and Machinist); and Mate | 17.26 | 4.35 |
| Tenderman (Boatman, attending Dredge Plant); Fireman | 16.83 | 4.35 |
| Assistant Mate (Deckhand); and Oiler | 16.46 | 4.35 |
| OMIT: | | |
| CARPENTERS: | | |
| Group 1: | | |
| Omit Drywall & Acoustical applicators only | | |
| ADD: | | |
| DRYWALL & ACOUSTICAL APPLICATOR | 14.40 | 4.02 |
| PLASTERER'S TENDERS [1] | 13.56 | 4.06 |

FOOTNOTE:

1. All projects involving the construction, alteration, or repair of buildings, bridges or other structures under $1.5 million not including the cost of utilities; and all projects other than the above, under $1 million excluding the cost of utilities. Employees shall be paid 80% of the basic hourly rate plus full fringe (Applies to Mason Tenders and Plasterer's Tenders)



| DECISION #OK84-4049-MOD. #1 (49 FR 35473-Sept. 7, 1984) | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfusgee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma | | |
| CHANGE: | | |
| Electricians | | |
| Area 2 | $14.90 | 3.5% + $2.40 |
| Cable Splicers | | |
| Area 2 | 15.15 | 3.5% + 2.40 |
| Tile Layers, Terrazzo Workers, & Marble Masons | 16.84 | 1.50 |

| DECISION NO. PA84-3012 MOD. NO. 2 (49 FR 19200 - May 4, 1984) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| ROOFERS: | | |
| Shingle, slate, and Tile Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; clean-up debris | $13.92 | 2.25 |
| | 6.25 | 2.25 |

| DECISION #OK84-4050-MOD. #1 ( 49 FR 35477-Sept. 7, 1984) | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods, and Woodward Cos., Oklahoma | | |
| CHANGE: | | |
| Supersedeas Decision No. OK84-4050 dated Sept. 7, 1984 in 49 FR 35477 supersedes Decision No. OK84-4034 instead of Decision No. OK84-4068. | | |
| Electricians | | |
| Area 2 | $14.90 | 3.5% + $2.40 |
| Area 3 | 14.05 | 3-1/4% +1.50 |
| Cable Splicers | | |
| Area 2 | 15.15 | 3.5% + 2.40 |

| DECISION NO. PA84-3017 MOD. NO. 1 (49 FR 24859 - June 15, 1984) Berks, Lehigh, & Northampton Counties, Pennsylvania | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| Electricians | | |
| Zone 2 | 15.41 | 1.83+ 3⅛% |
| ROOFERS: | | |
| Shingle, Slate & Tile Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; cleanup debris | 13.92 | 2.25 |
| | 6.25 | 2.25 |
| Sheet metal workers | 15.73 | 4.92 |

| DECISION NO. TX84-4005 - MOD. #7 (49 FR 7069 - 2/22/84) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| Boilermakers | $16.125 | 2.95 |
| Painters: | | |
| Zone 1: | | |
| Group 1 | 13.36 | 1.80 |
| Group 2 | 13.61 | 1.80 |
| Group 3 | 13.48 | 1.80 |
| Group 4 | 13.74 | 1.80 |
| Group 5-Steeple jack work consisting of water towers, smoke stack & breeching, chimneys, flag poles, radio & TV towers, cable work 16' & over above ground where cables are strung to scaffolds & running boards | 14.11 | 1.80 |

| DECISION NO. TX84-4037 - MOD. #3 (49 FR 22191 - 5/25/84) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| Asbestos workers | 17.10 | 2.57 |
| Boilermakers | 16.125 | 2.95 |

| DECISION NO. TX84-4045 - MOD. #1 (49 FR 32168 - 8/10/84) Travis County, Texas | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| Boilermakers | $16.125 | 2.95 |
| Electricians & cable splicers | 15.60 | 1.00+ 8-8/10% |
| Line construction: | | |
| Linemen | 16.30 | .80+ 3-1/2% |
| Groundmen | 8.15 | .80+ 3-1/2% |

| DECISION NO. TX84-4046 - MOD. #1 (49 FR 32166 - 8/10/84) Bexar County, Texas | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| Boilermakers | 16.125 | 2.95 |
| Electricians: | | |
| Electricians | 15.49 | 1.00+6% |
| Cable splicers | 15.74 | 1.00+6% |
| Elevator constructors: | | |
| Mechanics | 14.59 | 3.29+a |
| Helpers | 70%JR | 3.29+a |
| Helpers (Prob.) | 50%JR | |
| Line construction: | | |
| Lineman | 15.85 | .80+ 3-1/2% |
| Cable splicer | 16.10 | .80+ 3-1/2% |
| Groundman | 8.72 | .80+ 3-1/2% |

| DECISION NO. TX84-4047 - MOD. #1 (49 FR 32167 - 8/10/84) Lubbock County, Texas | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| Asbestos workers | 17.10 | 2.57 |
| Boilermakers | 16.125 | 2.95 |



| DECISION NO. CT84-3016 - MOD. #7 (49 FR 23980 - June 8, 1984) Statewide, Connecticut | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| MOD. #16 published August 24, 1984 to read MOD. #6 | | |
| ELEVATOR CONSTRUCTORS: | | |
| Mechanic | 18.81 | 3.29+ f+g |
| Helper | 13.17 | 3.29+ f+g |
| Prob. Helper | 9.405 | |
| PAINTERS: | | |
| Area 1 | | |
| Brush | 15.60 | 2.15 |
| Tapers | 16.10 | 2.15 |
| Bosun Chair | 16.60 | 2.15 |
| Spray | 20.50 | 2.15 |
| PLUMBERS & STEAMFITTERS: | | |
| Area 6 | | |
| Jobs where total mechanical work exceeds $200,000 | 18.00 | 3.83 |
| Jobs where total mechanical work is $200,000 or less | 13.50 | 3.83 |
| TRUCK DRIVERS: | | |
| Class 1 | 12.03 | 3.37+s |
| Class 2 | 12.13 | 3.37+s |
| Class 3 | 12.18 | 3.37+s |
| Class 4 | 12.23 | 3.37+s |
| Class 5 | 12.28 | 3.37+s |
| Class 6 | 12.33 | 3.37+s |

| DECISION NO. DE82-3015 - MOD. #19 (47 FR 24526 - June 4, 1982) State of Delaware. On MOD. #18 | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| OMIT: | | |
| CARPENTERS: | | |
| Building & Heavy Construction | | |
| New Castle & Kent Counties | | |
| Residential Carpenters | 12.23 | 3.67 |

| DECISION NO. DC84-3009- MOD. #5 (49 FR 13800-April 6, 1984) DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES. | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| SHEET METAL WORKERS | $14.83 | 4.56+d |
| d-Employer contributes additional 12¢ outside of the District of Columbia | | |

| DECISION NO. WA83-5110 - Mod #18 (48 FR 25108 - June 3, 1983) Statewide Washington | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| CHANGE: | | |
| ELEVATOR CONSTRUCTORS: | | |
| Mechanics: | | |
| Area 1 | $19.855 | a+3.37 |
| Area 2 | 20.76 | a+3.00 |
| PLASTERERS: | | |
| Area 2 | 17.31 | 3.62 |
| ROOFERS: | | |
| Area 3: | | |
| Roofers & Waterproofers | 18.85 | 2.57 |
| Slate & Tile Roofers | 19.10 | 2.57 |

SUPERSEDEAS DECISION

STATE: PENNSYLVANIA COUNTIES: SEE BELOW*
DECISION NO. PA84-3035 DATE: DATE OF PUBLICATION
Supersedes Decision No. PA83-3048 dated October 7, 1983,in 48 FR 45917.
DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes or apartments up to and including 4 stories). Excluding Sewage and Water Treatment Plant Projects.
*Lackawanna, Susquehanna, Wayne and Wyoming.

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| ASBESTOS WORKERS | 16.33 | 2.31 |
| BOILERMAKERS | 19.33 | 2.415 |
| BRICKLAYERS & STONEMASONS: | | |
| Lackawanna & Wayne Cos. | 15.00 | 2.68 |
| Susquehanna & Wyoming Counties | 15.70 | 2.00 |
| CARPENTERS: | | |
| LACKAWANNA, Susquehanna, Wayne Counties, and Wyoming County: | | |
| East of Susquehanna River | 14.46 | 2.70 |
| Wyoming County: | | |
| West of Susquehanna River | 14.99 | 2.55 |
| CEMENT MASONS: | | |
| Wyoming, Wayne, Susquehanna Counties, Scranton in Lackawanna Co. | 15.65 | |
| Carbondale in Lackawanna Counties | 15.00 | 2.86 |
| ELECTRICIANS: | | |
| Lackawanna, Susquehanna Wayne Counties, and Wyoming County | | |
| East of Susquehanna River | 15.25 | 3.30+ 3% |
| Wyoming County: | | |
| West of Susquehanna River | 15.99 | 2.70+ 3% |
| ELEVATOR CONSTRUCTORS | 15.60 | 3.00 +a+b |
| ELEVATOR CONSTRUCTORS' HELPERS | 70%JR | 3.00 +a+b |
| ELEVATORS CONSTRUCTORS' HELPERS (PROB.) | 50%JR | |
| GLAZIERS | 13.04 | 2.90 |
| IRONWORKERS: | | |
| Lackawanna, Wayne and Wyoming Counties | | |
| Structural and Ornamental | 17.85 | 3.70+e |
| Reinforcing | 17.75 | 3.70+e |
| Susquehanna County | 12.80 | |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| LABORERS: | | |
| Lackawanna, Wayne, Susquehanna, & Northern part of Wyoming County: | | |
| Unskilled & Window Cleaners | 12.80 | 2.87 |
| Semi-skilled Laborers; Jackhammer Operators, (each man when two are required for operation of Jackhammer) vibrator and Buster men, Wagon Drill and all men handling Dynamite, Gas Buggies, 2" Pumps and Concrete Mixers (up to 2 bags) and all Pneumatic Tools | 12.95 | 2.87 |
| PLASTER TENDERS & MASONS TENDERS and Handling of all material to be used; Masons and Scaffold Builders | 13.20 | 2.87 |
| NON-METALLIC PIPE LAYERS and making of Joints, Clay, Terra Cotta, Ironstone, Vitrified Concrete Handling of Burning Torches; Asphalt or other material | 12.95 | 2.87 |
| SOUTHERN PART OF WYOMING COUNTY: | | |
| Unskilled | 12.87 | 2.80 |
| Semi-skilled laborers; pneumatic and other mechanical tool operator 2" pump or under; Handling and mixing of all material used by Masons from stock pile to Mason Non-matallic Pipelayer & making of Joints, Clay, Terra Cotta, Ironstone, Vitrified Concrete, Handling of Burning Torches; Asphalt or other Hot material, Cement Finishers and Blasters Helpers | 13.07 | 2.80 |



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| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| LABORERS: (Continued) | | |
| Southern part of Wyoming County Plasterers' Tenders; Blasters; Wagon Drill Operators | 13.19 | 2.80 |
| Masons Tenders and Scaffold Builders | 13.27 | 2.80 |
| LATHERS | 12.04 | 2.80 |
| LEAD BURNERS | 10.75 | .66+c |
| LINE CONSTRUCTION: | | |
| Lineman; Dynamite man | 15.99 | .80+3 3/8% |
| Winch Truck | 11.29 | .80+3 3/8% |
| Groundman | 10.00 | .80+3 3/8% |
| MARBLE SETTERS | 13.60 | 2.50 |
| MILLWRIGHTS: | | |
| Lackawanna, Susquehanna, Wayne Counties, and Wyoming County: | | |
| East of Susquehanna River | 15.04 | 2.70 |
| Wyoming County: | | |
| West of Susquehanna River | 16.57 | 2.55 |
| PAINTERS: | | |
| Brush and Roller | 13.65 | 1.25 |
| Spray | 15.15 | 1.25 |
| Steel | 14.65 | 1.25 |
| PILEDRIVERMAN | 14.82 | 6.16+d |
| PLASTERERS | 16.73 | |
| PLUMBERS | 15.24 | 3.95 |
| POWER EQUIPMENT OPERATORS: | | |
| Group 1 | 15.89 | 26.6%+f |
| Group 2 | 15.60 | 26.6%+f |
| Group 3 | 14.72 | 26.6%+f |
| Group 4 | 13.95 | 26.6%+f |
| Group 5 | 13.47 | 26.6%+f |
| Group 6 | 12.55 | 26.6%+f |
| Group 7 | 16.14 | 26.6%+f |
| Group 7-A | 16.41 | 26.6%+f |
| Group 7-B | 16.64 | 26.6%+f |
| ROOFERS: | | |
| Composition & Kettleman | 14.42 | 2.28 |
| SHEET METAL WORKERS | 15.92 | 2.00 |
| SOFT FLOOR LAYERS: | | |
| Lackawanna, Wayne and Susquehanna Counties | 14.46 | 2.70 |
| Wyoming County | 12.29 | 2.55 |
| SPRINKLER FITTERS | 16.92 | 3.23 |
| PIPEFITTERS | 14.79 | 4.35 |
| TRUCK DRIVERS: | | |
| Class I | 12.77 | |
| Class II | 12.84 | |
| Class III | 13.33 | |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental. | | |

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))."

POWER EQUIPMENT OPERATORS - CLASSIFICATIONS

Group 1: Machines doing hook work; Any machine handling machinery; Cable spinning machines; Helicopters; Machines similar to the above

Group 2: All types of Cranes; All types of backhoes; Cableways; Dragline; Keystones; All types of shovels; Derricks; Trench shovels; Trenching machines; Hoist with two towers; Pavers, 21E and over; All types of overhead cranes; Building hoists (double drum); Gradalls; Mucking machines in tunnel; All front end loaders, 3½ cu. yds. and over; Tandem scrapers; Pippin type backhoes; Boat captains; Batch plant operators (concrete); Drills; Self-contained rotary drills; Fork lifts, 20 ft. lift and over; machine similar to the above

Group 3: Conveyors; Building hoists (single drum); Scrapers and Tournapulls; Spreaders; High or low pressure boilers; Concrete pumps; Well drillers; Bulldozers and tractors; Asphalt plant engineers; Roller (high grade finishing); Ditch witch type trencher; All loaders under 3½ cu. yds.; Mechanic-welder; Motor patrols; Drill helper-self contained rotary drills; Core drill operator; Forklift trucks, under 20 ft. lift; Machine similar to the above

Group 4: Welding machines; Well points; Compressors; Pumps; Heaters; Farm tractors; Form line garders; Fine grade machines; Road finishing machines; Concrete breaking machines; Rollers; Seaman pulverizing mixer; Power broom; Seeding spreaders; Tireman (for power equipment); Machines similar to above

Group 5: Fireman, Grease truck

Group 6: Oilers and deck hands (personnel boats); Core drill helper

Group 7: All machines with booms (including jib, masts, leads, etc.); 100 ft. and over

Group 7-A: 150 ft. and over

Group 7-B: 200 ft. and over



TRUCK DRIVERS - CLASSIFICATIONS

Class I - Helper; Stack Body Truck (single axle); Dumpster
CLASS II - Dump Trucks; Tandem and Batch Trucks; Semi-trailers; Agitator Mixer Trucks; Ready mix and Dumpcrete type vehicles Asphalt Distributors; Farm Tractor when used for transportation; Stake Body Truck (tandem)
CLASS

CLASS III - Eculid type; off-highway Equipment - Back or Belly Dump Trucks and Double Hitched Equipment; Straddle (Ross) carrier; low-bed Trailers

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.
b. Paid Holidays: A through F, plus the Friday after Thanksgiving Day.
c. Paid Holidays: A through F and Washington's Birthday, Good Friday; and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday and is avialable for work the days preceding and following the holiday.
d. Paid Holidays: Washington's Birthday, Good Friday, Memorial Day, Labor Day; Presidential Election Day; Veterans' Day, Thanksgiving Day.
e. Employer contributes $3.70 to a combined Health and Welfare and Pension Fund.
f. Paid Holidays: New Year's Day, Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day, provided the employee works the day before and after the holiday.

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Gregg
DECISION NO. TX84-4056 DATE: Date of Publication
Supersedes Decision No. TX83-4058, dated 8/5/83 in 48 FR 35850
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

| | BASIC HOURLY RATE | FRINGE BENEFITS |
|---|---|---|
| BRICKLAYERS | $12.75 | |
| CARPENTERS | 10.67 | |
| CEMENT MASONS | 9.48 | |
| ELECTRICIANS | 14.35 | 1.00+ 7-1/4% |
| GLAZIERS | 8.73 | |
| IRONWORKERS | 9.00 | |
| LABORERS | 5.84 | |
| PAINTERS | 9.00 | |
| PLUMBERS | 9.975 | |
| ROOFERS | 9.12 | |
| SHEET METAL WORKERS | 7.73 | |
| SOFT FLOOR LAYERS | 11.25 | |
| SPRINKLER FITTERS | 11.29 | |
| WELDERS - receive rate prescribed for craft performing operation to which welding is incidental. | | |
| Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)). | | |

[FR Doc. 84-24838 Filed 9-20-84; 8:45 am]
BILLING CODE 4510-27-C

federal register

Friday
September 21, 1984

## Part III

# Department of the Treasury

### Comptroller of the Currency

**12 CFR Part 11**

**Securities Exchange Act Disclosure Rules; Proposed Rule; Request for Comments**

**DEPARTMENT OF THE TREASURY**

**Comptroller of the Currency**

**12 CFR Part 11**

**[Docket No. 84-32]**

## Securities Exchange Act Disclosure Rules

**AGENCY:** Comptroller of the Currency, Treasury.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Office of the Comptroller of the Currency ("Office") is publishing for comment proposed amendments to its Securities Exchange Act Disclosure Rules adopted under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"). The Exchange Act requires the Office to issue regulations substantially similar to those adopted by the Securities and Exchange Commission ("SEC") or publish its reasons for not doing so. The proposed amendments are intended to comply with this requirement.

The proposed amendments would simplify a number of disclosure requirements for registration, periodic reporting and proxy solicitation by banks through the adoption of common disclosure items for nonfinancial statements and reports, as well as for financial statements. Where practicable, common requirements applicable to various forms would be centralized for ease of reference. Finally, the Office is proposing that the Securities Exchange Act Disclosure Rules be reformatted in a more logical sequence that will make them easier to understand and use.

**DATES:** Comments must be received on or before November 20, 1984.

**ADDRESS:** Interested persons are invited to submit written data, views, or comments regarding the proposed regulation to Docket No. 84-32, Comunications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219. Attention: Lynnette Carter. Telephone: (202) 447-1800. Commments will be available for inspection and photocopying.

The collection of information requirements in the existing rule have been approved by the Office of Management and Budget and given OMB No. 1557-0106. Comments specifically addressing changes in those information collection requirements as described herein should be directed to this Office at the above address and should be submitted to: Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20500 Attention: Desk Office for Comptroller of the Currency.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Dugas, Securities & Corporate Practices Division, Telephone: (202) 447-1954, and Zane D. Blackburn and Eugene W. Green, Bank Accounting Division, Telephone: (202) 447-0471, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

**SUPPLEMENTARY INFORMATION:** The Office today is proposing certain amendments to its Securities Exchange Act Disclosure Rules ("Rules") which are codified in 12 CFR Part 11 ("Part 11"). The amendments to Part 11 are being proposed pursuant to Section 12(i) of the Exchange Act, 15 U.S.C. 78*l*(i). That section authorizes the Office to administer and enforce Sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act, 15 U.S.C. 78*l*, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78o, with respect to national banks and banks operating under the Code of Law for the District of Columbia (collectively referred to as "banks" or "national banks"). Section 12(i) also requires the Office to issue, with respect to national banks, regulations substantially similar to those issued by the SEC under the foregoing sections unless the Office finds that such regulations are "not necessary or appropriate in the public interest or for the protection of investors," and publishes such findings, and the detailed reasons therefor, in the **Federal Register.** Except where noted herein, the amendments proposed today are virtually identical to regulations adopted by the SEC.*

The proposals would eliminate certain inconsistencies in disclosure items. The resulting uniform items, as well as certain other requirements common to various parts of the regulation, would be centralized in a reformatted Part 11. The proposed changes will lessen the burden of some disclosure requirements and facilitate ease of reference in preparing disclosure material.

The substantive proposals include (1) granting immediate relief from certain reporting obligations for banks filing deregistration certifications under Section 12 of the Exchange Act; (2) revising the annual report nonfinancial disclosure requirements for registered national banks to make them consistent with other periodic reporting requirements under Section 13 of the Exchange Act; (3) revising the annual report financial statement disclosure requirements to make them consistent with other financial statement requirements under Section 13 of the Exchange Act and to eliminate certain of those requirements that are duplicative of generally accepted accounting principles; (4) revising the beneficial ownership reporting requirements under Section 13(d), 13(g) and 16(a) of the Exchange Act to reduce the number of required filings and raise the initial threshold for reporting certain shareholder transactions; (5) amending proxy rules relating to proposals of security holders; (6) revising requirements relating to disclosure of executive compensation; (7) amending the pro rata requirements relating to tender offers under Section 14(d) of the Exchange Act to provide for fairer treatment of national bank shareholders; (8) amending certain requirements in the Office's proxy regulations under Section 14(a) of the Exchange Act to improve the communication by banks with beneficial owners of their securities; and (9) making certain technical amendments to conform the Rules of the Office with those of the SEC.

The Office is also requesting comments as to the criteria which should be used for (i) exempting small publicly-held banks from the registration requirements of Section 12(g) and (ii) allowing deregistration of small publicly-held bank registrants.

Also being published are requests for comments on clarification and simplification of certain proxy and information statement disclosure requirements of Part 11 relating to mergers, consolidations, and acquisitions or sales of assets of national banks. Comments are being requested relating to cases where cash is the only form of consideration and relating to "triangular mergers" where the consideration includes shares of a bank holding company that owns the acquiring bank. Comments are also being sought concerning the use of a shortened proxy or information statement for mergers involving national banks which do not have a class of securities registered pursuant to Section 12 of the Exchange Act.

In connection with the proposed amendments to Part 11, the Office is announcing that it plans to conduct an overall review of its 12 CFR Part 16 ("Part 16"), the Securities Offering Disclosure Rules. As part of that review, the Office expects to propose an integration of the Part 16 offering circular disclosure requirements with the disclosure requirements of Part 11.

*Historically, OCC has not included in Part 11 sections or phrases or SEC regulations applicable only to industries other than banking. See, e.g., 17 CFR 229.101 (c)(1) (i)-(iv), (vi), (viii), (ix), and (xi) (industry segments, raw materials, patents, trademarks, government contracts, research and development, etc.)

The Office believes that centralized disclosure rules in Part 11 would offer the additional advantage of facilitating integration of Part 16 with Part 11.

It should be noted that some of the proposals relating to financial statements—and set forth in reformatted Subparts A and I—were the subject of a notice of proposed rulemaking by this Office published on January 29, 1981 (46 FR 9618) ("January 1981 proposals") and appear as final rules in the Exhange Act disclosure regulations issued by the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.[1] Due to the substantiality of the amendments now being proposed, the Office considers it appropriate to repropose the January 1981 proposals, as subsequently modified because of later SEC action, rather than issue them as final rules at this time. The Office points out, however, that banks have the option of complying with the rules contained in the January 1981 proposals with respect to financial statements for periods ending not earlier than December 31, 1980.

The proposed amendments to Part 11 are discussed below. To facilitate the comment process, the proposed amendments are presented in accordance with the numbering sequence to be used in the reformatted Part 11. Interested parties should refer to the table at the end of this preamble which cross-references the old sections with the proposed new sections.

### I. Reformatting of Part 11

The Office is proposing to change the format of Part 11. As reflected below, the reformatted regulation would be set out in a more logical fashion and contain appropriate headings and subheadings in order to make the regulation easier to read and use. There would be separate subparts relating to (i) general provisions, (ii) registration requirements and statements under Section 12 of the Exchange Act, (iii) annual and other bank reports filed pursuant to Section 13 of the Exchange Act, (iv) reports filed by certain shareholders pursuant to Sections 13(d) and 16(a) of the Exchange Act, (v) proxy statement, information statement and election contest requirements pursuant to Section 14(a) and (c) of the Exchange Act, (vi) tender offer requirements pursuant to Section 14(d) of the Exchange Act, and (vii) general requirements concerning registration and reporting.

In addition, with the adoption of a number of uniform disclosure items for bank registration, reporting and proxy forms, the uniform disclosure item requirements have been grouped in appropriate subparts. One subpart (Subpart H) would contain nonfinancial disclosure item requirements common to different forms and would be similar to the SEC's Regulation S–K. A second subpart (Subpart I) would contain disclosure item requirements common to the different financial statement formats that are included in the registration, reporting and proxy forms and would be similar to the SEC's Regulation S–X.

Part 11 was originally adopted in 1964, pursuant to authority in the Securities Act Amendments of 1964, Pub. L. 88–467, 55 Stat. 565 (1964), which authorized the Office to administer and enforce most of the requirements of Sections 12, 13, 14 and 16 of the Exchange Act with respect to national banks. A major objective of the Office in adopting Part 11 was to develop disclosure requirements that take into consideration the particular nature of banks and to structure those requirements in a coherent manner, thereby facilitating banks' compliance with the Exchange Act.

The Office feels that the format adopted in 1964 met that objective well. However, Section 12(i) was amended in 1974 to require the Office to publish regulations substantially similar to those adopted by the SEC. Since then, the SEC has expanded its regulations to the point where the present Part 11 format can not readily accommodate comparable regulations issued by the Office. The Office now considers it appropriate to propose to reformat its regulations, particularly in light of SEC activity.

### II. Substantive Proposals

#### *A. General Provisions*

Certain provisions in Part 11, such as the definitions contained in 12 CFR 11.2, are of general applicability. In the proposed reformatting of Part 11, such provisions would be grouped together to form a new Subpart A. In addition, the following substantive changes are being proposed.

1. *Definitional amendments.* Several new terms would be added to the definitional section, 12 CFR 11.102, and several existing terms would be revised. First, the Office proposes to define the terms "related parties," and "totally held subsidiary" and to amend the definition of "significant subsidiary" to correspond with changes made by the SEC. *See* the discussion in Section I below concerning "related parties," "significant subsidiary" and "totally held subsidiary." *See also* proposed 12 CFR 11.102(hh), (ii), and (jj).

Second, the Office proposes to amend the definition of " immediate family," in proposed 12 CFR 11.102(k), to conform to changes made by the SEC in Exchange Act Release No. 19570, 48 FR 11104 (March 16, 1983) and to the new definition of that term in § 11.844 concerning disclosure of certain relationships and transactions involving management. *See* Exchange Act Release No. 19290, 47 FR 55661 (December 13, 1982).

Third, the definition of "officer," in proposed 12 CFR 11.102(o), is revised to indicate that the words "officer" and "executive officer" are used interchangeably in Part 11.

Fourth, the office also proposes to amend the definition of the term "verified," when used with respect to financial statements. *See* proposed 12 CFR 11.102(dd). As amended, the term would correspond with proposed clarifying amendments to the financial statement verification requirements reformatted under Subpart I and discussed in this preamble under Section I—Financial Statement Requirements. The amendment would also clarify the extent to which banks have the option of filing either certified, or internally verified, financial statements.

2. *Safe harbor rule projections and information on the effects of changing prices.* The current "safe harbor" for forward looking statements would be expanded to cover information concerning the effects of changing prices disclosed voluntarily by banks in annual reports and certain proxy and information statements. *See* proposed 12 CFR 11.106. This corresponds to changes adopted by the SEC. *See* Exchange Act Release No. 17658, 46 FR 19456 (March 31, 1981).

3. *Requirement to make and keep accurate books, records and accounts.* The Office is proposing rules prohibiting falsification of accounting records and the making of materially false and misleading statements to accountants, in connection with a national bank's disclosure requirements under the Exchange Act. These rules would implement the requirements of section 13(b)(2) of the Exchange Act, and are comparable to regulations adopted by the SEC. *See.* 17 CFR 240.13b–1 and 240.13b–1.

#### *B. Registration*

1. *Reformatted rules relating to registration of securities.* The reformatted requirements relating to the registration of a class of bank securities pursuant to Section 12 of the Exchange Act would be found in new Subpart B or

[1] *See* 12 CFR Parts 206 and 335, respectively.

Part 11. The forms for registration of securities of a bank, or an additional class of securities, under Section 12 of the Exchange Act woud be set forth in proposed 12 CFR 11.290 (Form F–1) and proposed 12 CFR 11.291 (form F–10), respectively.

2. *Deregistration.* The Office is proposing a change consistent with SEC regulations in the rule relating to termination of registration under Section 12(g) of the Exchange Act, 15 U.S.C. 78*l*(g). Proposed 12 CFR 11.207(b) would suspend a bank's obligation to file any reports required under Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), immediately upon the filing of a certification that the conditions required for deregistration are present. No change would be made in the conditions required for deregistration.

3. *Exemption for small issuers.* The Office is requesting comments concerning (i) an exemption from the registration requirements under Section 12(g) of the Exchange Act for small publicly-held banks and (ii) an authorization for small publicly-held bank registrants to deregister.

The registration requirements generally apply to banks having more than $1 million in assets and 500 or more shareholders. The SEC has adopted an exemption from registration for issuers having assets of less than $3 million. *See* 17 CFR 240.12g–1. In addition, under another exemption, registrants whose securities are registered with the SEC may terminate such registration if they have fewer than 500 shareholders and their assets have not exceeded $3 million as of the end of each of the last three fiscal years. *See* 17 CFR 240.12g–4. These exemptions were adopted by the SEC to reflect the effect of inflation since Congress enacted the existing statutory criteria in the Securities Acts Amendments of 1964, and thereby alleviate burdens imposed on small businesses in complying with the Exchange Act. *See* Exchange Act Release No. 18647, 47 FR 17046 (April 21, 1982).

The Office requests comments on whether exemptions similar to those contained in SEC Rules 12g–1 and 12g–4 should be adopted for national banks and what asset level should form the basis for the exemption. Suggestions are also requested on criteria, other than asset levels, more particularly suited to publicly-held banks, that should be considered by the Office as a basis for granting exemptions from the registration requirements of, and for permitting deregistration under Section 12(g) of the Act.

*C. Annual And Other Bank Reports*

1. *Reformatted rules relating to annual, quarterly and current reports.* The continuing disclosure requirements of Section 13(a) of the Exchange Act concerning annual, quarterly and current reports of a national bank would be reformatted in Subpart C of Part 11. The relevant forms for such reports would be set forth in proposed 12 CFR 11.390 (Form F–2 (annual report)), proposed 12 CFR 11.391 (Form F–3 (current report)) and proposed 12 CFR 11.392 (Form F–4 (quarterly report)).

2. *Substantive disclosure changes.* The Office is proposing substantive amendments to the continuing disclosure requirements. These proposals are described in this preamble under Section G—Requirements Concerning Registration and Reporting; Section H—Content of Nonfinancial Statements and Reports; and Section I—Financial Statement Requirements. The proposals correspond to amendments adopted by the SEC.

3. *Interim financial statements.* Among other things, the Office is proposing amendments relating to the presentation of interim financial information in reports and statements required by Part 11. The requirements as to the form and content of interim financial statements would be made uniform and centralized in proposed 12 CFR 11.917. The revised requirements would include an expanded description of the basis upon which banks may determine the adequacy of interim disclosure, a change relating to references by an independent public accountant to review of interim financial statements, a change in dates as of which balance sheets are required in filings on Form F–4, and a clarification of the bases to be used in applying the percentage tests for determining required balance sheet and income statement captions.

In addition, common requirements relating to management's discussion and analysis of interim financial statements would be centralized in proposed 12 CFR 11.833. These requirements would complement the requirements already established for discussions of annual periods by requiring interim period discussions to focus on the same type of information as discussed for annual periods. The interim discussion would not reiterate all of the information presented in the full year discussion, but only material changes in financial condition and results of operations occurring during the periods covered by the interim financial statements. The SEC has adopted a similar requirement with respect to interim financial reporting by industrial companies. *See* Exchange Act Release No. 17524, 46 FR 12480 (February 17, 1981).

4. *Annual report and exhibit requirements.* The Office would amend its requirements relating to the annual report prepared by banks on Form F–2 to correspond to amendments adopted by the SEC. The revised annual report form at 12 CFR 11.390 reflects efforts by the Office to simplify disclosure requirements applicable to banks and, where possible, construct common disclosure requirements for the documents which comprise the Office's disclosure program for publicly-held national banks.

Reflecting changes made by the SEC for the annual report, Form F–2 would be restructured into four parts. As proposed, the first part contains disclosure requirements relating to business, properties, legal proceedings and beneficial ownership. The second part contains requirements relating to market information, selected financial data, management's discussion and analysis of financial information and results of operations, and financial statements. The third part consists of traditional proxy disclosure information relating to directors and executive officers and management remuneration. The fourth part consists of financial statement schedules with amended requirements for exhibits. *See* Exchange Act Release Nos. 17095, 45 FR 58822 (September 5, 1980); 17114, 45 FR 63630 (September 25, 1980); and 17522, 46 FR 11952 (February 12, 1981).

5. *Current report requirements.* Form F–3, the current report, would be amended to correspond to amendments adopted by the SEC. No substantive changes in the events to be reported are being proposed. However, because of the proposed adoption of common disclosure items for financial statements, Item 7 of Form F–3 would be reformatted to reference the pertinent financial statement requirements in new Subpart I.

*D. Shareholder Transaction Reports*

1. *Reformatting of requirements relating to shareholder transaction reports.* The Office is proposing that the shareholder transaction reporting requirements under Sections 13(d)(1), 13(g) and 16 (a) of the Exchange Act would be reformatted in new Subpart D of Part 11. Relevant forms for reporting such transactions would be set forth in proposed 12 CFR 11.490 (Form F–11 (acquisition statement)), proposed 12 CFR 11.491 (Form F–11A (short form acquisition/ownership statement)), proposed 12 CFR 11.492 (Form F–7

(initial statement of beneficial ownership)), and proposed 12 CFR 11.493 (Form F–8 (statement of change in beneficial ownership)). In addition to the proposed reformatting and changes in the number of F–11's, F–11–A's or amendments thereto, to be filed with our Office from four to three, the Office is proposing two amendments, discussed below, to the shareholder transaction reporting requirements.

2. *Amendment to requirement for reporting beneficial ownership under Section 13(g) of the Act.* The Office proposes in 12 CFR 11.402(b) to eliminate the requirements for filing an annual amendment to Form F–11A when (i) no changes have occurred in the beneficial ownership information therein or (ii) when the change relates solely to a change in the aggregate number of the bank's outstanding shares. This corresponds to the SEC's amendment of Rule 13d–2 under the Act, 17 CFR 240.13d–2. *See* Exchange Act Release No. 19188, 47 FR 49963 (November 4, 1982).

3. *Exemptions of small transactions from the reporting requirements of Section 16(a) of the Act.* Section 16(a) of the Act imposes transactional reporting requirements on directors, officers and certain beneficial shareholders of national banks having a class of equity securities registered under Section 12 of the Act. The qualifying amount of the transaction is $3,000. Reflecting action taken by the SEC in amending Rule 16a–9, 17 CFR 240.16a–9, the Office is proposing to increase the qualifying amount from the current $3,000 to $10,000. *See* 12 CFR 11.410(h); Exchange Act Release No. 18853, 47 FR 29651 (July 8, 1982). The Office is also amending § 11.410(b)(1), and (b)(1)(f) to correspond to rules 16a–2(a) and 16a–6 of the SEC, 17 CFR 240.16a–2(a), 240.16a–6; and § 11.411(c) to correspond to Rule 16b–3, 17 CFR 240.16b–3.

*E. Shareholder Meetings*

1. *Reformatting of proxy regulations.* The Office is proposing that regulations relating to proxy solicitations, proxy statements and statements where management does not solicit proxies be reformatted in new Subpart E of Part 11. The related form for the proxy statement or information statement (Form F–5) and form for statement in election contests (Form F–6,) would be set forth in proposed 12 CFR 11.590 and proposed 12 CFR 11.591, respectively.

2. *Pro forma financial information.* The Office is revising the disclosure items and instructions in the Form F–5 concerning the presentation of pro forma financial information to correspond with changes made by the SEC in Exchange Act Release No. 18842, 47 FR 29832 (July 9, 1982). These are designed to promote uniformity in the presentation and preparation of *pro forma* financial information.

3. *Relationships with independent public accountants.* The Office proposes to eliminate the requirement, presently in 12 CFR 11.51, Item 8(b), that banks provide certain disclosures regarding non-audit services by independent public accountants. This reflects comparable action taken by the SEC in rescinding Rule 14a–101 under the Exchange Act, 17 CFR 240.14a–101. *See* Exchange Act Release No. 18450, 47 FR 5404 (February 5, 1982).

4. *Annual report to security holders.* The Office is proposing to amend the disclosures required to be made in the annual report to security holders that must accompany or precede any statement furnished on behalf of the bank relating to an annual meeting of security holders at which directors are to be elected. These amendments are being proposed to correspond to the proposed changes in the requirements relating to the annual report on Form F–2. *See* the discussion in Section C above concerning "annual report and exhibit requirements." The amended requirements relating to the annual report to security holders will be codified at 12 CFR 11.503(a).

5. *Material required to be filed.* The Office proposes, in 12 CFR 11.506, to revise the number of copies of preliminary and definitive proxy statements and other soliciting material to be sent to this Office, and to make certain other minor amendments. As proposed, four rather than six copies of such statements and material would be filed with the Office.

6. *Shareholder Communications.* The Office proposes to amend its proxy rules to correspond with amendments to Rule 14a–3, 17 CFR 240.14a–3, in accordance with recommendations of the SEC Advisory Committee on Shareholders Communications. *See* Exchange Act Release Nos. 19291, 47 FR 55491 (December 10, 1982), and 20021, 48 FR 35082 (August 3, 1983). The new requirements would be contained in proposed 12 CFR 11.507(b)(1).

The proposal relates to the inquiry which registered banks, as issuers, must make when they know that their shares are held of record by a broker-dealer or other nominee. The proposed rule would require banks to (i) make this inquiry at least 20 days in advance of the record date of the meeting of security holders, or if inquiry at such time is impracticable, as many days before such meeting as practicable, or at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown, and (ii) file a copy of such inquiry with the Office.

The other aspect of the proposal would contain an exception for multiple annual report mailings to the same address, and would relieve registered banks from the duty of delivering a proxy statement or annual report to any shareholder of record where at least two consecutive annual meeting solicitations mailed to the shareholder's address of record have been returned undeliverable, or where all, and at least two, checks (if sent by first class mail) in payment of dividends or interest on securities during a twelve month period have been mailed to such security holder's address and have been returned undeliverable. In addition, an express requirement that banks resume mailings of proxy statements or annual reports once they learn of a security holder's new address, would be added. These changes would be incorporated in 12 CFR 11.503(a). Under 12 U.S.C. 21a and 75, however, banks would still have to mail a "notice" of the meeting to each such shareholder of record.

Certain of the SEC's shareholder communications rules that apply to brokers under Exchange Act Rules 14b–1, 17 CFR 240.14b–1, are not now being proposed. *See* Exchange Act Release No. 20021 (July 28, 1983). The Exchange Act excludes banks from the definition of "broker" and, therefore, from the coverage of Section 14(b) of the Act and Rule 14b–1 issued thereunder.

One SEC amendment not now being proposed relates to inquiries from issuers, pursuant to Rule 14a–3(d), concerning the number of customers who are beneficial owners of the issuers' securities for whom the brokers are holders of record. Under revised Rule 14b–1(a) and (b), brokers are required to:

(A) Respond within seven business days after receipt of such inquiries; and

(B) Forward soliciting materials to the beneficial owners within five business days after receipt of such materials and of assurances of expense reimbursement.

Although bank nominees are not subject to Rule 14b–1, the Office encourages such banks to make every reasonable effort to forward issuers' soliciting materials to the beneficial owners promptly, using the time frame established by Rule 14b–1 as a guide.

In addition, the Office is not now proposing a newly adopted SEC requirement that brokers provide issuers, upon request and assurance of

reimbursement of reasonable expenses, with the names, addresses and securities positions of customers who are beneficial owners of the issuer's securities and who have not objected to such disclosure. 17 CFR 240.14b–1(c). Brokers would be required to keep a record of whether or not the beneficial owner has objected to the disclosure of his or her identity, address and securities positions to issuers. 17 CFR 240.17a–3(a)(9). Securities Exchange Act Release No. 20021 (July 28, 1983).

The Office understands that bank nominees are willing to provide issuers with the names, addresses and securities positions of beneficial shareholders, provided adequate safeguards exist and beneficial shareholders have consented. Accordingly, for the time being, bank nominees are encouraged to provide such information, provided that issuers have given assurance of timely reimbursement of reasonable expenses incurred by the bank nominees; that issuers have provided written notification to beneficial shareholders of the limitations on the issuer's use of such information; and that beneficial owners provide written consent to the bank nominee to make such disclosure to issuers for the limited purposes stated.

The Office supports efforts by banks, acting as nominees, to promote more efficent methods of communication between issuers and shareholders. In particular, until rules are promulgated which bring banks under requirements similar to Rule 14b–1, it encourages bank nominees to continue to work with issuer representatives, brokers, exchanges and interested government agencies, such as the SEC, to resolve the complex and technical issues relating to the development of a better system of communicating with beneficial shareholders.

7. *Proposals of Security Holders.* The Office proposes to amend its proxy rules relating to proposals of security holders, to correspond to changes made by the SEC to Rule 14a–8, 17 CFR 240.14a–8. *See* Exchange Act Release No. 34–20091, 48 FR 38218 (August 23, 1983). These changes include: adoption of a minimum investment and holding period test for a shareholder ("proponent") to be eligible to submit a proposal; adoption of a prohibition against the submission of any security holder proposals for inclusion in the bank's proxy soliciting material by a proponent who delivers written proxy materials to holders of more than 25% of a class of a bank's securities; and elimination of the requirement that the proponent notify the bank of his intention to appear personally at the meeting. The amendments would also allow the proponent to arrange, at the outset, to have any person who is permitted under applicable state law, to present the proposal for action at the meeting, extend the deadline for submitting proposals to be included in annual meeting proxy materials from 90 days to 120 days in advance of the date corresponding to the date the materials for the previous annual meeting were released, and reduce the number of proposals that a proponent may submit to a bank in any one year from two to one. Certain other amendments relating to identification, time periods, supporting statements and substantive grounds for omission of security holder proposals are also being proposed. The new requirements would be contained in proposed 12 CFR 11.508.

8. *Pension plan transactions.* Consistent with SEC changes, the Office is proposing to rescind disclosures required by Item 7(f)of Form F–5, 12 CFR 11.51, Item 7(f), regarding transactions with pension or similar plans. Such disclosures appear unnecessary, particularly in light of the regulation of affiliated transactions under the Employee Retirement Income Security Act of 1974. *See* Exchange Act Release No. 19290, 47 FR 55661 (December 13, 1982).

9. *Review of proxy regulations.* The SEC has announced the commencement of a comprehensive review of the rules, forms and schedules relating to the solicitation of proxies. *See* Exchange Act Release No. 18878, 47 FR 31394 (July 20, 1982). As noted in the announcement, the SEC's proxy requirements were adopted in a piecemeal fashion and have been subject to frequent changes. There are certain duplicative requirements in the existing system and proxy statements have become more detailed and complex over the years.

In addition to the above-listed specific proposed changes, the Office believes it appropriate to review in a systematic fashion the requirements and related forms as to the solicitation of proxies. The Office's review will involve an evaluation of existing substantive and procedural provisions and elimination of duplicative or outmoded requirements. Where practicable, the Office would rely upon incorporation by reference and use of uniform disclosure items, which would be set forth in proposed Subpart H, relating to the content of nonfinancial statements and reports, and those proposed in Subpart I, governing financial statements, in order to achieve this objective.

*F. Tender Offer Regulations*

1. *Reformatting of tender offer requirements.* The Office's tender offer regulations would be reformatted and set forth in a new Subpart F. The tender offer statement form (Form F–13) would be located in proposed 12 CFR 11.690 and the recommendation/solicitation statement (Form F–12) would be set forth in proposed 12 CFR 11.691. In addition, as discussed below, the Office is proposing one substantive amendment to the tender offer requirements.

2. *Proration rights.* The Office proposes to issue a rule which corresponds to amended Exchange Act Rule 14d–8, 17 CFR 240.14d–8, relating to proration rights in tender offers for less than all of the outstanding equity securities of a class. *See* Exchange Act Release No. 19336, 47 FR 57679 (December 28, 1982). Proposed 12 CFR 11.608 would require a bidder who makes a partial tender offer to accept securities on a pro rata basis, according to the number of securities deposited by each depositor, during the period such offer remains open. The present rule does not require the tender offeror to extend the proration period beyond the tenth calendar day following commencement of the tender offer or notification of an increase in the consideration offered. *See* proposed 12 CFR 11.608.

*G. Requirements Concerning Registration and Reporting*

1. *Reformatting of general requirements relating to registration and reporting.* The Office is proposing to reformat certain general requirements relating to registration and reporting into new Subpart G. The substance of most of these requirements is currently found in 12 CFR 11.4(i)–(w). The following amendments are being proposed.

2. *Timely filing of reports.* The Office is proposing to amend its procedures concerning the timely filing of annual and quarterly reports. Heretofore, banks which sought extensions of filing deadlines were required to apply for Office approval. As proposed in new 12 CFR 11.724, a bank would provide notice to the Office of its inability to file all or any portion of a required report on a timely basis. Under the new procedures, a subsequent filing made after the prescribed due date would be presumed to be filed on a timely basis if: (i) The reasons for the delay were set forth in the notice; and (ii) the subsequent filing were made within a prescribed time period after the due date (15 days in the case of annual reports and 5 days in the

case of quarterly reports). The proposed amendment is substantially similar to one adopted by the SEC. *See* Exchange Act Release No. 16718, 46 FR 23651 (April 8, 1980).

3. *Other amendments.* The Office is also proposing to add §§ 11.701, Scope of Subject; 11.703, Supplemental Information; 11.710, Requirements as to Proper Form; and 11.730, Other Exhibits, to conform to existing SEC regulations.

*H. Content of Nonfinancial Statements and Reports*

The Office is proposing that certain common substantive disclosure items pertaining to registration, periodic reporting or proxy solicitation by banks be centralized into a separate subpart of Part 11 (Subpart H). To the greatest extent possible the various registration, periodic reporting and proxy solicitation forms would in turn refer back to the pertinent disclosure items in the centralized Subpart H. Amendments to the substantive requirements of Subpart H are described below.

1. *Effects of changing prices.* The Office is proposing to require banks subject to the reporting requirements of Statement of Financial Accounting Standards ("SFAS") No. 33, "Financial Reporting and Changing Prices" of the Financial Accounting Standards Board, to disclose information on the effects of changing prices. This requirement applies only to banks which have, among other things, total assets of more than $1 billion (after deducting accumulated depreciation). The requirement would be contained in new 12 CFR 11.832, and would apply to annual reports and certain proxy statements prepared by such banks. As discussed above, the Office's safe harbor provisions, in new 12 CFR 11.106, have been expanded to include such disclosures.

2. *Executive Compensation.* The Office is proposing amended and retitled disclosure requirements concerning management remuneration to conform to recent changes made by the SEC to Item 402 of Regulation S–K. *See* Exchange Act Release No. 34–20220, 48 FR 44467 (September 29, 1983). The amended requirements, representing substantial changes from the existing management remuneration provisions of 12 CFR 11.51, Item 7, would be contained in proposed 12 CFR 11.842, to be entitled "Executive Compensation." The proposed changes include revising the table to require presentation of information only in the case of cash remuneration rather than all remuneration, and limiting the individual reporting requirements to directors and executive officers with policy-making functions instead of all officers and directors. Another change includes raising the threshold for individual compensation disclosure from $50,000 to $60,000 per year, adopting a disclosure threshold for noncash compensation (i.e. personal benefits) of 10 percent of the compensation reported in the Cash Compensation table or $25,000, whichever is less, and adding an instruction specifying that the bank's aggregate incremental cost is the valuation to be employed in calculating such noncash compensation. The amendments provide for separate disclosures covering plans pursuant to which the bank has paid during the last fiscal year, or proposes to pay in the future, any form of remuneration, including disclosure of amounts of securities, property, cash or other remuneration paid or distributed specifically in connection with such plans. In addition, the amendments would eliminate the requirement for disclosure of amounts allocated to plans, the distribution or unconditional vesting of which is subject to future events, and eliminate disclosure of interest paid on deferred compensation and dividends awarded on restricted stock. The amendments would still require disclosure of the net value realized from the exercise of stock options and stock appreciation rights (SARs), but not of the aggregate amount of securities underlying all unexercised options or SARs and the potential (unrealized) value of such unexercised options or rights. Proposed 11.842(b)(2) would make clear that the requirement to include a pension table only applies to defined benefit and actuarial plans under which benefits are determined primarily by final compensation (or average final compensation) and years of service. Certain other changes including disclosures concerning change of control arrangements, amendments to the general instructions to § 11.842 and conforming amendments to Items 9, 10 and 11 of § 11.590 are also being proposed.

3. *Certain relationships and related transactions.* To conform with recent SEC amendments, the Office is proposing a new disclosure item which would be applicable to proxy statements and periodic reports. This item, captioned "Certain relationships and related transactions" would be codified in 12 CFR 11.844, with appropriate amendments to the proxy statement, Form F–5, and the annual report, Form F–2 to reference the new item.

New § 11.844 would have four parts, requiring disclosures relating to (1) transactions with management and others; (2) business relationships of directors and nominees for directors; (3) indebtedness of management; and (4) transactions with promoters. *See* Exchange Act Release No. 19290, 47 FR 55661 (December 13, 1982). The requirements of proposed § 11.844 are drawn, with certain modifications, from Items 6 and 7 of the current proxy statement, 12 CFR 11.51, Items 6 and 7. Accordingly, appropriate revisions in those items have also been proposed.

4. *Selected Financial Data.* The Office proposes to eliminate the requirement of a detailed five-year Summary of Operations, replacing it with disclosure of Selected Financial Data. This will conform with action taken by the SEC in Exchange Act Release No. 17114, 45 FR 63630 (September 25, 1980). The five-year Summary of Operations is presently required by Item 4 of Form F–2, Item 4 of Form F–4 and Item 14(b) of Form F–5. The deletion of the present summary and the substitution of Selected Financial Data reflects a concern that operations summaries have duplicated information otherwise available in income statements and may have unduly emphasized income over other performance measures. The new requirement is designed to present significant five-year trend data relating to a bank's financial condition and results of continuing operations. The substance of the new Selected Financial Data requirement will be codified at 12 CFR 11.831.

5. *Management's Discussion.* In addition, Forms F–1 and F–2, the annual report to security holders, and proxy statements in which financial statements are included will incorporate a new item captioned Management's Discussion and Analysis of Financial Condition and Results of Operations. This will also conform with action taken by the SEC in Exchange Act Release No. 17114. Major features of this item, which will be codified at 12 CFR 11.833, include discussions of liquidity, capital resources and results of operations, an emphasis on favorable or unfavorable trends and upon the identification of significant events or uncertainties within each area of discussion, information concerning the effects of inflation and changing prices, and the encouragement of projections of other forward-looking information.

*I. Financial Statement Requirements*

In addition to the amendments to the Part 11 financial statement requirements that were included in the January 1981 proposal, the Office is proposing rules which correspond to SEC amendments to Regulation S-X, 17 CFR Part 210, appearing in Exchange Act Release Nos.

17116, 45 FR 63660 ( September 25, 1980); 17117, 45 FR 63682 (September 25, 1980); 17524, 46 FR 12480 (February 17, 1981); 18244, 46 FR 56171 (November 16, 1981); 18842, 47 FR 29832 (July 9, 1982); 19542, 48 FR 9520 (March 7, 1983); and 19570, 48 FR 11104 (March 16, 1983). Among other things, the proposed amendments make clear that the balance sheet and statement of income may be prepared in accordance with the instructions to and may conform to the respective formats of, the Consolidated Report of Condition and Consolidated Report of Income ("Call Reports"), except to the extent revised or expanded financial data is necessary to meet the disclosure standards of the Exchange Act. Banks would retain the option of conforming their financial statements to the format of Article 9 of the SEC's Regulation S-X, 17 CFR Part 210.9. The revised formats for the balance sheet, income statement, and related schedules, respectively, appear at proposed §§ 11.931–11.933.

The financial statement requirements would be centralized in proposed Subpart I. The proposals are described below.

1. *Subpart I.* Proposed Subpart I of 12 CFR Part 11 contains uniform requirements as to the periods to be covered by financial statements in reports filed with the Office and furnished to shareholders under the Exchange Act. Subpart I, at § 11.911, would require that (i) statements of income and statements of changes in financial position be presented for three fiscal years and (ii) balance sheets be prsented as of the end of each of the two most recent fiscal years.

In addition, an analysis of changes in equity capital would be presented for each period (including interim periods) for which an income statement is presented. The Office proposes to eliminate the requirement that this analysis appear as a separate financial statement, if the information can be presented in a note to the financial statements.

Uniform requirements for the form and content of interim period financial statements are proposed in 12 CFR 11.917. The periods for which interim financial statements would be required are addressed in 12 CFR 11.911 and 11.913.

These proposals conform to Regulation S–X amendments issued by the SEC in Exchange Act Release Nos. 17117 and 17524.

2. *Summary of operations.* As a result of action taken by the SEC in Exchange Act Release No. 17114, 45 FR 63630 (September 25, 1980), the Office proposes to eliminate the requirement of a detailed five-year summary of operations. It would be replaced by disclosure of selected financial data and management's discussion and analysis of financial condition and results of operations in proposed §§ 11.831 and 11.833, 12 CFR 11.831 and 11.833, respectively. *See* Section H—Content of Nonfinancial Statements and Reports.

3. *GAAP duplicative requirements.* The Office proposes to eliminate various financial statement rules which are duplicative of generally accepted accounting principles ("GAAP"). Among the disclosure rules to be deleted, in whole or in part, are those relating to accounting principles and practices, and changes therein; translation into U.S. dollars of items denominated in foreign currencies; lease commitments; pension and retirement plans; and capital stock optioned to officers and employees. Under present § 11.7(a) and proposed § 11.920(a), financial statements must conform to GAAP applicable to banks. The Office agrees with the views expressed by the SEC in Exchange Act Release No. 17116 regarding Regulation S–X rules which duplicate GAAP and, therefore, proposes to amend its rules accordingly. However, the Office may from time to time issue releases on accounting principles and practices to be used with respect to specific areas. *See* proposed § 11.920(d).

4. *Related-party transactions.* Proposed § 11.929(g), would require certain note disclosures regarding material related party transactions, including the nature of relationships, descriptions of transactions and amounts involved. This corresponds to the disclosure requirement in Rule 4–08(1) of the SEC's Regulation S-X, 17 CFR 210.4–08(k). *See* Exchange Act Release No. 17116. "Related party" would be defined in 12 CFR 11.102(hh).

5. *Instructions for pro forma financial information.* The Office proposes to add to Part 11 uniform instructions for the presentation and preparation of pro forma financial information. The new rules would be substantially similar to Article 11 of Regulation S-X, 17 CFR 210.11, issued by the SEC in Exchange Act Release No. 18842 and would appear in proposed §§ 11.940–11.942. As is the case with Article 11 of Regulation S-X, the Office's rules would allow presentation of a financial forecast in lieu of certain required pro forma information.

6. *Acquired or to be acquired businesses.* Also in accordance with SEC rule amendments contained in Exchange Act Release No. 18842, the Office is proposing amendments to the requirements for filing financial statements of businesses acquired or to be acquired. *See* proposed § 11.915, 12 CFR 11.915. As is the case with Rule 3–05 of Regulation S-X, 17 CFR 210.3–05, the Office would base the disclosure requirements on the conditions specified in the definition of "significant subsidiary." *See* proposed § 11.102(ii). In applying the "significant subsidiary" test, both Rule 3–05 and the Office's proposed rule use a sliding scale, to determine the requirements for filing, and to determine periods for which financial statements of the business acquired, or to be acquired, must be presented. Historically, the Office has used certain 5 percent tests in determining such requirements whereas the SEC uses 10 percent tests. Compare 12 CFR 11.2(z) *with* 17 CFR 210. 1–02(v)d. The Office believes, however, that the 5 percent test, is unnecessarily restrictive and proposes that the 10 percent test, incorporating a sliding scale, be used to determine such requirements.

7. *Independence and verification requirements.* To conform to SEC amendments in Exchange Act Release No. 19542, to Rule 2–01 of Regulation S-X, 17 CFR 210.2–01, the Office is proposing amendments to the standards for evaluating an accountant's independence. The amendments would redefine the term "member" as used with respect to an accounting firm and clarify the regulation's intent in certain minor respects. *See* proposed 12 CFR 11.903(a)(2).

The Office is proposing clarifying amendments to the rules governing financial statement verification by independent accountants. Part 11 permits the use of a certified public accountant or a "public accountant" who is "in good standing and entitled to practice as such under the laws of the place of his residence or principal office." *See* 12 CFR 11.7 (b)(3)(i)(A). The independence requirement applies to both classes of accountants. *See* 12 CFR 11.7(b)(3)(i)(B). In the proposed reformatting of Part 11, the verification requirements relating to independent accountants are set forth in § 11.903. Minor language changes proposed therein would clarify the fact that when an independent accountant is used for verification purposes, such accountant may be a "public accountant" or "certified public accountant."

The Office is also proposing to clarify the definition of "verified," when used with respect to financial statements. This is in response to a number of misinterpretations by banks of the extent to which they have the option of filing either certified, or internally verified, financial statements. The proposal would clarify the Office's long-standing position that if a bank files

certified statements with this Office pursuant to Part 11, all other Part 11 financial statement filings relating to that same reported period muist also be certified. *See* proposed § 11.102(dd) (12 CFR 11.102 (dd)). Banks would retain the option of filing internally verified financial statements covering any periods for which certified statements had not previously been filed.

8. *Definitions.* The Office is proposing to add a new definitional section to Subpart I at 12 CFR 11.901. Included in this section is a definition of "associate" for financial reporting purposes which differs from the definition of "associate" for other purposes in § 11.102(d). This change is made in response to a concern that the use of the broader definition in § 11.102(d), when applied to the financial disclosure requirements, would greatly expand the scope of required disclosure concerning associates, without providing meaningful information to financial statement users under the circumstances. The term "ordinary course of business" is defined to be consistent with the use of that term in § 11.844 concerning disclosure of certain relationships and transactions involving management. These changes conform to certain changes made by the SEC in Exchange Act Release No. 19570.

9. *Other amendments.* In addition to the amendments discussed above, the SEC made certain changes in Regulation S-X to clarify and modify requirements which are presently subject to differing interpretations. *See* Exchange Act Release No. 17116. The Office is also proposing to define the term "totally held subsidiary" to conform with the definition of that term in Article 1 of Regulation S-X. *See* proposed 12 CFR 11.102(jj).

10. *Certain Regulation S-X amendments not adopted.* In Exchange Act Release Nos. 18244 and 19570, the SEC amended Regulation S-X with respect to the requirements for separate financial statements and other financial information of registrants' subsidiaries and "50 percent or less owned persons" ("other persons"). The SEC rules contain detailed criteria for determining whether such information must be presented and detailed specifications regarding the type of information to be disclosed. The Office's present regulations instruct banks to provide, with respect to unconsolidated subsidiaries and other persons, whatever financial information is material to a proper understanding of the financial position and results of operations of the total enterprise. *See, e.g.*, 12 CFR 11.42, Instruction 3 as to Financial Statements. The present regulations also prescribe a tabular presentation of investments in, income from dividends of, and equity in earnings or losses of, subsidiaries and other related parties. *See* 12 CFR 11.71, Schedule V.

The Office is not proposing to conform its reglations to those of the SEC in this area at this time. There are few instances where activities of a bank's unconsolidated subsidiaries or other persons would be of such significance as to require separate disclosure under Regulation S-X standards. Where separate disclosure would be significant to investors, proposed 12 CFR 11.916 and 11.932 would require such disclosure just as Part 11 presently does. The Office believes, however, that adding detailed regulations to Part 11 to cover conditions which rarely exist would make Part 11 unnecessarily complex. For banks seeking guidance in assessing the need for this type of disclosure, the Office recommends that the pertinent provisions of Regulation S-X be used as a guide.

Related SEC amendments in Exchange Act Release Nos. 18244 and 19570, prescribe separate parent company disclosures by bank holding companies which file consolidated financial statements. *See* 17 CFR 210.9-06 and 210.12-04. Such disclosure is required when dividend payments, loans and advances to the holding company by its bank subsidiaries are subject to substantial restrictions imposed by third parties such as regulatory authorities. The Office is not proposing conforming amendments for two reasons. As previously noted, activities of unconsolidated subsidiaries generally are not so significant as to require disclosures about the separate entities. Moreover, since national banks do not own bank subsidiaries, the regulatory and other third party restrictions addressed by the SEC rules will seldom apply. The Office therefore believes that the general disclosure requirements of Part 11 described above, regarding the separate components of a consolidated enterprise, are adequate for bank registrants.

In Exchange Act Release No. 19570, the SEC amended Regulation S-X by transferring certain disclosure requirements from that regulation to Securities Act Industry Guide 3 [Statistical Disclosure by Bank Holding Companies] ("Guide 3"), codified at 17 CFR Part 231. Those disclosure provisions relate primarily to foreign activities, short-term borrowings and investment portfolio concentrations. The principal effect of those amendments is that registrants can exclude that information from their annual reports to shareholders. Those amendments do not affect registrants which integrate their Form 10-K's and annual reports in a single document.

The Office is formulating a disclosure guide for national banks, comparable to Guide 3, which will address matters that are appropriate for disclosure in the particular context of national banks. When this disclosure guide is published, the Office intends to transfer provisions from Subpart I to the guide in accordance with the SEC's transfer from Regulation S-X to Guide 3. Until then, however, it would be inappropriate to remove such provisions from Subpart I. As noted above, banks which intergrate their Form F-2's (the Office's analog to SEC Form 10-K) and annual reports will not be affected by this postponement of conforming amendments.

### III. Disclosure Requirements for Mergers and Similar Transactions

The Office is requesting comments relating to proxy and information statement disclosure requirements for mergers involving national banks. Items 14 and 15 of the present 12 CFR 11.51 ("Items 14 and 15") contain certain proxy and information statement disclosure requirements in connection with mergers, consolidations, and acquisitions or sales of assets (hereinafter collectively referred to as "merger transactions"). The rules are structured to require certain disclosures regarding all banks that are parties to the merger transactions.

The Office's experience has been that banks which are the subject of proposed acquisitions ("target banks") make most use of the proxy statement filings for merger transactions. In most of the cases, target bank shareholders are offered either cash or securities of a bank holding company ("BHC") that owns the acquiring bank which is a party to the merger transaction. Such a merger is often referred to as a "triangular merger."

Where target bank stockholders would receive cash in return for their entire investment, detailed disclosure regarding the acquiring entity are not useful. Item 14, by its terms, would nevertheless call for such disclosure.[2] If a BHC will issue securities to the target bank shareholders, such shareholders would need information about the BHC. Items 14 and 15, however, would only require disclosure relating to the BHC's subsidiary bank that is party to the merger transaction.

[2] Paragraph (b) of Item 15 also calls for financial statements of the acquiring entity. However, paragraph (c) would allow omission of such information.

A literal reading of Items 14 and 15 in the above-described merger transactions would, therefore, result in disclosures which are unnecessary and possibly confusing for target bank shareholders or omission of information that is essential for such shareholders. In order to prevent those results, the Office has interpreted Items 14 and 15 in the following manner:

(A) Where target bank stockholders will receive only cash in the merger transaction, they need not receive the specified disclosures relating to the acquiring entity; and

(B) Where target bank stockholders will receive securities from a BHC, Item 14 and 15 disclosures should relate to the BHC, rather than its banking subsidiary which is a party to the merger transaction.

The Office's experience has been that bankers and other members of the public generally interpret Items 14 and 15 in the same manner. Consequently, the Office did not change the coverage of these Items in prior rule amendments. In light of the substantial increase in bank merger activity in recent times, however, the Office believes that it may be appropriate to revisit this subject. Accordingly, the Office will consider comments as to whether, and in what manner, the proxy and information statement disclosure rules should be amended to clarify their coverage in the cash and "triangular merger" transactions described above.

In addition, the Office is requesting comments on the content of proxy material relating to mergers involving national banks not registered pursuant to Section 12 of the Exchange Act (nonregistered banks"). Under the Office's merger instructions and procedures for applicants, merger transactions involving nonregistered banks are subject to the proxy disclosure requirements of Part 11.[3]

Although, as a technical matter, all of the proxy and information disclosure requirements apply to mergers involving nonregistered banks, the Office has attempted to administer those requirements in a flexible manner, particularly where one person or group of persons held a controlling interest and a solicitation of proxies was not necessary for the transaction to be approved by shareholders of the target bank. On a case-by-case basis, the Office has permitted shortened proxy and information statements in merger transactions involving nonregistered banks, taking into consideration a number of factors, including the number of minority shareholders, the value of the minority-held shares, the form of consideration, the cost involved in preparing proxy or information statements, and the availability of dissenter's rights for minority shareholders. In light of the increased level of merger activity, the Office is requesting comments on whether specific criteria should be established for determining whether or not all the proxy and information statement disclosure provisions apply to mergers involving nonregistered banks and, if so, what the criteria should be.

For example, should there be a certain minimum criteria for requiring a complete proxy or information statement, such as minimum number of minority shareholders or minimum value of minority-held shares? In addition, would it be appropriate to have a two part format for disclosure to shareholders consisting of a (i) relatively short statement with information essential for shareholder evaluation of the transaction (including information relating to the value and kind of consideration and the rights of dissenting shareholders) and (ii) a statement of additional information to be available upon request at no charge to shareholders? This would be similar in concept to the new prospectus requirements for mutual funds recently adopted by the SEC. *See* Securities Act Release No. 33–6479, 48 FR 22864 (Aug. 19, 1983).

## IV. Special Studies

### *A. Competition*

As required by section 23(a)(2) of the Exchange Act, 15 U.S.C. 78w(a)(2), the SEC has specifically considered the impact which the proposed amendments would have on competition and concluded that they imposed no significant burden on competition. In any event, the SEC determined that any possible burden would be outweighed by the benefits of the amendments to investors and registrants. The Office believes the amendments would have no effect upon competition. However, the Office requests comments concerning any impact these amendments may have upon competition.

### *B. Alternatives Considered*

Section 12(i) of the Act requires the Office to issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. Except as previously indicated, the Office has no reason to believe that these proposed regulations should not be applicable to banks. Therefore, it is proposing the amendments.

### *C. Regulatory Impact Analysis*

The overall impact of the changes being proposed is burden reducing rather than burden imposing. Therefore a regulatory impact analysis is not required. The Office is considering, and requesting comments on, a flexible regulatory approach which would exempt small publicly-held banks from the registration requirements of the Act or permit such banks to deregister, as the case may be. However, the Office also recognizes that investors in small banks generally have the need for the same quality information provided for investors in large banks. Therefore, the Office deems it appropriate to consider the public comments on this issue before proposing specific rule amendments. It is also requesting comments on a more flexible regulatory approach to proxy and information disclosure requirements relating to merger transactions involving national banks. The Office also requests comments as to whether the proposals published today would impose increased costs or other burdens which are not outweighed by the benefits provided to the banks, investors and the public. The Office specifically requests information from banks concerning projected start-up costs and continuing costs. To the extent feasible, these estimates should be allocated among the various new areas of regulation.

### *D. Regulatory Flexibility Act*

The Secretary of the Treasury has certified that the proposal, if issued, would not have a significant economic impact on a substantial number of small banks or other entities.

**List of Subjects in 12 CFR Part 11**

National banks, Securities disclosure rules.

**Proposal of Amendments**

## PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

Set forth below is the proposed new format of Part 11 which cross-references the old sections with the proposed new sections.

[3] *See* Form CC–7023–01. (*General Instructions and Procedures for the Preparation of an Application for Merger, Consolidation, or Purchase of Assets and Assumption of Liabilities (All Hereinafter Referred to as "Mergers" Unless Otherwise Specifically Designated) Pursuant to 12 U.S.C. 215a, 12 U.S.C. 1828(c), and 12 U.S.C. 181).*

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| Form for registration of additional class of securities of a bank under Section 12(b) or Section 12(g) of the Exchange Act (Form F–10). | 11.46 | 11.291. |
| **Subpart C—Annual and Other Bank Reports** | | |
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| Form for annual report of bank (Form F–2) | 11.42 | 11.390. |
| Form for current report of a bank (Form F–3) | 11.43 | 11.391. |
| Form for quarterly report of bank (Form F–4) | 11.44 | 11.392. |
| **Subpart D—Transactions by Certain Shareholders** | | |
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| Amendments to acquisition statements | 11.4(g)(3) | 11.402. |
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| Filing and transmission of tender offer statement | 11.5(1)(7)–(9) | 11.603(a)–(c). |
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| Position of subject bank with respect to a tender offer | 11.5(o)(5) and (6) | 11.611(a)(1)–(3) and (b). |
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| | Old section Nos. | New section Nos. |
|---|---|---|
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| | Old section Nos. | New section Nos. |
|---|---|---|
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| All references within the text to Part II are renumbered appropriately. | | |

For the reasons set forth in the preamble, it is proposed that the following additional amendments be made to 12 CFR Part 11 as follows:

1. The authority citation for Part 11 reads as follows:

Authority: 15 U.S.C. 78*l*, 78m, 78n, 78p, 78w; 12 U.S.C. 1 *et seq.*

2. By revising the table of contents as follows:

## PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

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11.201 Requirement of registration statement under Section 12 of the Exchange Act.
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3. By revising § 11.102 (k), (o) and (dd), and adding § 11.102 (hh), (ii), and (jj), to read as follows:

**§ 11.102 Definitions.**

* * * * *

(k) *Immediate family.* The term "immediate family" means a person's spouse; parents; children; siblings; mothers and fathers-in-law; sons and daughters-in-law; and brothers and sisters-in-law.

* * * * *

(o) *Officer* or *executive officer.* The term "officer" or "executive officer" means. . . .

* * * * *

(dd) *Verified.* The term "verified," when used with respect to financial statements, means either (1) certified by an independent public accountant or an independent certified public accountant, or (2) signed in accordance with § 11.603 by the person principally responsible for the accounting records of the bank (the "principal accounting officer") and by the person principally responsible for the audit procedures of the bank (the "auditor"); except that the term "verified" shall mean certified by an independent public accountant or independent certified public accountant in any case in which the Comptroller of the Currency so informs the bank concerned, in writing, at least 90 days prior to the end of the fiscal year to which the financial statements will relate, or if financial statements for the most recent fiscal year have been examined and reported on by an independent accountant.

* * * * *

(hh) *Related parties.* The term "related parties" means the bank; its affiliates; principal owners, management, and members of their immediate families; and any other party with which the reporting entity may deal when one party has the ability to prevent the other from fully pursuing its own separate management or operating policies. Related parties also exist when another entity has the ability to prevent transacting parties from fully pursuing their own separate management or operating policies or when another entity has an ownership interest in one of the transacting parties and the ability to prevent one or more of the transacting parties from fully pursuing its own separate interests. For purposes of this definition, the term—

(1) "Principal owner" means either owner(s) of record or known beneficial owner(s) of more than 10% of the voting interests of the reporting entity, and

(2) "Management" means any person(s) having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which such objectives are to be pursued.

(ii) *Significant subsidiary.* The term "significant subsidiary" means a subsidiary meeting any of the following conditions:

(1) The investments in the subsidiary by the bank plus the bank's proportion of the investments in such subsidiary by the bank's other subsidiaries, if any, exceed 10 percent of the equity capital accounts of the bank. "Investments" refers to the amount carried on the books of the bank and other subsidiaries or the amount equivalent to the bank's proportionate share in the equity capital accounts of the subsidiary, whichever is greater. For purposes of determining whether financial statements of a business acquired or to be acquired in a business combination accounted for as a pooling of interests are required pursuant to § 11.915, this condition is also met when the number of common shares exchanged by the bank exceeds 10 percent of its total common shares outstanding at the date the combination is initiated;

(2) The parent's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the parent and its subsidaries consolidated as of the end of the most recently completed fiscal year;

(3) The parent's and its other subsidiaries' equity in the income of the subsidiary before income taxes exceeds 10 percent of the income before taxes of the parent and its consolidated subsidiaries; or

(4) The subsidiary is the parent of one or more subsidiaries and, together with such subsidiaries, when considered in the aggregate, constitutes a significant subsidiary.

**Computational note:**

For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the parent and its subsidiaries consolidated for purposes of the computation.

2. If income of the parent and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computating average income.

* * * * *

(jj) *Totally-held subsidiary.* The term "totally-held subsidiary" means a subsidiary (1) substantially all of whose outstanding equity securities are owned by its parent and/or the parent's other totally-held subsidiaries; and (2) which is not indebted to any person other than its parent and/or the parent's other totally-held subsidiaries, in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, provided that indebtedness of a subsidiary which is secured by its parent by guarantee, pledge, assignment or otherwise is to be excluded.

4. By revising § 11.104 to read as follows:

**§ 11.104 Inspection.**

Except as provided in § 11.105, all information filed regarding a security registered with the Comptroller will be available for inspection at its office in Washington, DC, in addition copies of the registration statement and reports required by Subparts B and C of this part (exclusive of exhibits), the statements required by § 11.501, and the annual reports to security holders required by § 11.503, will be available for inspection at the District Office in the district in which the bank filing the statements or reports is located.

5. By revising § 11.106 to read as follows:

**§ 11.106 Liability for forward-looking statements.**

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of a bank, or by an outside reviewer retained by the bank, shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This section applies to—

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Comptroller, in Part I of a quarterly report on Form F–4, or in an annual report to shareholders meeting the requirements of § 11.501,

(2)(i) A statement reaffirming the forward-looking statement referred to in paragraph (b)(1) of this section subsequent to the date the document was filed or the annual report was made publicly available, or

(ii) A forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available within a reasonable time after the making of such forward-looking statement, or

(iii) Information relating to the effects of "changing prices" on the bank presented voluntarily or pursuant to section § 11.833, "Management's discussion and analysis of financial condition and results of operations," or § 1.832, "Supplemental financial information," if disclosed in a document filed with the Comptroller or in an annual report to shareholders meeting the requirements of § 11.501.

(c) For the purpose of this section the term "forward-looking statement" shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of the summary of earnings; or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in § 11.106(c) (1), (2), or (3).

(d) For the purpose of this section the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course or business, or an artifice to defraud, as those terms are used in the Act or the regulations issued thereunder.

(e) Notwithstanding any of the provisions of § 11.106(a)–(d) this section shall apply only to forward-looking statements made by or on behalf of a bank if, at the time such statements are made or reaffirmed, the bank is subject to the reporting requirements of the Act and has filed its most recent annual report on Form F–2.

6. By adding § 11.107 to read as follows:

**§ 11.107 Falsification of accounting records.**

No person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Securities Exchange Act of 1934.

7. By adding § 11.108 to read as follows:

**§ 11.108 Bank's representations in connection with the preparation of required reports and documents.**

No director or officer of a bank shall directly or indirectly make or cause to be made a materially false or misleading statement to an accountant, or omit to state or cause another person to omit from such statement, any material fact needed to make statements made, in light of the circumstances under which they were made, not misleading, in connection with—

(a) Any audit or examination of the financial statements of the bank required to be made under this part or

(b) The preparation or filing of any document or report required to be filed with the Comptroller of the Currency under this part.

8. By revising § 11.201 to read as follows:

**§ 11.201 Requirement of registration statement under Section 12 of the Exchange Act.**

Securities of a bank shall be registered under the provisions of either section 12(b) or section 12(g) of the Act by filing a statement in conformity with the requirements of Form F–1 (or Form F–10, in the case of registration of an additional class of securities) within the period of time specified in the Act. No registration shall be required under the provisions of section 12(b) or section 12(g) of the Act of any warrant or certificate evidencing a right to subscribe to or otherwise acquire a security of a bank if such warrant or certificate by its terms expires within 90 days after the issuance thereof.

9. By revising § 11.207(b) to read as follows:

**§ 11.207 Deregistration.**

* * * * *

(b) The registration of any class of security of a registrant bank which is registered pursuant to section 12(g) of the Act shall be terminated in accordance with the provisions of section 12(g)(4) of the Act, upon certification by the bank to the Comptroller that the number of record holders of such class of security has fallen below 300. Termination of registration shall take effect ninety days, or such shorter period as the Comptroller may determine, after the filing of the certification. The bank's duty to file any report required under Section 13(a) shall be suspended immediately upon such certification; provided further, that if the certification is subsequently withdrawn or denied, the bank shall, within 60 days after the date of such withdrawal or denial, file with the Comptroller all reports which would have been required to be filed had the certification not been filed. If the bank has merged into or consolidated with another bank or banks, such certification shall be filed by the successor bank.

10. By revising § 11.290 to read as follows:

**§ 11.290 Form for registration of securities of a bank pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934.**

**Form F–1: Form for Registration of Securities of a Bank**

Pursuant to Section 12 (b) or (g) of The Securities Exchange Act of 1934

_____

(Exact name of bank as specified in its charter)

_____

(Address of principal office including Zip Code)

_____

(I.R.S. Employer Identification No.)

Bank's telephone number, including area code_____

Securities to be registered pursuant to Section 12(b) of the Act:

| Title of each class to be so registered | Name of each exchange on which each class is to be registered |
|---|---|
| | |
| ..... | ..... |
| ..... | ..... |

Securities to be registered pursuant to Section 12(g) of the Act:

_____

(Title of class)

_____

(Title of class)

*General Instructions*

A. Rule as to use of Form F–1.

Form F–1 shall be used for registration pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934 of classes of securities of banks for which no other form is prescribed.

B. Application of Subparts A and G.

(a) Subparts A and G of Part 11 contain general requirements which are applicable to registration on any form. These general requirements should be carefully read and observed in the preparation and filing of registration statements on this form.

(b) Particular attention is directed to the formal requirements in Subpart G regarding matters such as the kind and size of paper to be used, the legibility of the registration statement, the information to be given whenever the title of securities is required to be stated, and the filing of the registration statement. The definitions contained in § 11.102 should be especially noted.

C. Preparation of Registration Statement.

(a) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the registration statement in accordance with the requirements of §§ 11.711 and 11.712. The registration statement shall contain the item numbers and captions, but the text of the items may be omitted. The answers to the items shall be prepared in the manner specified in § 11.713.

(b) Unless otherwise stated, the information required shall be given as of a date reasonably close to the date of filing the registration statement.

(c) In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

D. Signature and Filing of Registration Statement.

Three complete copies of the registration statement, including financial statements, exhibits and all other papers and documents filed as a part thereof, shall be filed with the Comptroller. At least one complete copy of the registration statement, including financial statements, exhibits and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities is to be registered. At least one complete copy of the registration statement filed with the Comptroller and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

The report shall be signed by the bank, and on behalf of the bank by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors. The name of each person who signs the report shall be typed or printed beneath his or her signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which that person signs the report. Attention is directed to § 11.711 concerning manual signatures and signatures pursuant to powers of attorney.

E. Incorporation by Reference.

Attention is directed to § 11.723 which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a registration statement.

*Information Required in Registration Statement*

Item 1. Business.

Furnish the information required by § 11.811.

Item 2. Financial Information.

Furnish the information required by §§ 11.831 and 11.833.

Item 3. Properties.

Furnish the information required by § 11.812.

Item 4. Security Ownership of Certain Beneficial Owners and Management.

Furnish the information required by § 11.843.

Item 5. Directors and Executive Officers.

Furnish the information required by § 11.841.

Item 6. Executive Compensation.

Furnish the information required by § 11.842.

Item 7. Legal Proceedings.

Furnish the information required by § 11.813.

Item 8. Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.

Furnish the information required by § 11.821.

Item 9. Recent Sales of Securities.

Furnish the information required by § 11.871.

Item 10. Description of Registrant's Securities to be Registered.

Furnish the information required by § 11.822.

Item 11. Indemnification of Directors and Officers.

Furnish the information required by § 11.872.

Item 12. Financial Statements and Supplementary Data.

Furnish all financial statements required by Subpart I and the supplementary financial information required by § 11.832.

Item 13. Disagreements With Accountants on Accounting and Financial Disclosure.

Furnish the information required by § 11.834.

Item 14. Certain Relationships and Related Transactions.

Furnish the information required by § 11.844.

Item 15. Financial Statements and Exhibits.

(a) List separately all financial statements and schedules filed as part of the registration statement.

(b) Furnish the exhibits required by § 11.861.

*Signatures*

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the bank has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

(Bank) _____

Date _____

By _____

(Signature)* _____

11. By revising § 11.291 to read as follows:

**§ 11.291 Form for registration of additional class of securities of a bank pursuant to section 12(g) of the Securities Exchange Act of 1934 (Form F-10).**

**Form F-10: For Registration of Additional Classes of Securities Pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934**

_____

(Exact name of bank as specified in its charter)

_____

(Address of principal offices, including Zip Code)

Securities to be registered pursuant to Section 12(b) of the Act:

| Title of each class to be so registered | Name of each exchange on which each class is to be registered |
|---|---|
| ..... | ..... |
| ..... | ..... |

Securities to be registered pursuant to Section 12(g) of the Act:

_____

(Title of class)

_____

(Title of class)

*General Instructions*

A. Rule as to Use of Form F-10

This form may be used for registration of the following securities pursuant to the Securities Exchange Act of 1934:

(a) For the registration pursuant to section 12 (b) of the Act of any class of equity securities of a bank which has one or more other classes of securities registered pursuant to either section 12 (b) or (g) of the Act.

(b) For registration on a national securities exchange pursuant to section 12(b) of the Act of any class of securities of a bank which has one or more other classes of securities so registered on the same securities exchange.

B. Application of Subparts A and G

(a) Subparts A and G of Part 11 contain certain general requirements which are applicable to registration on any form. These general requirements should be carefully read and observed in the preparation and filing of registration statements on this form.

(b) Particular attention is directed to the formal requirements of Subpart G regarding matters such as the kind and size of paper to be used, legibility, information to be given whenever the title of securities is required to be stated, incorporation by reference and the filing of the registration statement. The definitions contained in § 11.102 should be especially noted.

C. Preparation of Registration Statement.

The format of Form F-10 is not to be used as a blank form to be filled in, but only as a guide in the preparation of the registration statement in accordance with the requirements of §§ 11.711 and 11.712. The registration statement shall contain the item numbers and captions, followed by the applicable disclosures. The answers to the items shall be prepared in the manner specified in § 11.713.

D. Signature and Filing of Registration Statement.

Three complete copies of the registration statement, including all papers and documents filed as a part thereof (other than exhibits) shall be filed with the Comptroller and at least one such copy shall be filed with each exchange on which the securities are to be registered. Exhibits shall be filed with the Comptroller and with any exchange in accordance with the Instructions as to Exhibits. At least one copy of the registration statement filed with the Comptroller and one filed with each exchange shall be manually signed. Unsigned copies shall bear printed or typed signatures.

The report shall be signed by the bank, and on behalf of the bank by its principal executive officer or officers, its principal financial officer, its controller or principal account officer, and by at least the majority of the board of directors. The name of each person who signs the report shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which that person signs the report. Attention is directed to § 11.711 concerning manual signatures and signatures pursuant to powers of attorney.

*Information Required in Registration Statement*

Item 1. Description of Registrant's Securities to be Registered.

Furnish the information required by § 11.822.

Instruction. If a description of the securities comparable to that required here is contained in any other filing with the Comptroller, such description may be incorporated by reference to such other filing in answer to this item. If the securities are to be registered on a national securities exchange, and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the application filed with the exchange.

Item 2. Exhibits.

Furnish the exhibits required by § 11.861.

*Signature*

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the bank has duly caused this registration statement to be signed on its behalf by the undersigned, thereto duly authorized.

*Print the name and title of the signing officer under his or her signature.

(Bank)

Date _____

By _____

(Signature) *

12. By adding § 11.304(b) to read as follows:

**§ 11.304 Quarterly reports.**

* * * * *

(b) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form F–4 shall not be deemed to be "filed" for the purpose of Section 18 of the Exchange Act or otherwise subject to the liabilities of that Section of the Act, but shall be subject to all other provisions of the Act.

13. By revising § 11.390 to read as follows:

**§ 11.390 Form for annual report of bank (Form F–2).**

**Form F–2: Annual Report Under Section 13 of the Securities Exchange Act of 1934**

For the fiscal year ended

_____

_____

(Exact name of bank as specified in its charter)

_____

(Address of principal office including Zip Code)

_____

(I.R.S. Employer Identification No.)

Bank's telephone number, including area code

_____

_____

Securities registered under section 12(b) of the Act:

Title of each class

_____

_____

Name of each exchange on which registered

_____

_____

Securities registered under section 12(g) of the Act:

_____

(Title of class)

_____

(Title of class)

Indicate by check mark whether the bank (1) has filed all reports required to be filed by Section 13 of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the bank was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes —— No ——

State the aggregate market value of the voting stock held by the non-affiliates of the bank. The aggregate market value shall be computed by reference to the price at which the stock was sold, or the average bid and asked prices of such stock, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in § 11.102(b)).

**Note.**—If a determination as to whether a particular person or entity is an affiliate cannot be made without involving unreasonable effort and expense, the aggregate market value of the common stock held by non-affiliates may be calculated on the basis of assumptions reasonable under the circumstances, provided that the assumptions are set forth in this form.

*Documents Incorporated by Reference*

List hereunder the folowing documents if incorporated by reference and the Part of the Form F–2 (e.g., Part I, Part II, etc.) into which the document is incorporated: (1) Any annual report to security holders; and (2) Any proxy or information statement. The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 31, 1980).

*General Instructions*

A. Rule as to Use of Form F–2.

The format form shall be used for annual reports pursuant to Section 13 of the Exchange Act for which no other form is prescribed. Reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. However, all schedules required by Subpart I may, at the option of the bank be filed as an amendment to the report not later than 120 days after the end of the fiscal year covered by the report. Such amendment shall be filed under cover of Form F–20.

B. Application of General Rules and Regulations.

(1) Subparts A and G of Part 11 Contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(2) Particular attention is directed to Subpart G which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in § 11.102 should be expecially noted.

C. Preparation of Report.

(1) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of § 11.712. Except as provided in General Instruction E, the answers to the items shall be prepared in the manner specified in § 11.713.

(2) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest practicable date.

(3) In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

D. Signature and Filing of Report.

Three complete copies of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, shall be filed with the Comptroller. At least one complete copy of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Comptroller and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

The report shall be signed by the bank and on behalf of the bank by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors. The name of each person who signs the report shall be typed or printed beneath his or here signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which that person signs the report. Attention is directed to § 11.711 concerning manual signatures and signatures pursuant to powers of attorney.

E. Information to be Incorporated by Reference.

(1) Attention is directed to § 11.723 which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a report.

(2) The information called for by Parts I and II of this form (Items 1 through 9 or any portion thereof) may, at the bank's option, be incorporated by reference from the bank's annual report to security holders furnished to the Comptroller pursuant to § 11.503, or from the bank's annual report to security holders, even if not furnished to the Comptroller pursuant to § 11.503, provided such annual report contains the information required by § 11.503.

**Note.**—In order to fulfill the requirements of Part I of Form F–2, the incorporated portion of the annual report to security holders must contain the information required by Items 1–3 of Form, F–2, to the extent applicable.

(3) The information required by Part III (Items 10, 11 and 12) shall be incorporated by reference from the bank's definitive proxy statement or definitive information statement (filed or to be filed pursuant to § 11.501) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Comptroller not later than 120-days after the end of the fiscal year covered by the Form F–2. However, if such definitive proxy or information statement is not filed with the Comptroller in the 120-day period, the items comprising the Part III information must be filed as part of the Form F–2, or as an amendment to the Form F–2 under cover of Form F–20, not later than the end of the 120-day period. It should be noted that the information regarding executive officers

* Print the name and title of the signing officer under his or her signature.

required by § 11.841 may be included in Part I of Form F–2 under an appropriate caption. See Instruction 4 to § 11.841(b).

(4) When the bank combines all of the information in Parts I and II of this form (Items 1 through 9) by incorporation by reference from the bank's annual report to security holders and all of the information in Part III of this form (Items 10, 11 and 12) by incorporation by reference from a definitive proxy statement or information statement involving the election of directors, then, notwithstanding General Instruction C(1), this form shall consist of the facing or cover page, those sections incorporated from the annual report to security to security holders, the proxy or information statement, and the information, if any, required by Part IV of this form, signatures, and a cross reference sheet setting forth the item numbers and captions in Parts I, II and III of this form and the page and/or pages in the referenced materials where the corresponding information appears.

F. Integrated Reports to Security Holders.

Annual reports to security holders may be combined with the required information of Form F–2 and will be suitable for filing with the Comptroller, if the following conditions are satisfied:

(1) The combined report contains full and complete answers to all items required by Form F–2. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made. If the information required by Part III of Form F–2 is omitted by virtue of General Instruction E, a definitive proxy or information statement shall be filed.

(2) The cover page and the required signatures are included. As appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

*Part I*

See General Instructions E(2)

Item 1. Business.

Furnish the information required by § 11.811 except that the discussion of the development of the bank's business need only include developments since the beginning of the fiscal year for which this report is filed.

Item 2. Properties.

Furnish the information required by § 11.812.

Item 3. Legal Proceedings.

(a) Furnish the information required by § 11.813.

(b) As to any proceeding that was terminated during the fourth quarter of the fiscal year covered by this report, furnish information similar to that required by § 11.813, including the date of termination and a description of the disposition thereof with respect to the bank and its subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders.

If any matter was submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in § 11.511) terminating any solicitation subject to § 11.511, including the cost or anticipated cost to the registrant.

Instructions:

1. If any matter has been submitted to a vote of security holders other than at a meeting of such security holders, corresponding information with respect to such submission shall be furnised. The solicitation of any authorization or consent (other than a proxy to vote at a stockhloders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered If (i) proxies for the meeting were solicited pursuant to Subpart E of Part 11, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the bank did not solicit proxies and the board of directors as previously reported to the Comptroller was reelected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the bank has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the bank has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report.

*Part II*

See General Instruction E(2)

Item 5. Market for the Bank's Common Stock and Related Security Holder Matters.

Furnish the information required by § 11.821.

Item 6. Selected Financial Data.

Furnish the information required by § 11.831.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by § 11.833.

Item 8. Financial Statements and Supplementary Data.

Furnish financial statements meeting the requirements of Subpart I (excluding separate financial statements of businesses acquired or to be acquired (§ 11.915) and pro forma information (§ 11.940)), and the supplementary financial information required by § 11.832. Financial statements of the bank and its subsidiaries consolidated (as required by § 11.503) shall be filed under this item. Other financial statements and schedules required under Subpart I may be filed as "Financial Statement Schedules" pursuant to Item 14—Exhibits, Financial Statement Schedules, and Reports on Form F–3—of this form.

Item 9. Disagreements on Accounting and Financial Disclosure.

Furnish the information required by § 11.834.

*Part III*

See General Instruction E(3)

Item 10. Directors and Executive Officers of the Bank.

Furnish the information required by § 11.841.

Item 11. Executive Compensation.

Furnish the information required by § 11.842.

Item 12. Security Ownership of Certain Beneficial Owners and Management.

Furnish the information required by § 11.843.

Item 13. Certain Relationships and Related Transactions.

Furnish the information required by § 11.844.

*Part IV*

Item 14. Exhibits, Financial Statement Schedules, and Reports on Form F–3.

(a) List the following documents filed as a part of the report:

1. All financial statements.

2. Those financial statement schedules required to be filed by Item 8 of this form, and by paragraph (d) below.

3. Those exhibits required to be filed by § 11.861 and by paragraph (c) below. Where any financial statement, financial statement schedule, or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. For purposes of all rules concerning incorporation by reference, a financial statement schedule shall constitute and "exhibit."

(b) Reports on Form F–3. State whether any reports on Form F–3 have been filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of any such reports.

(c) Banks shall file, as exhibits to this form, the exhibits required by § 11.861.

(b) Banks shall file, as financial statement schedules to this form, the financial statements required by Subpart I which are excluded from the annual report to

shareholders by § 11.503. These are: (1) If material to a proper understanding of the financial position and results of operations of the total enterprise, separate financial statements of subsidiaries and consolidated and fifty percent or less owned persons; and (2) schedules.

*Signatures*

See General Instruction D

Pursuant to the requirements of Section 13 of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Bank)

By ——————————

(Signature and Title) *

Date ——————————

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

(Signature and Title) *

(Date)

(Signature and Title) *

(Date)

14. By amending § 11.391 by revising Item 7 as follows:

**§ 11.391 Form for current report of a bank (Form F-3).**

* * * * *

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

List below the financial statements, pro forma financial information and exhibits, if any, filed as a part of this report.

*Financial Statements of Businesses Acquired*

(1) For any business acquisition required to be described in answer to Item 2 above, financial statements of the business acquired shall be filed for the periods specified in § 11.915.

(2) The financial statements shall be prepared pursuant to Subpart, I, except that supporting schedules need not be filed. A manually signed accountant's report should be provided pursuant to § 11.903.

*Pro Forma Financial Information*

(1) For any transaction required to be described in answer to Item 2 above, furnish any pro forma financial information that would be required pursuant to Subpart I.

*Exhibits*

The exhibits shall be furnished in accordance with the provisions of 11.861.

*Signatures*

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

(Registrant)

Date ——————————

By ——————————

(Signature)*

15. By revising § 11.392 to read as follows:

**§ 11.392 Form for quarterly report of bank (Form F-4).**

**Form F-4; Quarterly Report Under Section 13 of the Securities Exchange Act of 1934 For Quarter Ended ——————**

(Exact name of bank as specified in its charter)

(I.R.S. Employer Identification No.)

(Address of principal executive offices)

(Zip Code)

Bank's telephone number, including area code ——————

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the bank (1) has filed all reports required to be filed by section 13 of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the bank was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes —— No ——

*General Instructions*

A. Rule for Use of Form F-4.

(1) The format Form F-4 as printed in this regulation shall be used for quarterly reports under Section 13 of the Securities Exchange Act of 1934 filed pursuant to Section 11.304.

(2) A report in this format shall be filed within 45 days after the end of each of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year.

B. Application of Subparts A and G.

(1) Subparts A and G of Part 11 contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(2) Particular attention is directed to the requirements of Subpart G regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in § 11.102 should be especially noted.

C. Preparation of Report.

(1) The format of Form F-4, as used in this regulation, is not a blank form to be filled in. It is a guide copy to be used in preparing the report in accordance with §§ 11.711 and 11.712. Except as provided in General Instruction D, the answers to the items shall be prepared in the manner specified in § 11.713.

D. Incorporation by Reference.

(1) If the bank makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of this form, the information called for may be incorporated by reference to such published document or statement, in answer or partial answer to any item or items of Part I of this form, provided copies thereof are filed as an exhibit to Part I of the report on this form.

(2) Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form in accordance with the provisions of § 11.723.

E. Integrated Reports to Security Holders.

Quarterly reports to security holders may be combined with the required information of Form F-4 and will be suitable for filing with the Comptroller if the following conditions are satisfied:

1. The combined report contains full and complete answers to all items required by Part I of this form. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made.

2. If not included in the combined report, the cover page, appropriate responses to Part II, and the required signatures shall be included in the Form F-4. Additionally, as appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

F. Filed Status of Information Presented.

(1) Pursuant to § 11.304(b), the information presented in satisfaction of the requirements of Items (1) and (2) of Part I of this form, whether included directly in a report on this form, incorporated therein by reference from a report, document or statement filed as an exhibit to Part I of this form pursuant to Instruction D(1) above, included in an integrated report pursuant to Instruction E above, or contained in a statement regarding computation of per share earnings or a letter regarding a change in accounting principles filed as an exhibit to Part I pursuant to § 11.861, except as provided by Instruction F(2) below, shall not be deemed filed for the purpose of Section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to the other provisions of the Act.

(2) Information presented in satisfaction of the requirements of this form other than those of Items (1) and (2) of Part I shall be deemed filed for the purpose of Section 18 of the Act; except that, where information presented in response to Item (1) or (2) of Part I (or an exhibit thereto) is also used to satisfy Part II requirements through incorporation by

* Print the name and title of each signing officer under his or her signature.

* Print name and title of the signing officer under his or her signature.

reference, only that portion of Part I (or exhibit thereto) consisting of the information required by Part II shall be deemed so filed.

G. Signature and Filing of Report.

Three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, need not include exhibits, shall be filed with the Comptroller. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Comptroller and one such copy filed with each exchange shall be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial or chief accounting officer of the registrant. Copies not manually signed shall bear typed or printed signatures. In the case where the principal financial officer or chief accounting officer is also duly authorized to sign on behalf of the registrant, one signature is acceptable, provided that the registrant clearly indicates the dual responsibilities of the signatory.

The report shall be signed by the bank, and on behalf of the bank by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors. The name of each person who signs the report shall be typed or printed beneath his or her signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which that person signs the report. Attention is directed to § 11.711 concerning manual signatures and signatures pursuant to powers of attorneys.

*Part I—Financial Information*

Item 1. Financial Statements.

Provide the information required by § 11.917.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by § 11.833.

*Part II—Other Information*

Instruction. The report shall contain the item numbers and captions of all applicable items of Part II, but the text of such items may be omitted, provided the responses clearly indicate the coverage of the item. Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the bank, an additional report of the information on this form need not be made. The term "previously reported" is defined in § 11.102. A separate response need not be presented in Part II where the required information is already disclosed in Part I and is incorporated by reference into Part II by means of a statement to that effect.

Item 1. Legal Proceedings.

Furnish the information required by § 11.813. As to such proceedings which have been terminated during the period covered by the report, provided similar information, including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries.

Instruction. A legal proceeding need only be reported in the F-4 filed for the quarter in which it first become a reportable event and in subsequent quarters in which there have been material developments. Subsequent Form F-4 filings in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous report in that year.

Item 2. Changes in Securities.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Working capital restrictions and other limitations upon the payment of dividends are to be reported hereunder.

Item 3. Defaults Upon Senior Securities.

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any bank or any of its significant subsidiaries, the assets of which exceed 10 percent of the total assets of the registrant and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days with respect to any class of preferred stock of the bank which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 3 does not apply to default or arrearage on any class of securities held exclusively by, or for the account of, the bank or its totally held subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders.

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) The results of any election of directors, including the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting, including the number of affirmative votes and the number of negative votes cast.

(d) A description of the terms of any settlement between the bank and any other participant (as defined in § 11.102) terminating any solicitation subject to § 11.511, including the cost or anticipated cost to the registrant.

**Instructions**

1. Furnish corresponding information for other votes by security holders that were not conducted at the meeting. A solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) submitted to Security holders is covered by this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Subpart E of Part 11, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the Board of Directors as previously reported to the Comptroller was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the bank has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the bank has published a report containing all the information called for by this item, the item may be answered by a reference to the information contained in such report.

Item 5. Other Information.

The bank may, at its option, report under this item any information, not previously reported in a report on Form F-3, or required by this form. If disclosure of such information is made under this item, it need not be repeated in a report on Form F-3 or in a subsequent report on Form F-4.

Item 6. Exhibits and Reports on Form F-3.

(a) Furnish the exhibits required by § 11.861.

(b) Reports on Form F-3. State whether any reports on Form F-3 have been filed during the quarter for which this report is filed, and list the items reported, financial statements filed, and the dates of any such reports.

**Signatures** *

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date _____

(Registrant)

(Signature) **

Date _____

(Signature) **

16. By amending § 11.401 by revising the last sentence of paragraph (a) and amending the first sentence of paragraph (b) to read as follows:

**§ 11.401 Requirement of acquisition statements under section 13(d) of the Act.**

(a) * * * Three copies of the statement, including all exhibits, shall be filed with the Comptroller.

(b) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Form F-11 may, in lieu thereof, file with the Comptroller of the Currency within 45 days after the end of the calendar year in which such person became so obligated three copies, including all exhibits, of a short form statement on Form F-11A * * *.

* * * * *

17. By revising § 11.402 to read as follows:

**§ 11.402 Amendments to acquisition statements.**

(a) *Form F-11.* If any material change occurs in the facts set forth in the statement required by § 11.401(a) including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file with the Comptroller and send to the bank as its principal executive office, by registered or certified mail, and to each exchange on which the security is traded, as amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this section. Acquisitions or dispositions of less than such amounts may be materials, depending upon the facts and circumstances. Three copies of each amendment shall be filed with the Comptroller.

(b) *Form F-11A.* Notwithstanding § 11.402(a) and provided that the person or persons filing a statement under § 11.401(b) continue to meet the requirements set forth therein, any person who has filed a short form statement on Form F-11A shall amend such statement within 45 days after the end of each calendar year if, as of the end of such calendar year, there are any changes in the information reported in the previous filing on that form. Provided, however, that such amendment need not be filed with respect to a change in the percent of class outstanding previously reported if such change results solely from a change in the aggregate number of securities outstanding. Three copies of the amendment, including all exhibits, shall be filed with the Comptroller and one each sent, by registered or certified mail, to the bank at its principal office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required, unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file under § 11.401.

**Note.**—For persons filing a short form statement pursuant to § 11.401(b), see also § 11.401(b) (2), (3), and (4).

18. By revising § 11.410(b) (1), (f) and (h) to read as follows:

**§ 11.410 Reports of directors, officers and principal stockholders pursuant to section 16(a) of the Exchange Act.**

* * * * *

(b) *Ownership of more than 10 percent of a class of equity securities.* (1) In determining, for the purpose of section 16(a) of the Act, whether a person is the beneficial owner directly or indirectly, of more than 10 percent of any class of equity securities, such class shall be deemed to consist of the total amount of such class outstanding, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer. However, for the purpose of determining percentage ownership of voting trust certificates or certificates of deposit for equity securities, the class of voting trust certificates or certificates of deposit shall be deemed to consist of the amount of voting trust certificates or certificates of deposit issuable with respect to the total amount of outstanding equity securities of the class which may be deposited under the voting trust agreement or deposit agreement in question, whether or not all of such outstanding securities have been so deposited. For the purpose of this section, a person acting in good faith may rely on the information contained in the latest consolidated financial statement in a registration statement or annual report filed with the Comptroller under the Act with respect to the amount of securites of the class outstanding or in the case of voting trust certificates or certificates of deposit the amount thereof issuable.

* * * * *

(f) *Puts, calls, options, and other rights or obligations subject to section 16(a) of the Act.* (1) The granting, acquisition or disposition of any presently exercisable put, call, option, or other right or obligation to buy securities from, or sell securities to, another person, or any expiration or cancellation thereof, shall be deemed to effect such a change in the beneficial ownership of the securities to which the right or obligation relates as to require the filing of a statement under section 16(a) of the Act.

**Notes.**—1. If such right or obligation is not initially exercisable, the granting and acquisition thereof shall be reported in a statement filed for the month in which it became exercisable, unless the filing of such statement is otherwise not required.

2. The right of a pledgee or borrower of securities to sell the pledged or borrowed securities is not an option or right to sell securities within the meaning of this section. However, the sale of the pledged or borrowed securities by the pledgee or borrower shall be reported by the pledgor or lender.

3. The right to acquire securities, or the obligation to dispose of securities, in connection with a merger or consolidation involving the issue of the securities is not a right or obligation to buy or sell securities within the meaning of this section

(2) For the purpose of section 16(a) of the Act both the grantor and the holder of any presently exercisable put, call, option or other right or obligation to buy or sell securities shall be deemed to be beneficial owners of the securities shall be deemed to be beneficial owners of the securities subject to such right or obligation until it is exercised or cancelled or expires.

(3) Notwithstanding the foregoing, a statement need not be filed under section 16(a) of the Act: (i) By any person with respect to the acquisition, expiration or cancellation of any nontransferable, qualified, restricted or other stock option granted by the bank, if securities to which the option relates are govered by a plan provided for the benefit of its employees or the employees of its affiliates, and if such plan meets the conditions specified in § 11.411(c) of this chapter or (ii) by any bank with respect to any put, call, option or other right or obligation to buy or sell securities of which it is the issuer.

* See General Instruction G.

** Print name and title of the signing officer under his or her signature.

Note.—An option, otherwise nontransferable, is deemed to be nontransferable even though it may be disposed of by will or by descent and distribution upon the death of the holder.

(4) Nothing in this section shall be deemed to exempt any person from the duty to file the statements required upon the exercise of any put, call, option, or other right or obligation to buy or sell securities

* * * * *

(h) *Exemption of small transactions from section 16(a) of the Act.* (1) Any acquisition of a bank's securities shall be exempt from section 16(a) of the Act where:

(i) The person effecting the acquisition does not within six months thereafter effect any disposition, otherwise than by way of gift, of securities of the same class, and

(ii) The person effecting such acquisition does not participate in acquisitions or in dispositions of securities of the same class having a total market value in excess of $10,000 for any six-month period during which the acquisition occurs.

(2) Any acquisition or disposition of a bank's securities by way of gift, where the total amount of such gifts does not exceed $10,000 in market value for any six-month period, shall be exempt from section 16(a) of the Act and may be excluded from the computations prescribed in § 11.410(h)(1)(ii).

(3) All persons exempted by § 11.410(h) (1) or (2) shall include in the first report filed by him or her after a transaction within the exemption, a statement showing his or her acquisitions and dispositions for each six-month period or portion thereof that has elapsed since the last filing.

19. By revising § 11.411(c) to read as follows:

**§ 11.411 Exemption of certain transactions from section 16(b) of the Exchange Act.**

* * * * *

(c) Exemption from section 16(b) of the acquisitions of shares of stock and stock options and stock appreciation rights under certain stock incentive, stock option or similar plans. The following transactions by a director or officer shall be exempt from the operation of section 16(b) of the Act if they occur pursuant to a plan which satisfies the conditions of this subsection: the acquisition of shares of stock, except that stock acquired upon the exercise of an option, warrant or right, shall be exempt only to the extent indicated in the final clause of this sentence; the acquisition, expiration, cancellation or surrender to the bank of a stock option or stock appreciation right; the surrender or delivery to the bank of shares of its stock as payment for the exercise of a stock option for shares of the same class; and the acquisition, upon the exercise of a stock option, of shares of stock equal to the number of shares of the same class surrendered or delivered to the issuer as payment for the exercise of the option. The conditions of this rule that a plan must satisfy in order for the above transactions to be exempt are as follows:

(1) *Approval by security holders.* The plan must be approved, directly or indirectly,

(i) By the affirmative votes of the holders of a majority of the securities of the bank present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the State or other jurisdiction in which the bank is incorporated or

(ii) By the written consent of the holders of a majority of the securities of the bank entitled to vote: *Provided, however,* That if such vote or written consent was not solicited substantially in accordance with the rules and regulations, if any, in effect under section 14(a) of the Act at the time of such vote or written consent, the bank shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan which would be required by the rules and regulations in effect under section 14(a) of the Act at the time such information is furnished, if proxies to be voted with respect to the approval or disapproval of the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of the first registration by the bank of an equity security under section 12 of the Act, or the acquisition by the director or officer of the equity security or securities for which exemption is claimed.

Such written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of the mailing. Three copies of such written information shall be filed with, or mailed for filing to, the Comptroller not later than the date on which it is first sent or given to security holders of the bank. For the purposes of this paragraph, the term "bank" includes a predecessor corporation if the plan or obligations to participate thereunder were assumed by the bank in connection with the succession. In addition, any amendment to the plan shall be similarly approved if the amendment would materially increase the benefits accruing to participants under the plan, materially increase the number of securities which may be issued under the plan, or materially modify the requirements as to eligibility for participation in the plan.

(2) *Disinterested administrator.* If the selection of any director or officer of the bank to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted under the plan, or if the determination of the number or maximum number of shares of stock which may be allocated to any such director or officer or which may be covered by stock option or stock appreciation rights granted to any such director or officer under the plan is subject to the discretion of any person, then such discretion shall be exercised only as follows:

(i) With respect to the participation of directors—

(A) By the board of directors of the bank, if a majority of the board and a majority of the directors acting in the matter are disinterested persons;

(B) By, or only in accordance with the recommendation of, a committee of three or more persons having full authority to act in the matter, if all of its members are disinterested persons; or

(C) Otherwise in accordance with the plan, if the plan:

(*1*) Specifies the number of maximum number of shares of stock which directors may acquire or which may be subject to stock options or stock appreciation rights granted to directors pursuant to the plan and specifies the terms upon which and the times at which, or the periods within which, such stock may be acquired or such options or rights may be acquired and exercised; or

(*2*) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, options prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time or similar factors.

(ii) With respect to the participation of officers who are not directors—

(A) By the board of directors of the bank or a committee of three or more directors;

(B) By, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, if all of its members are disinterested persons; or

(C) Otherwise in accordance with the plan, if the plan:

(*1*) Specifies the number or maximum number of shares of stock which officers may acquire or which may be subject to stock options or stock appreciation rights granted to the officers pursuant to the plan and the terms upon which, and the times at which, or the period within which, such stock may be acquired or such options or rights may be acquired and exercised; or

(*2*) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time or similar factors.

(iii) The provisions of this paragraph shall not apply with respect to any option or right granted, or other equity security acquired, prior to the date of the first registration of an equity security under section 12 of the Act.

(3) *Plan limitations.* The plan effectively limits, as to each participant or as to all participants, the aggregate dollar amount of stock or the aggregate number of shares of stock which may be allocated, or which may be subject to stock options or stock appreciation rights issued pursuant to the plan. The limitations may be established on an annual basis or for the duration of the plan—whether or not the plan has a fixed termination date—and may be determined by: Fixed or maximum dollar amounts; fixed or maximum number of shares; or by formulas based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time, or similar factors which will result in an effective and determinable limitation. Such limitations may be subject to any provision for adjustment of the plan, of stock allocable, or options outstanding thereunder to prevent dilution or enlargement of rights.

(4) *Defintions.* Unless the context otherwise requires, all terms used in § 11.411(c) shall have the same meaning as in the Act or elsewhere in Part 11. In addition, the following definitions apply:

(i) The term "plan" shall mean an option, bonus, appreciation, profit sharing, retirement, incentive, thrift, savings, or similar plan which meets the following conditions:

(A) The plan must be set forth in a written document describing the means or basis for determining the eligibility of individuals to participate and either the price at which the securities shall be offered or the method by which the price or the amount of the award is to be determined; and

(B) The plan must provide with respect to any option or similar right (including a stock appreciation right) offered pursuant to the plan that such option or right is not transferable other than by will or the laws of descent and distribution and that it is exercisable during the employee's lifetime only by the employee or by the employee's guardian or legal representative.

(ii) The term "exercise of an option, warrant or right" contained in the parenthetical clause of the first paragraph of this § 11.411(c) shall not include:

(A) The election to receive under any plan, compensation in the form of stock or credits therefor: provided, that such election is made either prior to the making of the award or prior to the fulfillment of all conditions to the receipt of the compensation and provided further, that such election is irrevocable until at least six months after termination of employment;

(B) The subsequent crediting of such stock;

(C) Any election as to the time for delivery of such stock after termination of employment, provided that such election is made at least six months prior to any such delivery;

(D) The fulfillment of any condition to the absolute right to receive such stock; or

(E) The acceptance of certificates for shares of such stock

(iii) The term "disinterested person" used in § 11.411(c)(2) and (5) shall mean an administrator of a plan who, upon exercising discretion in administering the plan is not eligible for selection as a person to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan or any other plan of the bank or any of its affiliates that entitle the participants therein to acquire stock, stock options or stock appreciation rights of the bank or any of its affiliates.

(5) *Cash settlements of stock appreciation rights.* Any transaction involving the exercise and cancellation of a stock appreciation right issued pursuant to a plan (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, shall be exempt from the operation of section 16(b) of the Act, if all the following conditions are met:

(i) *Information about the bank.*

(A) The issuer of the stock appreciation right has been subject to the reporting requirements of section 13 of the Act for at least a year prior to the transaction and has filed all reports and statements required to be filed under that section during that year.

(B) The issuer of the stock appreciation right on a regular basis releases for publication quarterly and annual summary statements of operations. This condition shall be deemed satisfied if the specified financial data appears:

(*1*) On a wire service,

(*2*) In a financial news service,

(*3*) In a newspaper of general circulation, or

(*4*) Is otherwise made publicly available.

(ii) *Limitation on the right and any related option.* Neither the stock appreciation right nor any related stock option shall have been exercised during the first six months of their respective terms, except that this limitation shall not apply in the event death or disability of the grantee occurs prior to the expiration of the six-month period.

(iii) *Administration of the plan.* (A) The plan shall be administered by either the board of directors, a majority of which are disinterested persons and a majority of the directors acting on plan matters are disinterested persons, or by a committee of three or more persons, all of whom are disinterested persons;

(B) The board or committee shall have sole discretion either:

(*1*) To determine the form in which payment of the right will be made (i.e., cash, securities, or any combination thereof), or

(*2*) To consent to or diapprove the election of the participant to receive cash in full or partial settlement of the right. Such consent or disapproval may be given at any time after the election to which it relates;

(C) Any election by the participant to receive cash in full or partial settlement of the stock appreciation right, as well as any exercise by the participant of a stock appreciation right for such cash, shall be made during the period beginning on the third business day following the date of release of the financial data specified in § 11.411(c)(5)(i)(B) and ending on the twelfth business day following such date. Section 11.411(c)(5)(iii)(C), however, shall not apply to any exercise by the participant of a stock appreciation right for cash where the date of exercise:

(*1*) Is automatic of fixed in advance under the plan;

(*2*) Is a least six months beyond the date of grant of the stock appreciation right; and

(3) Is outside the control of the participant.

(iv) *Compliance with other conditions of § 11.411(c).* The plan under which the stock appreciation rights and any related options are granted shall meet the conditions specified above in § 11.411(c) (1), (2), (3), and (4).

(v) *Limit of the exemption.* Nothing in this § 11.411(c)(5) provides an exemption from section 16(d) for the acquisition of stock upon the exercise of stock appreciation right or a stock option.

20. By revising § 11.501 (a) and (c) to read as follows:

**§ 11.501 Requirement of statement.**

(a) *Proxy statements.* No solicitation of a proxy with respect to security of a bank registered under section 12 of the Act shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information required by Form F–5.

* * * * *

(c) *Statements.* A proxy statement or an information statement required by this paragraph is hereinafter sometimes referred to as a "Statement."

21. By revising § 11.503 to read as follows:

**§ 11.503 Annual report to security holders to accompany statements.**

(a) Any statement furnished on hehalf of the bank that relates to an annual meeting of security holders at which directors are to be elected shall be accompanied or preceded by an annual report to such security holders as follows, *Provided, however,* That: a bank is not required to send an annual report to a security holder of record having the same address as another security holder of record, provided that (i) such security holders are not holding such bank's securities in nominee name, (ii) at least one report is sent to a holder of record at that address and (iii) the holders of record to whom a report is not sent agree thereto in writing; and unless state law requires otherwise, a bank is not required to send an annual report or proxy statement to a security holder if (i) an annual report or a proxy statement for two consecutive annual meetings or (ii) all, and at least two, checks (if sent by first class mail) in payment of dividends or interest on securities during a twelve month period have been mailed to such security holder's address and have been returned undeliverable (although a bank's obligation to deliver an annual report or a proxy statement under this section is reinstated once it has such security holder's current address):

(1) The report shall include, for the bank and its subsidiaries, consolidated balance sheets as of the end of each of the two most recent fiscal years and statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Subpart I. The provisions of §§ 11.911, 11.913 to 11.918, and 11.940 shall not apply. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Comptroller may be omitted.

Note.—If the financial statements for a period prior to the most recently completed fiscal year have been examined by a predecessor accountant, the separate report of the predecessor accountant may be omitted in the report to security holders, provided the bank has obtained from the predecessor accountant a reissued report covering the prior period presented, and the successor accountant clearly indicates in the scope paragraph of his or her report (a) that the financial statements of the prior period were examined by other accountants, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant, and (d) the substantive reasons therefor, if it was other than unqualified. It should be noted, however, that the separate report of any predecessor accountant is required in filings with the Comptroller. If, for instance, the financial statements in the annual report to security holders are incorporated by reference in a Form F–2, the separate report of a predecessor accountant shall be filed in Part II or in Part IV as a financial statement schedule.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All types shall be leaded at least 2-points.

(3) The report shall contain the Supplementary Financial Information required by § 11.832.

(4) The report shall contain information concerning Disagreements with Accountants on Accounting and Financial Disclosure required by § 11.834.

(5)(i) The report shall contain the Selected Financial Data required by § 11.831.

(ii) The report shall contain Management's Discussion and Analysis of Financial Condition and Results of Operations required by § 11.833.

(6) The report shall contain a brief description of the business done by the bank and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the bank and its subsidiaries.

(7) The report shall identify each of the bank's directors and executive officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

(8) The report shall contain the market price of and dividends on the bank's common equity and related stockholder matters required by § 11.821.

(9) Management's proxy statement, or the report, shall contain an undertaking in boldface or otherwise reasonably prominent type to provide without charge to each person solicited, on the written request of any such person, a copy of the bank's annual report of Form F–2, including the financial statements and the financial statement schedules, required to be filed with the Comptroller pursuant to Rule 13a–1 under the Act for the bank's most recent fiscal year, and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, a bank need not udertake to furnish without charge copies of all exhibits to its Form F–2, provided that the copy of the annual report on Form F–2 furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the bank will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the bank's reasonable expenses in furnishing such exhibit. If the bank's annual report to security holders complies with all of the disclosure requirements of Form F–2 and is filed with the Comptroller in satisfaction of its Form F–2 filing requirements, such bank need not furnish a separate Form F–2 to security holders who receive a copy of such annual report.

Note.—Pursuant to the undertaking required by the above paragraph (a)(9), a bank shall furnish a copy of its annual report on Form F–2 to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the annual meeting of the bank's security holders, the person making the request was beneficial owner of securities entitled to vote at such meeting.

(10) Subject to the foregoing requirements, the report may be in any form deemed suitable by managment and the information required by subparagraphs (a)(5) to (a)(10) may be presented in an appendix or other separate section of the report, provided

that the attention of security holders is called to such presentation.

Note.—Banks are encouraged to utilize tables, schedules, charts, and graphic illustrations to present financial information in an understandable manner. Any presentation of financial information must be consistent with the data in the financial statements contained in the report and, if appropriate, should refer to relevant portions of the financial statements and notes thereto.

(11) This paragraph (a) shall not apply, however, to solicitations made on behalf of the bank before the financial statements are available if solicitation is being made at the time in opposition to the bank and if the bank's proxy statement includes an undertaking in boldface type to furnish such annual report to all persons being solicited, at least 20 days before the date of the meeting.

(b) Three copies of the report sent to security holders pursuant to this rule shall be mailed to the Comptroller solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of solicitation material are filed with the Comptroller pursuant to § 11.506, whichever date is later. The report is not deemed to be "soliciting material" or to be "filed" with the Comptroller or subject to this regulation otherwise than as provided in this rule, or to the liabilities of Section 18 of the Act, except to the extent that the bank specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.

Note.—To assist the staff, managements of banks are requested to indicate in a letter transmitting to the Comptroller copies of their annual reports to shareholders or in a separate letter at about the time the annual report is furnished to the Comptroller, whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices.

* * * * *

22. By adding § 11.505(f) to read as follows:

**§ 11.505 Presentation of information in proxy or information statement.**

* * * * *

(f) All proxy statements shall disclose on the first page thereof the complete mailing address, including zip code, of the principal executive offices of the bank and the approximate date on which the proxy statement and form of proxy are first sent or given to security holders.

23. By amending § 11.506 by revising paragraphs (a), (b), (c) and (e) to read as follows:

**§ 11.506 Material required to be filed.**

(a) Three preliminary copies of each statement, form of proxy, and other item of soliciting material to be furnished to secuirty holders concurrently therewith, shall be filed with the Comptroller by the bank or any other person making a solicitation subject to this subpart at least ten calendar days (or 15 calendar days in the case of other than routine meetings, as defined below) prior to the date such item is first sent or given to any security holders, or such shorter period prior to that date as may be authorized. For the purposes of this paragraph a routine meeting means a meeting with respect to which no one is soliciting proxies subject to this subpart other than on behalf of the bank and at which the bank intends to present no matters other than the election of directors, election of inspectors of election, or other recurring matters. In the absence of actual knowledge to the contrary, the bank may assume that no other such solicitation of the bank's security holders is being made. In cases of annual meetings, one additional preliminary copy of the statement, the form of proxy, and any other soliciting material, marked to show changes from the material sent or given to security holders with respect to the preceding annual meeting, shall be filed with the Comptroller. If the changes are material, the bank shall file with the Comptroller any explanatory comments which may be of assistance in the expeditious processing of the statement.

(b) Three preliminary copies of any additional soliciting material, relating to the same meeting or subject matter, furnished to security holders subsequent to the proxy statement shall be filed with the Comptroller at least two days (exclusive of Saturdays, Sundays, and holidays) prior to the date copies of such material are first sent or given to security holders, or such shorter period prior to such date as may be authorized upon a showing of good cause therefor.

(c) Three copies of each statement, form of proxy, and other items of soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Comptroller not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each exchange upon which any security of the bank is listed.

Note.—The Definitive Statement filed with the Comptroller should be accompanied by a letter indicating any material changes which have been made therein, other than those made in response to the staff's comments, and should also be accompanied by a marked copy of the Definitive Statement indicating all changes made therein.

* * * * *

(e) All copies of material filed under § 11.506 (a) and (b) shall be clearly marked "Preliminary Copies" and shall be for the information of the Comptroller only and shall not be considered available for public inspection before definitive material has been filed with the Comptroller, except that such material may be disclosed to any department or agency of the U.S. Government and to the Congress. The Comptroller may make such inquiries or investigations with respect to the material as may be necessary for an adequate review thereof. All material filed under § 11.506 (a), (b), or (c) shall be accompanied by a statement of the date upon which definitive copies thereof are intended to be, or have been, sent or given to security holders. All material filed under § 11.506(d) shall be accompanied by a statement of the date upon which copies thereof have been or are intended to be released to the individuals who will make the actual solicitation.

24. By revising § 11.507(b) to read as follows:

**§ 11.507 Mailing communications for security holders.**

* * * * *

(b)(1) If the issuer knows that securities of any class entitled to vote at a meeting with respect to which the issuer intends to solicit proxies, consents or authorization are held of record by a broker, dealer, bank or voting trustee, or their nominees, the issuer shall:

(i) By first class mail or other equally prompt means, inquire of such record holder whether other persons are the beneficial owners of such securities and, if so, how many copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, how many copies of the annual report to security holders are needed for transmittal to beneficial owners;

(ii) Make the inquiry at least 20 calendar days prior to the record date of the meeting of security holders, or (A) if such inquiry is impracticable 20 calendar days prior to the record date of a special meeting, as many days before such meeting as is practicable or (B) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; and

(iii) Shall supply the record holders of whom the inquiry is made with additional copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in a timely manner, in such quantities, assembled in such form and at such a place as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

* * * * *

25. By revising § 11.508 to read as follows:

**§ 11.508 Proposals of security holders.**

(a) If any security holder of a bank notifies the issuer of his or her intention to present a proposal for action at a forthcoming meeting of the bank's security holders, the bank shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by § 11.504. Notwithstanding the foregoing, the bank shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (b) and (c) of this section:

(1) *Eligibility.* (i) At the same time he or she submits the proposal, the proponent shall be a record or beneficial owner of at least 1% or $1,000 in market value of securities entitled to be voted at the meeting and have held such securities for at least one year, and shall continue to own such securities through the date on which the meeting is held. If the bank requests documentary support for a proponent's claim of being the beneficial owner of at least $1,000 in market value of such voting securities of the bank or of having been a beneficial owner of the securities for one or more years, the proponent shall furnish appropriate documentation within 14 calendar days after receiving the request. In the event the bank includes the proponent's proposal in its proxy soliciting material for the meeting and the proponent fails to comply with the requirement of continuously holding such securities through the meeting date, the bank shall not be required to include any proposals submitted by the proponent in its proxy materials for any meeting held in the following two calendar years.

(ii) Proponents who deliver written proxy materials to holders of more than 25 percent of a class of the bank's outstanding securities entitled to vote with respect to the same meeting of security holders will be ineligible to use the provisions of § 11.508 for the inclusion of a proposal in the bank's proxy materials. In the event the bank includes a proponent's proposal in its proxy material and the proponent thereafter delivers written proxy materials to the holders of more than 25 percent of a class of the issuer's outstanding securities entitled to vote with respect to such meeting, the bank shall not be required to include any proposals submitted by that proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(2) *Notice and attendance at the meeting.* At the time of submitting a proposal, a proponent shall provide the bank in writing with his or her name, address, the number of the bank's voting securities that he or she holds of record or beneficially, the dates upon which he or she acquired such securities, and documentary support for a claim of beneficial ownership. A proposal may be presented at the meeting either by the proponent or a representative who is qualified under state law to present the proposal on the proponent's behalf at the meeting. In the event that the proponent or the representative fails, without good cause, to present the proposal for action at the meeting, the bank shall not be required to include any proposals submitted by the proponent in its proxy soliciting material for any meeting held in the following two calendar years.

(3) *Timeliness.* The proponent shall submit the proposal sufficiently far in advance of the meeting so that it is received by the bank within the following time periods:

(i) *Annual meetings.* A proposal to be presented at an annual meeting shall be received at the bank's principal executive offices not less than 120 days in advance of a date corresponding to the date of the bank's proxy statement released to security holders in connection with the previous year's annual meeting of security holders, except that if no annual meeting was held in the previous year of the date of the annual meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, a proposal shall be received by the bank a reasonable time before the solicitation is made.

(ii) *Other meetings.* A proposal to be presented at any meeting other than an annual meeting specified in paragraph (a)(3)(i) of this section shall be received a reasonable time before the solicitation is made.

Note.—In order to curtail controversy as to the date on which a proposal was received by the bank, it is suggested that proponents submit their proposals by Certified Mail-Return Receipt Requested.

(4) *Number of proposals.* The proponent may submit no more than one proposal and a accompanying supporting statement for inclusion in the bank's proxy materials for a meeting of security holders. If the proponent submits more than one proposal, or fails to comply with the 500 word limit mentioned in paragraph (b)(1) of this section, the proponent shall be provided the opportunity to reduce the items submitted by him to the limits required by this rule, within 14 calendar days of notification of such limitations by the issuer.

(b)(1) *Supporting statement.* The bank at the request of the proponent, shall include in its proxy statement a statement of the proponent in support of the proposal, which statement shall not include the name and address of the proponent. A proposal and its supporting statement in the aggregate shall not exceed 500 words. The supporting statement shall be furnished to the bank at the time that the proposal is furnished, and the bank shall not be responsible for such statement and the proposal to which it relates.

(2) *Identification of proponent.* The proxy statement shall also include either the name and address of the proponent and the number of shares of the voting security held by the proponent or a statement that such information will be furnished by the bank to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor.

(c) The bank may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(1) If the proposal is, under the laws of the bank's domicile, not a proper subject for action by security holders;

Note.—Whether a proposal is a proper subject for action by security holders will depend on the applicable state law. Under certain states' laws, a proposal that mandates certain action by the bank's board of directors may not be a proper subject matter for shareholder action, while a proposal recommending or requesting such action of the board may be proper under such state laws.

(2) If the proposal, if implemented, would require the bank to violate any state law or federal law of the United States, or any law of any foreign

jurisdiction to which the bank is subject, except that this provision shall not apply with respect to any foreign law compliance with which would be violative of any state law or federal law of the United States;

(3) If the proposal or the supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a–9, 17 CFR 240.14a–9, which prohibits false or misleading statements in proxy soliciting materials;

(4) If the proposal relates to the redress of a personal claim or grievance against the bank or any other person, or if it is designed to result in a benefit to the proponent or to further a personal interest, which benefit or interest is not shared with the other security holders at large;

(5) If the proposal relates to operations which account for less than 5 percent of the bank's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the bank's business;

(6) If the proposal deals with a matter beyond the bank's power to effectuate;

(7) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the bank;

(8) If the proposal relates to an election to office;

(9) If the proposal is counter to a proposal to be submitted by the bank at the meeting;

(10) If the proposal has been rendered moot;

(11) If the proposal is substantially duplicative of a proposal previously submitted to the bank by another proponent, which proposal will be included in the bank's proxy material for the meeting;

(12) If the proposal deals with substantially the same subject matter as a prior proposal submitted to security holders in the bank's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding five calendar years, it may be omitted from the bank's proxy materials relating to any meeting of security holders held within three calendar years after the latest such previous submission: Provided, that—

(i) If the proposal was submitted at only one meeting during such preceding period, it received less than five percent of the total number of votes cast in regard thereto; or

(ii) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than eight percent of the total number of votes cast in regard thereto; or

(iii) If the prior proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 percent of the total number of votes cast in regard thereto; or

(13) If the proposal relates to specific amounts of cash or stock dividends.

(d) Whenever the bank asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Comptroller, not later than 60 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to § 11.506, or such shorter period prior to such date as the Comptroller or its staff may permit, three copies of the following items: (1) The proposal; (2) any statement in support thereof as received from the proponent; (3) a statement of the reasons why the bank deems such omission to be proper in the particular case; and (4) where such reasons are based on matters of law, a supporting opinion of counsel. The bank shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him or her a copy of the statement of reasons why the bank deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

(e) If the bank intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than 10 calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to § 11.506, or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the bank of the revised proposal, promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of § 11.509 and the proponent wishes to bring this matter to the attention of the Comptroller, the proponent promptly should provide the staff with a letter setting forth the reasons for this view and at the same time promptly provide the bank with a copy of such letter.

26. By adding § 11.509(b) to read as follows:

**§ 11.509 False or misleading statements.**

* * * * *

(b) The fact that a proxy statement, form of proxy, or other soliciting material has been filed with or reviewed by the Comptroller or its staff shall not be deemed a finding by the Comptroller that such material is accurate or complete or not false or misleading; or that the Comptroller has passed upon the merits of or approved any statement therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

27. By revising § 11.511(b)(2) to read as follows:

**§ 11.511 Special provisions applicable to election contests.**

* * * * *

(b) * * *

(2) Such terms do not include—

(i) Any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the performance of duties in the course of such employment, or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties.

(ii) Any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations, or financial adviser, and whose activities are limited to the performance of duties in the course of such employment.

28. By revising § 11.590 to read as follows:

**§ 11.590 Form for proxy statement or statement where management does not solicit proxies.**

**Information Required in Proxy Statement**

Notes.—A. When any item calls for information about any matter to be acted upon which involves other matters about which information is called for by other items of this schedule, the information called for by such other items shall also be given. For example, a merger, consolidation, or acquisition or disposition of assets specified in Item 14, in which the security holders to be solicited will become or continue to be security holders of the surviving or acquiring company, shall be deemed to involve the election of directors if any person who will serve as a director of such company was not elected to such office by the security holders to be solicited. In such case, Items 6 and 7 shall be answered with respect to each such person who will serve as a director of the surviving or acquiring company.

B. Where any item calls for information with respect to any matter to be acted upon at the meeting, such item need be answered in the bank's soliciting material only with respect to proposals to be made by or on behalf of the bank.

C. Except as otherwise specifically provided, when any item calls for information about directors, officers or other persons holding specified positions or relationships during a specific period, the bank shall provide such information about all persons who held any of the specified positions or relationships at any time during that period. However, information need not be included for any portion of the period during which such person did not hold such position or relationship, provided a statement to that effect is made.

Item 1. Revocability of Proxy.

State whether or not the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limted or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

Item 2. Dissenters' Rights of Appraisal.

Outline briefly the rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicated any statutory procedure required to be followed by the dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment or other similar act, state whether the persons solicited will be notified of such date.

Instruction. Indicate whether a security holder's failure to vote against a proposal will constitute a waiver of his or her appraisal or similar rights and whether a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to these matters.

Item 3. Persons Making the Solicitation.

(a) Solicitations not subject to § 11.511.

(1) If the solicitation is made by the bank, so state. Give the name of any director of the bank who has informed the issuer in writing that he intends to oppose any action intended to be taken by the bank and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the bank, so state and give the names of the persons by whom and on whose behalf it is made.

(3) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

(b) Solicitations subject to § 11.511.

(1) State by whom the solicitation is made and describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the bank or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, (ii) the cost or anticipated cost thereof, and (iii) the approximate number of such employees or employees of any other person (naming such other person) who will solicit security holders.

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne. If such cost is to be borne initially by any person other than the bank, state whether reimbursement will be sought from the bank, and, if so, whether the question of such reimbursement will be submitted to a vote of security holders.

(6) If any such solicitation is terminated pursuant to a settlement between the issuer and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the issuer.

Instructions

1. With respect to solicitations subject to § 11.511, costs and expenditures within the meaning of this Item 3 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation. The bank may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to the effect is included in the proxy statement.

2. The information required pursuant to paragraph (6) of Item 3(b) should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the bank subsequent to the date of settlement.

Item 4. Interest of Certain Persons in Matters To Be Acted Upon.

(a) Solicitations not subject to § 11.511.

Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) If the solicitation is made on behalf of the bank, each person who has been a director or officer of the bank at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of the bank, each person on whose behalf the solicitation is made. Any person who would be a participant in a solicitation for purposes of 11.511 as defined in paragraphs (b)(1) (iii), (iv), (v) and (vi) thereof shall be deemed a person on whose behalf the solicitation is made for purposes of this paragraph (a).

(3) Each nominee for election as a director of the bank.

(4) Each associate of the foregoing persons.

Instruction: Except in the case of a solicitation subject to this regulation made in opposition to another solicitation subject to this regulation, this sub-item (a) shall not apply to any interest arising from the ownership of securities of the bank where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) Solicitations subject to § 11.511.

(1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in §§ 11.51(b)(1) (ii), (iii), (iv), (v) and (vi), in any matter to be acted upon at the meeting, and include with respect to each participant the information, or a fair and adequate summary thereof, required by Items 2(a), 2(d), 3, 4(b) and 4(c) of Form F–6.

(2) With respect to any person, other than a director or officer of the bank acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that such person has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4 (b) and (c) of Form F–6.

Item 5. Voting Securities and Principal Holders Thereof.

(a) State for each class of voting securities of the bank entitled to be voted at the meeting, the number of shares outstanding and the number of votes to which each class is entitled.

(b) Give the record date that will determine security holders entitled to vote at the meeting. If the right to vote is not limited to security holders of record on that date, indicate the conditions under which other security holders may be entitled to vote.

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights: (1) State that they have such rights; (2) briefly describe such rights; (3) state briefly the conditions precedent to the exercise thereof; and (4) indicate if discretionary authority to cumulate votes is solicited.

(d) Furnish the information required by § 11.843(a)(1) to the extent known by the persons on whose behalf the solicitation is made.

(e) Furnish the information required by § 11.843(a)(2).

(f) Furnish the information required by § 11.843(c).

(g) Furnish the information required by § 11.843(b).

Item 6. Directors and Executive Officers.

If action is to be taken with respect to the election of directors, furnish the following information, in tabular form to the extent practicable, with respect to each person nominated for election as a director and each person whose term of office will continue after the meeting. However, if the solicitation is made on behalf of persons other than the bank, the information required need be furnished only as to nominees of the persons making the solicitation.

(a) The information required by § 11.841.
(b) The information required by § 11.844.

Item 7. Executive Compensation.

(See Note C at the beginning of Form F–5.)
Furnish the information required by § 11.842 and Instruction 4 to § 11.813 if action is to be taken with regard to (i) the election of directors, (ii) any bonus, profit sharing or other compensation plan, contract, or arrangement in which any executive director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the bank, the required information need be furnished only for nominees of the persons making the solicitation and for associates of such nominees.

Item 8. Relationship With Independent Public Accountants.

If the solicitation is made on behalf of the bank and relates to an annual meeting of security holders at which directors are to be elected, or if financial statements are included pursuant to Item 15, furnish the following information:

(a) The name of the principal accountant selected or being recommended to shareholders for election, approval or ratification for the current year. If no accountant has been selected or recommended, so state and briefly describe the reasons therefor.

(b) The name of the principal accountant for the fiscal year most recently completed, if different from the accountant selected or recommended for the current year, or if no accountant has yet been selected or recommended for the current year.

(c) If a change(s) in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, and if, in connection with such change(s), a disagreement between the accountant and bank has been reported or was required to be reported on Form F–3 or in the accountant's letter filed as an exhibit thereto, describe the disagreement. Prior to filing the preliminary proxy material with the Comptroller which contains or amends such description, the bank shall furnish the description of the disagreement to any accountant with whom a disagreement has been or was required to be reported. Any such accountant who believes that the description of the disagreement is incorrect or incomplete, may include in the proxy statement a brief declaration, ordinarily expected not to exceed 200 words, of the reasons for that belief. This declaration shall be submitted to the bank within ten business days of the date the accountant receives the bank's description.

(d) The proxy statement shall indicate whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year are expected to be present at the stockholders' meeting with the opportunity to make a statement if they desire to do so and whether or not such representatives are expected to be available to respond to appropriate questions.

(e) If any change in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, state whether such change was recommended or approved by: (1) Any audit or similar committee of the Board of Directors, if the bank has such a committee; or (2) the Board of Directors, if the bank has no such committee.

Item 9. Bonus, Profit Sharing and Other Remuneration Plans.

If action is to be taken with respect to any bonus, profit sharing or other remuneration plan, furnish the following information:

(a) Describe briefly the material features of the plan, identify each class of persons who will participate therein, indicate the approximate number of persons in each class and state the basis of such participation.

(b) State separately the amounts which would have been distributable under the plan during the last fiscal year of the bank to: (1) All current executive officers as a group; and (2) to all other current officers and directors as a group, and (3) all employees if the plan has been in effect.

(c) State the name and position with the bank of each person specified in § 11.842(a) who will participate in the plan and the amount which each such person would have received under the plan for the last fiscal year of the bank, if the plan had been in effect.

(d) Furnish such information, in addition to that required by this item and § 11.842, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other compensation or incentive plans, now in effect or in effect within the past five years, for: (i) Each director or officer named in answer to § 11.842(a) who may participate in the plan to be acted upon; (ii) all current executive officers of the bank as a group, if any executive officers may participate in the plan, (iii) all other current officers and directors of the bank as a group, if any other officer and director may participate in the plan; and (iv) all employees, if employees may participate in the plan.

(e) If the plan to be acted upon can be amended otherwise than by a vote of stockholders, to increase the cost thereof to the issuer or to alter the allocation of the benefits as among the groups specified in (b), state the nature of the amendments which can be so made.

**Instructions**

1. The term "plan" as used in this item means any plan as defined in Instruction 5 to § 11.842.

2. If action is to be taken with respect to the amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. The following instructions shall apply to paragraph (d):

(a) Information need only be given with respect to benefits received or set aside within the past five years.

(b) Information need not be included as to payments made for, or benefits to be received from, group life or accident insurance, group hospitalization, group relocation or similar group payments or benefits.

(c) If action is to be taken with respect to any plan in which directors or executive officers may participate, the information called for by § 11.842(b) (1) and (2) shall be furnished for the last five fiscal years of the bank and any period subsequent to the end of the latest such fiscal year, in aggregate amounts for the entire period for each such person and group: (1) As to options granted during the specified period, state the title and aggregate amount of securities subject to options, the average per share exercise price and, if the option price was less than 100 percent of the market value of the security on the date of the grant, such fact and the market price or such date (the title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately); and (2) As to the exercise or realization of options or stock appreciation rights held in tandem with options granted during the specified period or prior thereto, state the net value of the securities (market value less any exercise price) or cash realized during the specified period. If any named person, or any other director or officer, purchased securities through the exercise of options during such period, state the aggregate amount of securities of that class sold during the period by such named person and such other directors and executive officers as a group. The information called for by this Instruction 3(c) is in lieu of the information since the beginning of the bank's last fiscal year called for by § 11.842(d) (1) and (2). If other officers or employees may participate in the plan to be acted upon, state the aggregate amount of securities called for by all options granted to such other officers or employees, respectively, during the five-year period. If the options were other than "qualified" stock options, incentive stock options, or options granted pursuant to an "employee stock purchase plan," as the quoted terms are defined in Sections 422 through 423 of the Internal Revenue Code, state that fact and the weighted average option price per share. The information called for by this instruction may be furnished in the form of the table illustrated in § 11.842.

4. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Comptroller at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to § 11.506.

Item 10. Pension and Retirement Plans.

If action is to be taken with respect to any pension or retirement plan, furnish the following information:

(a) Describe briefly the material features of the plan, identify each class of persons who will be entitled to participate therein, indicate the approximate number of persons in each

such class and state the basis of such participation.

(b) State: (1) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; (2) the estimated annual payment to be made with respect to current services; and (3) the amount of such annual payments to be made for the benefit of (i) executive officers, (ii) all other officers and directors, and (iii) employees.

(c) State (1) the name and position with the bank of each person specified in § 11.842(a) who will be entitled to participate in the plan, (2) the amount which would have been paid or set aside by the bank and its subsidiaries for the benefit of such person for the last fiscal year of the issuer if the plan had been in effect, and (3) the amount of the annual benefits estimated to be payable to such person in the event of retirement at normal retirement date.

(d) Furnish such information, in addition to that required by this item and § 11.842, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other compensation or incentive plans, now in effect or in effect within the past five years, for: (1) Each executive director or officer named in answer to § 11.842(a) who may participate in the plan to be acted upon; (ii) all current executive officers of the bank as a group, if any executive officer may participate in the plan; (iii) all other current officers and directors of the bank as a group, if any other officer or director may participate in the plan; and (iv) all employees, if employees may participate in the plan.

(e) If the plan to be acted upon can be amended, other than by a vote of stockholders, to increase the cost thereof to the bank or alter the allocation of the benefits as between the groups specified in (b)(3), state the nature of the amendments which can be so made.

**Instructions**

1. The term "plan" as used in this item means any plan as defined in Instruction 5 to § 11.842. Instruction 2 to Item 9 shall apply to this item.

2. The requirements of paragraph (b)(3) or (c)(2) do not apply to payments made on an actuarial basis by any group pension plan which provides fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

3. Instruction 3 to Item 9 shall apply to paragraph (d) of this item.

4. If the plan to be acted upon is set forth separately in a written document, three copies shall be filed with the Comptroller at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of § 11.506.

Item 11. Options, Warrants, or Rights.

If action is to be taken with respect to the granting or extension of any options, warrants or rights to purchase securities of the issuer or any subsidiary, furnish the following information:

(a) State (i) the title and amount of securities called for or to be called for by such options, warrants or rights; (ii) the prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised; (iii) the consideration received or to be received by the bank or subsidiary for the granting or extension of the options, warrants or rights; (iv) the market value of the securities called for or to be called for by the options, warrants or rights, as of the latest practicable date; and (v) in the case of options, the Federal income tax consequences of the issuance and exercise of such options to the recipient and to the bank.

(b) State separately the amount of options, warrants or rights received or to be received by the following persons, naming each such person: (i) Each executive officer named in answer to § 11.842(a); (ii) each nominee for election as a director of the bank; (iii) each associate of such directors, executive officers or nominees; and (iv) each other person who received or is to receive 5 percent or more of such options, warrants or rights. State also the total amount of such options, warrants or rights received or to be received by all directors and executive officers of the bank as a group, without naming them.

(c) Furnish such information, in addition to that required by this item and § 11.842 as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other compensation or incentive plans, now in effect or in effect within the past five years, for: (i) Each executive director or officer named in answer to § 11.842 who may participate in the plan to be acted upon; (ii) all current executive officers of the bank as a group, if any executive officer may participate in the plan; (iii) all other current executive officers and directors of the bank as a group, if any other officer or director may participate in the plan; and (iv) all employees if employees may participate in the plan.

**Instructions**

1. The term "plan" as used in this item means any plan as defined in Instruction 5 to § 11.842.

2. Paragraphs (b) and (c) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

3. Instruction 3 to Item 9 shall apply to paragraph (c) of this item.

4. If the options described in answer to this item are issued pursuant to a plan which is set forth in a written document, three copies thereof shall be filed with the Comptroller at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of § 11.506.

Note.—The bank shall inform the Comptroller of the Currency when the proxy statement in preliminary form is filed, the date the options, warrants or rights and the shares called for thereby will be authorized or created.

Item 12. Authorization or Issuance of Securities Other than for Exchange.

If action is to be taken with respect to the authorization or issuance of any securities other than for exchange for outstanding securities of the bank, furnish the following information:

(a) State the title and amount of securities to be authorized or issued.

(b) Furnish a description of the securities in the manner required by § 11.290, Item 10 in a registration statement filed pursuant to this part. If the terms of any or all of the securities to be authorized cannot be stated or estimated because no offering thereof is contemplated in the proximate future, and if no further authorization by security holders for the issuance thereof is to be obtained, state that the terms of the securities to be authorized, including dividend or interest rates, conversion prices, voting rights, redemption prices, maturity dates, and similar matters will be determined by the board of directors of the bank. If the securities are additional shares of common stock of a class outstanding, the description may be omitted except for a statement of the preemptive rights, if any. Where the statutory provisions with respect to preemptive rights are so indefinite or complex that they cannot be stated in summarized form, a statement in the form of an opinion of counsel as to the existence and extent of such rights will suffice.

(c) Describe briefly the transaction in which the securities are to be issued, including a statement as to (1) the nature and approximate amount of consideration received or to be received by the bank, and (2) the approximate amount devoted to each purpose, so far as determinable, for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction, state the reason, indicate the purpose of the authorization of the securities, and state whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to such issuance.

(d) If the securities are to be issued other than in a general public offering for cash, state the reasons for the proposed authorization or issuance and the general effect thereof upon the rights of existing security holders.

Item 13. Modification or Exchange of Securities

If action is to be taken to modify any class of securities of the bank, or to issue or authorize for issuance securities of the bank in exchange for outstanding securities of the bank, furnish the following information:

(a) If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be issued, the title and amount of outstanding securities to be exchanged therefor and the basis of the exchange.

(b) Describe any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in § 11.290, Item 10.

(c) State the reasons for the proposed modification or exchange and the general effect thereof upon the rights of existing security holders.

(d) Furnish a brief statement of arrears in dividends or of defaults in principal or interest of the outstanding securities which are to be modified or exchanged.

(e) Outline briefly any other material features of the proposed modification or exchange. If the plan of proposed action is set forth in a written document, file copies thereof with the Comptroller in accordance with § 11.506.

Instruction: If the existing security is presently listed and registered on a national securities exchange, state whether the bank intends to apply for listing and registration of the new or reclassified security on such exchange or any other exchange. If the bank does not intend to make such application, state the effect of the termination of such listing and registration.

Item 14. Mergers, Consolidations, Acquisitions and Similar Matters.

(See Note A at the beginning of this Form F–5.)

If action is to be taken with respect to any plan for (i) the merger or consolidation of the bank into or with any other person, or of any other person into or with the bank, (ii) the acquisition, by the bank or any of its security holders, of securities of another bank, (iii) the acquisition, by the bank, of any other going business or the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the bank, or (v) the liquidation or dissolution of the bank, furnish the following information:

(a) A brief outline of the material features of the plan. State the reasons for the plan and its general effect upon the rights of existing security holders. If the plan is set forth in a written document, file three copies thereof with the Comptroller at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to § 11.506.

(b) Information essential to an investor's appraisal of the proposed action with respect to the bank and, unless otherwise indicated, each other person which is a party to the transaction, including:

(1) A brief description of the business and property of each such person in substantially the manner required by §§ 11.811 and 11.812.

(2) A brief statement of dividends in arrears or defaults in principal or interest in respect of any securities of the bank or of such person, and of the effect of the plan thereon, and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(3) Such information about the proposed management of the surviving bank as would be required by Items 6 and 7 of this Form F–5. Information concerning remuneration of management may be projected for the current year based on remuneration actually paid or accrued by each of the constituent persons during the last calendar year. If significantly different, proposed compensation arrangements should also be described.

(4) A tabulation in columnar form showing the existing and the pro forma capitalization.

(5) Selected financial data pursuant to § 11.831 and book value per common share as of the end of the most recent period for which a balance sheet is required by § 11.911.

(6) Any pro forma financial information required by § 11.940 and pro forma book value per common share as of the end of the most recent period for which a balance sheet is furnished pursuant to § 11.911.

(7) The equivalent share information specified in the instructions below for exchange transactions.

**Instructions**

1. The following data shall be set forth in comparative columnar form: The historical primary and fully diluted earnings per share before discontinued operations, extraordinary items, or the cumulative effects of accounting changes, as appropriate, and the primary and fully diluted pro forma per share data; cash dividends declared per common share; and book value per common share presented in response to paragraphs (b)(5) and (6) and equivalent share data pursuant to (b)(7) where appropriate.

2. The appropriate equivalent share amounts of the acquired bank shall be calculated by multiplying the appropriate item (the pro forma income (loss) per share before nonrecurring charges or credits directly attributable to the transaction, pro forma book value per share, or the historical dividends per share of the acquiring bank) by the exchange ratio. The per share amounts are thus equated to the respective values for one share of the bank being acquired. In situations where the fiscal year-ends of the banks involved are different, additional historical information should be presented so that equivalent share amounts may be compared for equivalent periods. If the impact of the change transaction is immaterial to the acquiring company, all equivalent share amounts furnished should be determined on the basis of its historical per share data.

3. The information required by this Item 14(b) is required in a statement of the "acquiring" or "surviving" bank only if a "significant" merger or acquisition is to be voted upon. For purposes of this item, the term "significant" merger or acquisition shall mean a transaction where (a) the net book value of assets to be acquired or the amount paid therefor exceeds 5 percent of the equity capital accounts of the acquiring bank, (b) in an exchange transaction, the number of shares to be issued exceeds 5 percent of the outstanding shares of the acquiring bank, or (c) gross operating revenues for the last fiscal year of the person to be acquired exceeded 5 percent of the gross operating revenues for the last fiscal year of the acquiring bank. If less than a "significant" merger acquisition is to be voted upon, only information necessary for the exercise of prudent judgment is required.

4. Paragraph (a) shall not apply if the plan described in answer to paragraph (a) involves only the bank and one or more of its totally held subsidiaries.

(c) For each class of securities of the bank, or of any person specified in paragraph (b), which is admitted to dealing on a national securities exchange or for which a market otherwise exists, and which will be materially affected by the plan, state the high and low sale prices (or, in the absence of trading in a particular period, the range of the bid and asked prices) for each quarterly period within the last two years. This information may be omitted if the plan involves merely the liquidation or dissolution of the bank.

Item 15. Financial Information.

(a) If action is to be taken on any matter specified in Items 12, 13, or 14, above, furnish verified financial statements of the Bank and its subsidiaries required by Subpart I. One copy of the definitive proxy statement filed with the Comptroller shall include a manually signed copy of the accountant's report. If financial statements required by Subpart I are furnished, also furnish the supplementary financial information required by § 11.832, information concerning disagreements with accountants on accounting and financial disclosure required by § 11.834, and management's discussion and analysis of financial condition and results of operations required by § 11.833. In addition, interim information should be provided in accordance with § 11.913.

(b) Notwithstanding paragraph (a) above, any or all of such financial statements, which are not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. Such financial statements are deemed material in the usual case involving the authorization or issuance of any material amount of senior securities. They are not deemed material in cases involving the authorization or issuance of common stock, other than in an exchange, merger, consolidation, acquisition, or similar transaction.

(c) If the financial statements are for an annual meeting, they may incorporate by reference any financial statements contained in the annual report sent to security holders pursuant to § 11.503 for that meeting, provided such financial statements substantially meet the requirements of this item.

(d) Financial statements may be omitted for a plan described in answer to Item 14(a), if the plan involves only the bank and one or more of its totally held subsidiaries.

(e) No schedules need be furnished in the proxy statement.

Item 16. Acquisition or Dispostion of Property.

If action is to be taken on the acquisition or disposition of any property, furnish the following information:

(a) Describe briefly the general character and location of the property.

(b) State the nature and amount of consideration to be paid or received by the bank or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

(c) State the name and address of the transferor or transferee, as the case may be, and the nature of any material relationship of such person to the bank or any affiliate of the bank.

(d) Outline briefly any other material features of the contract or transaction.

Item 17. Restatement of Accounts.

If action is to be taken on the restatement of any asset, capital, or surplus account of the bank, furnish the following information:

(a) The nature of the restatement and the date as of which it is to be effective.

(b) The reasons, briefly stated, for the restatement and for the selection of the particular effective date.

(c) The name and amount of each account (including any reserve accounts) affected by the restatement and the effect of the restatement thereon. Tabular presentation of the amounts shall be made when appropriate, particularly in the case of recapitalizations.

(d) To the extent practicable, state whether and the extent, if any, to which the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 18. Action with Respect to Reports.

If action is to be taken with respect to any report of the bank or of its directors, officers or committees or any minutes of meeting of its stockholders:

(a) State whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports or minutes.

(b) Identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item or items of this schedule with respect to each such matter.

Item 19. Matters Not Required to be Submitted.

If action is to be taken on any matter which is not required to be submitted to a vote of security holders, state the nature of such matter, the reasons for submitting it to a vote of security holders and the action be taken by the bank in the event of a negative vote by the security holders.

Item 20. Amendment of Charter, By-Laws or Other Documents.

If action is to be taken on any amendment of the bank's charter, by-laws or other documents as to which information is not required above, state briefly the reasons for, and general effect of, such amendment.

Instruction: Where the matter to be acted upon is the classification of directors, state whether vacancies which occur during the year may be filled by the board of directors to serve only until the next annual meeting or may be so filled for the remainder of the full term.

Item 21. Other Proposed Action.

If action is to be taken on any matter not specifically referred to above, describe briefly the substance of each such matter in substantially the same degree of detail as is required by Items 5 to 20, inclusive, above.

Item 22. Vote Required for Approval.

For each matter which is to be submitted to a vote of security holders, other than elections to office or the selection or approval of auditors, state the vote required for its approval.

29. By revising § 11.601 to read as follows:

**§ 11.601 Scope and definitions applicable to Subpart F (the "tender offer regulations").**

(a) *Scope.* Subpart F shall apply to any tender offer which is subject to section 14(d)(1) of the Act for the securities of a subject bank, including but not limited to, any tender offer made by an affiliate of the bank. Sections 11.610, 11.611, 11.620, 11.630 shall apply to any tender offer for subject bank securities (other than exempted securities) unless otherwise noted therein.

(b) *Definitions.* Unless the context otherwise requires, all terms used in the tender offer regulations have the same meaning as in the Act and in § 11.102. In addition, for purposes of sections 14(d) and 14(e) of the Act and the tender offer regulations, the following definitions apply:

(1) The term "bidder" means any person who makes a tender offer or on whose behalf a tender offer is made.

(2) The term "subject bank" means any national bank or bank operating under the Code of Law for the District of Columbia which is the issuer of securities sought by a bidder pursuant to a tender offer.

(3) The term "security holders" means holders of record and beneficial owners of securities which are the subject of a tender offer.

(4) The term "beneficial owner" shall have the same meaning as that set forth in § 11.403. However, for purposes of § 11.603, § 11.609(d) and Item 6 of Form F–13, the term shall not include a person who does not have or share investment power or who is deemed to be a beneficial owner by virtue of §11.403(d)(1).

(5) The term "tender offer material" means:

(i) The bidder's formal offer, including all material terms and conditions of the tender offer and all amendments thereto;

(ii) The related transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository and all amendments thereto; and

(iii) Press releases, advertisements, letters and other documents published by the bidder or sent to or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer.

(6) The term "business day" means any day, other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12.01 a.m. through 12:00 midnight Eastern time. Any time period computed under section 14(d)(5) or section 14(d)(6) of the Act or under these tender offer regulations, shall begin on the date of the event causing the computation of such time period. If such occurs on other than a business day such period shall begin on and shall include the first business day thereafter.

(7) The term "security position listing" means, with respect to securities of any bank held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the bank's securities and of the participants' respective positions in such securities as of a specified date.

30. By revising § 11.608 to read as follows:

**§ 11.608 Exemptions from statutory pro rata requirement.**

Notwithstanding the pro rata provisions of Section 14(d)(6) of the Act, if any person makes a tender offer for, or a request or invitation for tenders of less than all of the outstanding equity securities of a class, and if a greater number of securities are deposited pursuant thereto than such person is bound or willing to take up and pay for, the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor during the period such offer, request or invitation remains open.

31. By adding § 11.701 to read as follows:

**§ 11.701 Scope of subject.**

The rules contained in this regulation shall govern all registration statements of registered national banks filed pursuant to Section 12(b) and 12(g) of the Act and all reports of registered national banks filed pursuant to Section 13 and 15(d) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

32. By adding § 11.703 to read as follows:

**11.703 Supplemental information.**

The Office of the Comptroller of the Currency may request supplemental information concerning the bank, a registration statement or a periodic or other report under the Act. This information shall not be required to be filed with or deemed part of the registration statement or report. The information shall be returned to the registrant upon request, provided that:

(a) Such request is made at the time such information is furnished to the staff;

(b) The return of such information is consistent with the protection of investors; and

(c) The return of such information is consistent with the provisions of the Freedom of Information Act.

33. By adding § 11.710 to read as follows:

**§11.710 Requirements as to proper form.**

Every statement or report shall be on the form prescribed by the Comptroller, as in effect on the date of filing. Any statement or report shall be deemed to be filed on the proper form unless objection to the form is made by the Comptroller within thirty days after the date of filing.

34. By revising § 11.724 to read as follows:

**§ 11.724 Notification of inability to file timely annual or quarterly report or portions thereof.**

(a) If all or any required portion of an annual report on Form F-2, or a quarterly report on Form F-4 is not filed within the time period prescribed for such report, the bank, no later than one business day after the due date for such report, shall file a Form 12b-25 (17 CFR 249.322) with the Comptroller which shall contain disclosure of the inability to file the report timely and the reasons therefor in reasonable detail.

(b) With respect to any report or portion of any report described in paragraph (a) of this section which is not timely filed because the bank is unable to do so without unreasonable effort or expense, such report shall be deemed to be filed on its prescribed due date if:

(1) The bank files the Form 12b-25 in compliance with paragraph (a) of this section and, when applicable, furnishes the exhibit required by paragraph (c) of this section;

(2) The bank represents in the Form 12b-25 that:

(i) The reason(s) causing the inability to file timely could not be eliminated by the bank without unreasonable effort or expense; and

(ii) Either the subject annual report/portion thereof will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report/portion thereof will be filed no later than the fifth calendar day following the prescribed due date; and

(3) The report/portion thereof is actually filed within the period specified by paragraph (b)(2)(ii) of this section.

(c) If paragraph (b) of this section is applicable and the reason the subject report/portion thereof cannot be filed timely without unreasonable effort or expense relates to the inability of any person, other than the bank, to furnish any required opinion, report or certificate, the Form 12b-25 shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

(d) If a Form 12b-25 filed pursuant to paragraph (a) of this section relates only to a portion of a subject report, the bank shall:

(1) File the balance of such report and indicate on the cover page thereof which disclosure items are omitted; and

(2) Include, on the upper right corner of the amendment to the report (required to be filed on Form 8) which includes the previously omitted information, the following statement:

The following items were the subject of a Form 12b-25 and are included herein: (List Item Numbers).

(e) The provisions of ths section shall not apply to:

(1) Financial statements to be filed by amendment in accordance with § 11.916 or schedules to be filed by amendment in accordance with General Instruction A of Form F-2.

35. By adding § 11.730 to read as follows:

**§ 11.730 Additional exhibits.**

The bank may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matter to which they refer.

36. By consolidating requirements into a new Subpart H to read as follows:

## Subpart H—Content of Nonfinancial Statements and Reports

**§ 11.800 General.**

This subpart lists and describes topics to be discussed in the nonfinancial statement portions of registration statements under Section 12, annual or other reports under Sections 13 and 15(d), annual reports to security holders and proxy and information statements under Section 14 of the Exchange Act, and any other documents required to be filed under the Exchange Act, to the extent provided in the forms and rules under such Act.

**Business**

**§ 11.811 Description of business.**

Describe briefly the business done by the bank and any significant developments or trends in such business occurring over the preceding five years. In describing the business done by the bank, the business of its subsidiaries should be included only insofar as the same is important to an understanding of the character and development of the business conducted by the total enterprise. The description shall also include without limitation, information as to matters such as the following:

(a) The primary business locations of the bank, including the number of banking offices in each city (or county) in the United States in which the bank has offices and the number of banking offices located in each foreign country or jurisdiction.

(b) The competitive conditions and the competitive position of the bank and other financial intermediaries, with which the bank competes, in its service area.

(c) The amount of loan and similar commitments by appropriate categories, (excluding check credit card lines) as of the end of each of the last two fiscal years and with respect to the amount as of the end of the most recent fiscal year, the portion considered to be "firm" and the portion not reasonably expected to be exercised within the current year;

Notes.—1. The categorization may include such items as commercial letters of credit, commitments to grant loans, and commitments to purchase loans, or such other classifications deemed appropriate by the bank. Any specific category representing more than 25 percent of the total commitments shown shall, however, be identified and specific categories representing individually less than 25 percent of the total commitments shown may be aggregated as Other Commitments.

2. If more than 25 percent of the total commitments shown are on terms whereby the prices or interest rates are not to be determined by the market conditions prevailing at the time the commitments are exercised, the amount and a description of such commitments should also be disclosed.

(d) If a material portion of the bank's deposits has been obtained from a single person or a few persons (including Federal, State, and local governments and agencies thereunder), the loss of any of one or more of which would have a materially adverse effect on the business of the bank, or if a material portion of the bank's loan is concentrated within a single industry or group of related industries, a description of such customers, their other relationships, if any, to the bank, and material facts regarding their importance to the business of the bank.

(e) The extent to which the business is or may be seasonal;

(f) The importance of and risks attendant to foreign sources and applications of funds;

(g) The material effects that compliance with Federal, State and local provisions relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the bank and its subsidiaries;

(h) The approximate number of persons employed;

(i) The commercial, consumer, international, trust, and municipal trading services and other business activities of the bank.

**§ 11.812 Description of property.**

Describe briefly, individually or by categories, (a) properties held in fee, by the bank and its subsidiaries, in which the banking offices are located, indicating any major encumbrances with respect thereto, and (b) other real estate of material value that is owned by the bank. In the event aggregate annual rentals paid during the bank's last fiscal year exceeded 5 percent of its operating expenses, state the amount of such rentals and the average term of the leases pursuant to which such rentals were paid, and the expiration dates of any material leases.

**§ 11.813 Pending legal proceedings.**

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

**Instructions**

1. No information need be given with respect to proceedings which involve principally claims for damages, if the aggregate amount involved does not exceed ten percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceedings present in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

2. Any material proceedings to which any director, officer, or affiliate of the bank, any person holding beneficially in excess of ten percent of the bank's outstanding stock, or any associate of any such director, officer or security holder, is a party, or has a material interest adverse to the bank or any of its subsidiaries, shall also be described.

3. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, State or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the bank or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the equity capital of the bank and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of equity capital on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business": Provided, however, That such proceedings which are similar in nature may be grouped and described generically stating: the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the bank, the effect of such proceedings on the business or financial condition of the bank.

**Securities of the Bank**

**§ 11.821 Market price and dividends on the bank's common equity and related stockholder matters.**

(a) *Market information.* For each class of securities to be registered pursuant to Section 12(g) of the Act, state briefly the nature of the trading market, if any, in such securities, including the names of the principal makers and the reported high and low prices for each quarterly period during the past three years.

**Instructions**

In furnishing high and low bid prices, the bank may rely on quotations published in publications of national circulation, provided the source of the information is identified. If the principal market makers are not known, it will suffice to name three market makers which are believed to be actively engaged in making a market in the securities.

(b) *Holders.* (1) Set forth the approximate number of holders of each class of common equity of the bank as of the latest practicable date.

(2) If the information called for by this paragraph (b) is being presented in a registration statement filed pursuant to the Securities Act or a proxy statement or information statement filed pursuant to the Exchange Act that relates to an acquisition, business combination or other reorganization, indicate the effect of such transaction on the amount and percentage of present holdings of the bank's common equity owned beneficially by—

(i) Any person (including any group as that term is used in Section 13(d)(3) of the Exchange Act) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's common equity,

(ii) Each director and nominee and

(iii) All directors and officers as a group, and/or the bank's present commitments to issue such persons shares of any class of its common equity.

(c) *Dividends.* (1) State the frequency and amount of any cash dividends declared on each class of its common equity by the bank for the two most recent fiscal years and for any subsequent interim period for which financial statements are required by the General Instructions to Financial Statements in Subpart I of this Part. Where there are restrictions (including, where appropriate, restrictions on the ability of bank's subsidiaries to transfer funds to the bank in the form of cash dividends, loans or advances) that currently materially limit the bank's ability to pay such dividends or that the bank reasonably believes are likely to limit materially the future payment of dividends on the common equity so state, and either (i) describe briefly (where approrpriate quantify) such restrictions, or (ii) cross reference to the specific discussion of such restrictions as presented in the Management's Discussion and Analysis of Financial Condition and Results of Operations, prescribed by § 11.833, and to the description of such restrictions required by Subpart I of this part in the bank's financial statements.

(2) Banks having a record of paying no cash dividends although earnings indicate an ability to do so, are encouraged to consider the question of their intention to pay cash dividends in the foreseeable future and, if no such intention exists, are encouraged to make a statement of that fact in the filing. Banks having a history of paying cash dividends also are encouraged to indicate whether they currently expect that comparable cash dividends will continue to be paid in the future and, if not, the nature of the change in the amount or rate of cash dividend payments.

**Instructions to § 11.821**

1. Banks, the common equity of which is listed for trading on more than one securities exchange registered under the Exchange Act, are required to indicate each such exchange pursuant to paragraph (a); where available, these shall be the prices as reported in the

consolidated transaction reporting system and, where the prices are not so reported, the prices on the most significant (in terms of volume) securities exchange for such shares.

2. Market prices and dividends reported pursuant to this section shall be adjusted to give retroactive effect to material changes resulting from stock dividends, stock splits and reverse stock splits.

3. The computation of the approximate number of holders of bank's common equity may be based upon the number of record holders or also may include individual participants in security position listings. See SEC Rule 17Ad–8 under the Exchange Act. The method of computation that is chosen shall be indicated.

**§ 11.822 Description of bank's securities.**

(a) If capital stock is being registered, state the title of the class and furnish the following information:

(1) Outline briefly—

(i) Divided rights;

(ii) Voting rights;

(iii) Liquidation rights;

(iv) Preemptive rights;

(v) Conversion rights;

(vi) Redemption provisions;

(vii) Sinking fund provisions; and

(viii) Liability to further calls or to assessment by the bank.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) Outline briefly any restrictions on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

**Instructions**

1. This section requires only a brief summary of the provisions that are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct resume is required.

2. If the rights evidenced by the securities being registered are materially limited or qualified by the rights of any other class of securities or by the provisions of any contract or other document, include such information regarding such other securities as will enable investors to understand the rights evidenced by the securities being registered. If any securities being registered are to be offered in exchange for other securities, an appropriate description of such other securities shall be given. No information need be given, however, as to any class of securities all of which will be redeemed and retired if appropriate steps to assure such redemption and retirement will be taken prior to registration of the securities being registered.

(b) If long-term debt is being registered, outline briefly the following, if relevant:

(1) Provisions governing interest, conversion, maturity, redemption, amortization, sinking fund, or retirement.

(2) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets or the creation or maintenance of reserves or the maintenance of properties.

(3) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

(4) The name of the trustee and the nature of any material relationship between the trustee and the bank or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action, and the indemnification the trustee may require before proceeding to enforce the lien.

(5) Provisions governing the kind and priority of any lien, securing the issue, and a brief identification of the principal properties subject to each lien.

**Instructions**

1. The instructions to § 11.822(a) shall apply to § 11.822(b).

2. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance moneys, and similar provisions, need not be described in answer to paragraph (b)(3).

(c) If securities other than capital stock or long-term debt are being registered, outline briefly the rights evidenced thereby. If subscription warrants or rights are being registered, state the title and amounts of securities called for, the period during which and the price at which the warrants or rights are exercisable.

**Instruction**

The instructions to § 11.822(a) shall also apply to § 11.822(b).

## Financial Information

**§ 11.831 Selected financial data.**

Furnish in comparative columnar form the selected financial data for the bank referred to below, for

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

**Instructions to § 11.831**

1. The purpose of the selected financial data is to supply in a convenient and readable format selected financial data which highlight certain significant trends in the bank's financial condition and results of operations.

2. The following items shall be included in the table of financial data: net operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.

Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Banks that are required to provide five-year summary information in accordance with Statement of Financial Accounting Standard No. 33, "Financial Reporting and Changing Prices," may combine such information with the selected financial data provided pursuant to this section.

4. All references to the bank in the table of selected financial data and in this section shall mean the bank and its subsidiaries consolidated.

5. If interim period financial statements are included, or are required to be included by Subpart I, banks should consider whether any or all of the financial data need to be updated for such interim periods to reflect a material change in the trends indicated. When such updating is necessary, banks shall provide information for the comparable prior period unless not necessary to an understanding of such updating information.

**§ 11.832 Supplementary financial information.**

(a) Selected quarterly financial data. Banks specified in paragraph (c) shall provide the information specified below.

(1) Revenue of gross profit (net revenue less costs and expenses associated directly with or allocated to services rendered), icome (loss) before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), and net income (loss), for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Subpart I.

(2) A reconciliation of the data supplied pursuant to this paragraph (a) if different from those previously reported on the Form F–4 filed for any quarter, such as would be the case when

a pooling of interests occurs or where an error is corrected.

(b) If the financial statements to which this information relates have been reported on by an accountant, appropriate professional standards and procedures, as enumerated in the Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be followed by the reporting accountant with regard to the data required by paragraph (a) of this section.

(c) Paragraph (a) of this section applies to any national bank that meets both of the following tests:

(1) *First test.* The bank:

(i) Has securities registered pursuant to Section 12(b) of the Exchange Act; or

(ii) Has securities registered pursuant to Section 12(g) of the Exchange Act which also

(A) Are quoted on the National Association of Securities Dealeres Automated Quotation System, and

(B) Meet all the following criteria:

(*1*) Three or more dealers stand willing to, and do in fact, make a market in such stock, including making regularly published bona fide bids and offers for such stock for their own accounts; or the stock is registered on a securities exchange that is exempted by the Commission from registration as a national securities exchange pursuant to Section 5 of the Exchange Act. For purposes of this paragraph, the insertion of quotations into the National Association of Securities Dealers Automated Quotation System by three or more dealers on at least 10 business days during the six month period immediately preceding the fiscal year for which the financial statements are required shall satisfy the requirement that three dealers be making a market;

(*2*) There continue to be 800 or more holders of record, as defined in § 11.102, of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock;

(*3*) The bank continues to be a United States corporation;

(*4*) There are 300,000 or more shares outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(*5*) Any two of the three following requirements:

(*i*) The shares described in paragraph (5)(i)(C)(2)(iv) of this item continue to have a market value of at least $2.5 million;

(*ii*) The minimum representative bid price of such stock is at least $5 per share; or

(*iii*) The bank continues to have at least $2.5 million of capital, surplus, and undivided profits.

**Instructions to Paragraph (c)(1)(ii)(B)(5)**

1. The computation required by paragraph (*5*)(*i*) and (*ii*) shall be based on the average of the closing representative bid prices as reported by the National Association of Securities Dealers Automated Quotation System in accordance with SEC Rule 11Ac1–2 under the Exchange Act of the 20 business days immediately preceding the fiscal year for which the financial statements are required.

2. The computation required by paragraph (*5*)(*iii*) shall be as of the last business day of the fiscal year immediately preceding the fiscal year for which the financial statements are required.

(2) *Second test.* The bank and its consolidated subsidiaries (i) have had a net income after taxes, but before extraordinary items and the cumulative effect of a change in accounting, of at least $250,000 for each of the last three fiscal years; or (ii) had total assets of at least $200,000,000 for the last fiscal year-end.

(d) Information on the effects of changing prices. Information on the effects of changing prices on business enterprises shall be presented by banks subject to the reporting provisions of Statements of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," in accordance with the specific provisions of those Statements.

**§ 11.833 Management's discussion and analysis of financial condition and results of operations.**

(a) *Full fiscal years.* Discuss the bank's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a) (1), (2) and (3) of this section with respect to liquidity, capital resources and results of operations and also shall provide such other information that the bank believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated.

(1) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties that will result in, or that are reasonably likely to result in, the bank's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action that the bank has taken, or proposes to take, to remedy the deficiency. Also identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(2) *Capital resources.* (i) Describe the bank's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments.

(ii) Describe any known material trends, favorable or unfavorable, in the bank's capital resources. Indicate any expected material changes in the mix and relative cost of such resources. The discussion shall consider changes between equity, debt and any off-blance sheet financing arrangements.

(3) *Results of operations.* (i) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expenses that, in the bank's judgment, should be described in order to understand the bank's results of operations.

(ii) Describe any known trends or uncertainties that have had or that the bank reasonably expects will have a material favorable or unfavorable impact on revenues or income from continuing operations. If the bank knows of events that will cause a material change in the relationship between costs and revenue (such as known future increases in costs of labor or materials or price increases or inventory adjustments), the change in the relationship shall be disclosed.

(iii) To the extent that the financial statements disclose material increases in revenue, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of services being sold or to the introduction of new products or services.

(iv) For the three most recent fiscal years of the bank, or for those fiscal years in which the bank has been engaged in business, whichever period is shortest, discuss the impact of inflation and changing prices on the bank's net interest and other operating income and on income from continuing operations.

**Instructions to § 11.833(a)**

1. The bank's discussion and analysis shall be of the financial statements and of other statistical data that the bank believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations.

Generally, the discussion shall cover the three year period covered by the financial statements and shall use year-to-year comparisons or any other formats that in the bank's judgment enhance a reader's understanding. However, where threnḍ information is relevant, reference to the five year selected financial data appearing pursuant to § 11.831 may be necessary.

2. The purpose of the discussion and analysis shall be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the bank as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided pursuant to this section need only include that which is available to the bank without undue effort or expense and which does not clearly appear in the bank's financial statements.

3. The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amounts of (A) matters that would have an impact on future operations and have not had an impact in the past, and (B) matters that have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes shall be described to the extent necessary to an understanding of the bank's businesses as a whole; provided, however, that if the causes for a change in one line item also relate to other line items, no repetition is required, and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Banks need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in this item refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the bank shall indicate those balance sheet conditions or income or cash flow items which the bank believes may be indicators of its liquidity condition. Liquidity generally shall be discussed on both a long-term and short-term basis.

6. Banks are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will impact upon future operating results, such as known future increases in costs of labor or materials. This latter data may be required to be disclosed. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. (See Rule 175 under the Securities Act, § 11.106, and Rule 3b–6 under the Exchange Act and Securities Act Release No. 6084 (June 25, 1979).)

7. Banks that are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," (SFAS 33) may combine such explanations with the bank's discussion and analysis required pursuant to this section or may supply such information separately. If such statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If such statement is not combined, the discussion of the impact of inflation otherwise required by this item may be omitted, but an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made.

8. Banks that are not required to provide supplementary information in accordance with SFAS 33 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, it is not required. All that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented.

9. All references to the bank in the discussion and in this item shall mean the bank and its subsidiaries consolidated.

(b) *Interim periods.* If interim period financial statements are included, or are required to be included by Subpart I, a management's discussion and analysis of the financial condition and results of operations shall be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (b) (1) and (2) of this section. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (a) of this section, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(1) *Material changes in financial condition.* Discuss any material changes in financial conditions from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial conditions from that date to the date of the most recent interim balance sheet provided also shall be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the bank.

(2) *Material changes in results of operations.* Discuss any material changes in the bank's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the bank is required to, or has elected to, provide an income statement for the most recent fiscal quarter, such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the bank has elected to provide an income statement for the twelve month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that twelve month period and the twelve month period ended as of the corresponding interim balance sheet date of the preceding fiscal year. Notwithstanding the above, if for purposes of a registration statement a bank subject to paragraph (b) of § 11.914 provides a statement of income for the twelve month period ended as of the date of the most recent interim balance sheet, provided in lieu of the interim income statements otherwise required, the discussion of material changes in that twelve month period will be in respect to the preceding fiscal year rather than the corresponding preceding period.

**Instructions to Paragraph (b) of § 11.833**

1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to this paragraph (b) and the discussion of the full fiscal year's information shall be prepared pursuant to paragraph (a) of this item. Such discussions may be combined.

2. In preparing the discussion and analysis required by this paragraph (b), the bank may presume that users of the interim financial information have read or have access to the discussion and analysis required by paragraph (a) for the preceding fiscal year.

3. The discussion and analysis required by this paragraph (b) is required to focus only on material changes. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes shall be described if they have not already been disclosed; provided, however, that if the causes for a change in one line item also relate to other line items, no repetition is required. Banks need not recite the amounts of changes from period to period which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the financial statements. The information provided shall include that which is available to the bank without undue effort or expense and which does not clearly appear in the bank's condensed interim financial statements.

4. The bank's discussion of material changes in results of operations shall identify any significant elements of the bank's income or loss from continuing operations which do not arise from or are not necessarily representative of the bank's ongoing business.

5. The bank shall discuss any seasonal aspects of its business which have had a material effect upon its financial condition or results of operations.

6. Banks are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Rule 175 under the Securities Act, Rule 3b–6 under the Exchange Act, § 11.106 and Securities Act Release No. 6084 44 FR 38815 (July 2, 1979).

**§ 11.834 Disagreements with former accountants on accounting and financial disclosure.**

If, (a) within the twenty-four months prior to the date of the most recent financial statements, a Form F–3 under the Exchange Act reporting a change of accountants has been filed, (b) included in such Form F–3 there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (c) during the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (d) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

**§ 11.841 Directors and executive officers.**

(a) *Identification of directors and officers.* List all directors and officers of the bank and all persons chosen to become directors or officers. Indicate all positions and offices with the bank held by each person named. State the age of the persons named, their terms of office, and the periods during which each such person has served. Briefly describe any arrangement or understanding between each director and officer and any other person, pursuant to which such director or officer was selected to serve in that capacity. The term "officer" is defined in § 11.102(q).

**Instruction**

Do not include any arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

(b) *Identification of certain significant employees.* Where the bank employs persons such as special consultants or attorneys who are not officers, but who make or are expected to make significant contributions to the business of the bank, such persons should be identified and their background disclosed to the same extent as in the case of officers.

(c) *Family relationships.* State the nature of any family relationships between any directors, and/or person nominated or chosed by the bank to become a director.

**Instruction**

The term "family relationships" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(d) *Business experience*—(1) *Background.* Give a brief account of the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of this section. The account should set forth each person's principal occupations and employment during the past five years and the name and principal business of any corporation or other organization in which such occupations and employment were carried on, including whether such corporation or organization is a parent, subsidiary or other affiliate of the bank. When an executive officer or person named in response to paragraph (c) of this section has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of prior business experience. Information relating to the level of professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised, is required.

(2) Indicate any other directorships held by each director or person chosen to become a director in any company with a class of securities registered pursuant to Section 12 of the Act.

(e) For each proposed director or officer, describe any of the following events which occurred during the past five years and if they are material:

(1) Such person filed or was served a petition under the Bankruptcy Act or any state insolvency law; or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person or any partnership in which such person was a general partner at or within two years before the time of such filing, or any corporation or business association of which such person was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated of any court of competent jurisdiction permanently or temporarily enjoining such person from, or otherwise limiting the following activities:

(i) Acting as an investment adviser, underwriter, broker or dealer in securities, as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any activity in connection with the purchase or sale of any security or in connection with any violation of federal or state securities laws.

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (3), above, or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action, or by a government agency, to have violated any federal or state securities law, and the judgment in such civil action or finding by the government agency has not been subsequently reversed, suspended, or vacated.

**Instructions**

1. For purposes of computing the five year period referred to in this paragraph, the date of a reportable event shall be the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date

shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition becomes final.

2. If any event specified in this subparagraph (d) has occurred and information in regard thereto is omitted on the ground that it is not material, the bank may furnish to the Comptroller at the time of filing, as supplemental information and not as part of the statement, materials to which the omission relates, a description of the event, and a statement of the reasons for the omission of information in regard thereto.

3. The bank is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. If the information called for by § 11.841(d) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(f)(1) *Committee.* State whether or not the bank has standing audit, nominating and compensation committees of the Board of Directors, or committees performing similar functions. If the bank has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees.

(2) (i) If the bank has a nominating or similar committee, state whether the committee will consider nominees recommended by shareholders and, if so,

(ii) Describe the procedures to be followed by shareholders in submitting such recommendations.

(g) *Director attendance.* State the total number of meetings of the Board of Directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of (1) the total number of meetings of the board of directors (held during the period for which that person has been director) and (2) the total number of meetings held by all committees of the board of which that person served (during the periods served).

(h) *Resignation of directors.* If a director has resigned or declined to stand for re-election to the Board of Directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement. If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

(i) Shares voted at last meeting. With respect to those classes of voting stock which participated in the election of directors at the most recent meeting at which directors were elected:

(1) State in an introductory paragraph the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors; and (2) disclose in tabular format following such introductory paragraph, the percentage of total shares cast for and withheld from the vote for or, where applicable, cast against each nominee. Groups of classes or series of classes that vote together in the election of a director or directors, shall be treated as a single class for the purpose of the preceding sentence.

**Instructions**

1. Calculate the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors, referred to in paragraph (i)(1), by dividing the total shares cast for and withheld from the vote for or, where applicable, voted against, the director in respect of whom the highest aggregate number of shares was cast by the total number of shares outstanding which were eligible to vote as of the record date for the meeting.

2. No information need be given unless, with respect to any class of voting stock (or group of classes which voted together), 5 percent or more of the total shares cast for, withheld from, and, where applicable, cast against any nominee, were withheld from or cast against such nominee.

3. If a bank elects less than the entire board of directors annually, disclosure is required as to all directors if 5 percent or more of the total shares cast for and withheld from the vote for, or, where applicable, cast against any incumbent director were withheld from, or cast against the vote for such director at the meeting at which that director was most recently elected.

4. No information need be given if the bank has previously furnished to its security holders a report of the results of the most recent meeting of security holders at which directors were elected which includes: (1) A description of each matter voted upon at the meeting and a statement of the percentage of the shares voting which were voted for and against each such matter, and (2) the information which would be called for by § 11.841(i). If a bank has previously furnished such results to its security holders, this fact should be set forth in the bank's cover letter accompanying the filing of preliminary proxy materials.

**§ 11.842 Executive compensation.**

(a) (1) *Cash compensation.* Furnish, in substantially the tabular form specified, all cash compensation paid to the following persons through the latest practicable date for services rendered in all capacities to the bank and its subsidiaries during the bank's last fiscal year;

(i) *Five executive officers.* Each of the bank's five most highly compensated executive officers whose cash compensation required to be disclosed pursuant to this paragraph exceeds $60,000, naming each such person; and

(ii) *All executive officers.* All executive officers as a group, stating the number of persons in the group without naming them.

(2) *Bonuses and deferred compensation.* The Cash Compensation Table also shall include:

(i) All cash bonuses to be paid to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year unless such amounts have not been allocated at such time as compensation disclosure is filed;

(ii) All cash bonuses paid during the last fiscal year for services rendered in all capacities to the bank and its subsidiaries in a previous fiscal year, less any amount relating to the same contract, agreement, plan or arrangement included in the Cash Compensation Table for a prior fiscal year and less any amount that would have been so included but for the fact that the individual was not included in the Cash Compensation Table, as a named individual or as a member of the group, for such prior fiscal year; and

(iii) All compensation that would have been paid in cash to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year but for the fact that the payment of such compensation was deferred.

CASH COMPENSATION TABLE

| (A) | (B) | (C) |
|---|---|---|
| Name of individual or number in group. | Capacities in which served. | Cash compensation. |

**Instructions to § 11.842(a)**

1. Cash Compensation Table. (A) The bank may include additional columns in the Cash Compensation Table. For example, the bank may segregate cash bonuses and deferred compensation from cash salaries and fees.

(B) Amounts deferred pursuant to Section 401(k) of the Internal Revenue Code are to be included in paragraph (a) for the fiscal year during which they are accrued.

(C) Banks need list in Column (B) of the Cash Compensation Table only those principal capacities served by each of the identified individuals. The cash compensation disclosed, however, must include cash compensation received in all capacities.

2. Persons covered. (A) Paragraph (a) of this section applies to any individual who was an executive officer of the bank at any time during the last fiscal year. Information need not be disclosed, however, for any portion of the period during which such individual was not an executive officer of the bank, provided a statement to that effect is made. With respect to an individual who becomes for the first time an individual whose compensation is to be reported in the Cash Compensation Table, it is not necessary to report compensation that would have been reported in the Table had the individual been included in prior years.

(B) Banks should be flexible in determining which individuals should be named in the Cash Compensation Table in order to ensure that disclosure is made with respect to key policy making members of management. Consideration should be given to the question of whether an individual's level of executive responsibilities, viewed in conjunction with such individual's actual level of cash compensation is such that the bank reasonably may conclude that the person is among its five most highly compensated, key policy making executive officers. Under this standard, it may be appropriate, in certain circumstances, to include an executive officer of a subsidiary in the Cash Compensation Table.

(C) In certain circumstances, it may be appropriate for a bank not to include in the Cash Compensation Table an individual who is one of the registrant's five most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual are: (i) The distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (ii) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(b)(1) *Compensation pursuant to plans.* Describe briefly all plans, pursuant to which cash or noncash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future, to the named individuals and group specified in paragraph (a) of this section. Information need not be given with respect to any group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate, in scope, terms, or operation, in favor of officers or directors of the bank and that are available generally to all salaried employees. The description of each plan shall include the following, except that the description of any defined benefit or actuarial plans need not include the information specified in paragraphs (b)(1)(vi) and (b)(1)(vii) of this section and the description of any stock option and stock appreciation right plan need not include the information specified in paragraph (b)(1)(vii) of this section:

(i) A summary of how the plan operates and who is covered by the plan;

(ii) The criteria used to determine amounts payable, including any performance formula or measure;

(iii) The time periods over which the measurement of benefits will be determined;

(iv) Payment schedules;

(v) Any recent material amendments to the plan;

(vi) Amounts paid or distributed pursuant to the plan to the named individuals and the group during the last fiscal year less any amount relating to the same plan which previously has been disclosed as accrued pursuant to paragraph (b)(1)(vii) of this section or a predecessor provision; and

(vii) Amounts accrued pursuant to the plan for the accounts of the named individuals and group during the last fiscal year, the distribution or unconditional vesting of which are not subject to future events.

(2) *Pension table.* As to defined benefit and actuarial plans, other than any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include, as the payment schedule required by paragraph (b)(1)(iv) of this section, a separate Pension Table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) to persons in specified compensation and years-of-service classifications. In addition, in furnishing the information required by paragraphs (b)(1)(i)–(v) of this section, include:

(i) The compensation covered by the plan, including the relationship of such covered compensation to the compensation reported in the Cash Compensation Table pursuant to paragraph (a) of this section, and state the current compensation covered by the plan for any individuals named in the Cash Compensation Table whose covered compensation differs substantially (by more than 10 percent) from that set forth in the Cash Compensation Table;

(ii) The estimated credited years of service for each of the individuals named in the Cash Compensation Table; and

(iii) A statement as to the basis upon which benefits are computed (e.g., straight life annuity amounts) and whether or not the benefits listed in the Pension Table are subject to any deduction for Social Security or other offset amounts.

EXAMPLE OF PENSION TABLE

| Remuneration | Years of service | | | | |
|---|---|---|---|---|---|
| | 15 | 20 | 25 | 30 | 35 |
| 125,000 | xxx | xxx | xxx | xxx | xxx |
| 150,000 | xxx | xxx | xxx | xxx | xxx |
| 175,000 | xxx | xxx | xxx | xxx | xxx |
| 200,000 | xxx | xxx | xxx | xxx | xxx |
| 225,000 | xxx | xxx | xxx | xxx | xxx |

(3) *Alternative pension plan disclosure.* In furnishing the information required by paragraphs (b)(1) (i)–(v) of this section with respect to defined benefit or actuarial plans under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for each of the individuals named in the Cash Compensation Table pursuant to paragraph (a) of this section.

(4) Stock option and stock appreciation right plans. In addition to providing the information required by paragraphs (b)(1) (i)–(vi) of this section, furnish:

(i) With respect to stock options granted during the last fiscal year: (A) The title and aggregate amount of securities subject to options; (B) the average per share exercise price; and (C) if such option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date. The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock

appreciation rights should be set forth separately.

(ii) With respect to the exercise or realization of options or stock appreciation rights held in tandem with options, state the net value of securities (market value less any exercise price) or cash realized during the last fiscal year.

(iii) With respect to plans pursuant to which stock appreciation rights not in tandem with options were granted during the last fiscal year: (A) The number rights granted; and (B) the average per share base price thereof.

(iv) With respect to the exercise or realization of stock appreciation rights not in tandem with options, state the net value of the shares (market price) or cash realized during the last fiscal year.

**Instructions to § 11.842(b)**

1. Format. With the exception of these pension plans disclosed pursuant to § 11.842(b)(2), the bank may use either a narrative, tabular or other format or combination of formats provided the information so disclosed is clear and understandable. Disclosure required by § 11.842(b)(2), pertaining to certain defined benefit and actuarial plans, is required to be presented in the Pension Table format set forth in that section.

2. Cash paid pursuant to plans. The cash compensation paid pursuant to a plan need not be disclosed as amounts paid or distributed pursuant to § 11.842(b)(1)(vi) of this section if such compensation was included in the Cash Compensation Table pursuant to paragraph (a) of this section and a statement to that effect is made. Similarly, the cash compensation deferred under a deferred compensation plan need not be disclosed as amounts accrued pursuant to § 11.842(b)(1)(vii) of this section if such compensation was included in the Cash Compensation Table and a statement to that effect is made.

3. Definition of "plan." The term "plan" includes, but is not limited to the following: any plan, contract, authorization or arrangement whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights, warrants, convertible securities performance units and performance shares. A plan may be applicable to one person.

4. Pension levels. Compensation set forth in the Pension Table pursuant to § 11.842(b)(2) of this section shall allow for reasonable increases in existing compensation levels; alternatively, banks may present as the highest compensation level in the Pension Table an amount equal to 120 percent of the amount of covered compensation of the most highly compensated individual named in the Cash Compensation Table pursuant to paragraph (a) of this section.

5. Definition of "normal retirement age." The term "normal retirement age" means normal retirement age as defined in a pension or similar plan or, if not defined therein, the earliest time at which a participant may retire without any benefit reduction because of age.

(c) *Other compensation.* Describe, stating amounts, any other compensation not covered by paragraphs (a) or (b) of this section that was paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this section unless:

(1) With respect to any named individual, the aggregate amount of such other compensation is the lesser of $25,000 or 10 percent of the compensation reported in the Cash Compensation Table for such person pursuant to paragraph (a) of this section, or

(2) With respect to the group, the aggregate amount of such other compensation is the lesser of $25,000 times the number of persons in the group or 10 percent of the compensation reported in the Cash Compensation Table for the group pursuant to paragraph (a) of this section and a statement to that effect is made.

**Instructions to § 11.842(c)**

1. Scope. Compensation to the disclosed pursuant to this paragraph may include, among other things: (a) personal benefits or; (b) securities or property that were paid or distributed other than pursuant to a plan. It does not, in any event, include cash, which is to be disclosed pursuant to either paragraph (a) or (b).

(2) Threshold. If the amount of other compensation for a named individual or the group exceeds the established thresholds, the entire amount of such other compensation must be disclosed pursuant to this paragraph.

3. Valuation. Compensation within paragraph (c) shall be valued on the basis of the bank's and subsidiaries' aggregate incremental cost.

(d) *Compensation of directors.* (1) *Standard arrangements.* Describe any standard arrangement, stating amounts, pursuant to which directors of the bank are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the bank was compensated during the bank's last fiscal year for services as a director, stating the amount paid and the name of the director.

(e) *Termination of employment and change of control arrangement.* Describe any compensatory plan or arrangement, including payments to be received from the bank with respect to any individual named in the Cash Compensation Table pursuant to paragraph (a) of this section for the latest or next preceding fiscal year if such a plan or arrangement results or will result from the resignation, retirement or any other termination of such individual's employment with the bank and its subsidiaries or from a change in control of the bank to or a change in the individual's responsibilities following a change in control and the amount involved, including all periodic payments or installments, exceeds $60,000.

**General Instructions to § 11.842**

1. Transactions with third parties. This section includes transactions between the bank and a third party where the primary purpose of the transaction is to furnish compensation to any named individual or the group specified in paragraph (a) of this section. No information need be given in response to any paragraph of this section as to any such transaction if the transaction has been reported in response to § 11.844.

2. Exclusions. No information need be given pursuant to this section with respect to interest on deferred compensation if the rate of interest does not exceed prevailing market interest rates either: (1) At the time the interest is accrued or (2) at the time the plan pursuant to which the compensation is deferred was established. Similarly, dividends awarded on restricted stock need not be disclosed provided that the restricted stock is not of a particular class available only to certain employees on a discriminatory basis.

**§ 11.843 Principal security holders.**

(a) Furnish the following information as of the most recent practicable date:

(1) The name, business address and relationship to the bank of any individual, group, corporation or other entity who owns beneficially, directly or indirectly, more than 5 percent of the bank's outstanding voting securities. The following format should be used:

| Name and address | Relationship with bank | Amount beneficially owned | Percent of class beneficially owned |
|---|---|---|---|
| (1) | (2) | (3) | (4) |

A footnote to the table should disclose the nature of the beneficial ownership. A disclaimer of beneficial ownership can be added in the footnote with an appropriate explanation indicating the number of shares disclaimed.

Of the number of shares shown in Column (3), indicate by footnote or otherwise the amount of shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership as specified in § 11.403.

(2) The amount of each outstanding class of equity securities of the bank beneficially owned, directly or

indirectly, by all directors and officers of the bank, as a group, without naming them. The following format should be used:

| Title of class | Amount beneficially owned | Percent of class beneficially owned |
|---|---|---|
| (1) | (2) | (3) |
| | | |

A footnote to the table should disclose the nature of the beneficial ownership. Of the number of shares shown in Column (2), indicate, by footnote or otherwise, the amount of shares such persons have the right to acquire beneficial ownership of, as specified in § 11.403.

(b) *Changes in control.* Describe any arrangements, known to the bank, including any pledge by any person of securities of the bank or any of its parents, which may at a subsequent date result in a change in control of the bank. A description is not required of ordinary default provisions contained in any charter, trust indentures or other governing instruments relating to securities of the bank.

**Instructions**

1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 11.403.

2. For the purposes of this section, beneficial ownership shall be determined in accordance with § 11.403. Include such additional subcolumns or any other appropriate explanation of Column (3) to show amounts for which the beneficial owner has (1) sole voting power, (2) shared voting power, (3) sole investment power, and (4) shared investment power.

3. The bank shall be deemed to know the contents of any statement filed with the Comptroller of the Currency pursuant to Section 13(d) of the Exchange Act. When applicable, a bank may rely upon information set forth in such statements unless the bank knows or has reason to believe that such information is not complete or accurate, or that a settlement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (a), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion.

6. Subsection (b) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

7. If the holder(s) of voting securities reported pursuant to paragraph (a) hold more than five percent of any class of voting securities of the bank pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

(c) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person(s), the basis of the control, the date and a description of the transaction(s) which resulted in the change of control, the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control, and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted, provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate the identity of the bank so omitted and shall be filed separately with the Comptroller of the Currency. If the source of all or any part of the funds used to acquire control of the bank was a loan made by a bank as defined by Section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the bank maintains or would maintain a correspondent deposit account at such lending bank.

**Instructions**

1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangement or understandings among members of both the former and new control groups and their associates with respect to the election of directors and other matters should be described.

**§ 11.844 Certain relationships and related transactions.**

(a) *Transactions with management and others.* Describe briefly any transaction, or series of similar transactions, since the beginning of the bank's last fiscal year, or any currently proposed transaction, or series of similar transactions, to which the bank or any of its subsidiaries was or to be a party, in which the amount involved exceeds $60,000 and in which any of the following persons had, or is to have, a direct or indirect material interest, naming such person and indicating the person's relationship to the bank the nature of such person's interest in the transaction, the amount of such transaction and, where practicable, the amount of such person's interest in the transaction:

(1) Any director or executive officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is know to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities; and

(4) Any member of the immediate family of any of the foregoing persons.

**Instructions to Paragraph (a) of § 11.844**

1. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved in the transactions are among the factors to be considered in determining the significance of the information to investors.

2. For purposes of paragraph (a), a person's immediate family shall include such person's spouse; parents; children; sibling; mothers and fathers-in-law; sons and daughters-in-law; and brothers and sisters-in-law.

3. No information need be given in answer to § 11.844(a) as to any transaction where:

A. The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of sevices as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or government authority.

B. The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services.

C. The interest of the specified person arises solely from the ownership or securities of the bank and the specified person receives no extra or special benefits not shared on a pro rata basis.

There may be occasions when the interest of a specified person in a particular transaction or series of transactions is not a direct or indirect material interest. In such cases, information regarding such interest and transaction is not required to be disclosed in response to this paragraph.

4. In computing the amount involved in the transaction or series or similar transactions, include all periodic installments in the case of any lease or other agreement providing for periodic payments or installments.

5. This paragraph calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has position or relationship with a firm, corporation, or other

entity that engages in a transaction with the bank or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this paragraph if:

A. The interest arises only (i) from such person's position as a director of another corporation or organization which is a party to the transaction; (ii) from the direct or indirect ownership by such person and all other persons specified in paragraphs (a) (1) through (4) of this section, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or (iii) from both such position and ownership.

B. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in paragraphs (a) (1) through (4) of this section had an interest of less than ten percent; or

C. The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest), or a creditor interest, in another person which is a party to the transaction with the bank or any of its subsidiaries and the transaction is not material to such other person.

6. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction will be indicated.

7. In describing any transaction involving the purchase or sale of assets by or to the bank or any of its subsidiaries, other than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the bank's purchase or sale price and the name of the person making such determination.

8. Information shall be furnished in answer to this paragraph with respect to transactions not excluded above which involve remuneration from the bank or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than ten percent of any class of equity securities of another corporation furnishing the services to the registrant or its subsidiaries.

(b) *Certain business relationships.* Describe any of the following relationships regarding the bank, entities with which it has, does, or will conduct business, and directors or nominees for director that exist, or have existed during the bank's last fiscal year. Indicate the identity of the entity with which the bank has such a relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation. Describe the relationship between such entity and the bank and the amount of the business done between the bank and the entity during the bank's last full fiscal year or proposed to be done during the bank's current fiscal year.

(1) The nominee or director is, or during the last fiscal year has been, an executive officer of, or owns or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in any business or professional entity that has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments to the bank or to its subsidiaries for property or services in excess of five percent of (i) the bank's or other entity's consolidated gross revenue for its last full fiscal year or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(2) The nominee or director is, or during the last fiscal year has been, an executive officer of, or owns or during the last fiscal year has owned of record or beneficially in excess of ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries has made during the bank's last full fiscal year or proposes to make during the bank's current fiscal year, payments for property or services in excess of five percent of (i) the bank's or other entity's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(3) The nominee or director is, or during the last fiscal year has been an executive officer of, or owns or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries was indebted at the end of the bank's last full fiscal year in an aggregate amount in excess of five percent of the bank's total consolidated assets at the end of such fiscal year;

(4) The nominee or director is, or during the last fiscal year has been, a member of, or of counsel to, a law firm which the bank has retained during the last fiscal year or proposes to retain during the current fiscal year, provided, however, That the dollar amount of fees paid to a law firm by the bank need not be disclosed if such amount does not exceed five percent of the law firm's gross revenues for its last full fiscal year;

(5) The nominee or director is or during the last fiscal year has been a partner or executive officer of any investment banking firm which has performed services for the bank other than as a participating underwriter in a syndicate, during the last fiscal year or which the bank proposes to have perform services during the current year, provided, however, that the dollar amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for its last fiscal year;

(6) Any other relationships that the bank is aware of between the nominee or director and the bank that are substantially similar in nature and scope to those relationships listed in paragraphs (b) (1) through (5).

**Instructions to Paragraph (b) of § 11.844**

1. In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity other than the bank for such entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services, the following may be excluded:

A. Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with the law or governmental authority;

B. Payments that arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received; or

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in § 11.102(ii) provided that all such subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 11.102(ii).

3. In calculating indebtedness, the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to customary trade terms;

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in § 11.102(ii), provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 11.102(ii).

4. No information called for by paragraph (b) need be given for any director who is no longer a director at the time of filing the registration statement or report containing such disclosure. If such information is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(c) *Indebtedness of management.* (1) For each of the following specified persons, herein called specified persons, who was indebted to the bank at any time since the beginning of the last full fiscal year to date state:

(i) The largest aggregate amount of indebtedness, including extensions of credit of overdrafts, endorsements or guarantees (in dollar amounts and as a percentage of total equity capital accounts at the time) outstanding at any time during such period;

(ii) The amount thereof outstanding as of the latest practicable date;

(iii) The nature of the indebtedness and of the transaction in which it was incurred; and

(iv) The rate of interest paid or charged thereon;

(A) Each director or officer of the bank;

(B) Each nominee for election as director;

(C) Each security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities ("principal security holder");

(D) Any trust or other estate in which any of the persons specified in § 11.844(c)(1)(A) or § 11.844(c)(1)(B) has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity;

(E) Any member of the immediate family of any of the persons specified in paragraph (c)(1) (A) and (B). For purposes of this paragraph the members of a person's immediate family are those persons specified in Instruction 2 to § 11.844(a);

(F) Any corporation or organization (other than the bank or a majority-owned subsidiary of the bank) of which any of the persons specified in paragraph (c)(1) (A) or (B) is an executive officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities.

Instructions

1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this paragraph, unless any of the following are present:

A. The extensions of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons.

B. The extensions of credit were not made in the ordinary course of business.

C. Such extensions of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features, including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

D. The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a person specified in (A), (B), (C), (D) or (E) of this paragraph exceeded 10% of the equity capital accounts of the bank at that time or $5 million whichever is less.

Note.—For purposes of this Instruction 2(D) only: (1) the information called for by paragraphs (d)(1) (iii) and (iv) of § 11.844 need not be furnished; (2) a principal security holder shall mean each security holder known to the bank to own of record or beneficially more then five (5) percent of any class of the bank's voting securities; and (3) the name of any associates need not be furnished.

3. If any extension of credit to the specified persons as a group exceeded 20% of the equity capital accounts of the bank at any time since the beginning of the last full fiscal year to date, disclose the maximum aggregate amount of credit to the group during the period, the aggregate amount as a percentage of the equity capital accounts of the bank and include a statement, to the extent applicable, that the bank has had, and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders and their associates, on substantially the same terms, including interest rates, collateral and repayment terms on extensions of credit, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or collectibility or present other unfavorable features.

4. If any indebtedness required to be described arose under section 16(b) of the Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

5. Notwithstanding the foregoing, any transaction or series of transactions resulting in indebtedness to the bank or its subsidiaries which may be considered material should be disclosed.

6. If the information called for by § 11.844(c) is being presented in Form F–1, 12 CFR 11.290, or an offering circular filed pursuant to 12 CFR Part 16, the information called for shall be presented for the last three full fiscal years in the Form F–1 and for the last two full fiscal years in the offering circular.

7. Where a specified person is an endorser or guarantor on any extension of credit made by the bank or its subsidiaries disclosure should be made to the extent otherwise applicable.

(d) *Transactions with organizers.* Banks that have been organized within the past five years and that are filing a registration statement on Form F–1 under the Exchange Act (12 CFR 11.290) shall:

(1) State the names of the organizers, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the Bank and the nature and amount of any assets, services or other consideration therefor received or to be received by the bank; and

(2) As to any assets acquired or to be acquired by the bank from a organizer, state the amount at which the assets were acquired or are to be acquired and the principal followed or to be followed in determining such amount and identify the persons making the determination and their relationship, if any, with the bank or any promoter. If the assets were acquired by the organizer within two years prior to their transfer to the bank, also state the cost thereof to the organizer.

**Instruction to § 11.844**

1. No information need be given in response to any paragraph of this section for any remuneration or other transaction reported in response to any other paragraph of this section or § 11.842 for any remuneration or transaction with respect to which information may be omitted pursuant to any other paragraph of §§ 11.844 or 11.842.

2. If the information called for by this section is being presented in a registration statement filed pursuant to the Exchange Act, the period for which the information called for shall be reported is the previous three years.

**§ 11.861 Exhibits.**

(a) *Exhibits and index required.* (1) Subject to § 11.732 regarding incorporation of exhibits by reference, the exhibits required by the exhibit table shall be filed as indicated as part of the registration statement or report.

(2) Each registration statement or report shall contain an exhibit index, which shall immediately precede the exhibits filed with such registration statement. For convenient reference, each exhibit shall be listed in the exhibit index according to the number assigned to it in the exhibit table. The exhibit index shall indicate, by handwritten, typed, printed, or other legible form of notation in the manually signed original registration statement or report, the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact Shall be noted in the exhibit index referred to in the preceding sentence. Further, the first page of the manualy signed registration statement shall list the page

in the filing where the exhibit index is located. For a decription of each of the exhibits included in the exhibit table, see paragraph (b) of this section.

EXHIBIT TABLE

| | Form | | | | |
|---|---|---|---|---|---|
| | F-1 | F-2 | F-3 | F-4 | F-10 |
| (1) Plan of acquisition, reorganization, arrangement, liquidation or succession | x | | x | x | |
| (2) Articles of incorporation and by-laws | x | x | x | x | |
| (3) Instruments defining the rights of securities holders, including indentures | x | x | x | x | x |
| (4) Voting trust agreement | x | x | | | |
| (5) Material contracts | x | x | | | |
| (6) Letter re change in certifying accountant | | | x | | |
| (7) Published report regarding matters submitted to vote of security holders | | | | x | |

Instructions to the Exhibit Table 1. The exhibit table indicates those documents that must be filed as exhibits to the respective forms listed.

2. The "X" designation indicates the documents which are required to be filed with each form even if filed previously with another document, provided, however, that such previously filed documents may be incorporated by reference to satisfy the filing requirements.

3. The number used in the far left column of the table refers to the appropriate subsection in paragraph (b) where a description of the exhibit can be found. Whenever necessary, alphabetical or numerical subparts may be used.

(b) *Description of exhibits.* Set forth below is an identification of each document listed in the exhibit tables.

(1) *Plan of acquisition, reorganization, arrangement, liquidation or succession.* Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the statement or report. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the disclosure document. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Comptroller.

(2) *Articles of incorporation and by-laws.* The articles of incorporation and by-laws of the bank or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever amendments to the articles or by-laws of the bank are filed, there shall also be filed a complete copy of the articles or by-laws as amended.

(3) *Securities and instruments defining the rights of securities holders, including indentures.* (i) Specimens or copies of all securities being registered hereunder, and copies of all constituent instruments defining the rights of holders of long-term debt of the bank and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(ii) There need not be filed, however, (A) any instrument with respect to long-term debt not being registered hereunder if the total amount of securities authorized thereunder does not exceed 25 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis, (B) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the bank of the securities being registered, or (C) copies of instruments evidencing scrip certificates for fractions of shares.

(4) *Voting trust agreement.* Any voting trust agreements and amendments thereto.

(5) *Material contracts.* (i) Copies of every material contract not made in the ordinary course of business that is to be performed in whole or in part at or after the filing of the registration statement or that was made not more than 2 years before such filing and performance of which has not been completed. Only those contracts to which the bank or a subsidiary is a party or has succeeded to a party by assumption or assignment, and in which the bank or such subsidiary has a beneficial interest, need be filed.

(ii) If the contract is such as ordinarily accompanies the kind of business conducted by the bank and its subsidiaries, it is made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(A) Directors, officers, organizers, voting trustees, or security holders named in the statement or report are parties thereto except where the contract merely involves purchase or sale of current assets having a determinable market price, at such price.

(B) It calls for the acquisition or sale of fixed assets for a consideration exceeding 10 percent of the value of all fixed assets of the bank and its subsidaries.

(C) It is a lease under which a significant part of the property described in the statement or report is held by the bank.

(D) The amount of the contract, or its importance to business of the bank and its subsidiaries, is material, and the terms and conditions are of a nature of which investors reasonably should be informed.

(iii) Any bonus or profit-sharing plan, contract, or arrangement shall be deemed material and shall be filed.

(iv) Copies of all amendments or modifications with respect to the foregoing material contracts.

(6) *Letter re change in certifying accountant.* A letter from the bank's former independent accountant regarding its concurrence or disagreement with the statements made by the bank in the current report concerning the resignation or dismissal as the bank's prinicipal accountant.

(7) *Letter re director resignation.* Any letter from a former director which sets forth a description of a disagreement with the bank that led to the director's resignation or refusal to stand for re-election and which requests that the matter be disclosed.

(8) *Published report regarding matters submitted to vote of security holders.* Published reports containing all of the information called for by item 6, instruction 5, of § 11.392.

### Miscellaneous

#### § 11.871 Recent sales of securities.

Furnish the following information for all securities of the bank sold by the bank within the past three years, or presently proposed to be sold. Include securities issued in exchange for property, services, or other securities.

(a) Give the date of sale, title, and amount of securities sold.

(b) Give the names of the principal underwriters, if any. For any securities sold privately, name the persons or identify the class of persons to whom the securities were sold.

(c) For securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. For any securities sold other than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the bank.

(d) Give a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount to be used for each purpose.

Instructions

1. Information need not be set forth for notes, drafts, bills of exchange, or bank acceptances that mature not later than 12 months from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

**§11.872 Indemnification of directors.**

State the general effect of any charter provision, by law, contract, arrangement, or statute under which any director or officer of the bank is insured or indemnified in any manner against any liability that he may incur in his capacity as such.

37. By consolidating existing requirements into a new Subpart I to read as follows:

## Subpart I—Financial Statement Requirements

### Verification of Financial Statements

Note.—The term "verified," as used with respect to financial statements, is defined in § 11.102(gg).

**§ 11.900 General rules.**

(a) Every verification of financial statements filed under this Part, shall be dated, signed manually, indicate the city and State where issued, and identify without detailed enumeration the financial statements covered by the verification.

(b) If the person or persons making a verification wish to take exception to or express qualifications about the verification, each exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate its effect on the financial statements to which it relates.

**§ 11.901 Definitions.**

For purposes of Subpart I, the following definitions shall apply:

(a) "Associate" of a person means:

(1) A corporation venture or organization of which such person is a general partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) Any trust or other estate in which such person has a substantial beneficial interest or for which such person serves as trustee or in a similar capacity; and

(3) Any member of the immediate family of any of the foregoing persons.

(b) "Ordinary course of business" means those loans which were made on substantially the same terms, including interest rate and collateral, as those prevailing at the same time for comparable transactions with unrelated persons and did not involve more than the normal risk of collectibility or present other unfavorable features.

**§ 11.902 Opinions to be expressed by principal accounting officer and internal auditor.**

Every verification by a bank's principal accounting officer and internal auditor shall include their opinions with respect to:

(a) The financial statements covered by the verification and the accounting principles and practices reflected therein; and

(b) The consistency of the application of accounting principles, or any changes in such accounting principles which have a material effect on the financial statements.

**§ 11.903 Examination by independent accountants.**

(a) *Qualifications of independent accountants.* (1) The Comptroller of the Currency will not recognize any person as an independent public accountant who is not—

(i) Registered or licensed to practice as a public accountant by a regulatory authority of a State; and

(ii) In good standing with such authority as such an accountant.

(2) The Comptroller of the Currency will not recognize any certified public accountant or public accountant as independent of the bank or any of its affiliates who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates in which, during the period of his/her professional engagement to examine the financial statements being reported on or at the date of his/her report, the firm or a member of the firm had, or was committed to acquire, a direct financial interest or any material indirect financial interest; or with which, during the period of his/her professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the firm or a member of the firm was connected as an organizer, underwriter, voting trustee, director, officer, or employee. A firm's independence will not be deemed to be affected adversely where a former officer or employee of the bank is employed by or becomes a partner, shareholder or other principal in the firm and such individual has been completely disassociated from the bank and its affiliates and does not participate in auditing financial statements of the bank or its affiliates covering any period of his/her employment by the bank. For the purposes of § 11.903(a)(2), the term "member" means all partners, shareholders, and other principals in the firm, any professional employee involved in providing any professional service to the bank, its parents, subsidiaries, or other affiliates, or any professional employee having managerial responsibilities and located in the engagement office or other office of the firm which participates in a significant portion of the audit.

(3) In determining whether an accountant is, in fact, independent of a particular bank, the Comptroller of the Currency will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that bank or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Comproller of the Currency.

(b) *Representations as to the audit.* The independent accountant's report shall:

(1) State whether the audit was made in accordance with generally accepted auditing standards; and

(2) Designate any auditing procedures generally recognized as normal (or deemed necessary by the accountant under the circumstances of the particular case) that have been omitted, and the reasons for their omission. Nothing in this provision shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinioins required by paragraph (c) of this section.

(c) *Opinions to be expresed.* The independent accountant's report shall clearly state the opinion of the accountant with respect to:

(1) Financial statements covered by the report and the accounting principles and practices reflected therein; and

(2)(i) Consistency of the application of the accounting principles, or

(ii) Any changes in the accounting principles which have a material effect on the financial statements.

(d) *Exceptions.* If the accountant making the report considers that he/she must take exceptions or express

qualifications with respect thereto, each exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate its effect on the financial statements to which it relates.

(e) *Examination of financial statements by more than one independent accountant.* If, with respect to the examination of the financial statements of any bank, the principal independent accountant relies on an audit made by another independent accountant of certain of the accounts of the bank or its subsidiaries, the report of the other accountant shall be filed (and the provisions of this section shall be applicable thereto); however, the report of such other accountant need not be filed (1) if no reference is made directly or indirectly to the other accountant's audit in the principal accountant's report, or (2) if, having referred to the other accountant's audit the principal accountant's report indicates an assumption of responsibility for such other accountant's audit. The report of such other accountant is not required to be sent with the annual report to security holders.

(f) *Technical requirements.* The accountant's report shall—

(1) Be dated;

(2) Be signed manually;

(3) Indicate the city and state where issued; and

(4) Identify without detailed enumeration the financial statements covered by the report.

**General Instructions as to Financial Statements**

**§ 11.910 Verification requirement.**

Financial statements prepared in accordance with this Subpart shall be verified unless otherwise indicated.

**§ 11.911 Consolidated financial statements.**

(a) There shall be filed for the bank and its majority-owned bank premises subsidiaries; subsidiaries operating under the provisions of sections 25 or 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations"); and significant subsidiaries, and in the case of paragraph (a)(2) below, the bank's predecessors:

(1) Consolidated balance sheets as of the end of each of the two most recent fiscal years; and

(2) Consolidated statements of income and consolidated statements of changes in financial position for each of the three fiscal years preceding the date of the most recent verified balance sheet being filed.

(b) If the filing, other than a filing on Form F–1 or F–2, is made within 45 days after the end of the bank's fiscal year and verified financial statements for the most recent fiscal year are not available, the filing shall include balance sheets as of the end of the two preceding fiscal years and an additional balance sheet as of an interim date at least as current as the end of the bank's third fiscal quarter of the most recently completed fiscal year.

(c) The instruction in paragraph (b) is also applicable to filings, other than on Form F–1 or F–2, made after 45 days but within 90 days of the end of the bank's fiscal year, *Provided*, That the following conditions are met:

(1) The bank files annual, quarterly and other reports pursuant to section 13 of the Securities Exchange act of 1934 and all reports due have been filed;

(2) For the most recent fiscal year for which verified financial statements are not yet available, the bank reasonably and in good faith expects to report income, after taxes but before extraordinary items and the cumulative effect of a change in accounting principles; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year, the bank reported income, after taxes but before extraordinary items and the cumulative effect of a change in accounting principles.

(d) For filings made after 45 days, but within 90 days of the end of the bank's fiscal year when the conditions set forth in paragraph (c) of this section are not met, the filing must include the verified balance sheets required by paragraph (a) of this section.

(e) For filings made after 134 days subsequent to the end of the bank's most recent fiscal year, the filing shall also include a balance sheet as of an interim date within 135 days of the date of filing.

(f) Notwithstanding the requirements of this section, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Comptroller of the Currency on Form F–4.

(g) For the interim period between the date of the most recent verified balance sheet and the date of the most recent interim balance sheet filed, and for the corresponding period of the preceding fiscal year, the bank shall provide statements of income and changes in financial position.

(h) Any interim financial statements provided in accordance with the requirements of this section need not be verified or presented in greater detail than is required by § 11.917.

**§ 11.912 Analysis of changes in equity capital.**

(a) An analysis of the change in each caption of equity capital presented in the balance sheet shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be filed, with all significant reconciling items described by appropriate captions. State separately the adjustments to the balance at the beginning of the earliest period presented for items which were retroactively applied to periods prior to that period. With respect to any dividends, state the amount per share and in the aggregate for each class of shares.

(b) The analysis required by this section may conform generally to schedule RI–A of the Consolidated Report of Income (FFIEC 033) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

**§ 11.913 Age of financial statements at mailing date of proxy or information statement.**

(a) If the financial statements in a proxy statement or information statement (each of which is hereinafter referred to in this section as a "statement") are as of a date 135 days or more prior to the proposed mailing date of the statement, the financial statements shall be updated with a balance sheet as of an interim date within 135 days of such mailing date and with statements of income and changes in financial position for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided and for the corresponding period of the preceding fiscal year. Such interim financial statements need not be verified or be presented in greater detail than is required by § 11.917 and shall be at least as current as the most recent financial statements which have been filed with the Comptroller of the Currency on Form F–4.

(b) When the proposed mailing date of a statement falls between 45 and 90 days after the end of the fiscal year and the bank meets the conditions prescribed under § 11.911(c), the statement need not include financial statements more current than as of the end of the third quarter of the most recently completed fiscal year, unless

the verified financial statements for such fiscal year are available. A bank not meeting the conditions prescribed under § 11.911(c) shall include in the statement verified financial statements for the most recent fiscal year.

(c) When a statement is filed near the end of a fiscal year and verified financial statements for that fiscal year are not included, the statement shall be updated with such verified financial statements, if they become available prior to the proposed mailing date of the statement.

**§ 11.914 Instructions to income statement requirements.**

(a) The statements required shall be prepared in compliance with the applicable requirements of this subpart.

(b) If a period or periods reported on include operations of a business prior to the date of acquisition, or for other reasons differ from reports previously issued for any period, the statements shall be reconciled, as to total operating income and net income in the statement or in a note thereto, with the amounts previously reported; *provided, however,* That such reconciliations need not be made (1) if they have been made in filings with the Comptroller of the Currency in prior years or (2) the financial statements which are being retroactively adjusted have not previously been made public.

(c) Any non-verified statement for an interim period shall include a statement that all adjustments necessary for a fair presentation of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown, shall be furnished. Refer to § 11.917(b)(6) regarding estimated provisions for expenses which are normally determined at year-end.

**§ 11.915 Financial statements of businesses acquired or to be acquired.**

(a) *Financial statements required.* (1) The financial statements required by this section shall be for the business acquired, or to be acquired, by the bank.

(2) Financial statements prepared and verified in accordance with this Subpart shall be furnished for the periods specified in paragraph (b) of this section if:

(i) Consummation of a business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a business combination to be accounted for as a pooling of interests has occured or is probable.

(3) If consummation of more than one transaction has occurred or is probable, the required financial statements may be presented on a combined basis, if appropriate.

(4) This section shall not apply to any business which was totally held by the bank prior to consummation of the transaction.

(b) *Periods to be covered.* (1) If securities are being offered to the security holders of the business to be acquired, financial statements for the periods specified in § 11.911 shall be furnished. In all other cases, financial statements shall be filed for the period specified in this paragraph or such shorter periods as the bank has been in existence. The financial statements covering fiscal years shall be verified. 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 § 11.102(ii). The determination shall be made by comparing the most recent annual financial statements of each business acquired (or to be acquired) to the bank's most recent annual consolidated financial statements filed at or prior to the date of acquisition.

(i) If none of the conditions specified in § 11.102(ii) exceed the associated 10 percent tests, financial statements are not required. However, if the aggregate impact of the individually insignificant businesses acquired since the date of the most recent verified balance sheet filed for the bank exceeds 20 percent, financial statements covering at least the substantial majority of the businesses acquired, combined if appropriate, shall be furnished. Such financial statements shall be for at least the most recent fiscal year and any interim periods specified in § 11.911.

(ii) If any of the conditions exceed the associated 10 percent tests, but none exceed 20 percent, financial statements shall be furnished for at least the most recent fiscal year and any interim periods specified in § 11.911.

(iii) If any of the conditions exceed 20 percent, but none exceeds 40 percent, financial statements shall be furnished for at least the two most recent fiscal years and any interim periods specified in § 11.911.

(iv) If any of the conditions exceeds 40 percent, the full financial statements specified in § 11.911 shall be furnished.

(2) (i) Notwithstanding the requirements in paragraph (b)(1) of this section, separate financial statements of the acquired business need not be presented if the operating results of the acquired business have been reflected in the verified consolidated financial statements of the bank for a complete fiscal year, and such financial statements have already been filed, unless the acquired business is of such significance to the bank that omission of such financial statements would materially impair an investor's ability to understand the historical financial results of the bank. 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 § 11.102(ii) at the 80 percent level, the income statements of the acquired business should be furnished for such periods prior to the purchase as may be necessary, when added to the time after the purchase for which verified income statements are filed, to cover the equivalent of the period specified in § 11.911.

(ii) A sepearate verified balance sheet of the acquired business is not required when the bank's most recent verified balance sheet required by § 11.911 is for a date after the date the acquisition was consummated.

**§ 11.916 Separate statements of unconsolidated subsidiaries and other persons.**

(a) There shall be filed such other verified financial statements, or such summarized financial information, with respect to unconsolidated subsidiaries and other persons as is material to a proper understanding of the financial position and results of operations of the total enterprise. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the bank. For purposes of a filing on Form F–2, if the fiscal year of any unconsolidated subsidiary or other person ends no more than 90 days before the filing date, or any time after the filing date, the financial statements required by this section may be filed as an amendment to the Form F–2 within 90 days after the end of such subsidiary's or other person's fiscal year. For purposes of this section and § 11.917, "other persons" includes 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

(b) Where finacial statements of two or more unconsolidated subsidiaries are required under paragraph (a), combined or consolidated statements of such subsidiaries may be filed subject to

principles of inclusion and exclusion which clearly exhibit the financial position, changes in financial position and results of operation of the combined or consolidated group. Similarly, where financial statements of two or more other persons are required under paragraph (a) of this section, combined or consolidated statements of such other persons may be filed subject to the same principles of inclusion or exclusion referred to above.

**§ 11.917 Interim financial statements.**

(a) *Condensed statements.* Interim financial statements shall follow the general form and content of presentation prescribed by the other sections of this subpart with the following exceptions:

(1) Interim financial statements required by this subpart need only be provided for the bank and its consolidated subsidiaries and need not be verified. Separate statements of other entities which may otherwise be required by this subpart may be omitted.

(2) Summarized income statement information shall be given separately for each unconsolidated subsidiary and other person for which separate financial statements would otherwise be required for annual periods.

(3) Interim balance sheets shall include only major captions (*i.e.*, numbered captions) prescribed by § 11.931. Where any major balance sheet caption is less than 10 percent of total assets, and the amount in the caption has not increased or decreased by more than 25 percent since the end of the preceding fiscal year, the caption may be combined with others.

(4) Interim statements of income shall include only major captions prescribed by § 11.932. When any major income statement caption is less than 15 percent of average net income for the most recent three fiscal years and the amount in the caption has not increased or decreased by more than 20 percent as compared to the corresponding interim period of the preceding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the most recent three years, the average loss shall be used for purposes of this test.

(5) The statement of changes in financial position may be abbreviated, starting with a single figure for funds provided by operations and showing other changes individually only when they exceed 10 percent of the average of funds provided by operations for the most recent three years.

(6) Notwithstanding the tests in paragraphs (a) (3), (4) and (5) of this section for combining items § 11.922 applies, and *de minimis* amounts therefore need not be shown separately.

(7) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient to make the interim information presented not misleading. Banks may presume that users of the interim financial information have read or have access to the verified financial statements for the preceding fiscal year and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material contingencies, may be determined in that context. Accordingly, footnote disclosure which would substantially duplicate the disclosure contained in the most recent annual report to security holders or latest verified financial statements (such as a statement of significant accounting policies and practices), details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year, and detailed disclosures prescribed by § 11.928 may be omitted. However, disclosure shall be provided of events occurring subsequent to the end of the most recent fiscal year which have a material impact on the bank. Disclosures should encompass, for example, signficant changes since the end of the most recently completed fiscal year in such items as accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization including significant new indebtedness or modification of existing financing arrangements; and the reporting entity resulting from business combinations or dispositions. Notwithstanding the above, where material contingencies exist, disclosure of such matters shall be provided, even if a signficant change since year end has not occurred.

(8) Detailed schedules otherwise required by this Subpart may be omitted for purposes of preparing interim financial statements.

(b) *Other instructions as to content.* The following additional instructions shall be applicable for purposes of preparing interim financial statements:

(1) If appropriate, the income statement shall show earnings per share and dividends per share applicable to common stock. The basis of the earnings per share computation shall be stated together with the number of shares used in the computation. The bank shall file, as an exhibit, a statement setting forth in reasonable detail the computation of per share earnings, unless the computation is otherwise clearly set forth in the report.

(2) If, during the most recent intrim period presented, the bank or any of its consolidated subsidiaries entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate comments or comparisons between the separate and consolidated results.

(3) If a material business combination accounted for as a purchased has occurred during the current fiscal year, pro forma disclosure shall be made of the results of operations for the current year up to the date of the most recent interim balance sheet provided (and for the corresponding period in the preceding year) as though the companies had combined at the beginning of that period. This pro forma information shall at a minimum show:

(i) Total operating income;

(ii) Income before securities gains (losses), extraordinary items and the cumulative effect of accounting changes; and

(iii) Net income.

In addition, the per share amounts shall be shown for paragraphs (b)(3) (ii) and (iii) above.

(4) In addition to meeting the reporting requirements specified by existing standards for accounting changes, the bank shall state the date of any material accounting change and the reasons for making it. In addition, for filings on Form F–4, a letter from the persons who make a verification of the bank's financial statements shall be filed as an exhibit to the first Form F–4 filed subsequent to the date of an accounting change, indicating whether or not the change is to an alternative principle which in their judgment is preferable under the circumstances; except that no such letter need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(5) Any material retroactive prior period adjustment made during any period covered by the interim financial statements shall be disclosed, together with its effect upon net income—total and per share—and upon the balance of undivided profits for any prior period included. If results of operations for any period presented have been adjusted retroactively by such an item subsequent to the initial reporting of

such period, similar disclosure of the effect of the change shall be made.

(6) The interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end. Furnish any material information necessary to make the information called for not misleading, such as a statement that the results for interim periods are not necessarily indicative of results to be expected for the year.

(c) *Periods to be covered.* The periods for which interim financial statements are to provided in filings other than on Form F–4 are prescribed in §§ 11.911 and 11.913. In filings on Form F–4, financial statements shall be provided as set forth below.

(1) An interim balance sheet as of the end of the most recent fiscal quarter and a balance sheet as of the end of the preceding fiscal year shall be provided. The balance sheet as of the end of the preceding fiscal year may be condensed to the same degree as the interim balance sheet provided. An interim balance sheet as of the end of the corresponding fiscal quarter of the preceding fiscal year need not be provided unless necessary for an understanding of the impact of seasonal fluctuations on the bank's financial condition.

(2) Interim statements of income shall be provided for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding periods of the preceding fiscal year. Such statements may also be presented for the cumulative twelve month period ended during the most recent fiscal quarter and for the corresponding preceding period.

(3) Interim statements of changes in financial position shall be provided for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year. Such statements may also be presented for the cumulative twelve month period ending during the most recent fiscal quarter and for the corresponding preceding period.

(d) *Review by independent public accountant.* The interim financial information included in filings with the Comptroller of the Currency need not be reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with the established professional standards and procedures for such a review, the bank may state that the independent accountant has performed such a review. If such a statement is made, the report of the independent accountant on such review shall accompany the interim financial information.

(e) *Filing of other interim financial information in certain cases.* The Comptroller of the Currency may, upon the informal written request of the bank, and where consistent with the protection of investors, permit the omission of any of the interim financial information herein required or the filing in substitution therefor of appropriate information of comparable character. The Comptroller of the Currency may also require the filing of other information in addition to, or in substitution for, the interim information herein required in any case where such information is necessary or appropriate for an adequate presentation of the financial condition of any person for which interim financial information is required, or whose financial information is otherwise necessary for the protection of investors.

**§ 11.918 Filing of other statements in certain cases.**

The Comptroller of the Currency may, upon the request of the bank, and where consistent with the protection of investors, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Comptroller of the Currency may also require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

**§ 11.919 Schedules to be filed.**

(a) The following schedules shall be filed with each balance sheet filed pursuant to this Subpart: Schedule I-Securities, Schedule II–Loans and Lease Financing Receivables; and Schedule III-Commitments and Contingencies.

(b) The following schedules shall be filed with each statement of income filed pursuant to this subpart: Schedule IV-Investments in, Income from Dividends, and Equity in Earnings or Losses of Related Parties; and Schedule V-Charge-Offs and Recoveries and Changes in Allowance for Possible Loan and Lease Losses.

(c) Refer to § 11.933 for requirements as to the format and content of the schedules specified by § 11.919 (a) and (b).

(d) If the information required in any schedule (including the notes thereto) can be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(e) The schedules shall be examined by the independent public accountant if the related financial statements are so examined.

**Rules of General Application**

**§ 11.920 Principles of financial reporting.**

(a) Financial statements prepared in accordance with the requirements of this Subpart and filed with the Comptroller of the Currency shall conform to generally accepted accounting principles and practices applicable to banks, except as provided in (d) below.

(b) Financial statements shall be prepared on the basis of accrual accounting whereby all revenues and expenses shall be recognized during the period earned or incurred, regardless of the time received or paid. Statements with respect to the first fiscal year that a bank reports on the accrual basis shall indicate clearly, by footnote or otherwise, the beginning-of-year adjustments that were necessary and their effect on prior financial statements filed under this part.

(c) The term "financial statements," as used in this Subpart, includes all required notes to financial statements and all required schedules.

(d) The Comptroller of the Currency may from time to time issue releases on accounting principles and practices to be used with respect to specific areas.

**§ 11.921 Requirements as to form.**

(a) Except as otherwise provided on the applicable form, financial statements shall be prepared in accordance with the requirements of Subpart I of this part.

(b) All money amounts required to be shown in financial statements may be expressed in whole dollars or thousands of dollars. If shown in thousands, an indication to that effect shall be inserted immediately beneath the caption of the statement or schedule, or at the top of each money column.

(c) Negative amounts shall be shown in a manner which clearly distinguishes the negative attribute. When determining methods of display,

consideration should be given to the limitations of the reproduction and microfilming processes.

**§ 11.922 Items not material.**

If the amount that would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth. The combination of insignificant amounts is permitted.

**§ 11.923 Inapplicable captions and omission of unrequired or inapplicable financial statements.**

No caption need be shown in any financial statement required by the rules set forth in this subpart as to which the items and conditions are not present. Financial statements not required or inapplicable because the required matter is not present need not be filed, but the statements omitted and the reasons for their omission shall be indicated.

**§ 11.924 Additional information.**

In addition to the information required with respect to any financial statement, further information shall be furnished as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

**§ 11.925 Reacquired evidences of indebtedness.**

Reacquired evidences of indebtedness shall be deducted from the appropriate liability caption.

**§ 11.926 Foreign activities.**

(a) *General requirement.* Separate disclosure concerning foreign activities shall be made for each period in which either (1) assets, (2) revenue, (3) income (loss) before income tax expense, or (4) net income (loss), each as associated with foreign activities, exceeded ten percent of the corresponding amount in the related financial statements.

(b) *Disclosures.* (1) Disclose total identifiable assets (net of valuation allowances) associated with foreign activities.

(2) For each period for which an income statement is filed, state the amount of revenue, income (loss) before taxes, and net income (loss) associated with foreign activities. Disclose significant estimates and assumptions (including those related to the cost of capital) used in allocating revenue and expenses to foreign activities; describe the nature and effects of any changes in such estimates and assumptions which have a significant impact on interperiod comparability.

(3) The information in paragraph (b) (1) and (2) of this section shall be presented separately for each significant geographic area and in the aggregate for all other geographic areas not deemed significant.

(c) *Definitions.* (1) "Foreign activities" include loans and other revenue producing assests and transactions in which the debtor or customer, whether an affiliated or unaffiliated person, is domiciled outside the United States.

(2) The term "revenue" includes the total of the amounts reported in items (1), (6) and (7) of § 11.932.

(3) A "significant geographic area" is one in which assets or revenue or income before income tax or net income exceed 10 percent of the comparable amount as reported in the related financial statements.

**§ 11.927 Leased assets and lease commitments.**

The financial statement requirements in Statement of Financial Accounting Standards No. 13, "Accounting for Leases," shall be applied in financial statements filed for fiscal years ended after December 24, 1978 with regard to all leases except for companies where a problem, as defined, exists. The problem and its potential impact should be disclosed in the footnotes to the financial statements. For purposes of this section,"problem" is defined as: That situation where capitalization of capital leases, as defined in Statement of Financial Accounting Standards No. 13, would result in the violation or probable future violation, expected to occur prior to fiscal years beginning after December 31, 1980, of a restrictive clause in an existing loan indenture or other agreement.

**§ 11.928 General notes to financial statements.**

If applicable to the bank for which the financial statements are filed, disclosure specified in the following paragraphs shall be set forth in the appropriate statement or in appropriately captioned notes. The information shall be provided for each statement required to be filed, except that the information required by paragraphs (b), (c), (d), (e), (f) and (h) of this section shall be provided as of the date of the most recent fiscal year-end balance sheet being filed and for paragraph (g) as specified therein. When specific statements are presented separately, the pertinent note shall accompany such statements unless cross-referencing is appropriate.

(a) *Principles of consolidation or combination.* With regard to consolidated or combined financial statements, refer to § 11.929 for requirements for supplemental information in notes to the financial statements.

(b) *Assets subject to lien.* The amounts of assets mortgaged, pledged, or otherwise subject to a lien or security interest shall be designated and the obligation secured thereby, if any, shall be identified briefly.

(c) *Restrictions which limit the payment of dividends by the bank.* (1) Describe the most significant restrictions, other than as reported under paragraph (k) of this section, on the payment of dividends by the bank, indicating their sources, their pertinent provisions, and the amount of surplus and/or undivided profits or net income restricted or free or restrictions.

(2) Disclose the amount of consolidated retained earnings which represents undistributed earnings of 50 percent of less owned persons accounted for by the equity method.

(d) *Commitments and contigent liabilities.* Provide a brief statement as to contingent liabilities not reflected in the balance sheet.

(e) *Defaults.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue or 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, shall be stated in the notes to the financial statements. 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, state the amount of the obligation and the period of the waiver.

(f) *Significant changes in bonds, mortgages, and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages, and similar debt since the date of the latest balance sheet being filed shall be stated.

(g) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows:

(1) Title of issue of securities called for by warrants or rights outstanding;

(2) Aggregate amount of securities called for by warrants or rights outstanding;

(3) Date from which warrants or rights or exercisable and expiration date;

(4) Price at which warrant or right is exercisable.

(h) *Income tax expense.* (1) Disclosure shall be made, in the income statement

or a note thereto, of (i) the components of income (loss) before income tax expense (benefit) as either domestic or foreign and (ii) the components of income tax expense, including (A) taxes currently payable and (B) the net tax effects, as applicable, of timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences where the amount of each such tax effect exceeds 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rates; other differences may be combined).

Note.—Amounts applicable to United States Federal income taxes, to foreign income taxes, and to other income taxes shall be stated separately for each major component. Amounts applicable to foreign income (loss) and amounts applicable to foreign and other income taxes which are less than 5 percent of the total of income before taxes or the component of tax expense, respectively, need not be separately disclosed. For purposes of this rule, foreign income (loss) is defined as income (loss) generated from a bank's foreign operations, *i.e.*, operations that are located outside the United States.

(2) Provide a reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes of the difference. If no individual reconciling item amounts to more than 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate and the total difference to be reconciled is less than 5 percent of the computed amount, no reconciliation need be provided, unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than 5 percent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts.

(i) *Interest Cost.* Disclosure shall be provided for each period for which an income statement is presented of the amount of interest cost incurred and the respective amounts expensed or capitalized.

(j) *Material related party transactions which affect the financial statements.* (1) The financial statements filed shall disclose transactions with, investments in, and balances due to or from related parties that are materials, individually or in the aggregate. This disclosure should include the following:

(i) The nature of the relationship(s).

(ii) A description of the transactions (summarized when appropriate) for the periods for which an income statement is presented, including amounts, if any, and such other information as is deemed necessary to an understanding of the effects on the financial statements.

(iii) The dollar volume of transactions and the effects of any change in the method of establishing terms from that used in the preceding period.

(iv) Amounts due to or from related parties and, if not otherwise apparent, the terms and manner of settlements.

(v) Amount of investments in related parties.

(2) In cases where separate financial statements are presented for the bank, certain investees, or subsidiaries, separate disclosure shall be made in such statements of the amounts in the related consolidated financial statements which are (i) eliminated and (ii) not eliminated. Also, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof shall be disclosed.

(3) Disclosure should be made on the face of the balance sheet, income statement, or (if applicable) statement of changes in financial position for any material related-party receivable or payable; revenue, expense, gain or loss; or cash flows, respectively. Relevant details regarding these amounts should be provided in the notes.

(k) *Preferred shares.* (1) Aggregate preferences on involuntary liquidation, if other than par or stated value, shall be shown parenthetically in the equity section of the balance sheet.

(2) Disclosure shall be made of any restriction upon retained earnings that arises from the fact that upon involuntary liquidation the aggregate preferences of the preferred shares exceeds the par or stated value of such shares.

**§ 11.929 Principles of consolidation or combination.**

(a) Consolidated statements generally present more meaningful information to the investor than unconsolidated statements. Except where good reason exists, consolidated statements of the bank and its majority-owned significant subsidiaries should be filed.

(b) Every majority-owned bank-premises subsidiary and every majority-owned subsidiary operating under the provisions of section 25 or section 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations") shall be consolidated with that of the reporting bank irrespective of whether such subsidiary is a significant subsidiary.

(c) If the financial statements of a subsidiary are as of a date or for periods different from those of the bank, such statements may be used as the basis for consolidation of the subsidiary only if the date of such statements is not more than 93 days from the date of the close of the bank's fiscal year; the closing date of the subsidiary is specified; the necessity for the use of different closing dates is explained briefly; and any changes in the respective fiscal periods of the bank and the subsidiary made during the period of report are indicated clearly.

(d) A brief description of the principles followed in consolidating or combining the separate financial statements, including the principles followed in determining the inclusion or exclusion of (1) subsidiaries and (2) companies in consolidated or combined financial statements, shall be stated in the notes to the respective financial statements.

(e) For each consolidated financial statement and for each combined financial statement, if there has been a change in the persons included or excluded in the corresponding statement for the preceding fiscal period filed with the Comptroller of the Currency and such change has a material effect on the financial statements, the persons included and the persons excluded shall be disclosed. If, during the periods of the report there have been any changes in the respective fiscal periods of the persons included, and such changes have a material effect on the financial statements, the changes and their manner of treatment shall be clearly indicated.

(f) In general, there shall be eliminated intercompany items and transactions between persons included in the (1) consolidated financial statements being filed and, as appropriate, (2) unrealized intercompany profits and losses on transactions between persons for which financial statements are being filed and persons the investment in which is presented in such statements by the equity method. If such eliminations are not made, a statement of the reasons and methods of treatment shall be made.

(g) Material related party transactions which affect the financial statements. (1) The financial statements filed shall disclose transactions with, investments in, and balances due to or from related parties that are material, individually or in the aggregate. This disclosure should include the following: (i) The nature of the relationship(s); (ii) a description of the transactions (summarized when appropriate) for the periods for which an

income statement is presented, including amounts, if any, and such other information as is deemed necessary to an understanding of the effects on the financial statements; (iii) the dollar volume of transactions and the effects of any change in the method of establishing terms from that used in the preceding period; (iv) amounts due to or from related parties and, if not otherwise apparent, the terms and manner of settlements; and (v) amounts of investments in related parties.

(2) Disclosure should be made on the face of the balance sheet, income statement, or statement of changes in financial position, for any material related-party receivable or payable; revenue, expense, gain or loss; or cash flows, respectively. Relevant details regarding these amounts should be provided in the notes.

(3) With respect to the classification of current amounts due from or to related parties, consideration should be given to the intent and the financial position of such related parties in determining whether such amounts should be classified as current or long term.

**Financial Statement Formats**

**§ 11.930 General instructions.**

The formats in §§ 11.931 and 11.932 are intended to serve as guides for the preparation of the balance sheet and statement of income in accordance with the requirements of this Subpart. The formats for the statement of changes in financial position and (if applicable) the separate statement of changes in equity capital are not set forth herein. The formats are recommended presentations, but financial statements may be filed in such form and order as will best indicate their significance and character. Banks have the option of conforming their financial statement formats to the provisions of Article 9 of Regulation S–X of the Securities and Exchange Commission (17 CFR 210.9) in lieu of the format set forth herein. For detailed instructions as to the required content of general notes to the financial statements, refer to § 11.928.

**§ 11.931 Balance sheet.**

The balance sheet shall be prepared in accordance with the instructions for the preparation of the Consolidated Report of Condition (FFIEC 031, 032, 033, or 034 as applicable) ("Call Report") except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note.—See § 11.920 for general requirements of financial reporting.

The following captions and added supplemental instructions shall be observed in the preparation of the balance sheet required under this subpart.

**Assets**

1. *Cash and balances due from depository institutions.*

(a) State separately (1) interest-bearing balances in other banks and (2) noninterest-bearing balances and cash.

(b) Any withdrawal and usage restrictions (including requirements of the Federal Reserve to maintain certain average reserve balances) or compensating balance requirements should be disclosed.

2. *Securities* (a) Include securities held for investment only. Disclose the aggregate book value of investment securities; show on the balance sheet the aggregate market value at the balance sheet date. The aggregate amounts should include securities pledged, loaned or sold under repurchase agreements and similar arrangements; borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(b) Disclose in a note the carrying value and market value of securites of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) states of the U.S. and political subdivisions; and (3) other securities.

3. *Federal funds sold and securities purchased under agreements to resell.*

These amounts should be presented gross and not netted against Federal funds purchased and securities sold under agreements to repurchase.

4. *Loans and lease financing receivables.* Disclose separately (1) total loans and lease financing receivables, (2) the related allowance for losses and (3) unearned income.

(a) Disclose on the balance sheet or in a note the amount of total loans in each of the following categories: (1) Commercial, financial and agricultural, (2) Real estate-construction, (3) Real estate-mortgage, (4) Installment loans to individuals, (5) Lease financing receivables, (6) Foreign, (7) Other (State separately any other loan category regardless of relative size if necessary to reflect any unusual risks or uncertainties such as a substantial portion of total loans which are concentrated in one or a few industries or foreign countries).

(b) A series of categories other than those specified in (a) above may be used to present details of loans if considered a more appropriate presentation.

(c) The amount of foreign loans must be presented if the disclosures specified by § 11.926 are required.

(d) For each period for which an income statement is required, furnish in a note a statement of changes in the allowance for loan losses showing the balances at beginning and end of the period, provision charged to income, recoveries of amounts charged off and losses charged to the allowance.

(e)(1)(i) For each balance sheet date, disclose in a note the aggregate dollar amount of loans (exclusive of loans to any such persons which in the aggregate do not exceed $60,000 during the latest year) made by the bank or any of its subsidiaries to directors, executive officers, or principal holders of equity securities of the bank or any of its significant subsidiaries, or to any associate of such persons. For the latest fiscal year, an analysis of activity with respect to such aggregate loans to related parties should be provided. The analysis should include the aggregate amount at the beginning of the period, new loans, repayments, and other changes. (Other changes, if significant, should be explained.)

(ii) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date (or with respect to the latest fiscal year, the maximum amount outstanding during the period) does not exceed 5 percent of equity capital at the balance sheet date.

(2) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to (e)(1)(i) above relates to loans which are nonaccrual, past due (over 90 days) or restructured, as those terms are used in the Call Report, so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions on the financial statements.

(3) Notwithstanding the aggregate disclosure called for by (e)(1) above, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan.

5. *Assets held in trading accounts.* Include securities or any other investments held for trading purposes only.

6. *Premises and fixed assets.*

7. *Other real estate owned.* State in a note (1) the basis at which carried, (2) the aggregate fair market value of all real estate owned other than bank premises with an explanation of the method of determining such fair market value, and (3) for each period for which an income statement is required, a reconciliation of any valuation allowance account, including the balance at the beginning and end of the period, provision charged to income, and losses charged to the allowance.

8. *Investments in an indebtedness of unconsolidated subsidiaries and associated companies.*

9. *Customers' liability to the bank on acceptances outstanding.*

10. *Intangible assets.*

11. *Other assets.* Disclose separately on the balance sheet or in a note thereto any of the following assets or any other asset the amount of which exceeds 30 percent of equity capital. The remaining assets may be shown as one amount.

(1) Accrued interest.

(2) Net deferred tax charges.

12. *Total assets.*

**Liabilities**

13. *Deposits.* (a) Disclose separately the amounts of noninterest bearing deposits and

interest bearing deposits. The amount of noninterest bearing deposits and interest bearing deposits in foreign banking offices must be presented if the disclosures provided by § 11.926 are required.

(b) State in a note the aggregate amount of (1) time certificates of deposit and (2) other time deposits in denominations of $100,000 or more, in domestic offices and, if § 11.926 applies, foreign offices.

14. *Federal funds purchased and securities sold under agreements to repurchase and other short term borrowings.*

(a) Disclose separately on the balance sheet or in a note, amounts payable for (1) federal funds purchased and securities sold under agreements to repurchase; (2) commercial paper, and (3) other short term borrowings. Disclose any unused lines of credit for short-term financing.

(b) If the average balance outstanding during the period for any category was 30 percent or more of equity capital, provide the following information, with respect to each category, in a note:

(1) Weighted average interest rate at balance sheet date.

(2) Maximum amount of borrowings at any month-end during each period for which an end of period balance sheet is required.

(3) Approximate average borrowings outstanding during the period.

(4) Approximate weighted average interest rate for such average borrowings outstanding during the period.

15. *Demand notes issued to the U.S. Treasury.*

16. *Other borrowed money*—See supplemental instruction to Item 14.

17. *Mortgage indebtedness and obligations under capitalized leases.*

(a) Report the amount of mortgages, liens, or other encumbrances on premises and fixed assets and on other real estate owned for which the bank or its consolidated subsidiaries are liable. If the bank is the lessee on capitalized lease property, include the bank's liability for capitalized lease payments. (See the Call Report Glossary entry for "lease accounting" for a discussion of accounting with bank as lessee.)

(b) State in a note material terms and conditions of each obligation, including (but not limited to): (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity or if maturing serially, a brief indication of the serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; and (6) the amount outstanding at the balance sheet date.

18. *Bank's liability on acceptances executed and outstanding.* Report the amount of liability that is represented by drafts and bills of exchange that have been accepted by the reporting bank, or by others for its account, and that are outstanding. See the Call Report glossary entry for "Bankers Acceptances" for further information.

19. *Notes and debentures subordinated to deposits.*

(a) Report the amount of outstanding notes and debentures (including mandatory convertible debt) that are subordinated to the deposits of the consolidated bank (see the Call Report Glossary entry for "Subordinated Notes and Debentures").

(b) State in a note the material terms and conditions of each obligation including, but not limited to: (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity, or if maturing serially, an indication of serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; (6) the amount outstanding at the balance sheet date; and (7) if convertible, the basis.

20. *Other liabilities.* Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of 25 percent of the equity capital (except that amounts in excess of 5 percent of equity capital should be disclosed with respect to item (4)). The remaining items may be shown as one amount. (1) Income taxes payable, (2) Deferred income taxes, (3) Indebtedness to affiliates and other persons the investments in which are accounted for by the equity method, (4) Indebtedness to directors, executive officers, and principal holders of equity securities of the bank or any of its signficant subsidiaries, (5) accounts payable and accrued expenses, (6) commitments and contingent liabilities, minority interest in consolidated subsidiaries.

21. *Total Liabilities.*

22. *Limited-life preferred stock.* Report the amount of any preferred stock that has a stated maturity date that can be redeemed at the option of the holder (excluding those issues of preferred stock that automatically convert into perpetual preferred stock or common stock at a stated date). State on the face of the balance sheet the title of each issue, the carrying amount and redemption amount. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (b) below.) Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying amount is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (b) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate.

(b) State in a separate note captioned "Redeemable Preferred Stocks": (1) A general description of each issue, including its redemption features (e.g. sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event of a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five year following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed.

**Equity Capital**

23. *Perpetual preferred stock.* Report the amount of preferred stock that does not have a state maturity date or that cannot be redeemed at the option of the holder (including those issues of preferred stock that automatically convert into common stocks at a stated date). State on the face of the balance sheet, or if more than one issue is outstanding, state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. Show in a note or separate statement the changes in each class of preferred share reported herein for each period for which an income statement is required to be filed.

24. *Common stock.* Report the aggregate par or stated value of outstanding common stock. State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par value per share and the dollar amount thereof. Show also the dollar amount, if any, of each class of shares subscribed to but unissued, and show the deduction of subscriptions receivable therefrom. Disclose in the statement ot a note the changes in the aggregate par or stated value of outstanding common stock for each period for which an income statement is required.

25. *Surplus.*

26. *Undivided profits and capital reserves.* Report the amounts appropriated and unappropriated; restrictions which limit the payment of dividends; and the amount of undivided profits which represents undistributed earnings of 50 percent or less owned companies.

27. *Cumulative foreign currency translation adjustments.* (Not applicable to banks with domestic offices only).

28. *Total equity capital.*

29. *Total liabilities, limited-life preferred stock, and equity capital.*

### § 11.932 Statement of income.

The statement of income shall conform generally to the Consolidated Report of Income (FFIEC 031, 032, 033, or 034 as applicable) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

**Note.**—See § 11.920 for general requirements of financial reporting.

The following captions and added supplemental instructions shall be observed in the preparation of the statement of income required under this subpart.

1. *Interest income.* Include commitment and origination fees, late charges and current amortization of premium and accretion of discount on loans which are related to or are an adjustment of the loan interest rate. Disclose separately.

(a) Interest and fee income on loans.
(b) Income from lease financing receivables.
(c) Interest income on balance due from depository institutions.
(d) Interest and dividend income on securities—Disclose separately (1) taxable interest income, (2) nontaxable interest income, and (3) dividends. State in a note interest and dividend income on
(i) U.S. Treasury securities and U.S. Government agency and corporation obligations.
(ii) Securities issued by states and political subdivisions in the U.S.
(iii) Other domestic securities (debt and equity).
(iv) Foreign securities (debt and equity).
(e) Interest income from assets held in trading accounts.
(f) Interest income on federal funds sold and securities purchased under agreements to resell.

2. *Interest Expense.* Disclose separately.
(a) Interest on deposits.
(i) Interest on time certificates of deposit of $100,000 or more.
(ii) Interest on other deposits.
(b) Expense of federal funds purchased and securities sold under agreements to repurchase.
(c) Interest on demand notes issued to the U.S. Treasury and on other borrowed money.
(d) Interest on mortgage indebtedness and obligations under capitalized leases.
(e) Interest on notes and debentures subordinated to deposits.

3. *Net interest income.*

4. *Provision for loan and lease losses.*

5. *Net interest income after provision for loan and lease losses.*

6. *Noninterest income.* Disclose separately. separately.
(a) Income from fiduciary activities.
(b) Service charges on deposit accounts.
(c) Trading gains (losses) and fees from foreign exchange transactions.
(d) Other foreign transaction gains (losses).
(e) Gains (losses) and fees from assets held in trading accounts. Report the net gain or loss from the sale of assets reportable in § 11.931, item 5, "Assets held in trading accounts," other than those trading gains (losses) and fees relating to foreign exchange transactions reported in item 6(c) above.
(f) Other noninterest income. Report all operating income of the bank not required to be reported in item 1(a) through 1(f) and 6(a) through 6(e). State separately the dollar amount of any individual component of this item which exceeds 25 percent of the total.

7. *Gains (losses) on securities not held in trading accounts.* Report the net gain or loss. Disclose in a note the method used to determine the cost of investments sold and the related income taxes.

8. *Noninterest expense.*
(a) Salaries and employee benefits.
(b) Expenses of premises and fixed assets.
(c) Other noninterest expense. See item 6(f) for threshold for disclosure of individual components.
(d) Total noninterest expense.
(e) Amortization of goodwill.
(f) Minority interest in income of consolidated subsidiaries.

9. *Income (loss) before income taxes and extraordinary items and other adjustments.*

10. *Applicable income taxes (on item 8).*—See § 11.928(h).

11. *Income (loss) before extraordinary items and other adjustments.*

12. *Extraordinary items and other adjustments.*
(a) Extraordinary items and other adjustments, gross of income taxes.
(b) Applicable income taxes (on item 12(a)).
(c) Extraordinary items and other adjustments, net of income taxes.

13. *Net income (loss).* Report the sum of items 10 and 11(c).

14. *Earnings per share data.*

## § 11.933 Schedules.

### Schedule I—Securities

Exclude assets held in trading accounts.

| | Book value (Col. A) | Market value (Col. B) |
|---|---|---|
| 1. U.S. Treasury securities | | |
| 2. U.S. Government agency and corporation obligations: | | |
| a. All holdings of U.S. Government-issued or guaranteed certificates of participation in pools of residential mortgages | | |
| b. All other | | |
| 3. Securities issued by states and political subdivisions in the U.S | | |
| 4. Other domestic securities (debt and equity): | | |
| a. All holdings of private (i.e., nongovernment-issued or guaranteed) certificates of participation in pools of residential mortgages | | |
| b. All other | | |
| 5. Foreign securities (debt and equity) | | |
| 6. Total (sum of items 1 through 5) (Total of column A must equal call report schedule RC, item 2) | | |
| 1. Pledged securities | | |

### Schedule II—Loans and Lease Financing Receivables

Net of unearned income and before adjustment for allowance for loan and lease losses. Excluding assets held in trading accounts.

| | Book value |
|---|---|
| 1. Loans secured by real estate: | |
| a. Construction and land development | |
| b. Secured by farmland (including farm residential and other improvements) | |
| c. Secured by 1-4 family residential properties | |
| d. Secured by multifamily (5 or more) residential properties | |
| e. Secured by nonfarm nonresidential properties | |
| 2. Loans to depository institutions: | |
| a. To commercial banks in the U.S.: | |
| (1) To U.S. branches and agencies of foreign banks | |
| (2) To other commercial banks in the U.S. | |
| b. To other depository institutions in the U.S. | |
| c. To banks to foreign countries: | |
| (1) To foreign branches of other U.S. banks | |
| (2) To other banks in foreign countries | |
| 3. Loans to finance agricultural production and other loans to farmers | |
| 4. Commercial and industrial loans: | |
| a. To U.S. addressees (domicile) | |
| b. To non-U.S. addressees (domicile) | |
| 5. Acceptances of other banks | |
| 6. Loans to individuals for household, family, and other personal expenditures (includes purchased paper) | |
| a. Credit cards and related plans | |
| b. Other | |
| 7. Loans to foreign governments and official institutions (including foreign central banks) | |
| 8. Obligations (other than securities) of states and politicial subdivisions in the U.S.: | |
| a. Nonrated industrial development obligations | |
| b. Other obligations (excluding securities) | |
| 9. Other loans: | |
| a. Loans for purchasing or carrying securities (secured and unsecured) | |
| b. All other loans | |
| 10. Lease financing receivables (net of unearned income) | |
| 11. Less: Any unearned income on loans reflected in items 1-9 above) | |
| 12. Total loans and leases, net of unearned income (sum of items 1 through 10 minus item 11) (must equal call report schedule RC, item 4a) | |
| 1. Commercial paper included in call report schedule RC-C | |

### Schedule III—Commitments and Contingencies

See Call Report, Instructions to Schedule RC–L.

| | Dollar amounts |
|---|---|
| 1. Commitments to make or purchase loans or to extend credit in the form of lease financing arrangements (report only the unused portions of commitments that are fee paid or otherwise legally binding) | |
| 2. Futures and forward contracts (exclude contracts involving foreign exchange): | |
| a. Commitments to purchase | |
| b. Commitments to sell | |
| 3. Standby contracts and other option arrangements: | |
| a. Obligations to purchase under option contracts | |
| b. Obligations to sell under option contracts | |
| 4. Commitments to purchase foreign currencies and U.S. dollar exchange (spot and forward) | |
| 5. Standby letters of credit: | |
| a. Standby letters of credit: | |
| (1) To U.S. addressees (domicile) | |
| (2) To non-U.S. addressees (domicile) | |
| b. Amount of standby letters of credit in items 5.a.(1) and 5.a.(2) conveyed to others through participations | |
| 6. Commerical and similar letters of credit | |
| 7. Participations in acceptances (as described in the instructions) conveyed to others by the reporting (accepting) bank | |
| 8. Participations in acceptances (as described in the instructions) acquired by the reporting (nonaccepting) bank | |
| 9. Securities borrowed | |
| 10. Securities lent | |
| 11. Other significant commitments and contingencies (list below each component of this item over 25 percent of call report schedule RC, item 28, "Total equity capital") | |
| 1. Loans originated by the reporting bank that have been sold or participated to others during the calendar quarter ending with the report date (exclude the portions of such loans retained by the reporting bank; see instructions for other exclusions) | |

### Schedule IV—Investments in, Dividend Income From, and Equity in Earnings or Losses of Related Parties

| Name of issuer [1] | Percent of voting stock owned | Total investment | Equity in underlying net assets at balance sheet date [2] | Amount of dividends [3] | Bank's proportionate part of earnings or loss for the period |
|---|---|---|---|---|---|
| | Col. A | Col. B | Col. C | Col. D | Col. E |
| Totals | | | | | |

[1] Group separately securities of (a) subsidiaries consolidated, (b) subsidiaries not consolidated, (c) associated companies, and (d) other related parties. Show shares, bonds, notes and advances separately in each case.
[2] Equity shall include advances and other obligations reported in Column B to the extent recoverable.
[3] State as to any dividends other than cash the basis on which they have been reported as income. If any such dividend received has been credited to income in an amount differing from that charged to surplus or undivided profits by the disbursing subsidiary, state the amount of such difference and explain.

### Schedule V—Charge-Offs and Recoveries and Changes in Allowance for Loan and Lease Losses

I. CHARGE-OFFS AND RECOVERIES ON LOANS AND LEASES [1]

| | Charge-offs (col. A) | Recoveries (col. B) |
|---|---|---|
| 1. Real estate loans | | |
| 2. Installment loans | | |
| 3. Credit cards and related plans | | |
| 4. Commercial (time and demand) and all other loans | | |
| 5. Lease financing receivables | | |
| 6. Total (sum of items 1 through 5) | | |
| 1. Loans to foreign governments and official institutions included in part I, items 1 through 4 above | | |
| Item 2 is to be completed only by banks with agricultural loans exceeding five percent of total loans | | |
| 2. Agricultural loans included in part I, items 1 through 4 above | | |

[1] See Call Report, Instructions to Schedule R-B.

II. CHANGES IN ALLOWANCE FOR LOAN AND LEASE LOSSES

| | Dollar amounts |
|---|---|
| 1. Balance end of previous calendar year | |
| 2. Recoveries (must equal part I, item 6, column B above) | |
| 3. Charge-Offs (must equal part I, item 6, column A above) | |
| 4. Provision for loan and lease losses (must equal call report schedule RI, item 4) | |
| 5. Adjustments (see instructions for this schedule) | |
| 6. Balance end of current period (sum of items 1 through 5) (must equal call report schedule RC, item 4b) | |

### Pro Forma Financial Information

**§ 11.940 Presentation requirements.**

(a) Pro forma financial information shall be furnished when any of the following conditions exist:

(1) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 11.911, a significiant business combination accounted for as a purchase has occurred;

(2) After the date of the most recent balance sheet filed pursuant to § 11.911, consummation of a significant business combination to be accounted for by either the purchase method or pooling-of-interests method of accounting has occurred or is probable;

(3) The bank is offering its securities to the security holders of a significant business to be acquired or the proceeds from the offered securities will be applied, directly or indirectly, to the purchase of a specific significant business;

(4) The disposition of a significiant portion of a business either by sale, abandonment or distribution to shareholders by means of a spin-off, split-up or split-off has occurred or is probable and such disposition is not fully reflected in the bank's financial statements included in the filing; or

(5) Other transactions or events have occurred or are probable for which disclosure of pro forma financial information would be material to investors.

(b) A business combination or disposition of a business shall be considered significiant if:

(1) A comparison of the most recent annual financial statements of the business acquired or to be acquired and the bank's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary under conditions specified in § 11.102(ii); or

(2) The business to be disposed of meets the conditions of a significant subsidiary in § 1.102(ii).

(c) When consummation of more than one transaction has occurred or is probable during a fiscal year, the tests of significnace in paragraph (b) above shall be applied to the cumulative effect of those transactions. If the cumulative effect of the transactions is significant, pro forma financial information shall be presented.

(d) For purposes of this section, the term "business" should be evaluated in light of the facts and circumstances involved and whether there is sufficient continuity of the acquired entity's operations prior to and after the transactions so that disclosure of prior financial information is material to an understanding of future operations. A presumption exists that a separate entity, a subsidiary, or a division is a business. However, a lesser component of an entity may also constitute a business. Among the facts and circumstances which should be considered in evaluating whether an acquisition of a lesser component of an entity constitutes a business are the following:

(1) Whether the nature of the revenue-producing activity of the component will remain generally the same as before the transaction; or

(2) Whether any of the following attributes remain with the component after the transaction:

(i) Physical facilities,

(ii) Employee base,

(iii) Market distribution system,

(iv) Sales force,

(v) Customer base,

(vi) Operating rights,

(vii) Production techniques, or

(viii) Trade names.

(e) This section does not apply to transactions between a bank and its totally owned subsidiaries.

**§ 11.941 Preparation requirements.**

(a) *Objective.* Pro forma financial information should provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier time. Such statement should assist investors in analyzing the future prospects of the bank because they illustrate the possible scope of the change in the bank's historical financial position and results of operations caused by the transaction.

(b) *From and content.* (1) Pro forma financial information shall consist of a pro forma condensed balance sheet, pro forma condensed statements of income, and accompanying explanatory notes. Where a limited number of pro forma adjustments are required and those adjustments are easily understood, a narrative description of the pro forma effects of the transaction may be furnished in lieu of the statements described herein.

(2) The pro forma financial information shall be accompanied by an introductory paragraph which briefly sets forth a description of (i) the transaction, (ii) the entities involved, and (iii) the periods for which the pro forma information is presented. In addition, an explanation of what the pro forma presentation shows shall be set forth.

(3) The pro forma condensed financial information need only include major captions (*i.e.*, the numbered captions) prescribed by §§ 11.931 and 11.932. Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major income statement caption is less than 15 percent of average net income of the bank for the most recent three fiscal years, the caption may be combined with others. In calculating average net income, loss years should be excluded, unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Nôtwithstanding these tests, *de minimis* amounts need not be shown separately.

(4) Pro forma statements shall ordinarily be in columnar form showing condensed historical statement, pro forma adjustments, and the pro forma results.

(5) The pro forma condensed income statement shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction. Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the Bank within the 12 months succeeding the transaction shall be disclosed separately. It should be clearly indicated that such charges or credits were not considered in the pro forma condensed income statement. If the transaction for which pro forma financial information is presented related to the disposition of a business, the pro forma results should give effect to the disposition and be presented under an appropriate caption.

(6) Pro forma adjustments related to the pro forma condensed income statement shall be computed assuming the transaction was consummated at the beginning of the fiscal year presented and shall include adjustment which give effect to events that are (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the bank, and (iii) factually supportable. Pro forma adjustments related to the pro forma condensed balance sheet shall be computed assuming the transaction was consummated at the end of the most recent period for which a balance sheet is required by § 11.911 and shall include adjustments which give effect to events that are directly attributable to the transaction and factually supportable, regardless of whether they have a continuing impact or are nonrecurring. All adjustments should be referenced to notes which clearly explain the assumption involved.

(7) Historical, primarly and fully diluted per share data based on continuing operations (or net income if the bank does not report discontinued operations, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes) for the bank, and primary and fully diluted pro forma per share data based on continuing operations before nonrecurring charges or credits directly attributable to the transaction shall be presented on the face of the pro forma condensed income statement together with the number of shares used to compute such per share data. For transaction involving the issuance of securities, the number of shares used in the calculation of the pro forma per shares outstanding during the period, adjusted to give effect to shares subsequently issued or assumed to be issued had the particular transaction or event taken place at the beginning of the period presented. If a convertible security is being issued in the transaction, consideration should be given to the possible dilution of the pro forma per share data.

(8) If the transaction is structured in such a manner that significantly different results may occur, additional pro forma presentations shall be made which give effect to the range of possible results.

**Instructions**

1. The historical statement of income used in the pro forma financial information shall not report operations of a segment that has been discontinued, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes. If the historical statement of income includes such items, only the appropriate portion of the statement (and appropriate captions) should be used in preparing pro forma results.

2. For a purchase transaction, pro forma adjustments for the income statement shall include amortization of any intangible asset, depreciation and other adjustments based on the allocated purchase price of net assets acquired. Disclose in a note the effect which the purchase adjustment will have on the reported results of operations for each of the next five years if such adjustments:

(a) Involve a significant write-down of the historical cost of the acquired assets to their fair value at the acquisition date; and

(b) Will have a significant effect on earnings in periods immediately following the acquisition which will be progressively eliminated over a relatively short period.

3. For a disposition transaction, the pro forma financial information shall begin with the historical financial statements of the bank and show the deletion of the buisness to be divested along with the necessary pro forma adjustments, including adjustments relating to expenses that will be or have been incurred on behalf of the business to be divested, *e.g.*, advertising costs and personnel expenses.

4. When consummation of more than one transaction has occurred or is probable during a fiscal year, the pro forma financial information may be presented on a combined basis; however, in some circumstances, *e.g.*, where some transactions have been consummated and the others are probable, it may be more useful to present the pro forma financial information on a nonaggregated basis, even though some or all of the transactions would not meet the tests of significance individually. For combined presentations, a note should explain the various transactions and disclose the maximum variances in the pro forma financial information which would occur for any of the possible combinations. If the pro forma financial information is presented in a proxy or information statement for purposes of obtaining shareholder approval of one of the transactions, the effects of that transaction must be clearly set forth.

5. Income tax effects, if any, of pro forma adjustments normally should be calculated at the statutory rate in effect during the periods for which pro forma condensed income statements are presented and should be reflected as a separate pro forma adjustment.

(c) *Periods to be presented.* (1) A pro forma condensed balance sheet as of the end of the most recent period for which a consolidated balance sheet of the bank is required by § 11.911 shall be filed, unless the transaction is already reflected in such balance sheet.

(2)(i) Pro forma condensed statements of income shall be filed for only the most recent fiscal year and for the period from the end of the most recent fiscal year to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed statement of income shall not be filed when the historical income statement reflects the transaction for the entire period.

(ii) For a business combination accounted for as a pooling of interests, the pro forma income statements (which are in effect a restatement of the historical income statements as if the combination had been consummated) shall be filed for all periods for which historical income statements of the bank are required.

(3) Pro forma condensed statements of income shall be presented using the bank's fiscal year-end. If the most recent fiscal year-end of any other entity involved in the transaction differs from the bank's most recent fiscal year-end by more than 93 days, the other entity's income statement shall be brought up to within 93 days of the bank's most recent fiscal year-end, if practicable. This updating could be accomplished by adding subsequent interim period results to the most recent fiscal year-end information and deducting the comparable preceding year interim period results. Disclosure shall be made of the periods combined and of the sales or revenues and income for any periods which were excluded from or included more than once in the condensed pro forma income statements (*e.g.*, an interim period that is included both as part of the fiscal year and the subsequent interim period)

(4) Whenever unusual events enter into the determination of the results shown for the most recently completed fiscal year, the effect of such unusual events should be disclosed and consideration should be given to presenting a pro forma condensed income statement for the most recent twelve-month period, in addition to those required in paragraph (c)(2)(i) of this section, if the most recent twelve-month period is more representative of normal operations.

**§ 11.942 Presentation of financial forecast.**

(a) A financial forecast may be filed in lieu of the pro forma condensed statements of income required by § 11.941(b)(1).

(1) The financial forecast shall cover a period of at least 12 months from the later of (i) the date of the most recent balance sheet included in the filing or (ii) the consummation date or estimated consummation date of the transaction.

(2) The forecasted statement of income shall be presented in the same degree of detail required by § 11.941(b)(3) for the pro forma condensed statements of income.

(3) Assumptions particularly relevant to the transaction and effects thereof should be clearly set forth.

(4) Historical condensed financial information of the bank and the business acquired or to be acquired, if any, shall be presented for at least a recent 12 month period in parallel columns with the financial forecast.

(b) Such financial forecast shall be presented in accordance with the guidelines established by the American Institute of Certified Public Accountants.

(c) Forecasted earnings-per-share data shall be substituted for pro forma per-share data.

(d) This section does not permit the filing of a financial forecast in lieu of pro forma information required by generally accepted accounting principles.

Dated: June 5, 1984.

**C.T. Conover,**

*Comptroller of the Currency.*

[FR Doc. 84-24887 Filed 9-20-84; 8:45 am]

BILLING CODE 4810-33-M

federal register

Friday
September 21, 1984

Part IV

# Department of Agriculture

Forest Service

National Environmental Policy Act; Revised Implementing Procedures; Notice

## DEPARTMENT OF AGRICULTURE

### Forest Service

### National Environmental Policy Act; Revised Implementing Procedures

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed revision.

**SUMMARY:** The Forest Service proposes to revise Forest Service Manual (FSM) Chapter 1950 and Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures. The revisions emphasize the need to scope proposed actions to determine the extent of environmental analysis required. They also clarify the meaning of categorical exclusions and encourage their use where effects of proposed actions are not significant.

**DATE:** Comments must be received by November 20, 1984.

**ADDRESS:** Comments should be sent to R. Max Peterson, Chief (1950), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

**FOR FURTHER INFORMATION CONTACT:** David E. Ketcham, Director, Environmental Coordination, (202)447-4708.

**SUPPLEMENTARY INFORMATION:** FSM 1950 and FSH 1909. 15 contain Forest Service policy and procedural guidelines to implement the National Environmental Policy Act as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508). The present direction in FSM 1950 and FSH 1909. 15 was published in the **Federal Register** on November 19, 1981 (46 FR 56998, Part 3).

Consistent with agency directives policy, FSM 1950 is being revised to specify desired results, to minimize procedural detail, to rely as much as practicable on judgment of field professionals, and to permit discretion in achieving on-the-ground results appropriate to local situations and conditions. As proposed, FSM 1950 would contain only that direction needed by line and primary staff officers. The more detailed procedures for environmental analyses and documentation are set forth in the handbook, FSH 1909.15. This includes passages which clarify the Chief's and Secretary's NEPA responsibilities in situations where they have retained decision authority. In addition, portions of the handbook have been reorganized and edited for a more concise, logically ordered presentation. Minor changes are included to keep the handbook consistent with FSM 1950 manual revisions.

The Council on Environmental Quality's regulations and supplementary guidance emphasize that competent scoping is the key to successful environmental analysis and the right kind of documentation. Scoping is the appropriate stage to examine the characteristics of the proposed action and to identify potentially affected and interested agencies and publics, important issues, and a range of reasonable alternatives. For this reason the Forest Service plans to apply appropriate scoping procedures to all proposed actions under NEPA rather than only to those requiring environmental impact statements. This broader application of scoping sets the stage for an efficient, defensible analysis with relevant, concise documentation.

The proposed policy on categorical exclusions clarifies and broadens current direction by allowing responsible officials to exclude from preparation of environmental assessments and environmental impact statements proposed actions not having a significant effect on the human environment. It also expands the listing of typical classes of actions which might be excluded. This will permit agency officials to concentrate valuable time and other resources on proposed actions which will or might have significant effects.

The revision also applies the principles of adoption to existing internal environmental documents. Adoption of our own documents, including environmental assessments, is appropriate when another decisionmaker is responsible for an action that is within the same general area and that is adequately covered by the original document. Incorporation by reference in any environmental document may also be used to prevent duplication of effort.

In order to cover the full extent of the proposed revised procedures, both Forest Service Manual Chapter 1950 and the revised portions of Forest Service Handbook 1909.15 must be reviewed. This notice publishes the entire handbook [1] except for Chapter 60, References.

Comments on the proposed revision are invited and will be considered in the preparation of the final revision of the directives material.

[1] Certain Landbook exhibits are not published in this proposed revision but will be published in the final revision.

Dated: September 14, 1984.

**J. Lamar Beasley,**

*Deputy Chief.*

## TITLE 1900—PLANNING

### Chapter 1950—Environmental Policy and Procedures

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*1950.1—Authority.*

1. *The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4346).* NEPA encourages the Forest Service to carry out its programs in ways that will create and maintain conditions under which people and nature can exist in productive harmony and fulfill social, economic, and other needs of present and future generations.

NEPA also requires that a systematic, interdisciplinary approach be used in planning and decisonmaking for actions which may have an impact on the human environment. The act further requires detailed statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

2. Council on Environmetal Quality Regulations (40 CFR 1500-1508) for implementing the National Environmental Policy Act.

3. U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR 1b). USDA agencies are directed to develop and implement procedures for compliance with NEPA and seven categories of activities are excluded from documentation.

The above authorities and supplementary Council on Environmental Quality guidance are printed in full in Chapter 60 of the Forest Service Environmental Procedures Handbook (FSH 1909.15).

*1950.2—Objectives.*

1. To consider carefully the environmental consequences of agency planning and decisionmaking.

2. To document environmental considerations adequately.

3. To conduct and document environmental analyses and subsequent decisions efficiently and cost-effectively.

*1950.3—Policy.*

1. Fully integrate NEPA requirements into agency planning and decisionmaking.

2. Use scoping to determine the depth and breadth of environmental analysis required for all proposed actions and consider whether the analysis needs to be documented.

3. Notify interested and affected publics of the availability of environmental documents (40 CFR 1506.6(b)), records of decision, and decision notices in a manner appropriate to the situation.

4. Make environmental documents, decision notices, and records of decision available to the public free of charge to the extent practicable (40 CFR 1506.6(f)).

5. Apply the concepts of tiering and adoption to both environmental impact statements and environmental assessments (40 CFR 1502.20, 1506.3).

*1950.4—Responsibility.*

*1950.41—Washington Office.*

*1950.41a—Chief.* The Chief is responsible for environmental analysis, documentation, and decisions relating to legislation and national policies, plans, programs, projects, and other actions of national importance where the Chief has reserved jurisdiction.

*1950.41b—Director of Enviromenatl Coordination.* The Director is the staff official responsible for the establishment of national standards, procedures, and coordination necessary to implement the National Environmental Policy Act for the Forest Service. This includes policies and procedures for conducting social analysis.

The Director also provides liason with the Council on Environmental Quality and consults with the Council on possible referrals (40 CFR 1504) and emergencies (1506.11).

*1950.42—Regional Foresters, Station Directors, and Area Director.* Regional Foresters, Station Directors, and the Area Director who are delegated responsibility for proposed actions are also responsible for related environmental analyses and documentation (FSM 1220 and 1230). Regional Foresters, Station Directors, and the Area Director may file environmental impact statements directly with the Environmental Protection Agency for actions within their authority. Refer matters requiring consultation with the Council on Environmental to the Washington Office Director of Environmental Coordination.

*1950.43—Forest Supervisers, Project Leaders, and State and Private Forestry Field Representatives.* Regional Foresters may redelegate responsibility for environmental analyses, documentation and related requirements, and decisions on proposed actions to Forest Supervisors, Project Leaders, and State and Private Forestry Field Representatives.

*1950.6—Guidance.* Detailed instructions for conducting and documenting environmental analyses and implementing and monitoring proposed actions are presented in FSH 1909.15.

*1951—Scoping and Environmental Analysis.*

*1951.1—Scoping.* Use scoping to investigate and identify relevant issues and the extent of analysis required for all proposed actions. Depending on the complexity and nature of the action, scoping varies from a brief consideration of a few pertinent factors in a proposed minor action to full compliance with Council on Environmental Quality scoping regulations for preparation of environmental impact statements.

*1951.2—Environmental Analysis.* Estimate the physical, biological, social, and economic effects of proposed agency actions on the quality of the human environment and determine if and what types of environmental documents are needed.

*1952—Documentation.*

*1952.1—Environmental impact statements.* Prepare environmental impact statements to document the analysis of major federal actions which will have a significant effect on the human environment (40 CFR 1502.3). These documents must meet all requirements of 40 CFR 1502. Actions requiring environmental impact statements include:

1. Proposals for legislation recommended by the Forest Service, when significant effects would result.

2. Regional guides and forest land and resource management plans.

3. Other major actions that would produce significant effects.

*1952.2—Categorical exclusion from documentation (40 CFR 1508.4).* USDA regulations exclude seven categories of actions from documentation (7 CFR 1b.3) Exclude from documentation in environmental assessments or environmental impact statements other actions which, based on past experience and environmental analysis, will have no significant effect on the human environment, individually or cumulatively.

The guide for exclusion is the significance of the effects of the proposed action, considering both context and intensity (40 CFR 1508.27). Actions which have short-term effects or limited magnitude are normally excluded.

In unusual circumstances, an action listed below may have a significant environmental effect and must be documented in an environmental assessment or environmental impact statement.

Typical classes of actions which might be categorically excluded are:

1. Administrative actions, such as:

a. Road and area closures.

b. Restrictions on travel or use, such as camping, boating, or hunting.

c. Posting signs and markers.

2. Construction of facilities or improvements, consistent with existing management direction, such as:

a. Auxiliary support buildings or other structures.

b. Cattle guards on or adjacent to existing roads.

c. Picnic areas, campgrounds, and nature trails.

d. Fences and gates.

e. Temporary low-standard roads.

3. Renovation, repair, and maintenance activities, not including aerial application of herbicides, to meet applicable standards, such as the following:

a. Buildings and grounds.

b. Roads and rights-of-way.

c. Trails.

d. Campgrounds.

e. Fences.

f. Fire breaks.

g. Range improvements.

4. Vegetation management activities, such as the following, which are limited in scale and duration, primarily using existing roads and facilities, and do not include aerial application of herbicides.

a. Timber stand improvement, including thinning and pruning.

b. Low-impact timber sales, including firewood and salvage.

c. Regeneration.

d. Routine use of prescribed burning.

e. Suppressing poisonous plants and noxious weeds.

5. Routine range management activities, such as:

a. Improving conditions for livestock by fencing, seeding, and installing water facilities.

b. Reissuing grazing permits in areas with established grazing programs.

c. Modifications of grazing permits designed to improve range conditions or improve the efficiency of grazing management that do not substantially change the character of the authorized use.

6. Issuance or modification of special use authorizations such as:

a. Gathering firewood and other plant material.

b. Siting beehives.

c. Outfitting and guiding.

d. Gates and short roads to provide access to private lands and developments.

e. Development of low-impact roads, rights-of-way, or easements.

f. Additional use or limited improvement of existing roads, rights-of-way, and easements.

7. Routine pest management projects not involving aerial application of pesticides, such as:

a. Suppressing nuisance pests; for example, mosquitos, wasps, flies, and chiggers in public use areas.

b. Protecting valuable trees in seed orchards and administrative sites.

8. Low-impact mineral and energy activities, such as:

a. Preliminary exploration; for example, vibroseis operations using existing roads.

b. Activities which do not require a plan of operations under 36 CFR 228.4 and cause no significant surface disturbance; for example, the search for, and occasional removal of, small mineral samples.

9. Fish and wildlife management activities, such as:

a. Habitat improvement.

b. Installing fish ladders.

c. Stocking native or established species.

10. Standard transfer of interests in land, such as:

a. Sales, exchanges, or interchanges pursuant to the Small Tracts Act.

b. Purchases.

c. Statutorily mandated exchanges.

Generally, the nature of a proposed action determines whether or not to document a categorical exclusion. In those situations where environmental assessments have historically been prepared for actions which now may be categorically excluded, a simple note or memorandum in the project file for one or more projects should be adequate. In other situations no documentation is necessary.

*1952.3—Environmental Assessments.* Prepare environmental assessments to document the analysis of actions that may significantly affect the quality of the human environment, unless the responsible official has decided to prepare an environmental impact statement.

Environmental assessments must meet the purpose and content requirements of 40 CFR 1508.9.

*1953—Related documents.*

*1953.1—Notice of intent.* Publish a notice of intent in the **Federal Register** as soon as practicable after the decision to prepare an environmental impact statement.

*1953.2—Finding of no significant impact.* See 40 CFR 1501.4(e), 1508.13.

*1953.3—Decision notice.* A decision notice states what the decision was, the reasons for the decision, and whether the decision is subject to appeal. Prepare a decision notice for actions documented in an environmental assessment. The responsible official must sign and date the decision notice on the date the decision is made.

*1953.4—Record of decision.* In cases where an environmental impact statement has been prepared, the responsible official shall prepare a record of decision. For actions subject to administrative appeal, the responsible official should sign and date the record of decision on the date it is transmitted with the final environmental impact statement to the Environmental Protection Agency and made available to the public (36 CFR 211.18).

For actions not subject to appeal the responsible official signs and dates the record of decision no sooner that 30 days after the notice of availability of the final environmental impact statement is published in the **Federal Register** (40 CFR 1506.10(b)).

*1954—Emergency actions (40 CFR 1506.11).* Emergencies may require immediate actions, without adequate environmental analysis and documentation, to prevent or reduce risk to public health or safety or serious resource loss. When consultation with the Council on Environmental Quality is anecessary, consult with the Washington Office Director of Environmental Coordination (FSM 1950.41b and 1950.42).

## UNTIED STATES DEPARTMENT OF AGRICULTURE; FOREST SERVICE

[FSH 1909.15]

## Environmental Policy and Procedures Handbook

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### Zero Code

**Contents**

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This handbook provides procedural guidance for implementing the National Environmental Policy Act and the Council on Environmental Quality regulations (40 CFR 1500–1508) in Forest Service activities.

The handbook is organized to distinguish clearly between analyzing the effects of proposed actions and documenting the results of such analysis. Chapter 10 sets forth guidelines on the scoping process. Chapter 20 addresses the actual analysis process. Chapters 30 and 40 contain the the documentation requirements for environmental assessments and impact statements. Chapter 50 addresses implementing and monitoring requirements. Chapter 60 includes the text of pertinent laws, regulations, and memoranda and other reference materials needed to carry out the procedures in this handbook.

This handbook is to be used in conjunction with the broad direction set forth in FSM 1950, Environmental Policy and Procedures Manual.

*02—Objectives*

1. To incorporate environmental considerations into Forest Service planning and decisionmaking in a systematic and cost-effective manner.

2. To provide uniform guidelines and direction for conducting environmental analyses associated with preparing regional guides and forest land and resource management plans, and for carrying out other resource management activities or actions.

*03—Policy*

*04—Responsibility*

Line officers are responsible for ensuring that planning and decisionmaking incorporate the procedural direction in this handbook.

*05—Definitions*

1. *Categorical Exclusion.* (40 CFR 1508.4).
2. *Cooperating Agency.* (40 CFR 1508.5).
3. *Cumulative Impact.* (40 CFR 1508.7).
4. *Decision Notice.* A concise public record of the responsible official's decision when an environmental assessment is prepared.
5. *Effects.* (40 CFR 1508.8).
6. *Environmental Analysis.* An investigation of alternative actions and their predictable environmental effects, including physical, biological, economic, and social consequences and their interactions; short- and long-term effects; and direct, indirect, and cumulative effects. This process provides the information needed for identifying actions which may be categorically excluded, preparing environmental documents, and determining whether an environmental impact statement is required.
7. *Environmental.* (40 CFR 1508.9).
8. *Environmental Design Arts.* Disciplines that directly influence the biological and physical environment as a result of the design of projects of all kinds.
9. *Environmental Documents.* (40 CFR 1508.10).
10. *Environmental Impact Statement.* (40 CFR 1508.11).
11. *Environmentally Preferable Alternative.* The alternative (or alternatives) that best meets the goals of Section 101 of the National Environmental Policy Act (NEPA).
12. *Finding of No Significant Impact. (40 CFR 1508.13).*
13. *Flood Plains.* "Lowland and relatively flat areas adjoining inland and coastal water including, as a minimum, that area subject to a one-percent or greater chance of flooding in any given year" (E.O. 11988).
14. *Human Environement.* (40 CFR 1508.14).
15. *Irreversible.* Describes the loss of future options. Applies primarily to the effects of use of nonrenewable resources, such as minerals or cultural resources, or to those factors that are renewable only over long periods of time, such as soil productivity.
16. *Irretrievable.* Applies to the loss of production, harvest, or use of renewable natural resources. For example, some or all of the timber production from an area is lost irretrievably while an area is serving as a winter sports site. The production lost is irretrievable, but the action is not irreversible. If the use changes, it is possible to resume timber production.
17. *Issue.* A point of discussion, debate, or dispute.
18. *Jurisdiction by Law.* (40 CFR 1508.15).
19. *Lead Agency.* (40 CFR 1508.16).
20. *Legislation.* (40 CFR 1508.17).
21. *Major Federal Action.* (40 CFR 1508.18).
22. *Matter.* (40 CFR 1508.19).
23. *Mitigation.* (40 CFR 1508.20).
24. *NEPA Process.* (40 CFR 1508.21).
25. *Notice of Intent.* (40 CFR 1508.22).
26. *Opportunities.* Possible actions, measures, or treatments that may be taken to address goals and objectives.
27. *Proposal.* (40 CFR 1508.23).
28. *Record of Decision.* A concise public record of a responsible official's decision on actions for which an environmental impact statement was prepared. (40 CFR 1505.2).
29. *Referring Agency.* (40 CFR 1508.24).
30. *Scope.* (40 CFR 1508.25).
31. *Scoping.* Examining a proposed action and its possible effects; establishing the depth of analysis needed; and determining analysis procedures, data needs, and task assignments. Depending on the complexity and nature of the action, scoping varies from a brief consideration of a few pertinent factors in a proposed minor action to full compliance with CEQ direction for EIS preparation (40 CFR 1501.7). Elements of scoping may include exploring the nature of the action, determining the responsible official and cooperating agencies, initiating public involvement, identifying issues, selecting an interdisciplinary team, establishing analysis criteria, exploring possible alternatives and their environmental effects, and making task assignments.
32. *Special Expertise.* (40 CFR 1508.26).
33. *Significantly.* (40 CFR 1508.27).
34. *Substantive Comment.* A comment that provides factual information, professional opinion, or informed judgment germane to the decision under consideration.
35. *Tiering.* (40 CFR 1508.28).
36. *Wetlands.* "Areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction" (E.O. 11990).

*06—Overview of process*

Exhibits 1 and 2 illustrate the full NEPA process and indicate the normal sequence of actions that occur under various alternatives.

**Exhibit 1—The NEPA Process**

**Exhibit 2—Environmental Analysis, Documentation, and Implementation**

*07—Cross references*

Exhibit 1 provides a quick reference to the sources of direction governing the various activities required for environmental analysis.

**Exhibit 1**

**Chapter 10—Scoping**

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11.2—Determine characteristics of proposed action and nature of the decision.
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12.3—Expand public involvement as appropriate.
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12.41—Formulate analysis criteria.
12.42—Formalize issues.
12.43—Explore alternatives.
12.44—Determine other analysis needs.
13—Inform participants of results of scoping.

Scoping is the procedure by which the Forest Service determines the extent of analysis necessary for an informed decision on a proposed action.

Scoping may be viewed as a form of preliminary environmental analysis. However, for clarity, this handbook distinguishes scoping from the environmental analysis which results from the scoping process.

*10.2—Objectives.* The Forest Service conducts scoping:

1. To gather the information necessary to determine the degree of analysis required on a proposed action.

2. To help determine if and how the environmental analysis of proposed actions is to be documented.

3. To help determine whether analysis of a proposed action is categorically excluded from documentation.

4. To produce a work plan to guide environmental analysis and documentation, and to assign tasks.

5. To achieve effective use of time and money in conducting environmental analysis.

*10.3—Policy.* 1. Use scoping to investigate the nature of any proposed action and to determine how much analysis is necessary. The use of scoping is not confined to the preparation of environmental impact statements.

2. Ensure that an appropriate interdisciplinary approach is used in the scoping process (sec. 11.1, 11.7, and 12).

3. Conduct the scoping actions set forth in this chapter commensurate with the complexity of the proposed action. Not all scoping activities are required for all proposed actions.

*10.4—Responsibility.* The official responsible for a decision on a proposed action shall:

1. Ensure that an appropriate level of scoping occurs.

2. Determine whether an interdisciplinary (ID) team of specialists is needed for further scoping and environmental analysis.

3. Select the ID team and leader using the criteria set forth in section 12.1.

4. Review and approve the ID team's plan of work.

For actions where the Chief or the Secretary is the responsible official, the Washington Office Environmental Coordination Staff participates with appropriate field or other Washington Office Staffs and involves the appropriate Deputy Chief, the Chief, or the Assistant Secretary, as necessary. (FSM 1950.41.)

*11—Conduct preliminary scoping*

*11.1—Organize scoping effort.* The National Environmental Policy Act (NEPA) requires a systematic, interdisciplinary approach to ensure integrated application of the natural and social sciences and the environmental design arts in any planning and decisionmaking that affects the human environment (40 CFR 1501.2(a)). The interdisciplinary approach used in scoping varies according to the judgment of the responsible official.

Where it is necessary to resolve which agency shall be the lead agency for scoping and analysis, follow the direction in section 46.1.

*11.11—Use flexible procedures.* Because the nature and complexity of a proposed action determines the scope and intensity of the required analysis, there is no single required or prescribed technique. The responsible official may expand, omit, or combine the various steps of the process outlined in this handbook to aid in the understanding of the proposed action and in responding to the issues identified. In each analysis, use previously documented information to avoid duplication of efforts. If there is no longer a need to complete an analysis (because a project application is withdrawn or for other reasons), stop the analysis and inform the interested parties.

*11.2—Determine the characteristics of the proposed action and nature of the decision.* Important details include:

1. Sponsorship: who wants the action and why.

2. Technical details: phases of activity, equipment used, number and types of employees needed.

3. Time schedules: when the action would begin and end, the duration of major phases.

4. Preliminary estimates of possible environmental effects.

5. Preliminary estimates of public interest in the action and the likelihood of controversy.

6. Type of decision: whether to implement or permit the action, how to do it, or both.

7. Whether or not a categorical exclusion is appropriate.

*11.3—Identify agencies involved and responsible officials.* The responsible official for proposed actions on National Forest System lands usually is the agency employee who has the delegated authority to make the required decision(s). When an action is proposed, the responsible official must identify other Federal, State, or local agencies with an interest in the action and must estimate the extent of analysis required for an informed decision. The official may base this estimate on existing documentation, personal experience, and consultation with knowledgeable people. At this point, it would be helpful to decide whether an interdisciplinary team is necessary to carry out the remainder of the analysis process or whether a much less formal interdisciplinary approach would suffice (sec. 11.7).

*11.4—Determine if existing documents address proposed action.* Sometimes a responsible official may determine that an existing environmental document adequately addresses a proposed action. For such actions, the official may adopt the existing document (40 CFR 1506.3) if the official is satisfied with the accuracy and adequacy of the document. In this case, the responsible official must determine if the existing document needs to be recirculated to interested parties (40 CFR 1506.3(b) and (c)). The official must prepare a record of decision or a decision notice with a finding of no significant impact.

Case histories of similar actions may be reviewed for additional information on:

1. Geographic areas and resources that the action is likely to affect.

2. The scale, duration, and intensity of possible effects.

3. Applicable Federal and State laws and regulations.

4. Pertinent documents and other data sources.

Such information should help define the situation and narrow the scope of the environmental analysis. The evironmental documents prepared for the proposed action may incorporate these sources by reference. (sections 32.2, Tiering; 32.3, Adoption; and 32.4, Incorporation by Reference.)

*11.5—Look for relevant issues.* Based on reviews of similar actions, knowledge of the area(s) involved, discussion with community leaders, and/or consultations with experts who are familiar with such actions and their effects, prepare and evaluate a preliminary list of issues and concerns. The goal of preparing this list is to provide an early look at potential issues and to sharpen the focus of the environmental analysis (40 CFR 1501.1(d)).

*11.6—Assess public involvement needs and initiate public participation.* Review the need for public participation in investigating the scope of the proposed action. Identify agency options for involving potentially interested and affected individuals, organizations, and governments in the analysis process (40 CFR 1506.6). Early in the analysis of proposed actions that may have important or controversial effects, it is essential to:

1. Provide adequate public information about the proposed action.

2. Analyze public reactions: that is, who expects to be affected and how.

3. Consider suggestions offered by those affected.

*11.7—Identify skills needed for analysis.* Proposals for minor actions, especially those which can be tiered from an existing environmental document (40 CFR 1508.28), may not require the selection of an interdisciplinary team (sec. 11). When there is a need for extensive environmental analysis, select an interdisciplinary team and support staff to provide the required range of skills. The disciplines and skills of this group must be appropriate to the scope of the action and the issues identified (40 CFR 1502.6). The team must have the

professional capability to identify and evaluate the potential direct, indirect, and cumulative social, economic, physical, and biological effects of the proposed action and its alternatives (40 CFR 1507.2; 1508.25).

Interdisciplinary teams are not necessary for all analyses. A qualified individual may perform the necessary analysis for simple actions. However, the analysis still must include consideration of the physical, biological, economic, and social factors pertinent to the decision. Team review of the analysis also may satisfy the requirement for use of the interdisciplinary approach. Complex actions normally require a team of specialists representing the necessary disciplines.

*11.71—Determine need for interdisciplinary team.* Preparation of regional guides and forest plans requires the use of interdisciplinary (ID) teams (36 CFR 219.5) who are responsible for the environmental analysis (40 CFR 1502.6).

*12—Proceed to more extensive scoping*

The interdisciplinary approach to preparing an environmental impact statement often begins with the responsible official designating an ID team and leader. The team is responsible for conducting extensive scoping and the subsequent environmental analysis, subject to review and approval by the responsible official, and for preparing the environmental documents. A team can integrate its collective knowledge of the physical, biological, economic, and social sciences and environmental design arts into the analysis process. Interaction among team members often provides insight that otherwise would not be apparent.

*12.1—Select interdisciplinary team.* The responsible official must select the leader and other members of the interdisciplinary team and keep abreast of their work.

1. *Team Leader.* To ensure selection of an effective team leader, consider such factors as the individual's:

a. Degree of working knowledge of the NEPA process.

b. Ability to communicate effectively with team members and the responsible official.

c. Ability to facilitate interaction among team members and agreement on team goals.

d. Ability to organize and interpret information.

e. Past performance in observing time schedules.

2. *Team Members.* In selecting other team members, consider such factors as:

a. Variety of disciplines needed.

b. Manageable numbers of experts.

c. Ability to work as part of a team.

d. Ability to communicate to others information about the field the member represents.

e. Knowledge of and degree of experience in the environmental analysis process.

f. Ability to conceptualize and solve problems.

*12.2—Convene interdisciplinary team and assign tasks.* The interdisciplinary team continues the scoping at a more specialized level, revising as necessary the:

1. Estimates of the type, scale, and intensity of effects.

2. Public and agency issues, concerns, and opportunities.

3. Public participation procedures.

*12.3—Expand public involvement as appropriate.* The Council on Environmental Quality (CEQ) regulations require a diligent effort to involve the public in the National Environmental Policy Act process (40 CFR 1506.6). Options include:

1. Analyzing target groups. Identify all potentially affected groups and the nature of their concerns (FSH 1609.13).

2. Developing and implementing a public participation plan. When extensive public involvement is necessary, prepare a formal public participation plan (FSM 1626). The plan may provide for media announcements about the proposed action, public meetings, distribution and collection of public response forms, mailing of responses to inquiries, person-to-person communication, and other activities designed to meet public involvement objectives. Invited participants shall include potentially affected Federal, State, and local agencies, Indian tribes, interested individuals and groups, and others who might be affected by the action or its alternatives. The level of effort to inform and involve the public shall be consistent with the scale and importance of the proposed action and the degree of public interest.

The Public Participant Handbook, FSH 1609.13, provides guidance in identifying and involving the public, preparing public involvement plans, and using public responses in the analysis process.

*12.4—Plan for orderly analysis.* By focusing the analysis on important issues, scoping can improve the efficiency and effectiveness of the analysis substantially. The scoping process is the time to begin developing criteria, refining issues, and considering possible alternatives and their effects.

*12.41—Formulate analysis critiera.* Preliminary criteria and standards may be necessary to guide the process. Be sure to consider Forest Service objectives identified in legislation, policies, and plans. These criteria should be redefined as necessary during the course of the analysis.

Frequently, criteria are necessary to govern:

1. Selection of data, sources, and standards of accuracy.

2. Depth or detail of the analysis.

3. Development of a suitable range of alternatives.

4. Evaluation of alternatives.

5. Judgments of the significance of effects (40 CFR 1508.27).

*12.42—Formulate issues.* Formalize the preliminary lists of important issues, concerns, and opportunities and the analysis criteria, taking public and agency comments into account. These lists define the goals, priorities, and standards for the remainder of the analysis; further adjustments may be necessary as new insights emerge.

*12.43—Explore alternatives.* For the proposed action consider possible alternatives that are responsive to the issues. Discuss the feasibility and possible effects of these alternatives with potentially affected agencies and public parties. Decide which merit further study and which do not belong in the analysis.

*12.44—Determine other analysis needs.* During scoping, anticipate later analysis needs and make arrangements for meeting them. These might include:

1. Data needed and their availability.

2. Time and support services available. Time and page limits may be set (40 CFR 1501.7(b)).

3. Other agency needs this analysis can meet.

4. How other agencies might contribute to the analysis.

5. Responsibility for each task not yet assigned.

6. Additional staff support and travel funds needed.

7. The possibility of publishing a notice of intent (to prepare environmental impact statement).

*13—Inform participants of results of scoping*

After scoping, provide participants with prompt feedback summarizing both the scope and the important issues that the EA or EIS will analyze in depth.

**Chapter 20—Environmental Analysis**

**Contents**

21—Continue public involvement as needed.
22—Collect data.
23—Interpret data.
24—Develop alternatives.
24.1—No action alternatives.

24.2—Other alternatives.
25—Estimate effects of each alternative.
26—Evaluate alternatives and identify preferred alternative.

Environmental analysis assesses the nature and significance of the physical, biological, social, and economic effects of a proposed action and its reasonable alternatives. Exhibit 2 in section 06 of zero code shows how environmental analysis relates to other procedures required under the National Environmental Policy Act and its implementing regulations.

*21—Continue public involvement as needed*

Consistent with the importance of the action, keep the public informed of the progress of the analysis. For major actions, this includes notifying the public that the action is under consideration and providing feedback on the results of scoping and other stages of the analysis. Monitor and consider the wishes and concerns of affected publics, and respond to individual requests for information.

*22—Collect data*

The type and amount of data to collect depend on the nature of the action, agency objectives, public concerns, opportunities, and the scope of anticipated effects. Focus data collection on the present and expected conditions of those physical, biological, economic, and social factors affecting or affected by the decision. Document assumptions, methods, and data sources used in the analysis. For environmental impact statements, when there are gaps in relevant information or scientific uncertainty see 40 CFR 1502.22(b).

*23—Interpret data*

Interpret data and information to provide an understanding of current and expected conditions relative to the objectives, issues, and concerns of the action. This may include supply and demand relationships and other relevant physical, biological, economic, and social factors.

*24—Develop alternatives*

The final array of alternatives must provide different responses to significant issues, objectives, concerns, and opportunities. Consider all reasonable alternatives (40 CFR 1502.14). "The phrase 'all reasonable alternatives' is firmly established in case-law interpreting the NEPA. The phase has not been interpreted to require that an infinite or unreasonable number of alternatives be analyzed." (sec. 65.11, ex. 1, 43 FR 55983).

*24.1—No action alternatives*

Objectives of legislation or higher order Forest Service plans, programs, and policies guide but do not necessarily limit the range of alternatives. Always consider the alternative of taking "no action." The "no action" alternative provides a baseline for estimating the effects of other alternatives. Two distinct interpretations of no action are often possible, depending on the nature of the proposal being evaluated. The first interpretation involves an action such as the updating of a land management plan where ongoing programs initiated under existing legislation, regulations, and budget allocations continue, even as new plans are developed. In these cases no action is "no change" from current management direction or the level of management intensity. Consequently, the responsible official would compare the projected impacts of alternative management schemes to those impacts projected for the existing plan.

The second interpretation of no action is that situation where no action or activity would take place, such as in Federal decisions on proposals for projects.

The extent of analysis necessary for no action depends in part on the extent to which previous analyses and decisions have defined the current program. Compare the environmental effects resulting from no action with the effects of permitting the proposed activity or an alternative activity to go forward. In each case the analysis of the no-action alternative can provide a benchmark, enabling decisionmakers to compare the magnitude of the environmental effects of alternative actions.

*24.2—Other alternatives.* Develop alternatives fully and impartially. Take care to ensure that the range of alternatives does not foreclosure prematurely any options that might protect, restore, and enhance the environment. Also consider reasonable alternatives outside the jurisdiction of the Forest Service (40 CFR 1502.14(c)). Explain the reasons for eliminating any alternatives originally considered in the analysis for an environmental impact statement (40 CFR 1502.14(a)). Modify alternatives or develop new alternatives as necessary as the analysis proceeds. Alternatives must specify any activities that may produce important environmental changes, and they must include management requirements, mitigation measures, and monitoring of environmental effects.

*25—Estimate effects of each alternative*

(40 CFR 1502.16 and 1508.8) Estimate the effects of implementing each alternative. Consider direct, indirect, and cumulative effects. For each alternative, effects may be expressed in terms of changes in the physical, biological, economic, and social components of the human environment. The changes should be those associated with implementation of alternatives. When possible, analyze these changes in terms of differences from the present conditions, magnitude, duration, and significance. See section 61 for a list of environmental factors that may change as a result of implementation of the various alternatives.

It is not always necessary to deal with all factors and components of the environment. Consider in detail those effects important to the objectives, issues, concerns, and opportunities identified during scoping.

If indicators of economic efficiency are appropriate, develop them in this step. Also consider unquantified environmental amenities and values.

Although separate analysis is not necessary, be sure to consider the following for all alternatives:

1. Effects on consumers, civil rights minority groups, and women. (Secretary's Memorandum 1662, Supplement 8; OMB Circular A–19, revised; and FSM 1730).

2. Effects on prime farmland, rangeland, and forest land.

3. Effects on wetlands and flood plains.

4. Effects on threatened and endangered species.

5. Effects on cultural resources.

If information about adverse impacts is essential to a reasoned choice among alternatives being considered in an environmental impact statement and is not known, see 40 CFR 1502.22. If the need for an environmental impact statement has not been established already (FSM 1952.1), consider the significance of effects in terms of context and intensity in order to determine if an environmental impact statement is necessary. See 40 CFR 1508.27, "Significantly," for definition of "context" and "intensity."

*26—Evaluate alternatives and identify preferred alternative(s)*

Using evaluation criteria, compare alternatives on the basis of their effects on the human environment. The evaluation, along with other relevant considerations, provides a basis for identifying the preferred alternative(s).

When the Chief or the Secretary is the responsible official, the Washington Office Environmental Coordination Staff Unit participates with appropriate field or Washington Office Staff Unit(s), appropriate Deputy Chief, Chief, or

Assistant Secretary to identify the preferred alternative(s).

## Chapter 30—Environmental Assessments and Related Documents

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*31—Documentation of analysis*

(FSM 1952.) Document the analysis in an environmental assessment when the analysis indicates that the proposed action is not categorically excluded or to be presented in an environmental impact statement (40 CFR 1509.9). The length and detail of documentation in an environmental assessment may vary according to the complexity of the issues involved in the decision. (An environmental impact statement (EIS) is necessary if environmental analysis reveals that an action significantly affects the quality of the human environment. The responsible official shall publish a notice of intent to prepare an EIS.)

*31.04—Responsibility.* 1. When the Chief or Secretary is the responsible official, the appropriate field unit prepares documentation with assistance from Environmental Coordination and appropriate Washington Office staff units. Environmental Coordination arranges for processing of documents, and involves appropriate staff units.

2. Contractors or Applicants. (40 CFR 1506.5(b) and (c).) The responsible official may require applicants or contractors to conduct studies to determine the impact of the proposed action of the human environment and to provide data and documentation. When applicants or contractors prepare an environmental assessment, limit their activities to those shown in section 11.3, exhibit 1 for staff, specialists, and interdisciplinary teams participating in the National Environmental Policy Act process.

*31.1—Content.* (40 CFR 1508.9.) An environmental assessment may be prepared in any format useful to facilitate planning and decisionmaking as long as the requirements of 40 CFR 1508.9 are met. It must include brief discussion of:

1. the need for the proposal.

2. Alternatives as required by section 102(2)(e) of NEPA.

3. Environmental impacts of the proposed action and alternatives.

4. A listing of agencies and persons consulted.

*31.2—Processing environmental documents (Reserved).*

*32—Other considerations in preparing assessments.*

*32.1—public involvement.* See 40 CFR 1506.6

*32.2—Tiering.* (40 CFR 1502.20 and 1508.28.) Tiering is appropriate for environmental assessments. See section 45.1 for additional information about tiering.

*32.3—Adoption.* (40 CFR 1506.3.) Adoption is appropriate to environmental assessments as well as environmental impact statements.

*32.4—Incorporation of other information by reference.* Incorporation by reference is appropriate to EA's as well as EIS's (40 CFR 1502.21).

*32.5—Supplements, corrections, and revisions.* Supplement, correct, or revise environmental assessments as needed. (section 42.4.)

*33—Documentation of decisions.*

*33.1—Decision notice.* A decision notice may be a separate document or combined with a finding of no significant impact.

A decision notice also may be an integral part of brief environmental assessments. Exhibit 1 displays a document which combines a decision notice and a finding of no significant impact. Exhibit 2 contains a sample document which combines an environmental assessment, a decision notice, and a finding of no significant impact.

When the Chief or the Secretary is the responsible official, the appropriate field unit prepares the decison notice with assistance from the Washington Office Environmental Coordination Staff, as necessary. The Environmental Coordination Staff coordinates the review and signing of the decision notice, involving appropriate Washington Office staff units, Deputy Chiefs, the Chief, and the Secretary as necessary.

**Exhibit 1—Decision Notice and Finding of No Significant Impact**

*Decision Notice and Finding of No Significant Impact*

**Lower Star River Recreation Project, Summit County, Colorado**

*USDA Forest Service, Star Mountain National Forest*

An environmental assessment that discusses proposed recreation development on 150 acres of National Forest lands adjacent to six (6) miles of the Star River is available for public review in the Forest Service Office in Central, Colorado. This project does not involve the use of flood plains and wetlands adjacent to the Star River.

It is my decision to adopt Alternative B for the recreation development and management for these National Forest System lands. This alternative calls for moderate development and use, including two day-use picnic sites, 40 developed camping sites, and 12 miles of nature trails. Alternative B provides for recreation development and use with minimum environmental impacts near a metropolitan area with rapidly increasing demand for recreational opportunities.[1] Other alternatives considered were (A) the no-action alternative which would continue present management, (C) maximum development and use to acommodate 10,000 persons at one time, and (D) an alternative that would allow for day-use only. The assessment evaluates the site-specific design and construction necessary to implement some of the management decisions contained in the Star Mountain National Forest Plan.

The District Ranger is directed to modify Alternative B to initiate a monitoring program to determine annually the effects of project implementation upon the water quality of the Lower Star River. In addition, the use of the area shall be limited to not more than 5,000 persons at one time. Mitigation measures to avoid environmental harm are specified in the environmental assessment.

I have determined that this action would not significantly affect the quality of the human environment. Therefore, and environmental impact statement is not needed. This determination was made considering the following factors:

(a) construction of roads and day-use recreational facilities on 150 acres will have only a slight effect on the ecosystem;

(b) there are no irreversible resource commitments or irretrievable loss of timber production on lands used for roads and parking lots;

(c) there are no apparent adverse cumulative or secondary effects;

(d) the physical and biological effects are limited to the area of planned development and use; and

(e) no known threatened or endangered plants or animals are within the affected area.[2]

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[1] Decision.

[2] List relevant factors that were considered in determining that an environmental impact statement (EIS) was not required (finding of no significant impact).

Project implementation will begin immediately.

This decision is subject to appeal.

Date: September 1, 1984.

William E. Hill,

*Forest Supervisor.*

**Exhibit 2—Environmental Assessment, Decision Notice, and Finding of No Significant Impact**

*33.2—Finding of no significant impact.* (40 CFR 1508.13.) A finding of no significant impact may be included as an integral part of the decision notice or prepared as a separate document attached to the environmental assessment.

*33.3—Publication of decision documents on actions of national concern.* If the responsible official determines that an environmental impact statement is not necessary but that the effects of the action are of national concern, publish the decision notice and finding of no significant impact in the **Federal Register** and send them to State and areawide clearinghouses. (40 CFR 1506.6(b)(2).)

33.4—*Distribution of decision documents.* (40 CFR 1506.6(b).) In addition to the requirements of sections 33.3 and 51.2a, distribute environmental assessments, decision notices, and findings of no significant impact (FONSI) in a manner designed to inform any parties you believe they might interest or affect. For an action similar to one that normally requires an EIS, or for an action without precedent or for an action involving floodplains, make the decision notice and FONSI available for public review, including State and areawide clearinghouses, for 30 days.

**Chapter 40—Environmental Impact Statements and Related Documents**

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*40.4—Responsibility.*

1. When the Chief or the Secretary is the responsible official for an action requiring an environmental impact statement (EIS), the appropriate field unit prepares the necessary documents with assistance from the Washington Office Environmental Coordination Staff and other Washington Office staffs, as necessary.

2. The Washington Office Environmental Coordination Staff coordinates, reviews, and processes documents as necessary (such as filing EIS's with the Environmental Protection Agency (EPA)). When EIS's involve legislation, regulations, multiagency actions at the national level, and Service-wide policies, the Washington Office Staff files them with EPA.

*41—Notices of Intent.*

*41.1—Preparation and filing of notices of intent.* (40 CFR 1501.7 and 1508.22.) When it is necessary to prepare an environmental impact statement, prepare a notice of intent. In addition to meeting the requirements of 40 CFR 1508.22, the notice of intent must include the identity of the responsible official(s) and the estimated dates for filing the draft and final environmental impact statement (EIS). Publish the notice of intent in the **Federal Register** immediately after determining that an EIS is necessary except in cases where a lengthy period of time may exist between the determination of need and the actual preparation of the EIS (40 CFR 1507.3(e)). In addition to sending copies to the Office of the Federal Register, send one copy of the notice to the Washington Office (WO) Director of Environmental Coordination for use in reporting to the Department. The WO staff uses the notices of intent (exhibit 1) to develop reports of EIS's under preparation.

When the Chief or the Secretary is the resonsible official, the appropriate field unit prepares the notice of intent as soon as practicable after the decision to prepare an EIS (40 CFR 1501.7, 107.3(e), and FSM 1953.1). Send the notice of intent to the Washington Office of Environmental Coordination for review, processing, and submission to the Office of the Federal Register.

*41.2—Federal Register document requirements.* Follow these procedures in submitting a notice of intent to the Office of the Federal Register (OFR):

1. *Format.* a. Use 1½-inch left margin and 1-inch right, top, and bottom margins.

b. Double space the document. Indent 5 spaces for each paragraph. Do not include 4 spaces between paragraphs, as is typical in typing other double-space material.

c. If the notice is longer than one page, center page numbers one inch from the bottom of the page, beginning with page 2.

2. *Signature.* a. The signing official must sign the document over his or her own title. The OFR does not accept or publish documents signed by one official acting "for" another official. The signing official must have delegated authority to sign over his or her title.

b. For field issuances, the signing official must sign the original and each

of the two copies. In the Washington Office, the signing official may sign only the original and the certifying officer certifies the two copies.

c. Stamp or type the signer's name and title below the signature line on all three copies.

d. Enter the date on all three copies.

3. *Copies.* a. The OFR no longer accepts white carbon tissues of originals. Make photocopies or prepare three originals.

b. Do not photocopy documents on both sides of the paper (back-to-back reproduction).

4. *Transmittal.* a. Send original and two copies to the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408.

b. To obtain confirmation of the publication date, attach a note to the notice document giving the name of the Forest Service official and the FTS telephone number the OFR staff is to call, or include this information in a transmittal letter. Exhibit 1 illustrates a properly prepared notice of intent.

**Exhibit 1—Notice of Intent**

3410–11 [1]

DEPARTMENT OF AGRICULTURE

Forest Service

CLOUD TOP MOUNTAIN ALPINE WINTER SPORTS SITE

Star Mountain National Forest Summit County, Colorado

*Notice of Intent to Prepare an Environmental Impact Statement*

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of the proposed Cloud Top Mountain Alpine Winter Sports Site on the Galaxy Ranger District.

The Star Mountain National Forest Land and Resource Management Plan has been prepared.[2] One of the management decisions in the Plan was to study further the development of an Alpine Winter Sports Site on Cloud Top Mountain.

A range of alternatives for this site will be considered. One of these will be nondevelopment of the site. Other alternatives will consider different sizes of development ranging from 4,000 to 10,000 persons at one time. Alternative locations for uphill facilities, ski runs, and support facilities will be considered.

Federal, State and local agencies, potential developers, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the potential winter sports site.

The Forest Supervisor will hold public meetings in his office at the Star Mountain National Forest, Central, Colorado at 1:00 p.m., Saturday, November 3, 1981, and at the Summit County Community Center in Central, Colorado, at 7:00 p.m., Wednesday, November 14, 1981.

William Watson, Regional Forester, Rocky Mountain Region, Denver, Colorado, is the responsible official.

The analysis is expected to take about 10 months. The draft environmental impact statement should be available for public review by (month/year). The final environmental impact statement is scheduled to be completed by (month/year).

Written comments and suggestions concerning the analysis should be sent to William Hill, Forest Supervisor, Star Mountain National Forest, Central, Colorado 80000 by December 15, 1984.

Questions about the proposed action and environmental impact statement should be directed to Phil Graham, Recreation Staff Officer, Star Mountain National Forest, phone 303–234–3800.

Dated: October 13, 1984.

William Watson,

*Regional Forester.*

*41.3—Revision of notices of intent.* The official responsible for preparation of the EIS must notify the appropriate Regional, Station, or Area Environmental Coordinator and the Washington Office Director of Environmental Coordination whenever information shown in the notice of intent changes. Significant changes may require publishing a revised notice of intent in the **Federal Register** (40 CFR 1501.7 and 1507.3(e)). A revised notice of intent shall reference any previously published document relevant to the action being proposed, including the filing of an EIS.

*41.4—Cancellation notice.* If, after publication of a notice of intent or distribution of a draft environmental impact statement, the project application is withdrawn or for some other reason a decision is no longer necessary, publish a cancellation notice (exhibit 1) in the **Federal Register** to terminate the process. The cancellation notice must refer to any previously published notice of intent or notice of availability of an environmental impact statement. Prepare and distribute a cancellation notice in the same manner as the notice of intent (section 41).

**Exhibit 1—Cancellation Notice**

3410–11 [1]

DEPARTMENT OF AGRICULTURE

Forest Service

NORTH SLOPE UNIT PLAN

Star Mountain National Forest Summit County, Colorado

*Environmental Impact Statement Cancellation Notice*

A draft environmental impact statement (EIS) for the North Slope Unit Plan was distributed to the public and filed with the Environmental Protection Agency on July 19, 1979.

I am terminating the EIS process because the Land and Resource Management Plan for the Star Mountain National Forest will consider the issues and concerns involved in the North Slope Unit Plan.

The Forest Plan will be developed according to the regulations for land and resource management plans for the National Forest System (36 CFR Part 219).

This Forest plan will be completed by December 31, 1983, in accordance with the schedule published in the **Federal Register** July 30, 1979, at 48 FR 47861.

Date: December 15, 1982.

William Watson,

*Regional Forester.*

When the Chief or the Secretary is the responsible official, the appropriate field unit prepares the notice as soon as there is a decision to terminate the process and sends the cancellation notice to the Washington Office of Environmental Coordination for review, processing, and submission to the Office of the Federal Register.

*41.5—Lists of Environmental Impact Statements Under Preparation.* Each Regional, Station, and Area Office and the Washington Office keeps a list of environmental impact statements (EIS's) under preparation. Lists are updated with the publication of new notices of intent, revised notices of intent, and cancellation notices (sections 41.1 to 41.4). Exhibit 1 illustrates the required format for a composite list of EIS's under preparation.

**Exhibit 1—Composite List of EIS's Under Preparation**

*42—Environmental impact statements*

*42.1—General preparation standards.*

*42.11—Preparation.* (FSM 1952.1).

*42.12—Page limits.* (40 CFR 1502.7).

*42.13—Writing.* (40 CFR 1502.8).

*42.14—Legislative proposals.* (40 CFR 1506.8 and FSM 1952.1).

[1] This Forest Service billing code is shown on all **Federal Register** documents.

[2] Note that the document has only double space between paragraphs, not 3 lines.

[1] This Forest Service billing code is shown on all **Federal Register** documents.

*42.2—Content standards and recommended format.* An environmental impact statement must contain the following:

1. *A cover sheet.* (40 CFR 1502.11) In addition to the Council on Environmental Quality requirements, the cover sheet must include the name and title of the responsible official and an abstract of the alternatives considered and the preferred alternative. See exhibit 1 for a cover sheet.

**Exhibit 1—Cover Sheet**

2. *A summary.* (40 CFR 1502.12).

3. *A table of contents.*

4. *A statement of purpose and need.* (40 CFR 1502.13).

5. *A description and comparison of alternatives, including the proposed action.* (40 CFR 1502.14).

6. *A description of the affected environment.* (40 CFR 1502.15).

7. *A statement of the environmental consequences of the actions.* (40 CFR 1502.16 and 1502.22) The environmental impact statement (EIS) may discuss physical, biological, economic, and social consequences in terms of quantified or relative changes in components of the affected environment. In addition, it is appropriate to discuss the expected outputs—in terms of goods, services, and uses—that will result from implementing each alternative. In presenting outputs, use standard service-wide terminology as set forth in FSH 1309.11, Management Information Handbook, and in FSM 1905. Use the Resources Program planning time periods where appropriate.

8. *A list of preparers.* (40 CFR 1502.17).

9. *A list of agencies, organizations, and persons to whom copies of the statement are sent.*

10. *An index.* (40 CFR 1502.10(j)) All EIS's must include indexes. The purpose of an index is to make the information in the EIS fully available to the reader without delay. See action 62 for preparation of indexes.

11. *An appendix.* (section 42.51b and 40 CFR 1502.18 and 1503.4).

42.21—*Incorporation of relevant information by reference.* (40 CFR 1502.21).

42.22—*Acknowledgement of incomplete or unavailable information.* (40 CFR 1502.22).

*42.23—Documentation of cost-benefit analysis.* (40 CFR 1502.23).

*42.24—Identification of methodology and scientific accuracy.* (40 CFR 1502.24).

*42.25—Identification in draft environmental impact statements of permits necessary to implement proposal.* (40 CFR 1502.25).

*42.3—Filing, circulation, and availability of environmental impact statements.*

*42.31—Draft environmental impact statement.* (40 CFR 1502.19). After preparation of a draft environmental impact statement (EIS):

1. Circulate a draft EIS to agencies and the public at the same time or before filing it with the Environmental Protection Agency (EPA) in Washington, D.C.

2. Conduct public participation sessions, as appropriate.

3. Review, analyze, evaluate, and respond to substantive comments on the draft EIS. Make copies of all comments available for public and in-Service review in the office of the responsible official or administrative unit affected by the policy, plan, program, or project. (40 CFR 1506.9.)

*42.32—Final environmental impact statement.* 1. File a final EIS with EPA along with all substantive comments, or summaries thereof, on the draft EIS. The Washington Office files statements involving legislation, regulations, multi-agency national actions, and Service-wide policies with EPA. If the Chief or the Secretary is the responsible official, other levels of the Forest Service may assist with the analysis and preparation of documents.

2. Circulate a final EIS to other agencies and the public at the same time or before filing it with EPA. (40 CFR 1506.10.) If the statement is unusually long, a summary may be circulated instead (40 CFR 1500.4(h)). A summary distributed as a separate document (40 CFR 1502.19) must:

a. State how other agencies and the public can obtain or review the complete EIS.

b. Have a cover sheet attached.

After filing the EIS with the EPA, ensure that a reasonable number of copies of the statement are available free of charge (40 CFR 1506.6(f) and FSM 1950.3(4)).

*42.33—Environmental impact statements on Rare II "Further Planning" areas.* If the EIS deals with plans or projects that allocate Rare II "Further Planning" Areas to nonwilderness uses, the responsible official may make public distribution of and file the final EIS with EPA in the same manner as for other EIS's. Send five additional copies of the final EIS to the Washington Office Director of Environmental Coordination for transmittal to congressional committees (section 42.34).

*42.34—Distribution of environmental impact statements.*

*42.34a—Draft and final environmental impacts statements.*

1. *When responsible official is a field officer.* When the responsible official is the Regional Forester, Station Director, Area Director, or Forest Supervisor, send:

a. Five copies to the Environmental Protection Agency (EPA) in Washington, D.C., for filing purposes. Include a transmittal letter. See exhibit 1 for a sample transmittal letter.

b. Fifteen copies to the Washington Office Director of Environmental Coordination.

c. Two copies of the letter transmitting copies to EPA to the Washington Office.

2. *When the Chief is the responsible official.* When the responsible official is the Chief, send:

a. Twenty copies to the Washington Office. (The Washington Office files five copies with EPA.) (Seventy copies of an EIS are needed for wild and scenic river studies.)

b. One original and two copies of the transmittal letter for transmittal to EPA to the Washington Office for the Chief's signature.

**Exhibit 1—Transmittal Letter to EPA**

*42.34b—Lists.* Responsible officials shall ensure the maintenance of lists of individuals, groups, organizations, and government agencies interested in reviewing Forest Service environmental impact statements (EIS's). Regions shall develop specific distribution lists.

Use State and areawide clearinghouses, by mutual agreement, for obtaining reviews of draft EIS's. The responsible official also may communicate directly with appropriate State or local officials or agencies if clearinghouses are unwilling or unable to handle this phase of the process. However, clearinghouses should always receive copies of EIS's.

*42.34c—State and local agencies.* Regions, Stations, and the Area office shall develop and maintain lists of State and local agencies as supplements to this section.

*42.34d—Organizations.* Regions, Stations, and the Area office shall develop and maintain lists of organizations as supplements to this section.

*42.34e—Individuals.* Regions, Stations and the Area office shall develop and maintain, as supplements to this section, lists of individuals who have expressed an interest in receiving Forest Service environmental impact statements (EIS's).

*42.34f—Federal agencies.* Following is the mandatory distribution list for all EIS's prepared by the Forest Service.

Environmental Protection Agency, Mail Code A-104, Room 2119, 401 M Street, SW., Washington, D.C. 20460
Environmental Protection Agency, Appropriate Regional Offices
Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Room 4256, Washington, D.C. 20240.

Always send copies of EIS's to these agencies by certified mail with a return receipt requested or by other methods of delivery where receipt can be verified. This method also may be desirable for other key recipients. Base any other distribution to Federal agencies on agency expertise and legal jurisdiction. Regions, Stations, and the Area shall use the above list and distribute other EIS's as appropriate. When the Forest Service requests review and comments from any of the above agencies, the addresses, phone numbers, and number of copies to send are shown in section 63.1.

*42.4—Corrections, revisions, or supplements.* The standards at 40 CFR 1502.9 govern revision of draft EIS's or supplementation of drafts and finals. Use errata sheets to make any necessary corrections to environmental impact statements (EIS's). Draft EIS's may be revised. Use supplements to modify EIS's if necessary. Prepare, circulate, and file supplements and revisions in the same manner as the document being modified.

*42.5—Environmental impact statement review and comment procedures.*

*42.51—Comments on Forest Service environmental impact statements.*

*42.51a—Draft environmental impact statements.* (40 CFR 1503.1(a)). The responsible officer may accept comments on a draft environmental impact statement (EIS) after the end of the review period and before filing the final EIS. If it is too late to incorporate the comments in the final EIS, the responsible official may respond to them on an individual basis.

*42.5b—Final environmental impact statements.* (40 CFR 1502.9(b) and 1503.4). When the responsible official determines that a summary of responses is appropriate, the summary must reflect accurately all substantive comments received on the draft EIS. Comments that are pertinent to the same subject may be aggregated by categories, but the summary must identify the comment specifically. Avoid a general summary.

As a minimum, include in the appendix of a final EIS copies of all comments received on the draft EIS from Federal, State and local agencies, and elected officials. See exhibit 1 for one example of a summary of substantive comments.

**Exhibit 1—Summary of Substantive Comment**

*42.52—Review of other agency environmental impact statements.* (40 CFR 1503.2 and 1503.3) Because of special agency expertise, the Forest Service may be asked to review and comment on environmental impact statements (EIS's) prepared by other agencies. Unless otherwise assigned by the Chief, officials in the Washington Office shall review and comment on EIS's prepared on legislative proposals, Service-wide policies, regulations, or national program proposals. The Regional Forester or Area Director in whose Region or Area the proposal is located shall review all other draft and final EIS's prepared by other agencies. When an EIS affects both Regional and Area program responsibilities, the Regional Forester and Area Director shall determine who assumes the lead of responding.

The responsible field unit shall submit comments on other agency EIS's directly to the appropriate agency. Send one copy of the comments to the Washington Office Director of Environmental Coordination. When another agency's EIS involves more than one Region, the Washington Office Director of Environmental Coordination coordinates the responses.

*42.52a—Referrals to Council on Environmental Quality.* (40 CFR 1504) When Forest Service review of another agency's draft EIS concludes that the proposed action is environmentally unacceptable, follow the procedures set forth in 40 CFR 1504.3(a).

If after receipt of the final EIS the other agency has not remedied the situation or reached an agreement with the Forest Service, follow the procedures set forth in 40 CFR 1504.3 (b). Send the referral to the Washington Office Director of Environmental Coordination for processing. The Director, through the Office of the Secretary, submits the referral to the Council on Environmental Quality.

The 25-day time period is extremely short; therefore, begin referral documentation immediately after determination that the proposal is environmentally unacceptable.

In addition to the requirements of 40 CFR 1504.3(c), the responsible official shall include a letter to the Council on Environmental Quality requesting the referral for signature by the Secretary of Agriculture.

*43—Other planning and preparation requirements for environmental impact statements*

*43.1—Interdisciplinary approach.* See section 102(2)(A) of the National Environmental Policy Act (NEPA), as amended, 40 CFR 1502.6, and chapter 10 of this handbook.

*43.2—Public involvement.* (40 CFR 1501.7, 1502.25, and 1506.6).

*43.3—Consultation requirements.* (40 CFR 1502.25).

*43.4—Elimination of duplication with state and local procedures.* (40 CFR 1506.2).

*43.5—Federal and federal-state agencies with legal jurisdiction or special expertise.* (40 CFR 1503.1) See section 63 for Council on Environmental Quality's list of agencies with jurisdiction by law or special expertise. See section 63.1 for addresses and recommended document distribution.

*43.6—Limitation on actions during the environmental analysis and documentation process.* (40 CFR 1506.1).

*44—Responsibilities when applicants and contractors are involved* (40 CFR 1506.5). The responsible official may require project proponents to provide data and documentation for consideration and use in preparing an EIS. When a contractor is to prepare an environmental impact statement, limit the contractor's activities to those of interdisciplinary teams (section 06, exhibit 2) participating in the National Environmental Policy Act process. Applicants or contractors may be required to conduct studies to determine the impact of the proposed action on the human environment.

*45—Tiering and adopting other environmental statements*

*45.1—Tiering.* (40 CFR 1502.20). When the responsible official has selected an alternative other than the no-action alternative in a broad program document and a record of decision is prepared, the no-action alternative need not be described in detail in subsequent environmental documents tiered from the parent document unless new information has emerged. Tiered documents may refer to the evaluation of the no-action alternative in the broad program document. However, the decision on site-specific actions must consider the no-action alternative appropriate to that decision.

*45.2—Adoption.* Use adoption procedures, when applicable, to avoid duplication of effort (40 CFR 1506.3).

*46—Determining lead and cooperating agencies*

*46.1—Lead agency.* (40 CFR 1501.5, 1501.6, 1501.7, 1503.1, and 1508.16). If the Forest Service requests the Council on

Environmental Quality to determine which Federal agency shall be the lead agency, send this request to the Director of Environmental Coordination in Washington, D.C., for processing. Where National Forest System lands are involved, the Forest Service shall exert a strong role in the preparation of environmental documents. If the Forest Service is the lead agency, at the earliest possible time, make a written request of all other Federal agencies with jurisdiction by law or special expertise to become cooperating agencies.

*46.2—Cooperating with other agencies.* (40 CFR 1501.6, 1503.2, 1503.3, and 1508.5). When National Forest System lands are involved and the Forest Service is not the lead agency, the reponsible official shall request that the Forest Service be a cooperating agency in scoping, environmental analysis, and documentation. There may be other circumstances where the Forest Service should be a cooperating agency, such as in the administration of the forestry incentives programs. The Forest Service may also be a cooperating agency when State and private forest lands are involved.

If the Forest Service is asked to be a cooperating agency and other program commitments preclude being able to become involved, the responsible official shall prepare a reply to this effect. Send copies of this reply to the Council on Environmental Quality and to the Director of Environmental Coordination in Washington, D.C.

*47—Documentation of decisions*

*47.1—Decision.* Follow the instructions in exhibit 1 on timing decision and other conditions that must be met for EIS's.

**Exhibit 1.—Conditions for Decision**

| If an EIS is required for— | These conditions must be met prior to a decision— |
|---|---|
| I. Land and Resource Management Plans for units of the National Forest System. (36 CFR 219); | |
| A. That *do not* involve RARE II *Further Planning* areas. | 1. 90 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA.<br>2. A final EIS that responds to comments on the draft EIS has been prepared. |
| B. That *do* involve RARE II *Further Planning* areas. | 1. 90 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA.<br>2. A final EIS that responds to comments on the draft EIS has been prepared. |
| II. Plans (other than land management plans), programs or projects adversely affecting the existing wilderness character of RARE II *Further Planning* areas. | 1. 60 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA.<br>2. A final EIS that responds to comments on the draft EIS has been prepared. |
| III. Land management or other plans, programs or projects affecting areas involved in pending legislation for wilderness designation in which either the House or Senate has passed a bill to designate all or any portion of an inventoried roadless area for wilderness or for wilderness study. | 1. 60 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA.<br>2. A final EIS that responds to comments on the draft EIS has been prepared. |
| IV. Other plans, programs or projects subject to appeal (namely, 36 CFR 211.18). | 1. 60 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA.<br>2. A final EIS that responds to comments on the draft EIS has been prepared. |
| V. Actions not subject to appeal, for example, State and Private Forestry and Research programs, etc. (namely, 36 CFR 211.18). | 1. 90 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA.<br>2. A final EIS that responds to comments on the draft EIS has been prepared.<br>3. 30 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA.[1] |

[1] The 90-day period and the 30-day period may run concurrently if a 45-day period for pubiic comment is provided.

*47.11—Record of decision.* A record of decision is a separate, concise document stating the decision of the responsible official. It must include the official's name, location, administrative unit, and a statement indicating whether or not the decision is subject to appeal as well as meet the requirements of the Council on Environmental Quality regulations at 40 CFR 1505.2.

The responsible official signs the record of decision. For decisions subject to appeal, the date of decision is the date the official transmits the record of decision and the final environmental impact statement (EIS) to the Environmental Protection Agency (EPA) and makes it available to the public.

For decisions not subject to appeal, the responsible official must sign, date, and distribute the record of decision no sooner than 30 days after the notice of availability of the final EIS is published in the **Federal Register**. Distribute the record of decision in the same manner as the final EIS.

When an EIS identifies joint lead agencies, the responsible official from each agency shall sign and date the record of decision for those actions within the authority of each. Each responsible official may prepare separate records of decision. See exhibit 1 for a record of decision.

When the Chief or Secretary is the responsible official, the appropriate field unit prepares the record of decision with assistance from Environmental Coordination. Environmental Coordination coordinates the review and signing of the record of decision, involving the appropriate Washington Office staff unit, Deputy Chief, Chief, or Secretary as necessary.

**Exhibit 1.—Record of Decision**

*47.11a—Distribution of records of decision.* Distribute the record of decision to those who have received or have asked to receive the final environmental impact statement (EIS). In addition, the public may be notified as indicated in 40 CFR 1506.6.

## Chapter 50—Implementation and Monitoring

**Contents**

51—Implementing decisions based on environmental assessments.
51.1—Implementation.
51.2—Limitations on implementation.
51.2a—Unprecedented actions or actions similar to those that normally require an environmental impact statement.
51.2b—Actions involving flood plains and wetlands.
52—Implementing decisions based on environmental impact statements.
53—Monitoring.

*51—Implementing decisions based on environmental assessments*

*51.1—Implementation.* Implementation of decisions that do not have effects of national concern (section 33.3) or involve flood plains and wetlands (section 51.2b) may take place immediately after signing and dating of the decision notice. Implementation includes responding to any requirements for mitigation or monitoring included in the environmental assessment or decision notice.

*51.2—Limitations on implementation.*

*51.2a—Unprecedented actions or actions similar to those that normally require an environmental impact statement.* (40 CFR 1501.4(e)(2).) When a proposed action is similar, or closely similar, to one that normally requires an environmental impact statement or when the nature of a proposed action is without precedent, do not implement the decision until after the decision notice and finding of no significant impact have been available for public review (including State and areawide clearinghouses) for 30 days.

At the end of the 30-day period consider public comment and implement the decision or publish a notice of intent to prepare an environmental impact statement.

*51.2b—Actions involving flood plains and wetlands.* For actions involving wetlands, do not implement decisions until 30 days after the decision notice has been signed and dated. This delay allows a reasonable period of public review as required by Executive Order 11988 and Executive Order 11990.

*52—Implementing decisions based on environmental impact statements.* Be sure that the conditions listed in exhibit 1 are met prior to implementation of the decision if an environmental impact statement is prepared. Commitments for mitigation efforts or monitoring activities included in the final EIS and record of decision also must be met.

**Exhibit 1—Condition for Implementation**

*53—Monitoring*

(40 CFR 1505.3) Implement and monitor action to ensure that:

1. Environmental safeguards are executed according to plan.

2. Necessary adjustments are made to achieve desired results.

## Chapter 60—References

Contents

61—Environmental factors.
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67—Office of Management and Budget Circulars.
67.1—OMB Circular, A–95 process.
68—State and local agencies (Reserved).

This chapter contains various guidelines and reference documents essential to conducting environmental analysis or preparing environmental documents.

*61—Environmental factors*

The following list identifies environmental factors that may need to be considered in data and information collection during environmental analyses. Few, if any, analyses deal with all of these factors. The classification into physical, biological, economic, and social factors is arbitrary and is not mandatory.

*61.1—Physical factors.*

1. Location.
2. Geomorphic/physiographic.
a. Geologic hazards.
b. Unique land forms.
3. Climate.
4. Soils.
a. Productivity.
b. Capability.
c. Hazard.
(1) Erodibility.
(2) Mass failure.
5. Minerals and energy resources.
a. Locatable minerals.
b. Leasable minerals.
c. Energy sources.
6. Visual resources.
7. Cultural resources.
a. Archaeological.
b. Historical.
c. Architectural.
8. Wilderness Resources.
9. Wild and scenic rivers.
10. Water resources.
a. Water quality.
b. Streamflow regimes.
c. Flood plains.
d. Wetlands.
e. Ground water recharge areas.
11. Air quality.
12. Noise.
13. Fire.
a. Potential wildlife hazard.
b. Role of fire in the ecosystem.
14. Land use—including prime farm, timber and rangelands.
15. Infrastructure improvements.
a. Roads.
b. Trails.
c. Utility corridors and distribution.
d. Water collection, storage, and distribution.
e. Communications systems.
f. Solid waste collection and disposal.
g. Sanitary waste collection and disposal.
g. Sanitary waste collection and disposal.

*61.2—Biological factors.*

1. Vegetation.
a. Forest, including diversity of tree species.
b. Rangeland, including conditions and trends.
c. Other major vegetation types.
d. Threatened or endangered plants.
e. Research natural area (RNA) potentials.
f. Unique ecosystems (other than RNA's).
g. Diversity of plant communities.
h. Noxious weeds.
2. Wildlife.
a. Habitat.
b. Populations.
c. Threatened or endangered species.
d. Diversity of animal communities.
e. Animal damage control.
3. Fish.
a. Habitat.
b. Populations.
c. Threatened or endangered species, including State-listed species.
4. Recreation resources (usually a combination of physical and biological factors).
5. Insects and diseases.
6. Exotic organisms; for example, Russian thistle, Siberian ibex.

*61.3—Economic factors.*

1. Economic base.
2. Employment/unemployment.
3. Housing.
4. Land-use requirements.
5. Community service requirements.
6. Revenue base.
a. Local general government.
b. Special service districts.
7. Plans and programs of other agencies.
8. Income.
a. Sources.
b. Amounts.
c. Distribution.
9. Cost.
a. Financial analysis (who pays for what-when).

61.4—Social factors.

1. Population dynamics.
a. Size (growth, stability, decline).
b. Composition (age, sex, minority).
c. Distribution and density.
d. Mobility.
e. Displacement.
2. Social institutions.
a. Educational.
b. Family.
c. Economic.
d. Political.
e. Military.
f. Religious.
g. Recreation/leisure.
3. Special concerns.
a. Minority (civil rights).
b. Historic/archaeological/cultural.
4. Ways of life—defined by.

a. Subcultural variation.
b. Leisure and cultrural opportunities.
c. Personal security.
d. Stability and change.
e. Basic values.
f. Symbolic meaning.
g. Cohesion and conflict.
h. Community identity.
i. Health and safety.
5. Land tensure and land use.
6. Legal considerations.

*62—Indexing standards*

Preparation of an index is a specialized task. Consider using an experienced indexer, rather than the author of the environmental impact statement, to prepare the index. The author(s) can assist the indexer by suggesting subject headings and indicating their relative importance. Contacts with local publishing firms, colleges, and universities may be useful in locating experienced indexers.

*62.1—Definitions.* The following definitions are derived from a publication on British Standards for Indexing (B.S. 3700:1964) and are used in this section of the handbook.

1. *Index.* A systematic guide to the text, comprising a series of entries, with headings arranged in alphabetical order and with references to show where each indexed item appears in the text.

2. *Entry.* A unit of the index consisting of a heading and at least one reference to the location of the item in the text (or with a cross-reference to another entry to the index).

3. *Heading.* The word(s) or symbol(s) selected from, or based on, an item in the text—specifically the initial word or keyword, for example:

Fish
Fishing
Water

4. *Subheading.* The word(s) or symbol(s) under which references in a complex entry are located specifically, for example:

Fish (Heading)
Trout (subheading)
Rainbow (subheading)

5. *Reference.* The number of the section or page where the item is to be found in the body of the material indexed.

6. *Cross-reference.* A direction from one heading or subheading to another heading.

7. *"See" cross-references.* A direction from one heading (after which there are no references) to an alternative heading, under which there are all the relevant references to an item in the text. "See" cross-references usually are for synonyms, or near-synonysm for example, "Impacts, see Effects." Also use "see" cross-references when the "inverted form" of heading is used, for example: Human environment, see Environment, human.

8. *"See also" cross-references.* A direction from one heading (after which there are references) to any additional heading(s) under which further relevant references to an item, in the text are to be found, for example: "Environment, natural (see also Environment, physical) * * * "reference 89". (Note: the reference "89 above indicates that natural environment appears on page 89 of the text.

*62.2—Length.* The length of an index usually relates to the length of the text material. Because indexes are usually in smaller type than the text, it is customary to express the index length in number of lines and to compare this to the number of lines in the text. Generally, the length of the index shall be from 4 to 8 percent of the number of lines in the document. Example: If an environmental impact statement is 105 pages long (including the Appendix, but not the Table of Contents), and there are 45 lines per page, the total length of the document would be 4,725 lines. The index shall be from 190 to 390 lines in length.

*62.3—Layout.* Use of the "set out" system of subheadings is recommended. In this system, the heading is flush with the left margin of the list; indent subheadings three spaces, and indent subsubheadings another three spaces. Place comma after headings with subheadings, but not after headings without subheadings. Use a line of dots to connect the headings and the reference. Align references with the right margin of the list. Example:

EPA. See Environmental Protection Agency environment.
Biological ..... 32–39
Economic ..... 17–21
Human ..... 2
Social ..... 21–23
Environmental Protection Agency ..... 2, 7, 16

If the list of references is too large to fit on one line, list only the first reference on the line which the heading and subsequent references on subsequent lines, for example,

Environmental Protection Agency...2, 7, 16, 93–95, 101

A long series of references is discouraging to readers. If possible, limit the number of references to five for each entry. This can be done, in most cases, by increased use of subheadings.

Use of smaller than normal size type is customary for indexes. Because most environmental impact statements are printed from camera-ready material typed on a standard typewriter, it is possible to create smaller-than-normal size type only by reducing the page of copy to a smaller size before printing. An index originally typed on 12" x " 15¾" paper, with double-size margins, in two columns of material, can be reduced to 8" x 10½" and still be legible.

*62.4—Conventional practices.* These are generally accepted indexing standards:

1. Leave a blank line between the last heading in one letter of the alphabet and the first heading in the next letter.

2. Use upper and lower case headings as appropriate.

3. The table of contents of the environmental impact statement (EIS) is not subject to indexing.

4. Index footnotes, the bibliography, and the appendix.

5. If paragraphs are numbered, it is permissible to use paragraph numbers as well as the page numbers for references. Place paragraph numbers in parentheses immediately following the heading, for example, Environment, man's (3.25) . . . 36. The introduction to the index should explain that this is the practice followed. If pages are not numbered, references shall be to numbered paragraphs of the EIS. Clearly state this practice at the bottom of each page of the index.

6. Index compound headings of two or more words under the words that are likely to be most useful to prospective readers and that are still consistent with the general construction of the index.

7. Use a noun as the heading, or subheading, rather than an adjective, when choice is available, for example, "criteria, evaluation" rather than "evaluation criteria." If, as in the example above, the term is a subject-matter heading in the EIS, or is otherwise likely to be searched for in the index, use a "see" reference after the heading that begins with the adjective, for example, Evaluation Criteria, see criteria, evaluation."

8. When possible, avoid having separate entries under both the singular and plural forms of a noun. Use "(s)," "(ies)" after the entry and list all appropriate references, for example:

Index(es) ..... 72–91

9. References:

a. List references in page order, for example, 7, 23, 29, 56.

b. It is permissible, but not necessary, to emphasize "more important" references by underlining them in typed copy, or by printing them in boldface type. The introduction to the index should explain the use of this practice.

c. When there is scattered mention of the subject on several pages, the reference shall list each of the pages, for example, 63, 64, 67, 72.

d. When several pages deal continuously with the subject, the reference shall be to the first and last pages, for example 63–72.

e. When the reference is to a subject that starts on one page and continues to the next page, list both pages for example 63–4.

f. When listing pages, repeat 10's and 100's only when there is any possibility of misunderstanding, for example:

Use 121–6 rather than 121–26, 13–17 rather than 13–7, 97–101 rather than 97–1, or 97–01, 125–31 rather than 123–131

10. Use letter-by-letter alphabetization, particularly for compound word headings; that is, treat all letters in the heading as if they were in a single word. For example, treat Red Cross as if it were spelled redcross. If in doubt about the order of listing of entries, check a current dictionary and use the system used there.

11. Proper names require special attention:

a. Do not invert a proper name just so that the noun is usable as the heading, for example "Desolation Wilderness" is preferable to "Wilderness, Desolation"; or to "Wilderness (Desolation)"; "Sierra Club" is preferable to "Club, Sierra"; "Western Timber Association" is preferable to "Association, Western Timber."

b. For names of people, list the last name before the name and initials, for example: "Peterson, R. Max" or "Peterson, R. M.," rather than "R. Max Peterson" or "R. M. Peterson."

c. If in doubt about the listing of names of people, firms, or organizations, consult the telephone directory for their listing.

12. If initials are used in the text, the index heading also shall use the initials with a "see" reference to the full name, for example:

"EPA, see Environmental Protection Agency"

13. List headings consisting of initials only at the head of the letter division of the index, for example:

EPA, see Environmental Protection Agency environment,
- Biological ..... 32–39
- Economic ..... 17–21
- Social ..... 21–3

Environmental Protection Agency ..... 2, 7, 16

14. When entries start on one page and continue on the next page, (or start in one column and continue in the next column) repeat the heading followed by "(continued)."

15. When referencing footnotes, follow the page reference with a small "n" for example, 117n.

*62.5—Methodology.* The following suggestions may be useful when specialist indexing services are not used.

1. Index from final typed copy, not from earlier drafts.

2. Use 3" × 5" cards with a separate entry on each card. Keep the cards arranged alphabetically in a file box.

3. Plan on at least three readings of the text.

4. Determine the approximate length of the index and after completing about one-fourth of the text (on the first review), check the number of entries to see if the length will be approximately that which is desired.

5. Check references carefully during the last review of the text. Check to be sure that a series of "see" references does not take the reader back to the original reference.

6. Carefully proofread the final typed index against the original text.

*62.6—References.* The following reference may be useful for further understanding of the practice of indexing: Council of Biology Editors, 1983 "CBE Style Manual" Fifth Edition, published by the Council of Biology Editors, Inc. It is possible to purchase the CBE Style Manual by contacting the Special Publication Department of the Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, Maryland 20814, (301) 530–7158. They require prepayment.

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[FR Doc. 84–24989 Filed 9–20–84; 8:45 am]
BILLING CODE 3410–11–M

federal register

Friday
September 21, 1984

Part V

# Department of Education

34 CFR Part 628
Endowment Grant Program; Final Rules

## DEPARTMENT OF EDUCATION

### 34 CFR Part 628

### Endowment Grant Program

**AGENCY:** Department of Education.

**ACTION:** Final regulations with comments invited; amendments.

**SUMMARY:** The Secretary issues final regulations amending regulations for the Endowment Grant Program. The Secretary takes this action in order to correct the text of previously published regulations. The regulations are necessary to implement the Endowment Grant Program, authorized by section 333 of Title III of the Higher Education Act of 1965 (HEA), as amended by the Challenge Grant Amendments of 1983, Pub. L. 98–95.

**DATES:** *Effective Date:* These regulations take effect either November 5, 1984 or later if the Congress takes certain adjournments. If you want to know the effective date of the regulations, call or write the Department of Education contact person.

Comments on these amendments postmarked on or before October 22, 1984.

**ADDRESS:** Comments should be sent to Mr. Thomas Keyes, Institutional Aid Program, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20024.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Keyes, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20024. Telephone: (202) 245–2384.

**SUPPLEMENTARY INFORMATION:** On July 12, 1984, at 49 FR 28520, the Secretary published final regulations with comments invited for the Endowment Grant Program. The Secretary publishes these amendments to correct and clarify the formula in the selection criteria in § 628.31(a)(4) of the final regulations and to clarify the duration of the period a grantee has to raise matching funds.

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations.

The Secretary published a notice of proposed rulemaking for the Endowment Grant Program on March 5, 1984 (49 FR 8184). The comments and the Secretary's responses were summarized in an appendix to the final regulations with comments invited, which was published on July 12, 1984.

An error was contained in the revised formula in § 628.31(a)(4) of the final regulations. Since this error would affect the manner in which the Secretary awards points to an applicant for an endowment grant, it is essential that the Secretary immediately correct the error.

In the preamble to the final regulations, the Secretary explained that the Administration had submitted proposed legislation to the Congress to permit funds appropriated for the Endowment Grant Program to remain available until expended. This was done to allow a granteee eighteen months, from the time it is selected to receive a grant, to raise the required matching funds. Because the Congress has not granted authority for these funds to remain available until expended, the Secretary must change the language in § 628.41(b) to clarify how long the period for raising matching funds may be.

Due to the technical nature of these amendments, the brief time period remaining for application and selection, and previous opportunities afforded for public comment, the Secretary has determined that public comment on these amendments is impracticable, unnecessary, and contrary to the public interest and is not required under 5 U.S.C. 553(b)(B). However, comments on these amendments will be considered along with other comments on the final regulations.

### List of Subjects in 34 CFR Part 628

Colleges and universities, Education, Grant Programs—Education.

Dated: September 14, 1984.

**T.H. Bell,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.031 Institutional Aid Programs)

The Secretary amends Part 628 of Title 34 of the Code of Federal Regulations as follows:

## PART 628—ENDOWMENT GRANT PROGRAM

1. Identical corrections are made in §§ 628.31(a)(4)(i) and 628.31(a)(4)(ii), appearing in the first column of 49 FR 28523 (July 12, 1984), as follows:

**§ 628.31 What selection criteria does the Secretary use in evaluating an application for an endowment grant?**

a. The words "change in" in the first line of each paragraph are changed to "amount of".

b. The words "for the four-year period" in the second and third lines of each paragraph are deleted.

c. In the third line of each paragraph, "(i)" is inserted between "(3)" and "of".

d. Following the authority citation insert "(Approved by the Office of Management and Budget under control number 1840–0531.)"

2. In § 628.41 paragraph (b) introductory text is revised to read as follows:

**§ 628.41 What are the obligations of an institution that the Secretary selects to receive an endowment grant?**

* * * * *

(b) Before the Secretary disburses grant funds and not later than a date established by the Secretary through a notice in the **Federal Register** (which date may not be later than the earlier of the last day of availability of appropriations or eighteen months after an institution has been notified that it has been selected to receive a grant), an institution shall—

* * * * *

[FR Doc. 84–24955 Filed 9–20–84; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
September 21, 1984

Part VI

# Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Petroleum Dry Cleaners; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[AD-FRL-2494-7]**

## Standards of Performance for New Stationary Sources; Petroleum Dry Cleaners

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

**ACTION:** Final rule.

**SUMMARY:** Standards of performance for petroleum dry cleaners were proposed in the **Federal Register** on December 14, 1982 (47 FR 56118). This action promulgates standards of performance for petroleum dry cleaners. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that petroleum dry cleaners cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed petroleum dry cleaner facilities to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

**EFFECTIVE DATE:** September 21, 1984.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

**ADDRESSES:** *Background Information Document.* The background information document (BID) for the promulgated-standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Petroleum Dry Cleaners-Background Information for Promulgated Standards" (EPA–450/3–82–012b). The BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

*Docket.* A docket, number A–80–2, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

**SUPPLEMENTARY INFORMATION:**

### The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

For convenience this will be referred to as "best demonstrated technology".

The best demonstrated technology for petroleum dry cleaners is a combination of work practices and equipment. A performance standard for this source category is not practical due to economic limitations. The instrumentation and procedures for measuring emissions from the affected facilities are well demonstrated; however, the cost of these measurements precludes their use as a compliance provision in regulating the relatively small plants common to the petroleum dry cleaning industry.

The standards require the installation and use of solvent recovery dryers when dryers are installed at affected petroleum dry cleaning plants. In addition, the standards require the use of cartridge filters for each affected plant installing solvent filtration systems, and used filter cartridges must be drained for at least 8 hours in their closed housing prior to disposal.

The standards do not apply to small petroleum dry cleaning plants. To determine whether petroleum solvent washers, dryers, filters, settling tanks, and vacuum stills are subject to these standards, the total dryer capacity of the plant is calculated by adding the manufacturer's rated dryer capacity (kilograms or pounds of clothing articles per load, dry weight) for each existing and proposed new dryer that will be in service after the proposed equipment commences operation. If the total manufacturer's rated dryer capacity is less than 38 kilograms (84 pounds), the proposed new, modified, or reconstructed dry cleaning equipment is exempt from the requirements of the standard.

The owner or operator of an affected recovery dryer is required to conduct an initial 2-week test to demonstrate that the recovered solvent flow rate from the solvent recovery dryer is 0.05 liters per minute or less at the termination of the recovery cycle. The owner or operator also is required to maintain a record of this test. No emission tests are required.

### Summary of Environmental, Energy, and Economic Impacts

The standards will reduce the cumulative nationwide VOC emissions from petroleum dry cleaners through the first 5 years following promulgation of the standards by an average of 22,700 megagrams (25,000 tons) or 41 percent, relative to baseline emissions (i.e., emissions in the absence of the standards). In the fifth year following promulgation of the standards, the average reduction in nationwide VOC emissions resulting from the standards will be 7,600 megagrams (8,400 tons). The standards will result in negligible adverse water, noise, radiation, and solid waste impacts.

The standards will reduce the steam and electrical energy consumption at dry cleaning plants affected by the standards by about 187 terajoules (175 billion Btu's) in the fifth year following promulgation of the standards. This reduction in plant energy consumption results from the lower steam and electrical demands of the solvent recovery dryer as compared to those of conventional dryers.

The capital costs for the petroleum dry cleaning industry will increase by $1.6 million in the fifth year following promulgation of these standards. The cumulative capital cost attributable to the standard for all affected facilities constructed through the first 5 years following promulgation will be $8.2 million. The annualized costs for the industry will decrease by $3.6 million in the fifth year following promulgation, as a result of the savings due to the value of the petroleum solvent recovered by the recovery dryer. The 5 year cumulative annualized cost will be a savings of $10.9 million. No adverse economic impacts are expected to result from the promulgated standards.

**Public Participation**

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (46 FR 55000, November 5, 1981) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the Petroleum Dry Cleaning standards recommended for proposal. This meeting was held on December 2, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed in the **Federal Register** on December 14, 1982 (47 FR 56118). The preamble to the proposed standards discussed the availability of the background information document (BID), "Petroleum Dry Cleaners—Background Information for Proposed Standards," (EPA–450/3–82–012a), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. The preamble to the proposed regulation provided notice of opportunity for public hearing to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards. No request for public hearing was received. The public comment period was from December 14, 1982 to February 14, 1983.

Four comment letters were received concerning issues relative to the proposed standards of performance for the petroleum dry cleaning industry. The comments have been carefully considered and, where determined to be appropriate, changes have been made in the proposed standards.

**Significant Comments and Changes to the Proposed Standards**

Comments on the proposed standards were received from the petroleum dry cleaning industry, State and local air pollution control agencies, and industry trade associations. A detailed discussion of these comments and responses can be found in the background information document (BID), which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble under the following headings: Safety of Solvent Recovery Dryers, Format for the Exemption, and Leak Detection and Repair.

*Safety of Solvent Recovery Dryers*

One commenter representing three dry cleaning industry trade associations questioned the safety of solvent recovery dryers, which are required by the standard to control emissions of volatile organic compounds (VOC) from dryers. He acknowledged that the question had been investigated early in the standard development process. At that time, the safety of the recovery dryer was adequately demonstrated by industry operating experience and Factory Mutual Research Corporation's certification that the technology conformed to the National Fire Protection Association's (NFPA) guidelines. However, since proposal of the standard, two explosions of solvent recovery dryers have occurred. The commenter requested, therefore, that no action to finalize the standard be taken until these incidents were fully investigated.

The use of both solvent recovery and conventional dryers presents risks of explosions or fires because petroleum solvent is a highly flammable liquid. Petroleum dry cleaners minimize these incidents by removing metal articles and other objects that might ignite the solvent from clothes prior to dry cleaning. However, when the solvent does ignite, fires tend to occur in conventional dryers while minor explosions tend to occur in solvent recovery dryers. This later tendency led to a careful evaluation of solvent recovery dryer safety before the standards of performance were proposed. The investigation identified 19 cases of solvent recovery dryer explosion. However, in each of these cases the safety features designed into the solvent recovery dryer had safely vented the explosion with only minor damage to the dryer itself.

Factory Mutual Research Corporation's certification for insurance underwriting that solvent recovery dryers complied with the NFPA code in combination with industry operating experience indicated that the safety of solvent recovery dryers was adequately demonstrated to consider them as a basis for standards of performance. As discussed in the **Federal Register** at proposal, however, decisions concerning safety are in the hands of safety officials, and standards of performance will not require the use of any device safety officials consider unsafe.

Since proposing the standard, two explosions of solvent recovery dryers have occurred (see Docket Items IV–B–1 and IV–B–2). These incidents differ from those investigated before proposal of the standards because the force of these explosions reportedly caused the loading door assembly panel to break away from the dryer. The detached panels, weighing about 300 to 400 pounds, were found at a distance of 8 to 10 feet from the dryers.

The domestic recovery dryer manufacturer and Factory Mutual Research Corporation were asked to investigate these explosions and to comment on whether their previous judgments concerning the safety of solvent recovery dryers have changed in light of their new findings. Both the manufacturer and Factory Mutual Research Corporation agreed to do so.

After its investigation, the manufacturer developed a front panel restraining device for use on both existing and new solvent recovery dryers. Factory Mutual tested the modified dryer and concluded that the dryer meets both the NFPA and Factory Mutual's safety codes. As a result, both the manufacturer and Factory Mutual consider that the safety of solvent recovery dryers has been adequately established. Therefore, the basis of the promulgated standard remains the use of a solvent recovery dryer. Further, since the issue of safety of recovery dryers has been resolved through the safety review procedures, no reason exists to delay action on the standard.

*Format of the Exemption Level*

One commenter requested that the small plant exemption level incorporated into the definition of an affected facility be expressed in terms of dryer capacity rather than solvent consumption as in the proposed standards. The commenter felt that the dryer capacity format would be simpler and easier to apply.

The solvent consumption format for the exemption level in the proposed standards was established in response to industry comments received at the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) meeting in December 1981. As expressed at that time, the primary concerns of the industry were that the exemption level should be: easily understood, unambiguous, and based on a parameter that already exists at the plants rather than a parameter that requires additional monitoring and recordkeeping. The industry felt that annual solvent consumption met these requirements and, as a result, recommended the use of an exemption expressed in terms of annual solvent consumption.

It is clear, however, that an exemption expressed in terms of dryer capacity is better than one expressed in terms of annual solvent consumption. Compared with solvent consumption, dryer capacity requires substantially fewer recordkeeping requirements. The manufacturer's rated capacity is either stamped on the name plate of each individual piece of equipment or readily available from the equipment specifications provided by the manufacturer. The determination of whether the standard applies to a particular facility is made by simple comparison of the rated capacity for the proposed unit (or collective capacities for proposed multiple unit installations) to the applicability criterion. The approach is straightforward and easily verifiable. It also is simpler because no projection of expected future solvent use is required as with solvent consumption. For these reasons, the exemption contained in the final standard is structured in terms of dryer capacity.

The exemption level is 38 kilograms (84 pounds) of manufacturer's rated dryer capacity. This capacity is derived directly from the 60,000 kilograms (132,170 pounds) of clothes cleaned per year breakeven level established in the economic analysis (see derivation in Docket Item No. IV–B–3) and is equivalent to the 17,800 liters (4,700 gallon) per year solvent consumption exemption level in the proposed standard.

The derivation involves assumptions about average or typical operating schedules and load factors (i.e., days per year, loads per day, and the ratio of actual load weight to rated capacity). However, because the economic breakeven analysis incorporates a number of conservative assumptions (including the use of a 5-year amortization period) the standard will not endanger the economic viability of affected dry cleaners. It is important to remember that, at the breakeven point, a dry cleaner that purchases and operates a solvent recovery dryer will have net annualized costs exactly equal to those of purchasing and operating the much less expensive conventional dryer. Moreover, plants with throughput levels near the breakeven level would have essentially the same financial conditions as would plants at the breakeven level. For example, a plant with a throughput of 2,270 kilograms (5,000 pounds) below the 60,000 kilograms (132,170 pound) breakeven level would have a cost increase of $200 compared to the breakeven level. This difference represents less than 1 percent of the plant's earnings. Selection of the 38 kilogram (84 pound) manufacturers' rated dryer capacity criterion, therefore, is reasonable and sufficient to mitigate any adverse economic impacts that could result from the new source performance standard.

The total manufacturers' rated capacity was selected as the basis for the small plant exemption because it is a readily identifiable parameter that is indicative of the actual quantity of clothes cleaned at a particular dry cleaning establishment (i.e., the clothes throughout). The exemption is incorporated into the standard to avoid potential adverse economic impacts on small commercial dry cleaning plants that may not have sufficient revenues to obtain financing for the solvent recovery dryers required by the standard. Because the total manufacturers' rated dryer capacity is an indicator of the clothes throughput level, it is an indicator of the revenues generated by a particular plant and therefore the plant's ability to finance recovery dryers. Because the total plant throughput determines the revenues generated by the plant, it is the total dryer capacity of the plant that has been made the basis for the exemption level. Provisions have been added to the regulation promulgated in today's **Federal Register** to clarify which dryers are considered in determining the total manufacturers' rated dryer capacity.

For a proposed new plant the applicability determination is simple. The total manufacturers' rated dryer capacity is the summation of the name plate capacities of each proposed new dryer. When an existing plant is expanding, the total manufacturers' rated dryer capacity is the summation of the name plate capacities of each proposed new dryer and each existing dryer that will remain in service after the proposed expansion commences operation. In the situation where existing dryers are being replaced, the same "in service" rule applies for the determining applicability. Since the dryer that is being replaced is to be removed from service, its capacity is not included in determining the total manufacturers' rated capacity of the plant.

An existing dryer clearly cannot be in service if it is sold or destroyed. Similarly, an existing dryer should be considered to be out of service if it cannot be repaired. The intent is to include in the calculation of the total manufacturers' rated dryer capacity those dryers that will or could contribute to the plant's overall capacity to dry clean clothes and thereby generate revenues.

The change in the format of the exemption decreases the recordkeeping burden of the standard. To determine whether a facility is qualified for an exemption under the solvent throughput criterion in the proposed standard, the owners or operators were required to maintain records of solvent purchases. Since the format of the exemption has been changed in the final standard to the total manufacturers' rated dryer capacity, the unnecessary solvent purchase recordkeeping requirement has been removed from the standard. Because the manufacturer's rated dryer capacity can be read from the dryer name plate(s) or is readily available from the manufacturer, no special recordkeeping requirement is needed in the final standard.

*Leak Detection and Repair*

The proposed standard included a provision for periodic inspections of affected facilities and prompt repair of identified petroleum solvent leaks (Reference: Proposed 40 CFR 60.622(c); 47 FR 56127). However, in their review of the standard under Executive Order 12291, OMB found the leak detection and repair provision to be inconsistent with the objectives of the Executive Order. Specifically, OMB suggested that there are sufficient economic incentives for dry cleaners to recover leaking solvent and that a mandatory inspection cycle is unnecessary. While the Agency agrees with OMB that there is a natural economic incentive for inspection and leak repair, some dry cleaners may nonetheless allow leaks to go undetected and unrepaired for longer than economically and evironmentally desirable. Consequently, the Agency has replaced the requirement for mandatory inspection every 15 days with a requirement that equipment manufacturers inform equipment purchasers that the EPA recommends frequent inspections and prompt repair of leaks. This provision requires that the manufacturers of each affected dryer, washer, filter, still, and settling tank constructed after promulgation specify in the operating instructions, and in a conspicuous location on the equipment itself, suggested procedures for inspecting equipment on a 15-day schedule and for repairing identified petroleum solvent liquid and vapor leaks within 15 working days. In addition, the EPA urges State and local air quality regulatory authorities to require 15-day petroleum solvent leak detection and repair for owners and operators of affected facilities under their jurisdiction. The EPA believes that the manufacturers' labeling requirement

along with leak detection and repair requirements by the State and local air quality regulatory authorities are adequate to ensure the prompt detection and repair of petroleum solvent leaks and the corresponding reduction in emissions of volatile organic compounds.

### Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review except for interagency review materials [Section 307(d)(7)(A)].

### Miscellaneous

The effective date of this regulation is September 21, 1984. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal, December 14, 1982.

As prescribed by Section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that dry cleaning contributes significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining the best demonstrated technology. The economic impact assessment is included in the BID for the proposed standards.

In addition to economics, the cost effectiveness of alternative standards were also evaluated in order to determine the least costly way to reduce emissions and to assure that the controls required by this rule are reasonable relative to other VOC regulations. In this case, the proposed and promulgated standards would reduce the dry cleaners' operating costs and produce an average 5 year total cost effectiveness savings of $470 per megagram of VOC emission reduction. Additional detail on costs can be found in the BID.

Information collection requirements associated with this regulation (those included in 40 CFR Part 60, Subpart A and Subpart JJJ) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0079.

Under Executive Order 12291, the EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." Because the recommended control equipment results in the recovery of solvent which would otherwise be lost, the effect of this regulation is to reduce costs. No increase in the price of dry cleaning services attributable to implementation of these proposed standards is expected. The Agency has, therefore, concluded that this regulation is not a "major rule" under Exeuctive Order 12291.

### Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Determination of the need to perform a Regulatory Flexibility Analysis is based upon the consideration of three factors: (1) The maximum size of a small business, (2) the number of small businesses affected, and (3) the expected economic impacts.

The Small Business Administration has several definitions for small businesses. In the case of service industries such as petroleum dry cleaners, "small" is defined as having revenues less than or equal to $2 million. Almost all petroleum dry cleaners qualify as small businesses under this definition, except for large industrial plants.

However, as previously discussed, only dry cleaning plants with annual dry cleaning throughputs less than or equal to 62,700 kilograms (138,000 pounds) of articles would have difficulty financing the equipment requirements of these standards. These dry cleaning plants are exempt from the standards. Dry cleaning plants with throughputs above this level would have lower costs and higher profits as a result of the standards. Therefore, because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic Fibers.

Dated: September 6, 1984.

**William D. Ruckelshaus,**

*Administrator.*

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

The Code of Federal Regulations Title 40, Part 60 is amended by adding a new Subpart JJJ as follows:

### Subpart JJJ—Standards of Performance for Petroleum Dry Cleaners

Sec.

60.620 Applicability and designation of affected facility.
60.621 Definitions.

Sec.

60.622 Standards for volatile organic compounds.
60.623 Equivalent equipment and procedures.
60.624 Test methods and procedures.
60.625 Recordkeeping requirements.

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411, 7601(a)], and additional authority as noted below.

## Subpart JJJ—Standards of Performance for Petroleum Dry Cleaners

### § 60.620 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 38 kilograms (84 pounds): Petroleum solvent dry cleaining dryers, washers, filters, stills, and settling tanks.

(1) When the affected facility is installed in an existing plant that is not expanding the manufacturers' rated capacity of its petroleum solvent dryer(s), the total manufacturers' rated dryer capacity is the summation of the manufacturers's rated capacity for each existing petroleum solvent dryer.

(2) When the affected facility is installed in a plant that is expanding the manufacturers' rated capacity of its petroleum solvent dryers, the total manufacturers' rated dryer capacity is the summation of the manufacturers' rated dryer capacity for each existing and proposed new petroleum solvent dryer.

(3) When the affected facilty is installed in a new plant, the total manufacturers' rated dryer capacity is the summation of the manufacturers' rated dryer capacity for each proposed new petroleum solvent dryer.

(4) The petroleum solvent dryers considered in the determination of the total manufacturers' rated dryer capacity are those new and existing dryers in the plant that will be in service at any time after the proposed new source or modification commences operation.

(b) Any facility under paragraph (a) of this section that commences construction or modification after December 14, 1982, is subject to the requirements of this part.

### § 60.621 Definitions.

As used in this subpart, all terms not defined herein shall have the same meaning given them in the Act and in subpart A of this part.

"Cartridge filter" means a discrete filter unit containing both filter paper and activated carbon that traps and removes contaminants from petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Dryer" means a machine used to remove petroleum solvent from articles of clothing or other textile or leather goods, after washing and removing of excess petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Manufacturers' rated dryer capacity" means the dryer's rated capacity of articles, in pounds or kilograms of clothing articles per load, dry basis, that is typically found on each dryer on the manufacturer's name-plate or in the manufacturer's equipment specifications.

"Perceptible leaks" means any petroleum solvent vapor or liquid leaks that are conspicuous from visual observation or that bubble after application of a soap solution, such as pools or droplets of liquid, open containers or solvent, or solvent laden waste standing open to the atmosphere.

"Petroleum dry cleaner" means a dry cleaning facility that uses petroleum solvent in a combination of washers, dryers, filters, stills, and settling tanks.

"Settling tank" means a container that gravimetrically separates oils, grease, and dirt from petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Solvent filter" means a discrete solvent filter unit containing a porous medium that traps and removes contaminants from petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Solvent recovery dryer" means a class of dry cleaning dryers that employs a condenser to condense and recover solvent vapors evaporated in a closed-loop stream of heated air, together with the piping and ductwork used in the installation of this device.

"Still" means a device used to volatilize, separate, and recover petroleum solvent from contaminated solvent, together with the piping and ductwork used in the installation of this device.

"Washer" means a machine which agitates fabric articles in a petroleum solvent bath and spins the articles to remove the solvent, together with the piping and ductwork used in the installation of this device.

### § 60.622 Standards for volatile organic compounds.

(a) Each affected petroleum solvent dry cleaning dryer that is installed at a petroleum dry cleaning plant shall be a solvent recovery dryer. The solvent recovery dryer(s) shall be properly installed, operated, and maintained.

(b) Each affected petroleum solvent filter that is installed at a petroleum dry cleaning plant shall be a cartridge filter. Cartridge filters shall be drained in their sealed housings for at least 8 hours prior to their removal.

(c) Each manufacturer of an affected petroleum solvent dryer shall include leak inspection and leak repair cycle information in the operating manual and on a clearly visible label posted on each affected facility. Such information should state:

> To protect against fire hazards, loss of valuable solvents, and emissions of solvent to the atmosphere, periodic inspection of this equipment for evidence of leaks and prompt repair of any leaks is recommended. The U.S. Environmental Protection Agency recommends that the equipment be inspected every 15 days and all vapor or liquid leaks be repaired within the subsequent 15 day period.

### § 60.623 Equivalent equipment and procedures.

(a) Upon written application from any person, the Administrator may approve the use of equipment or procedures that have been demonstrated to his satisfaction to be equivalent, in terms of reducing VOC emissions to the atmosphere, to those prescribed for compliance within a specified paragraph of this subpart. The application must contain a complete description of the equipment or procedure; the testing method; the date, time and location of the test; and a description of the test results. Written applications shall be submitted to the Administrator, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(b) The Administrator will make a preliminary determination of whether or not the application for equivalency is approvable and will publish a notice of these findings in the **Federal Register**. After notice and opportunity for public hearing, the Administrator will publish the final determination in the **Federal Register**.

### § 60.624 Test methods and procedures.

Each owner or operator of an affected facility subject to the provisions of § 60.622(a) shall perform an initial test to verify that the flow rate of recovered solvent from the solvent recovery dryer at the termination of the recovery cycle is no greater than 0.05 liters per minute. This test shall be conducted for a duration of no less than 2 weeks during which no less than 50 percent of the dryer loads shall be monitored for their final recovered solvent flow rate. The suggested point for measuring the flow rate of recovered solvent is from the

outlet of the solvent-water separator. Near the end of the recovery cycle, the entire flow of recovered solvent should be diverted to a graduated cylinder. As the recovered solvent collects in the graduated cylinder, the elapsed time is monitored and recorded in periods of greater than or equal to 1 minute. At the same time, the volume of solvent in the graduated cylinder is monitored and recorded to determine the volume of recovered solvent that is collected during each time period. The recovered solvent flow rate is calculated by dividing the volume of solvent collected per period by the length of time elapsed during the period and converting the result with appropriate factors into units of liters per minute. The recovery cycle and the monitoring procedure should continue until the flow rate of solvent is less than or equal to 0.05 liter per minute. The type of articles cleaned and the total length of the cycle should then be recorded.

(Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414))

**§ 60.625 Recordkeeping requirements.**

Each owner or operator of an affected facility subject to the provisions of this subpart shall maintain a record of the performance test required under § 60.624.

(Approved by the Office of Management and Budget under the Control Number 2060–0079.)

(Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414))

[FR Doc. 84–24748 Filed 9–20–84; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
September 21, 1984

Part VII

# Department of the Interior

Minerals Management Service

30 CFR Parts 210, 212, 217, 218, 219, 228, 229, 241, and 243

Implementation of the Federal Oil and Gas Royalty Management Act of 1982; Final Rule

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## Implementation of the Federal Oil and Gas Royalty Management Act of 1982

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements in part the Department of the Interior's authorities under the Federal Oil and Gas Royalty Management Act of 1982, which was enacted to ensure that all oil and gas produced on Federal and Indian lands is properly accounted for and that all revenues resulting from that production are collected and distributed properly. This rulemaking applies only to those sections of that Act that establish the duties and responsibilities of the Minerals Management Service Royalty Management Program.

**EFFECTIVE DATE:** October 22, 1984.

**ADDRESS:** Any inquiries should be sent to: Deputy Associate Director for Royalty Management Policy, Minerals Management Service (MS 660), 12203 Sunrise Valley Drive, Reston, Virginia 22091.

**FOR FURTHER INFORMATION CONTACT:** Orie L. Kelm (703) 860–7511, (FTS) 928–7511.

**SUPPLEMENTARY INFORMATION:** The principal author of this rulemaking is Robert E. Boldt, Associate Director for Royalty Management, MMS.

### I. Background

In mid-1981, the Secretary of the Interior appointed the Commission on Fiscal Accountability of the Nation's Energy Resources (Commission) which produced a report in January 1982 making 60 specific recommendations for improvement to DOI's royalty management effort, including improved accounting, stricter penalty provisions for noncompliance, enhanced site security requirements on Federal and Indian leases, and new methods of seeking out and preventing potential oil theft. The Commission recommended in its final report that the Administration introduce legislation to implement those Commission recommendations which were not authorized by law and to update those statutory provisions which had become outmoded over the years. The Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 97–451, 30 U.S.C. 1701 *et seq.*, and subsequently referred to herein as "the Act") serves as the culmination of the efforts of the Department of the Interior to improve the processes by which it collects and accounts for bonuses, rents, and royalties on Federal and Indian oil and gas leases.

On September 20, 1983 (40 FR 42902), the MMS issued proposed regulations to implement its new authorities under the Act. Prior to publishing this proposed rule, the MMS held extensive informal meetings with producers, States, Indian tribes, and other affected groups to receive the maximum possible input on the form of the regulations. In response to the proposed rulemaking, the MMS received comments from 29 lessees and other interested persons. All of these comments were considered carefully in preparing these final regulations. Included in this preamble is a discussion of the important comments on a section-by-section basis.

These rules are not the only rules to be issued under the Act. As the MMS gains experience with compliance problems under the new Auditing and Financial System (AFS) and the Production Accounting and Auditing System (PAAS), it intends to propose additional enforcement and penalty regulations. Other changes to the rules implemented today also may be necessary.

Moreover, the MMS is not the only part of DOI with responsibilities under the Act. The MMS regulations concern royalty on oil and gas production and the collection, accounting, and distribution of royalty and rental payments from Federal and Indian lands. Regulations dealing with other topics within the Act (e.g. lease management and site security) are issued by other offices of DOI. On September 16, 1983 (48 FR 41738), the Bureau of Land Management (BLM) issued proposed rules pertaining to its responsibilities under the Act. Final rules are being issued concurrently with these rules.

### II. Summary of Rules Adopted

The following sections summarize the most significant provisions of the regulations being adopted today. Most of the rules being adopted are substantially the same as the proposed rules. Therefore, much of the discussion in the preamble to the proposed rules applies to the final rules. Where significant changes are being made to the final rules, they are discussed in this preamble.

*Part 212.* The provisions of Part 212, authorized by Section 103 of the Act, reaffirm required recordkeeping, including requirements for the submission of certain data to MMS.

This part indicates the types of records which must be maintained by the lessee, operator, revenue payor, or other person, establishing that these records must be maintained for a 6-year period. A further requirement of this Part is that records be maintained in paper or in a reproducible form such as microfilm, microfiche, or electronic imagery, and be available for inspection and review on a ready basis. Records to be maintained also include computer programs, automated files and systems support documentation.

*Part 217.* This part is authorized by Section 101 of the Act and establishes the authority of the Secretary to carry out audits on all aspects of the performance of lessees, operators, revenue payors, and other persons (including third parties) under the terms of Federal and Indian oil and gas leases. The part also establishes priority for the reconciliation of all lease accounts specifically identified by a State or Indian tribe as having a significant potential for underpayment.

*Part 218.* The provisions of Part 218, authorized by Sections 102, 103, and 111 of the Act, deal with the timing and method of royalty payments and establishment of regulations for the submission of royalty payments under the new Auditing and Financial System (AFS) being operated by MMS at its Royalty Management Accounting Center (RMAC) in Lakewood, Colorado.

In addition, this part establishes provisions for the payment of interest charges for late or underpaid royalty payments and identifies the way in which such interest charges will be calculated.

A charge of $10.00 may be assessed for reports not received by MMS by the designated due date. A charge of $10.00 may also be assessed for reports that are received by the due date but are incorrect. For purposes of the Auditing and Financial System (AFS), a report is defined as each individual required transaction code for each Accounting Identification Number (AID), Product Code, and Selling Arrangement.

This part further indicates that States will be exempted from interest or penalties found to be payable by the DOI to small refiners if it is determined that DOI failed to comply with the Emergency Petroleum Allocation Act of 1973 with respect to crude oil taken by the Secretary as in-kind royalty oil and then sold to small refiners under the provisions of the Mineral Leasing Act or the Outer Continental Shelf Lands Act.

This part further clarifies that when the Department, as a result of litigation or a negotiated settlement, pays a claim

resulting from alleged failure to comply with the Emergency Petroleum Allocation Act of 1973, as amended, the portion of that claim which can be identified as having been paid to a State under the shared royalty provisons of the Mineral Leasing Act of 1920 will be deducted from future share revenues to be paid to the State until the State's share of that claim has been satisfied.

*Part 219.* The regulations for this part, authorized by Sections 104 and 105 of the Act, deal with the timing and payment to States and Indian tribes of their share of MMS collected royalties, rents, and bonuses, and establish the terms under which interest will be paid to a State if mineral revenues are not disbursed promptly, by MMS, in accord with the Act.

This part also describes the types of reports which will be provided to States and Indian tribes, identifying the source of and amounts distributed to the States and Indian tribes on a monthly basis.

*Part 228.* This part, authorized by Section 202 of the Act, establishes provisions by which States and Indian tribes may enter into cooperative agreements with DOI to conduct audit activities. Under the provisions of the regulations, 50 percent of the cost of cooperative activities carried out under this part would be reimbursed by the Department. The 50 percent share provided by the State or Indian tribes can be provided in cash or in the way of in-kind contributions as defined in normal Government accounting practices.

Under these regulations, a cooperative agreement is for a period of 3 years with a possible extension of an additional 3 years if mutually agreed to by both parties. The regulations also indicate that a State may concurrently carry out activities under both Sections 202 and 205 of the Act.

The proposed rulemaking contained a provision allowing the Secretary to increase funding to a level of 100% for cooperative agreements with certain Indian tribes showing extreme need. Upon reflection, it was decided that the needs to administer such a provision would create an administrative nightmare which would be self-defeating to the coopreative provisions of the Act.

Discussion with representatives of Indian tribes who have indicated an interest in pursuing cooperative agreements under this part indicate willingness to participate at the 50% level assuming the acceptance of in-kind contributions which are authorized by other provisions of this part. Therefore, the provisions authorizing 100% funding has been dropped from the final regulations.

These regulations also indicate, as provided in Section 206 of the Act, that 50 percent of any civil penalty collected by MMS under the activities authorized by Sections 202 and 205 of the Act will be shared with States or Indian tribes. However, the amount of that civil penalty will be deducted from the Federal share of any funding provided for in a cooperative agreement with a State of Indian tribe or a delegation of authority to a State.

These regulations also establish that funding under the provisions of Sections 202 and 205 of the Act is subject to the availability of appropriations.

*Part 229.* This part, authorized by Section 205 of the Act, establishes regulations dealing with the delegation of certain authorities to the States to conduct investigations and audits with respect to all Federal lands within a State and to those Indian lands for which the State has received specific delegation of authority from the tribe or from individual Indian allottees.

These regulations establish requirements for factfinding and hearings on the part of the Department before a delegation is made to a particular State. These regulations specify that the term of delegation is for a period of 3 years with a possible extension for an additional 3 years on the mutual agreement of both parties. Requirements for recordkeeping and reporting from States involved in a delegation are also included as well as a provision for an annual audit of the State's activities carried out under the provisions of the delegation.

As required by the Act, allowable costs incurred by the State under the delegation of authority will be reimbursed 100 percent by the Federal Government.

*Parts 228 and 229.* Section 203 of the Act authorizes regulations establishing the types of information which can be provided to States and Indian tribes under a cooperative arrangement dealing with the sharing of trade secrets and proprietary and confidential information.

*Part 241.* The regulations for Part 241, authorized by Section 109 of the Act, establish the process for the assessment and collection of civil penalties.

The primary intent of the penalty process is to elicit, to the greatest extent possible, voluntary compliance with MMS paying and reporting requirements as reflected by low error rates and timely paying and reporting.

*Part 243.* The purpose of this section is to provide and appeal mechanism for any MMS Royalty Management Program order or directive.

*Sections of the Act for which regulations have not been formulated.* There are a number of provisions of the Act for which specific regulations have not been formulated because the statutory language itself is self-explanatory or the language of the Act is advisory and does not require regulatory language to implement it. In other instances, the Department will reference an existing regulation as meeting the requirements of the Act.

*Relationships to other statutes and regulations.* Regulations are being issued by two separate bureaus of DOI; therefore, certain provisions of the Act will ultimately be implemented by regulations found in 43 CFR and 30 CFR Subchapter B (the offshore operating regulations) as well as in this Subchapter A of 30 CFR which, when fully completed, will provide a compendium of regulations relating to the royalty management process.

The subpart letter designations of the regulations indicate applicability to onshore or offshore matters, or both.

**III. Comments Received on Proposed Rules—General**

The proposed rulemaking published September 20, 1983, provided for a 30-day public comment period which ended October 20, 1983. All comments received during that time period are addressed in this section, and the text of these regulations has been changed to reflect comments as appropriate.

Two commentors felt that the 30-day comment period was too short. Since the MMS conducted extensive informal discussions with many interested parties prior to formulating the proposed rules, a longer formal public comment period was not considered necessary.

One commentor stated that the regulations should be prospective rather than retroactive.

The MMS agrees and the regulations are prospective with the exception of audits and certain appeals procedures. Audits, by their very nature, must involve looking back at historical records. See preamble § 243.2 for explanation of retroactive application to appeals.

One commentor objected to the burden that the rules will place on small nonoperating lessees and royalty payors, particularly the reporting and paying requirements.

Lessees and royalty payors may elect to have the operator or purchaser submit the required payments and reports to MMS. However, as required by the Act, those assuming paying and reporting obligations must comply with MMS reporting and paying requirements.

Further, the lessee will remain ultimately responsible for all payments and reports from the lease.

**IV. Comments Received on Proposed Rules—Specific by Section**

*Part 210—Forms and Reports*

*Section 210.51 Payor information forms.* Ten commentors found difficulty with the timing of reporting requirements (submission of Form MMS–4025). Most of these commentors noted that the requirement for submission within 30 days after issuance of a new lease or a change in the paying responsibilities of the lease conflicts with § 218.52 which requires notification within 60 days rather than 30 days. All commentors favored the longer 60-day period.

The MMS's new computerized Auditing and Financial System (AFS) cannot properly track payment responsibilities without current and accurate Form MMS–4025 data. Consequently, the MMS must receive these forms within 30 days as required at § 210.51. The MMS understands that all the data required on Form MMS–4025 cannot always be provided within 30 days, especially in the case of newly issued leases. Nevertheless, the MMS will require the submittal of that form with the best data available at the time of submittal (at a minimum, MMS must be told who is to be the interim designated payor). An amended resubmittal should be made at a later date when lessee/payor responsibilities are changed. Section 218.52 has been revised from 60 days to 30 days to conform with § 210.51.

*Section 210.52 Report of sales and royalty remittance.* Four commentors suggested that changes be made to this section to permit early payments.

The MMS agrees and this has been done.

One commentor suggested that the requirement for payment and reporting by the end of the second month be extended to the first business day of the following month, when the last day of the month falls on a weekend or holiday.

The MMS had to revise this section to eliminate the confusion that was associated with different time requirements for payment and payor information forms. The revised § 210.52 now requires payment by the end of the month following the production month. No extension to the succeeding month will be permitted.

One commentor recommended changing the section to restrict its applicability to rentals from MMS-managed leases and to exclude former BLM leases from Form MMS–2014 and electronic funds transfer requirements.

The MMS agrees in principle with the comment. In April 1984, MMS assumed responsibility for the collection of rentals on nonproducing onshore Federal leases. A new accounting system, the Bonus and Rental Accounting Support System (BRASS), was developed to account for all nonproducing leases. Eventually, most nonproducing leases on which rentals are being paid will be moved to the BRASS system, eliminating the need for the submission of the Form MMS–2014 for rentals from nonproducing leases. In the interim, those nonproducing leases maintained in the AFS will require the submission of Form MMS–2014. Electronic Funds Transfer (EFT) will not be required for the payment of rentals, except for first year rentals paid with the four-fifths portion of the offshore lease bonus bids.

One commentor stated that, contrary to this regulation, payments must continue to be made by the end of the first month following the production month due to the terms of existing leases.

The MMS has revised this part to require payment by the end of the first month following the production month.

One commentor stated that Form MMS–2014 reporting requirements should be expanded to permit submission of the data via magnetic tape.

MMS agrees and the required wording change has been made.

*Part 212—Records and Files Maintenance*

*Section 212.50 Required recordkeeping and reports.* Three commentors addressed the 6-year requirement for recordkeeping. One favored it; a second objected to it as being too long; and the third suggested that MMS not have a policy to audit back more than 2 years since older records would be burdensome to retrieve.

The 6-year recordkeeping requirement is provided by Section 103(b) of the Act. A 2-year limitation is impractical and incompatible with statute of limitation requirements found in Federal and State law.

*Section 212.51 Records and files maintenance.* One commentor stated that NTL–1, 1A, and 5 and the Act as shown in paragraph (a) should not be referenced for recordkeeping requirements. Rather, the commentor states the recordkeeping requirements given at those locations should be fully spelled out in these regulations.

Subsequent changes to the Royalty Management regulations will incorporate the records and files maintenance requirements of existing orders and notices.

One commentor responded favorably to the provision in paragraph (b) that lessees and operators are only required to retain payment records for the period that the recordholders have paying or operating responsibility on the lease. A second objected to this provision stating that lessees should always be responsible for complete recordkeeping for the full 6-year period and also that operators or other persons required to keep records generated during the time they had paying or operating experience be required to keep records for the full 6-year retention period.

Upon reexamination of the wording of paragraph (b), MMS has changed the text of the final regulation. All records pertaining to the lease must be retained for a period of 6 years even if paying or operating responsibilities have ceased. However, the lessee or operator remains responsible only for the records generated during its period of operating or paying responsibility. The text of the subsection has been revised accordingly, MMS has also changed paragraph (c) by adding the term "revenue payor" to make clear that any person or entity who makes mineral revenue payments to MMS, but has no other obligations under the lease, is covered by these regulations.

Three commentors stated that a reasonable period of time should be permitted for producing records since historical records are often stored offsite.

MMS agrees and the wording has been changed accordingly in paragraph (c) of § 212.51.

*Part 217—Audits and Investigations*

*Section 217.50 Audits of records.* Three commentors stated that words should be added to this section indicating that no more than one auditing or investigating entity should be conducting an audit at the same time as required by Section 301 of the Act.

Section 301 of the Act "recommends" that care be taken to prevent multiple audits by different entities (MMS, States, OIG, etc.) from taking place concurrently. However, it does not prohibit such concurrent audits. In conformity with the Act, it is the policy of MMS to avoid concurrent or uncoordinated audits, if possible. MMS feels it is unnecessary to state this in the regulations.

One commentor suggested that MMS consider a policy of auditing lease

records within 24 months after the end of the reporting period to be audited. It was claimed that audits going back more than 2 years are too burdensome, especially respecting records retrieval.

MMS will make the audits as current as possible but the 6-year audit cycle is in keeping with standard industry and Government auditing practices.

One commentor suggested adding the words "during the time period set out in § 212.50," to the end of the paragraph to clarify that audits will not look back further than the recordkeeping requirements.

The MMS will not audit further back than records are required to be maintained unless the recordholder has been notified in writing of a continued investigation or audit which requires that the records be maintained for a longer period of time. Paragraph (b) of § 212.51 gives sufficient clarification.

One commentor stated that audits should be final so that reaudits would be neither necessary nor authorized by MMS.

MMS agrees that normal practice does not require reaudits, but cannot state that there will never be reaudits.

One commentor stated that 180-days' notice of audit should be given along with information about what specific items will be audited.

A 6-month notice requirement of an impending audit is unreasonable. MMS will give reasonable time for furnishing records, depending on the circumstances of each audit.

*Section 217.51 Lease account reconciliation.* One commentor stated that the same time constraints should apply to MMS for lessee overpayments as apply to lessees for underpayments in regard to reconciliation of lease accounts.

MMS has a program for reconciling all lease accounts with open balances within a specified period of time. All overpayments, as well as underpayments, will be resolved as a result of that program.

See comments on § 218.54 for further discussion.

*Part 218—Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government*

*Section 218.50 Timing of payment.* A total of 20 comments were received concerning this issue in paragraph (a). Nineteen commentors supported the proposed change to 60 days in the payment cycle and suggested that the 60-day cycle be made applicable to all Federal and Indian oil and gas leases. One commentor objected to the extension of time from 30 to 60 days for payments on leases.

The commentors in favor of the 60-day payment period would all benefit financially from such an extension. The Federal Government, States and Indian tribes would suffer a loss of substantial revenues. The Government's original proposal to extend the payment period was prompted by its desire to obtain more accurate reporting and payment data from lessees/payors. This was consistent with the recommendations of the Commission on Fiscal Accountability of the Nation's Energy Resources. However, because the huge loss of revenue to the Federal Government, States, and Indian tribes would be so significant as compared to an unknown higher degree of accounting accuracy, the MMS will not extend the payment due date as proposed. The MMS will rely on a system of assessments for incorrect or late reporting and paying. This final regulation is in agreement with present lease payment terms.

One commentor stated that § 218.50(b) was not clear as to whether separate royalty checks or EFT payments would be required for Indian allotted leases and for Indian tribal leases.

MMS has made the required clarifying change now found at § 218.51(f).

One commentor stated that the word "payment" should be inserted instead of "royalty" at subparagraph (b)(2) of § 218.50, because Indian tribes receive payments other than royalties.

MMS agrees and this has been done and moved to paragraph (f) of § 218.51.

One commentor questioned if the term "format" included in subparagraph (b)(3) refers to Form MMS–2014.

The word "format" as used in this subparagraph (now § 218.51(f)(2)) does refer to Form MMS–2014.

*Section 218.51 Method of payment.* Three commentors requested a change in the text of paragraph (a). Specifically, they asked that we delete the proposed language which was in parentheses: "(OCS bonuses . . . of the Part)" and replace it with a new § 218.51(c) referencing 30 CFR 218.155 (formerly 30 CFR 256.13) which would clarify that payments on nonproducing leases are not required to be made by EFT.

MMS has made a clarifying change. However, a new subsection (c) for this purpose was not deemed necessary.

Two commentors were confused about rental payments for onshore non-producing leases. One contended that they are to be made to BLM (as required by lease terms) and the other was not sure whether they were to be made to BLM or to MMS and, if to MMS, to which MMS office.

Changes that have been made to the section should eliminate that confusion. Beginning in April 1984, all rental payments on *all* nonproducing Federal leases, except first year rentals and bonuses for onshore leases and except for the six excepted land categories listed below, will be paid to MMS–RMAC at Lakewood, Colorado. The six excepted land categories are: Coos Bay—Wagon Road; Oregon and California Grant Lands; Alaska National Petroleum Reserve; Taylor Grazing Act Districts; BLM National Grasslands; and South half of the Red River—Oklahoma Lands.

One commentor suggested that nonproducing lease rental payments be excluded from the EFT requirements.

This has been done. However, such payments can be made by EFT at the option of the payor, if approval is obtained prior to use of EFT from the MMS–RMAC in Lakewood, Colorado.

One commentor stated that there was confusion about the payment level for determining the $50,000 threshold for making payment by EFT. Another commentor objected to combining multiple lease payments to reach an aggregate amount.

Payment level is to be determined by payor number. Whenever the aggregate amount of royalties due on a given day for a single payor (any entity assigned a payor number by MMS) equals or exceeds $50,000, the payment *must* be made by EFT.

One commentor stated that the amount triggering the EFT payment requirement should be $100,000 not $50,000. Another commentor stated that all payors should be allowed to make payments by any payment method they choose providing the payment is timely and in the proper amount.

Neither of the above two comments are acceptable to MMS since the intent of requiring payment of amounts of $50,000 or more by EFT is to ensure the earliest availability of funds to the U.S. Treasury.

Two commentors recommended that the list of alternative methods for remittance of less than $50,000 in paragraph (b) include payment by means of EFT.

The MMS agrees and payment by EFT has been included as an alternative optional method for amounts under $50,000.

One commentor stated that paragraph (b) is unclear as to whether payments could include combined payments from more than one lease.

Payments could include combined payments from more than one lease. See paragraph (f)(2) of § 218.51 of the final rule.

*Section 218.52 Designated payor.* Five commentors noted that the proposed 60-day period for notifying MMS of paying responsibility or any change in paying responsibility conflicts with the 30 day reporting period at § 210.51.

This section has been amended to 30 days to conform to § 210.51 requirements. For an explanation of the 30-day requirement, see the discussion of comments on § 210.51 given above.

One commentor contended that in the case of joint lessees, no single lessee must be assigned as the "designated payor."

The MMS must have a "payor" or "payors" assigned for the proper operation of its new computerized accounting system.

*Section 218.53 Division of interest.* Eight commenters stated that MMS should change the provision that division of interest documents be submitted at the end of the second month following the "date of the contract" to the end of the second month following the "date of the first production or sale," since industry practice is not to prepare such documents until production is imminent, particularly in the case of gas.

Four commentors suggested that the time period be extended from 60 days (end of second month) to 120 days for submission of division of interest documents to allow time to resolve problems of title documentation.

One commentor felt that the reference relating division orders to "contracts for sale of products" is misleading. "Contracts for sale of products," the commentor states, are not always identical to division orders describing the leaseholders' interest in the lease. This commentor also felt that the submission of Form MMS–4025 under § 210.51 should provide sufficient information and make the submission of division of interest documents unnecessary.

Four commentors stated that all State laws do not require division of interest documents.

In view of comments received on this issue, MMS will not include the specific requirements for submission of Division of Interest Documents in this rulemaking.

*Section 218.54 Late payments and underpayments.* One commentor suggested that the regulations be modified to specify that late payments and underpayments be determined at the Accounting Identification Number (AID) level.

MMS disagrees; late payments and underpayments are assessed at the AID, product code, and selling arrangement levels. If all lines on a Form MMS–2014 are paid late, then the late payment billing is rolled up to reflect that the entire Form MMS–2014 is late, rather than identifying every line as being late. In those instances where only certain lines on Form MMS–2014 are reported and paid late, the late payment billing identifies each late line.

Two commentors stated that the same rules and interest rates should apply to overpayments as to underpayments. One other commentor suggested that overpayments be credited against underpayments before assessing any penalties or interest.

In those instances where estimated payments exist, a payor's reported royalties are compared with estimated payments an interest is billed where royalties exceed estimate. In that process, overpayments and underpayments are netted at the payor level for Federal leases and at the lease level for Indian leases prior to calculating interest. In those instances where estimates do not exist, however, each AID is independently reviewed for late payment. There is no offsetting in that case.

One commentor suggested that the interest not be assessed on late payment or underpayments when they are not the fault of the lessee.

MMS agrees. If a late payment or underpayment is not the fault or the lessee in the judgment of MMS, assessment of interest will be waived.

One commentor suggested that the word "daily" be added after the word "computed" in paragraph (c) of the proposed rule.

MMS agrees that daily compounding of interest for late payments and under payments is required by Section 6621 of the Internal Revenue Code.

*Section 218.55 Interest payments to Indians.* One commentor stated that since Indians will be receiving payments other than royalties, the term "monies" should replace the term "royalties" in paragraph (a) of § 218.55.

Revised paragraph (a) reads: "All interest collected from late payments on Indian tribal or allotted leases will be paid to the tribe or allottee."

*Section 218.56 Assessments for incorrect or late reports and failure to report.* Eight comments concerning proposed paragraphs (a) and (b) stated that the penalties were too severe because of the line-by-line cumulative/additive nature of the proposed system. One comment stated that the penalties were too small at $10.00 per day and that they should be increased to $50.00 per day and be made mandatory, not discretionary.

The MMS has decided to retain the rule as proposed except for nomenclature changes believing that conscientious payors will not commit sufficient errors to become unduly burdened by assessments while careless payors will be encouraged to improve their paying and reporting by the levying of assessments in a consistent and progressive manner. The commentor believing the assessments were too small apparently failed to note the line-by-line cumlative/additive nature of the system.

Four commentors stated that this section should be deleted because any civil penalty authority of the Secretary related to royalty payment and accounting has been subsumed into and/or preempted by Section 109 of the Act.

MMS disagrees with this interpretation of the Act. Section 304(a) of the Act provides that the penalties and authorities of the Act are supplemental to, and not in derogation of, any penalties or similar authorities in other laws. The Secretary's authority for the assessments provided by §218.56 is derived not from the Act, but from the Secretary's responsibilities to administer the Mineral Leasing Act, the Outer Continental Shelf Lands Act, and other mineral leasing laws.

*Section 218.103 Payments to States.* One commentor stated it is not clear who is to pay the interest charge to the State. Would it be the entity disputing the monies held in suspense?

MMS has responsibility for paying interest on suspended amounts to the State.

One commentor stated that interest on suspended amounts should be calculated beginning at the time of deposit of the suspended amounts and not beginning on the calendar day that such amounts would normally have been paid to the States as shown in paragraph (c).

MMS disagrees. The Act (Section 104) is clear that interest accrues only *after* a payment is deemed late under the provisions of the legislation dealing with timely payments to the States and tribes.

*Section 218.104 Exemption of States from certain interest and penalties.* One commentor said the middle sentence of paragraph (b) as proposed should be deleted because it conflicts with § 111(e) of the Act.

The commentor has misread § 111(e). The first sentence of that section deals only with interest or penalties, e.g., treble damages, which might be assessed against the Government. The second sentence of § 111(e) clearly

states that the State share in any refunds of overpayments, whether a result of settlement or pursuant to a judicial or administrative order. Paragraph (c) of § 218.104 carries out the intent of the Act in that regard.

*Part 219—Distribution and Disbursement of Royalties, Rentals, and Bonuses*

*Section 219.100 Timing of payment to States.* One commenter objected to the definition of the last business day of the month as including the first working day of the succeeding month when the month ends on a weekend or holiday. The commentor contends this is contrary to Section 104(a) of the Act.

The MMS agrees and paragraph (b) has been deleted.

*Section 219.101 Receipts subject to an interest charge.* Implementation of the provisions of this section is dependent upon the availability of appropriated funds.

One commentor stated that paragraph (a) should be clarified by adding a new paragraph (c) to read as follows:

"(c) Included in paragraph (a) are revenues which cannot be disbursed to the State because the payor/lessee provided incorrect, inadequate, or incomplete information to MMS, which prevented MMS from properly identifying the payment to the proper recipient."

MMS agrees. Paragraph "(c)" has been added accordingly.

One commentor stated that the lessee should not have to pay such interest since it will already have been paid to MMS.

This section does *not* apply to lessees or royalty payors.

*Section 219.103 Payments to Indian accounts.* One commentor claimed that the proposed "inequitable" changes in payment date (§ 218.50(a)) are compounded by the wording of this section giving the Government an entire month after warranting of funds by the Treasury to effect the distribution of funds to Indian accounts. This commentor contends further that this is contrary to the Act (30 U.S.C. 1714), Section 104(b).

It is the MMS policy to follow the intent of Section 104(b) of the Act which states that "Deposits of any royalty funds derived from the production of oil or gas from, or allocated to, Indian lands shall be made by the Secretary to the appropriate Indian account at the earliest practicable date after such funds are received by the Secretary but in no case later than the last business day of the month in which such funds are received." Section 219.103 reflects this change.

*Section 219.104 Explanation of payments to States and Indian tribes.* One commentor stated that MMS should provide Indian tribes the same information that MMS is providing to the BIA. That commentor also recommended that the language used should track with that of Section 219.104(a) by reading as follows:

"Explanation of payment reports shall be provided to BIA on hehalf of tribes and individual Indain allottees, and directly to tribes, not later than the last business day of the month in which MMS disburses the Indian share of the royalties and related monies."

Where the BIA has a direct trust responsibility for a tribe or allottee, MMS provides data to BIA to support mineral leasing payments. To duplicate this information would create an unnecessary burden on MMS and in some instances on royalty payors. The information is readily available to tribes and allottees from BIA.

*Part 228—Cooperative Activities With States and Indian Tribes*

*Section 228.5 Delegation of authority.* One commentor felt that these sections are ambiguous and might permit States or Indian tribes to assess penalties directly instead of MMS.

MMS does not intend to delegate penalty assessment authority to States or Indian tribes.

One commentor expressed concern about the problem of dual or even triple oversight of lessees' activities. The commentor recommended MMS exercise ultimate authority when the overseeing entities are in disagreement.

MMS agrees with this comment and has ultimate responsibility for minimizing duplication. However, MMS does not have responsibility for audits being performed by the Office of the Inspector General.

*Section 228.6 Definitions.* One commentor stated that specific language should be added to the definition of the word "audit" to clarify the ability of a State to extend the audit process to review the accounting transaction involved in the recording and distribution of Federal mineral royalties, bonuses, and rentals.

MMS disagrees. MMS is subject to audit only by the properly authorized entities established by Congress and the Executive Branch.

One commentor stated that the reconciliation of leases prior to conversion to AFS should be closed for leases previously reported to Los Angeles, Metairie, and Tulsa. Another commentor stated that audits should not be applied retroactively.

MMS agrees in part with the first comment but disagrees with the second. Account reconciliations for accounts formerly managed by Los Angeles, Metairie, and Tulsa have been completed and all accounts reconciled. These leases as well as all other Federal leases will continue to be subject to audit for a 6-year period for other potential audit issues, other than account balances, that may be found.

*Section 228.100 Entering into an agreement.* Two commentors expressed concern that audits conducted by States or Indian tribes would not be properly regulated by MMS.

MMS believes that adequate controls do exist and that MMS will provide the required oversight. Section 228.104 of the proposed rule is now contained at § 228.100 of the final rule.

*Section 228.101 Terms of agreement.* This section which was § 228.100 of the proposed rule is now at § 228.101 in the final rule.

Three commentors discussed paragraph (d): One commentor stated that any in-progress audit activity should be completed prior to termination by MMS of a cooperative agreement in order to avoid duplication of effort later.

MMS would endeavor to follow this advice whenever possible but cannot guarantee that it can be accomplished in every situation. Care will be taken to avoid duplication of effort.

One commentor stated that there should be provisions for "emergency" termination of cooperative agreements by MMS in a timeframe shorter than 120 days.

MMS feels that any such provisions would be unfair to States or Indian tribes insofar as MMS had previously determined that they were eligible and able to conduct audits and investigations under the cooperative agreement.

One commentor recommended changing the word "the" in the proposed rule to "any" in the last sentence of paragraph (d) of § 228.101. The commentor suggested this change to provide for the instance where no submission has been made.

MMS agrees and has made the suggested change in paragraph (d) of § 228.101 of the final rule.

*Section 228.102 Establishment of standards.* This section which was § 228.101 of the proposed rule is now at § 228.102 in the final rule.

Two commentors suggested that a sentence be added to read: "Where an auditor is permanently assigned to a lessee/payor, contact by the State and Indian tribal auditors with the lessee/

payor shall be through the auditor in residence."

MMS agrees. The sentence is added.

One commentor stated support for the provision that State and Indian tribe standards must *not* be more stringent than those of MMS.

MMS agrees. All audit work performed under cooperative audits will follow MMS established standards.

One commentor suggested that draft standards established under this section be published in the **Federal Register** for public comment.

MMS intends to publish the standards for public comment.

*Section 228.103 Maintenance of records.* This section, which was § 228.102 of the proposed rule, is now at § 228.103 final rule.

One commentor contends that State requirements for recordkeeping must not be more stringent than MMS requirements.

MMS requirements will cover all cooperative audit activities.

*Section 228.104 Availability of information.* This section, which was § 228.103 of the proposed rule, is now at § 228.104 in the final rule.

Two commentors endorsed the wording of this section. Another commentor suggested it be reworded to more closely conform to the wording of the Act since there is potential for abuse.

The MMS has not changed the wording.

*Section 228.105 Funding of cooperative agreements.* One commentor requested that MMS put words in this section binding MMS to request budget appropriations for funding cooperative agreements. Another commentor believed that such funding could significantly increase the costs of Government management and that such increases should be avoided. A third commentor believed that the funding limitation of 50 percent should be eliminated in favor of 100 percent Federal funding.

MMS disagrees with these three comments. The Act does not specifically establish a level of funding, and MMS feels that 50 percent of the total cost of a cooperative program supports the cooperative nature of activity, particularly since States share in the revenue derived from the audit. MMS cannot be bound to seek funding for activity as part of the annual budget process. MMS must follow the guidelines established by OMB and the Department in seeking appropriations, a process that cannot be interdicted by regulation.

*Section 228.107 Eligible cost of activities.* One commentor felt that under paragraph (a) the cost of services or activities that cannot be directly related to the support of the cooperative agreement should not be eligible for funding for Indian tribes.

The rule section already indicates this; no change is required.

*Part 229— Delegation to States*

*Subpart A—General Provisions*

One commentor submitted a number of general statements expressing concerns that the States may perform unnecessary, repetitious, and costly audits, unless properly monitored by MMS.

The MMS will regularly monitor the audit work being conducted by a State under the delegation of authority and, if it is found that a State has been abusing its authority, that authority can be revoked by MMS.

*Section 229.100 Petition for delegation.* Two commentors stated the regulation should use the term "Indian tribe and allottee" rather than "Indian tribe or allottee," since any delegation of authority by the Federal Government over Indian lands must have the approval of the tribal governing body.

MMS agrees. This change has been implemented.

*Section 229.103 Terms of delegation.* One commentor stated that renewals of the delegations of authority must be the subject of public review.

MMS agrees. A renewal of a delegation would require the same public comment period and hearing process as that which accompanied an original petition for delegation of authority.

*Section 229.105 Recordkeeping requirements.* One commentor stated that recordkeeping requirements under the delegation to the State must be no more extensive than when these matters are directly under MMS jurisdiction.

All directives affecting recordkeeping during a State-conducted audit will be in compliance with MMS regulations and standards.

*Section 229.106 Standards for carrying out delegated authority.* One commentor stated that the MMS prescribed standards used for a State to carry out a delegation of authority must be made the subject of public review.

The standards will be published in a rulemaking for public review and comment before authority is delegated to a State.

*Section 229.107 Reports from States.* One commentor recommended that paragraph (b) of the proposed rule be deleted because it was the intention of Congress to have the Federal jurisdiction, and not the State, handle enforcement actions.

MMS agrees. Enforcement actions are not delegated. Paragraph (b) as proposed has been eliminated.

*Section 229.109 Reimbursement for costs incurred by a State under the delegation of authority.* Two commentors recommended that this rule include language binding the MMS to request appropriations specifically designated for delegations of authority.

MMS disagrees. See comments made on §§ 228.105 and 228.106.

*Section 229.120 Withdrawal of Indian lands from delegated authority.* One commentor stated that if an Indian tribe or Indian allottee withdraws its delegation of authority to a State, it may cause an undue burden on industry and subsequently cause a duplication of audit work.

MMS will utilize audit workpapers and reports submitted to the date of termination and will make every effort to avoid duplication.

*Part 241—Civil Penalties*

Many comments were received on this proposed civil penalties part which suggested that MMS should revise the proposed language for consistency and clarity. More detail was suggested regarding the establishment of penalty amounts and the procedures for creation of a record. Although the penalty provisions are extensively prescribed by Section 109 of the Act, MMS has made revisions to the proposed regulations to provide more detail on notice procedures, penalty assessments, and hearings.

*Subpart A—General Provisions*

*Section 241.20 Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.* Section 241.20 was originally proposed as § 241.50 and remains unchanged except for the elimination of suspension of operations as a possible penaly. Upon reevaluation it was concluded that such an action would be detrimental not only to the lessee/operator but also to the government. This section authorizes the MMS to impose civil penalties for royalty management violations under the authority of the MLA, OCSLA, and other mineral leasing authorities. These authorities existed prior to the Act and continue to exist as an alternative and additional means of enforcement to the civil and criminal penalties in the Act. Assessment of penalties under these other statutes are subject to less rigorous procedural requirements than those prescribed by the Act. The designation of this section as § 241.20 of Subpart A should clarify that these

penalties are not penalties prescribed by the Act. It is not MMS's intention, in most cases, to apply penalties authorized under this section concurrently or in addition to penalties authorized in succeeding sections of this part. These penalties could be used as an alternative or in situations where FOGRMA penalties under § 241.51 do not apply by law, e.g., solid minerals.

*Subpart B—Oil and Gas, General*

*Section 241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.* Section 241.51 provides regulations implementing the more complicated civil penalty provisions of the Act. Pursuant to subsection (a), when MMS believes that any person has committed a violation, it will issue a notice of noncompliance specifying the nature of the violation and how it should be corrected. This is the notice required by Section 109(a) of the Act. Service of the notice will be by personal service or registered mail and will be deemed to occur when received or 5 days after mailing, whichever is earlier. As specified in Section 109 of the Act, unless the violation is corrected within 20 days (or such longer period as specified in the notice) from the date of service, the person is liable for a penalty of up to $500 per day for each violation, dating from the date the notice was served. If the violation is not corrected within 40 days, the liability increases to a maximum of $5,000 per day per violation, dating from the date the notice was served.

The regulations provide in paragraph (a)(3)(iii) that if the person served with the notice does not correct the violation within 20 days (or as specified in the notice), he may request a hearing *on the record*, as provided by the Act, by filing a request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior. However, if the violation is corrected within the prescribed period, under the regulations no penalties may be assessed under Section 109(a) of the Act. Consequently, no hearing *on the record* need be provided. Accordingly, if the violation is corrected, the only available appeal will be to the MMS Director and then the Board of Land Appeals, in accordance with the appeals procedures in 30 CFR Part 243.

Subsection (b) of new § 241.51 provides for issuance of a notice of noncompliance for intentional violations. In such circumstances, penalties are increased to $10,000 per day and no period for correction need be provided before liability begins. Pursuant to the Act, penalties accrue from the date the violation began, not the date the notice is served.

If the person who received a notice of noncompliance does not correct the violation within the prescribed period, or if a notice of noncompliance is issued for an intentional violation, then the person is liable for penalties. Pursuant to § 241.51(c), MMS will issue a penalty notice setting forth the amount of penalty applicable for each violation. By way of illustration, if the maximum penalty for a violation is $500 for the first 20 days, and later increases to $5,000 retroactive to the first day of the notice of noncompliance for failure to correct the violation within 40 days, MMS may elect in the penalty notice to set the actual penalty for the particular violation below those maximums. MMS will determine the applicable penalty by taking into account the severity of the particular violation and violator's noncompliance history. Persons who consistently violate the applicable rules will receive higher penalties.

Subsection (d) of § 241.51 has been added to make it clear that any penalties assessed under § 241.51 will be in addition to interest which is owed on any nonpayment or underpayment of royalties and in addition to assessments for late or incorrect reporting. The interest and late or incorrect reporting provisions are in Part 218 which is also incorporated in this rulemaking.

If a person served with a notice of noncompliance requests a hearing, subsection (e) provides that liability for penalties will continue to accrue on a daily basis until the person corrects the violation set forth in the notice of noncompliance. For example, if the violations were nonpayment of royalties on an oil and gas lease, penalties would continue to accrue until the royalties in dispute were received by MMS. Subsection (e) provides further that the Director, MMS, may in certain circumstances suspend the requirement to correct the violations during appeal and accept a bond in lieu of payment. Such a suspension is at the discretion of the Director and will be granted only if the Director determines that suspension will not be detrimental to the lessor and if the lessee submits and MMS accepts a suitable bond. The bond amount must be sufficient to cover the underlying violations, penalties accrued up to the date the bond is accepted, and interest.

MMS may require the bond to be increased when there are increases in the amount of the underlying obligation, penalties or interest. In most instances, MMS will not grant suspensions since the effectiveness of MMS's royalty collection efforts is premised on compliance with its orders during appeal. See also the discussion of § 243.2 in a later section of this preamble.

Subsection (f) sets forth the applicable procedures when a hearing on the record is requested. The hearing will be conducted by an Administrative Law Judge (ALJ) of DOI's Office of Hearings and Appeals, who will issue a decision in accordance with the evidence presented and applicable law. The ALJ's decision may be appealed to the Interior Board of Land Appeals. If the ALJ's decision is not appealed, it becomes a final order. If there is an appeal to the Board, its decision becomes a final order which may be appealed to the District Courts in accordance with subsection (i).

Subsection (g) applies to situations where the person who has received a notice of noncompliance has *not* paid pursuant to the MMS order which initiated the notice and has *not* requested a hearing on the record. Pursuant to section 109(e) of the Act, that person has been "given the opportunity for a hearing on the record" and penalties may be assessed. The assessment will be in the form of an order issued by the MMS Director, with the applicable penalties determined in accordance with the penalty notice previously issued. The penalty assessment will be a final order and, pursuant to the terms of the Act, no further appeal is available since a hearing was not requested when the opportunity was provided. Accordingly, failure to pay the assessment will subject the person to collection action pursuant to Section 109(k) of the Act and subsection (j) of § 241.51 and any other remedies MMS may have available.

Subsection (h) authorizes the Secretary to compromise or reduce civil penalties, as provided in Section 109(g) of the Act.

Section 241.51(i) and (j) set forth the procedures for judicial review and court enforced collection of assessments. The regulations follow the detailed provisions of Section 109(j) and (k) of the Act.

Section 241.52 implements Section 110 of the Act. Any person who commits an act for which a penalty is authorized by Section 109(d) of the Act also will be subject to criminal penalties.

*Part 243—Appeals-Royalty Management Program*

*Section 243.1 Procedures.* This section provides that most decisions and orders of the Royalty Management Program may be appealed in accord

with the appeal procedures in 30 CFR Part 290. The exception is appeals from FOGRMA penalty assessment orders which must be appealed with the specific appeal procedures of Part 241.

*Section 243.2 Effectiveness of Orders or Decision Pending Appeals.* This section continues MMS's long-standing practice that compliance with its decisions and orders is not suspended by reason of an appeal being taken. The MMS Director (or the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved) may grant a suspension of an order pending appeal, when, in his or her discretion, it is determined that suspension will not be detrimental to the lessor and the recipient of the order has provided an acceptable bond or other surety adequate to protest MMS. In almost all instances MMS will not grant suspensions, since the effectiveness of MMS's royalty collection efforts is premised on compliance with orders during appeal. Only in the unusual circumstance will MMS grant suspension pending the appeal process.

This provision is being made retroactive to orders and decisions issued by the Royalty Management Program after August 12, 1983. The retroactive effectiveness is necessary for consistent application of MMS's procedure because on that date 30 CFR Section 221.66, the predecessor to new Section 243.2, was unintentionally removed from MMS's regulations along with other rules which were removed by virtue of the transfer of MMS's onshore operational program to the Bureau of Land Management (48 FR 36582, August 12, 1983).

**Executive Order 12291**

The Department has determined that this rule is not a major action and does not require the preparation of a regulatory impact analysis under Executive Order 12291.

Cooperative agreements and delegations to States have minimal economic effect, as this arrangement primarily addresses who will perform the functions, i.e. the Secretary, State, or Indian tribe.

The cost to the Government in light of the additional mineral revenues generated as a result of audit recoveries has, based on experience, been proven to be cost beneficial and is expected to be so under the provisions of these regulations.

**Regulatory Flexibility Act**

The Department has determined that this rule will not have a significant economic effect on a substantial number of small entities and does not, therefore, require a small entity flexibility analysis under the Regulatory Flexibility Act. Although the rule establishes certain penalties, if the lessee operator or royalty payor complies with the rules, there will be no penalties. The cost or economic effect of this regulation is soley in the hands of the lessee.

**Paperwork Reduction Act of 1980**

Although information collection requirements are noted in several parts of this rule, it is done so only for reaffirmation. The purpose of the Act is stated to be, in part, to clarify, reaffirm, expand, and to define the responsibilities and obligations of lessess, operators, and other persons involved in transportation or sale of oil and gas from the Federal and Indian lands and the Outer Continental Shelf.

The information collection requirements noted in this rule have been previously authorized or there is no need for authorization as discussed by part/section as follows:

*Section 210.51,* The information collection requirements contained in this section has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.,* and assigned clearance number 1010–0033.

*Section 210.52.* The information collection requirement contained in § 210.52 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0022.

*Sections 212.50 and 212.51.* In the preamble to the proposed rule, these information collection requirements were incorrectly included as being approved under OMB clearance number 1010–0033. The information collection requirements for §§ 212.50 and 212.51 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1010–0022 and 1010–0040.

*Sections 228.10 and 229.10.* The information collection requirements contained in Parts 228 and 229 will involve fewer than ten (10) respondents annually and consequently do not require approval by the Office of Management and Budget under U.S.C. 3501 *et seq.*

*National Environmental Policy Act of 1969*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. No detailed statement in accord with Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

**List of Subjects**

*30 CFR Part 210*

Government contracts, Reporting requirements, Mineral royalties, Continental shelf, Public lands-mineral resources, Geothermal energy.

*30 CFR Part 212*

Coal, Reporting requirements, Government contracts, Mineral royalties, Public lands-mineral resources.

*30 CFR Part 217*

Coal, Government contracts, Mineral royalties, Reporting requirements.

*30 CFR Part 218*

Government contracts, Mineral royalties, Continental shelf, Public lands-mineral resources, Coal, Geothermal energy.

*30 CFR Part 219*

Mineral royalties, Intergovernmental relations, Penalties.

*30 CFR Part 228*

Freedom of information, Intergovernmental relations, Investigations, Mineral royalties.

*30 CFR Part 229*

Intergovernmental relations, Investigations, Mineral royalties.

*30 CFR Part 241*

Government contracts, Reporting requirements.

*30 CFR Part 243*

Appeals—Royalty Management Program.

Title 30, Chapter II, of the Code of Federal Regulations is amended as set forth below.

Dated: September 14, 1984.

**J. Steven Griles,**

*Deputy Assistant Secretary for Land and Minerals Management.*

## PART 210—FORMS AND REPORTS

1. The authority for Part 210 reads as follows:

**Authority:** The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919

(25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

2. 30 CFR Part 210, Subpart A, § 210.10 is amended by revising the filing date for Form MMS-2014, as given in the "table of forms" from "* * *—due by the end of second month following production month * * *" to "* * *—due by the end of first month following production month * * *".

3. 30 CFR Part 210, Subpart B, is amended by adding §§ 210.50, 210.51, 210.52, and 210.53, to read as follows:

**Subpart B—Oil and Gas, General**

Sec.
210.50 Required recordkeeping.
210.51 Payor information form.
210.52 Report of sales and royalty remittance.
210.53 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

## Subpart B—Oil and Gas, General

### § 210.50 Required recordkeeping.

Information required by the MMS shall be filed using the forms prescribed in this Subpart, which are available from MMS. Records may be maintained in microfilm, microfiche, or other recorded media that is easily reproducible and readable.

### § 210.51 Payor information form.

The Payor Information Form (Form MMS-4025) must be filed for each Federal or Indian lease on which royalties are paid. Where specifically determined by MMS, Form MMS-4025 is also required for all Federal leases on which rent is due. The completed form must be filed by the party who is making the rent or royalty payment (payor) for each revenue source. Form MMS-4025 must be filed no later than 30 days after issuance of a new lease or a modification to an existing lease which changes the paying responsibility on the lease.

### § 210.52 Report of sales and royalty remittance.

A completed Report of Sales and Royalty Remittance (Form MMS-2014) must accompany all payments to MMS for royalties and, where specified, for rents on nonproducing leases. Payors who submit Form MMS-2014 data on magnetic tape will not be required to submit the form itself. Completed Form MMS-2014's (or magnetic tape) for royalty payments including those covering payments by electronic funds transfer, are due by the end of the month following the production month. Where applicable, completed Form MMS-2014's for rental payments are due no later than the anniversary date of the lease. This section does not prohibit payors from making early payments voluntarily.

### § 210.53 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

## PART 212—RECORDS AND FILES MAINTENANCE

4. 30 CFR Part 212, Subpart B, is amended by adding §§ 212.50, 212.51, and 212.52, to read as follows:

**Subpart B—Oil and Gas, General**

Sec.
212.50 Required recordkeeping and reports.
212.51 Records and files maintenance.
212.52 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

## Subpart B—Oil and Gas, General

### § 212.50 Required recordkeeping and reports.

All records pertaining to offshore and onshore Federal and Indian oil and gas leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released by written notice of the obligation to maintain records.

### § 212.51 Records and files maintenance.

(a) *Records.* Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, net profit shares, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders. Records covered by this section include those specified by lease terms, notices and orders, and by the various parts of this Chapter. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tape submitted to the Minerals Management Service (MMS) for use in its Auditing and Financial System (AFS) and Production Accounting and Auditing System (PAAS).

(b) *Period for keeping records.* Lessees, operators, revenue payors, or other persons required to keep records under this Section shall maintain and preserve them for 6 years from the day on which the relevant transaction recorded occurred unless the Secretary notifies the record holder of an audit or investigation involving the records and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released in writing from the obligation to maintain the records. Lessees, operators, revenue payors, or other persons shall maintain the records generated during the period for which they have paying or operating responsibility on the lease for a period of 6 years.

(c) *Inspection of records.* The lessee, operator, revenue payor, or other person required to keep shall be responsible for making the records available for inspection. Records shall be provided at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be given a reasonable period of time to produce historical records.

### § 212.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

## PART 217—AUDITS AND INSPECTIONS

5. 30 CFR Part 217 Subpart B, is amended by adding § 217.50 and § 217.51 and 217.52, to read as follows:

**Subpart B—Oil and Gas, General**

Sec.
217.50 Audits of records.
217.51 Lease account reconciliation.
217.52 Definition.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

## Subpart B—Oil and Gas, General

### § 217.50 Audits of records.

The Secretary, or his/her authorized representative, shall initiate and conduct audits relating to the scope,

nature and extent of compliance by lessees, operators, revenue payors, and other persons with rental, royalty, net profit share and other payment requirements on a Federal or Indian oil and gas lease. Audits also will relate to compliance with applicable regulations and orders. All audits will be conducted in accordance with the notice and other requirements of 30 U.S.C. 1717.

**§ 217.51 Lease account reconciliation.**

Specific lease account reconciliations shall be performed with priority being given to reconciling those lease accounts specifically identified by a State or Indian tribe as having significant potential for underpayment.

**§ 217.52 Definitions.**

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

## PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

6. The authority for Part 218 reads as follows:

**Authority:** The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the Act of May 11, 1938 (25 U.S.C. 396a–396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.) as amended; the National Environmental Policy Act of 1969 (42 U.S.C., 4321, et seq.) as amended; the Act of December 12, 1980 (Pub. L. 96–514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.) as amended; the Geothermal Act of 1970 (30 U.S.C. 1001, et seq.) as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

7. 30 CFR Part 218, Subpart B, is amended by adding §§ 218.50, 218.51, 218.52, 218.53, 218.54, 218.55, 218.56, and 218.57, to read as follows:

**Subpart B—Oil and Gas, General**

Sec.
218.50 Timing of payment.
218.51 Method of payment.
218.52 Designated payor.
218.53 Division of interests. [Reserved]
218.54 Late payments and underpayments.
218.55 Interest payments to Indians.
218.56 Assessments for incorrect or late reports and failure to report.
218.57 Definitions.

**Authority:** The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

### Subpart B—Oil and Gas, General

**§ 218.50 Timing of payment.**

(a) Royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday. In such cases, payments are due on the first business day of the succeeding month. Rental payments are due as specified by the lease terms.

(b) Payments made on a Bill for Collection (Form DI–1040b) are due as specified by the Bill. Bills for Collection will be issued and payable as final collection actions.

(c) All payments to MMS are due as specified and are not deferred or suspended by reason of an appeal having been filed unless such deferral or suspension is approved in writing by an authorized MMS official.

**§ 218.51 Method of payment.**

(a) *Payment of royalties.* (1) All payors whose aggregated royalty liability to the MMS on the payment due date totals $50,000 or more, must make payment by electronic funds transfer (EFT), utilizing the Federal Reserve Communications System link to the Treasury Financial Communications System, unless otherwise directed by the Secretary. Early payment by other than EFT of a portion of the aggregated royalty liability to avoid remittance by EFT on the payment due date is not permitted. Such early payments are permitted regardless of amount but must be remitted by EFT. Payments to MMS by EFT shall begin only after the payor has received instructions from the MMS Royalty Management Accounting Center (RMAC) in Lakewood, Colorado.

(b) Each payor, whose aggregated remittance for royalties on payment due date is less than $50,000, must use one of the following payment instruments:

(1) Federal Reserve check.
(2) Commercial check.
(3) Money Order.
(4) Bank Draft.
(5) Cashier's check.
(6) Certified check.
(7) Electronic Funds Transfer.

(c) All payment instruments except EFT should be inscribed payable to "Department of the Interior—MMS."

(d) *Payment of rentals.* (1) Payment of rentals to MMS–RMAC (other than the first year rentals) must be made by one of the methods shown in paragraph (b) of this section. First year rentals from offshore leases are paid in accordance with § 218.155.

(e) *Where to pay.* (1) The mailing address for Form MMS–2014 and the applicable payment is: Royalty Management Program, Minerals Management Service P.O. Box 5810 T.A. Denver, Colorado 80217. Use P.O. Box 5640 T.A. with the above address to send payments for Federal non-producing leases not required to be reported on the Form MMS–2014 report.

(2) Payments received after 4:00 p.m. mountain time, are considered next day receipts.

(f) *General payment information.* (1) Payments for offshore and onshore Federal leases shall be segregated from payments for Indian leases. All payments shall be made by one of the methods shown in paragraph (b) of this section. For payments made by EFT, the deposit message shall include information as prescribed by the RMAC.

(2) For Indian payments by check, the following instructions are applicable:

(i) For Indian allotted leases, payments shall be aggregated and identified on a single check for each respective BIA agency/area office having jurisdiction over the lease(s) for which the payment is made.

(ii) For Indian tribal leases, payments shall be aggregated and identified for each respective Indian tribe for whom the royalty is owed.

(iii) When payments are made on an aggregated basis (single check), the payment identification required in paragraphs (f)(2) (i) and (ii) of this section shall be provided in a format to be specified by MMS.

**§ 218.52 Designated payor.**

(a) When the lessee or revenue payor assigns any paying responsibility to any other entity, MMS must be notified within 30 days of the assignment.

(b) MMS may, by order, designate a lessee or revenue payor on a lease as the single payor for all revenues due and owing from that lease.

**§ 218.53 Division of interests. [Reserved]**

**§ 218.54 Late payments and underpayments.**

(a) An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due.

(b) The interest charge on late payments and underpayments shall be at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(c) Interest will be charged only on the amount of the payment not received.

Interest will be charged only for the number of days the payment is late.

(d) A portion of the interest collected will be paid to a State where the State shares in mineral revenues from Federal leases.

**§ 218.55 Interest payments to Indians.**

(a) All interest collected from unpaid or underpayments on Indian tribal or allotted leases will be paid to the tribe or allottee.

(b) Any disbursement of Indian mineral revenues not made by the due date as required in § 219.103 of this chapter shall accrue interest.

(c) Interest shall be computed at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(d) The interest shall be payable only for the number of days the disbursement is late.

**§ 218.56 Assessments for incorrect or late reports and failure to report.**

(a) An assessment of $10.00 per day may be charged for each report not received by MMS by the designated due date.

(b) An assessment of $10.00 per day may be charged for each report received by the designated due date but which is incorrectly completed.

(c) For purposes of reports required for the Auditing and Financial System (AFS), a report is defined as each line item on a Form MMS–2014. The line item consists of the various information, such as Product Code or Selling Arrangement Code, relating to each Accounting Identification Number (AID).

(d) [Reserved.]

(e) An assessment under this section shall not be shared with a State, Indian tribe, or Indian allottee.

**§ 218.57 Definitions.**

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

* * * * *

**§ 218.102 [Amended]**

8. 30 CFR Part 218, Subpart C, is amended by removing paragraphs (c) and (d) of § 218.102 and by redesignating paragraph (e) as paragraph (c) of that section.

9. 30 CFR Part 218, Subpart C, is amended by adding § 218.103, 218.104, and 218.105, to read as follows:

**Subpart C—Oil and Gas, Onshore**

**§ 218.103 Payments to States.**

(a) Any amount that is payable by MMS to a State but is not paid on the due date, as specified in § 219.100 of this chapter, or that is held in a suspense account pending resolution of a dispute as specified in § 219.101 of this chapter, shall accrue interest payable to the State.

(b) Interest shall be computed at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(c) Interest shall be computed only for the number of days the disbursement is late. In the case of suspended amounts subject to interest, it shall be computed beginning with the calendar day following the day that the monies normally would have been paid to the State had they not been in suspense.

**§ 218.104 Exemption of States from certain interest and penalties.**

(a) States are exempt from being assessed for any interest or penalties found to be due against the Department of the Interior for failure to comply with the Emergency Petroleum Allocation Act of 1973, as amended, or any regulation issued by the Secretary of Energy thereunder concerning the certification or processing of crude oil taken in-kind as royalty by the Secretary.

(b) Any State shall be assessed for its share of any overcharge resulting from a determination that DOI failed to comply with the Emergency Petroleum Allocation Act of 1973, as amended. Each State's share shall be assessed against monies owed to the State. Such assessment shall be first against monies owed to such State as a result of royalty audits prior to January 12, 1983, the enactment date of the Federal Oil and Gas Royalty Management Act of 1982, then against other monies owed. The State shall be liable for any balance.

(c) A State's liability for repayment of an overcharge under this section shall exist for any amounts resulting from a judgment in a civil suit or as the result of settlement of a claim through a negotiated agreement. State liability would be offset against future mineral revenue distributions to the State.

**§ 218.105 Definitions.**

Terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

**§ 218.150 [Amended]**

10. 30 CFR Part 218, Subpart D, is amended by removing paragraphs (d) and (e) of § 218.150, and by redesignating paragraph (f) as paragraph (d) of that section.

11. 30 CFR Part 219 is amended by adding Subparts A, B, C, and §§ 219.100, 219.101, 219.102, 219.103, 219.104, and 219.105, to read as follows:

## PART 219—DISTRIBUTION AND DISBURSEMENT OF ROYALTIES, RENTALS, AND BONUSES

**Subpart A—General Provision [Reserved]**

**Subpart B—Oil and Gas, General [Reserved]**

**Subpart C—Oil and Gas, Onshore**

Sec.

219.100 Timing of payment to States.
219.101 Receipts subject to an interest charge.
219.102 Method of payment.
219.103 Payments to Indian accounts.
219.104 Explanation of payments to States and Indian tribes.
219.105 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

**Subpart A—General Provisions—[Reserved]**

**Subpart B—Oil and Gas, General [Reserved]**

**Subpart C—Oil and Gas, Onshore**

**§ 219.100 Timing of payment to States.**

A State's share of mineral leasing revenues shall be paid to the State not later than the last business day of the month in which the United States Treasury issues a warrant authorizing the disbursement, except for any portion of such revenues which is under challenge and placed in a suspense account pending resolution of a dispute.

**§ 219.101 Receipts subject to an interest charge.**

(a) Subject to the availability of appropriations, the Minerals Management Service (MMS) shall pay the State its proportionate share of any interest charge for royalty and related monies that are placed in a suspense account pending resolution of matters which will allow distribution and disbursement. Such monies not disbursed by the last business day of the month following receipt by MMS shall accrue interest until paid.

(b) Upon resolution, the suspended monies found due in paragraph (a) of this section, plus interest, shall be disbursed to the State under the provisions of § 219.100.

(c) Paragraph (a) of this section shall apply to revenues which cannot be disbursed to the State because the payor/lessee provided incorrect, inadequate, or incomplete information to MMS which prevented MMS from properly identifying the payment to the proper recipient.

**§ 219.102 Method of payment.**

The MMS shall disburse monies to a State either by Treasury check or by Electronic Funds Transfer (EFT). Should the State prefer to receive its payment by EFT, it should request this payment method in writing to the Minerals Management Service, P.O. Box 5760, Denver, Colorado 80217.

**§ 219.103 Payments to Indian accounts.**

Mineral revenues received from Indian leases shall be transferred to the appropriate Indian accounts managed by the Bureau of Indian Affairs (BIA) for allotted and tribal revenues. These accounts are specifically designated Treasury accounts. Revenues shall be transferred to the Indian accounts at the earliest practicable date after such funds are received, but in no case later than the last business day of the month in which revenues are received by the MMS.

**§ 219.104 Explanation of payments to States and Indian tribes.**

(a) Payments to States and BIA on behalf of Indian tribes or Indian allottees discussed in this part shall be described in *Explanation of Payment* reports prepared by the MMS. These reports will be at the lease level and shall include a description of the type of payment being made, the period covered by the payment, the source of the payment, sales amounts upon which the payment is based, the royalty rate, and the unit value. Should any State or Indian tribe desire additional information pertaining to mineral revenue payments, the State or tribe may request this information from the MMS.

(b) The report shall be provided to: (1) States not later than the 10th day of the month following the month in which MMS disburses the State's share of royalties and related monies; (2) the BIA on behalf of tribes and Indian allottees not later than the 10th day of the month following the month the funds are disbursed by MMS.

(c) Revenues that cannot be distributed to States, tribes, or Indian allottees because the payor/lessee provided incorrect, inadequate, or incomplete information, preventing MMS from properly identifying the payment to the proper recipient, shall not be included in the reports until the problem is resolved.

**§ 219.105 Definitions.**

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

12. 30 CFR Part 228 is amended by adding Subparts A, B, C, and §§ 228.1, 228.2, 228.4, 228.5, 228.6, 228.10, 228.100, 228.101 228.102, 228.103, 228.104, 228.105, 228.107, and 228.108, to read as follows:

## PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

### Subpart A—General Provisions

Sec.

228.1 Purpose.
228.2 Policy.
228.4 Authority.
228.5 Delegation of authority.
228.6 Definitions.
228.10 Information collection requirements.

### Subpart B—Oil and Gas, General [Reserved]

### Subpart C—Oil and Gas, Onshore

228.100 Entering into an agreement.
228.101 Terms of agreement.
228.102 Establishment of standards.
228.103 Maintenance of records.
228.104 Availability of information.
228.105 Funding of cooperative agreements.
228.107 Eligible cost of activities.
228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.

Authority: Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

### Subpart A—General Provisions

**§ 228.1 Purpose.**

It is the purpose of cooperative agreements to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system as indicated at 30 U.S.C. 1701.

**§ 228.2 Policy.**

It shall be the policy of DOI to enter into cooperative agreements with States and Indian tribes to carry out audits and related investigations and enforcement actions whenever a State or tribe initiates a request to enter into an agreement and a finding is made that a State or tribe has the ability to carry out cooperative activities in a timely and efficient manner.

**§ 228.4 Authority.**

The Secretary of the Interior is authorized to enter into cooperative agreements with States and Indian tribes (30 U.S.C. 1732) to share oil or gas royalty management information, and to carry out auditing and related investigation or enforcement activities in cooperation with the Secretary.

**§ 228.5 Delegation of authority.**

(a) Authority to enter into cooperative agreements to carry out audit and related investigation and enforcement activities with State and tribal governments has been delegated to the Director of the Minerals Management Service (MMS).

(b) Authority to enter into cooperative agreements with State and tribal governments to carry out inspection and related investigation and enforcement activities has been delegated to the Director of the Bureau of Land Management (BLM) and is not covered by this part.

(c) The entry into a cooperative agreement with either MMS or BLM will not affect the ability of a State or Indian tribe to choose to enter into such an agreement with the other agency. A State may enter into a delegation agreement (30 U.S.C. 1735) with MMS to perform certain functions without affecting its ability to enter into a cooperative agreement with either MMS or BLM, or both, to cooperate in the performance of those functions which are not delegated in this part.

**§ 228.6 Definitions.**

For the purposes of this part, terms shall have the same meaning as in 30 U.S.C. 1702. In addition, the following definition shall apply:

*Audit* means an examination of the financial accounting and lease related records of the lessee and other interest holders, who by lease or contract pay royalties or are obligated to pay royalties, rents, bonuses or other payments on Federal or Indian leases. An examination is to be conducted in accordance with generally accepted audit standards as adopted by the American Institute of Certified Public Accountants. Activities to be examined which are considered to be an audit function include reconciliation of lease accounts under the Royalty Accounting System; records of lease activities related to Federal leases located within the boundaries of the State entering into a cooperative agreement; records of lease activities related to leases located on Indian lands, and the review and resolution of exceptions processed by the Auditing and Financial System and the Production Accounting and Auditing System, the official accounting systems for royalty reporters and payors maintained by the MMS.

**§ 228.10 Information collection requirements.**

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than ten respondents annually.

## Subpart B—Oil and Gas, General [Reserved]

## Subpart C—Oil and Gas, Onshore

### § 228.100 Entering into an agreement.

(a) A State or Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from the governor, tribal chairman, or other appropriate official with delegation authority, to the Director of MMS.

(b) The request for an agreement shall be in a format prescribed by MMS and should include at a minimum the following information:

(1) Type of eligible activities to be undertaken.

(2) Proposed term of the agreement.

(3) Evidence that the State or Indian tribe meets, or can meet by the time the agreement is in effect, the standards established by the Secretary for the types of activities to be conducted under the terms of the agreement.

(4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms of the cooperative agreement for activities to be conducted on tribal or allotted land.

### § 228.101 Terms of agreement.

(a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable or additional consecutive 3-year periods upon request of the State or Indian tribe which is a party to the agreement.

(b) An agreement may be terminated at any time by mutual agreement and upon any terms and conditions as agreed upon by the parties.

(c) A State or Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate.

(d) The MMS may commence termination of an agreement by giving a 120-day written notice of intent to terminate. MMS shall provide the State or Indian tribe with the reasons for the proposed termination in writing if the termination is proposed because of alleged deficiencies by the State or Indian tribe in carrying out the provisions of the agreement. The State or Indian tribe will be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies. No final action on termination shall be taken until any submission of the State or Indian tribe provided within the above prescribed 60 days has been reviewed by MMS for content or merit.

(e) Termination of a cooperative agreement shall not bar a later request by a State or Indian tribe to enter into a subsequent cooperative agreement.

### § 228.102 Establishment of standards.

The MMS, after consultation with States and Indian tribes, shall establish standards for carrying out the activities under the provisions of this part. The standards will be incorporated into the agreement and shall be no more stringent than those applicable to similar activities of the MMS. The States and Indian tribes shall coordinate their planned auditing activities with MMS. Where an MMS audit team is permanently assigned to a lessee/payor, contact by State and Indian tribal auditors with the lessee/payor shall be through the MMS auditor in residence.

### § 228.103 Maintenance of records.

The State or Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup matrials for a period specified by MMS. All records and support materials must be available for inspection and review by appropriate personnel of DOI including the Office of the Inspector General.

### § 228.104 Availability of information.

(a) Under the provisions of this part, information necessary to carry out the activities authorized under the terms of a cooperative agreement will be provided by DOI to the States and Indian tribes entering into such agreements. The information will consist of data provided from all relevant sources on a lease level basis for leases located within the boundaries of the State or Indian tribe which has entered into the agreement. This information will include any records or data held by the lessee or other person that have not been submitted to MMS, but that affect Federal lease interests and could be required to be submitted under the lease terms or Federal regulations.

(b) None of the provisions of this subpart should be construed as limiting information already being provided to Indian tribes and allottees regarding their lease interests.

(c) Information will be provided by MMS on a monthly basis and will include data on royalties, rents, and bonuses collected on the lease, volumes produced, sales made, value of products disposed of as a sale and used as a basis for royalty calculation, and other information necessary to allow the State or tribe to carry out its responsibilities under the cooperative agreement.

(d) Proprietary data that is made available to a State or tribe under provisions of 30 U.S.C. 1733 shall be subject to the constraints of 18 U.S.C. 1905. To receive proprietary data, the State or tribe must—

(1) Demonstrate what audit, investigation, or litigation under provisions of 30 U.S.C. 1734 is planned for or underway for which this data is essential;

(2) Demonstrate why this particular data is necessary; and

(3) Agree to safeguard proprietary data as provided.

### § 228.105 Funding of cooperative agreements.

(a) The Federal share of funding eligible activities under a cooperative agreement will be limited to not more than 50 percent share of the cost of eligible activities under the terms of the cooperative agreement. The State or tribe may provide its 50 percent share either in cash or in kind. In kind contributions must be found eligible under the terms of the agreement and are subject to examination and evaluation by the Department.

(b) All cooperative agreements under this part are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

### § 228.107 Eligible cost of activities.

(a) Only costs directly associated with eligible activities undertaken by the State or Indian Tribe under the terms of a cooperative agreement will be eligible for sharing. Costs of services or activities which cannot be directly related to the support of the cooperative agreement will not be eligible for Federal funding or for inclusion in the State's 50 percent share or in the Indian Tribe's share.

(b) Eligible costs are the cost of salaries and benefits associated with technical, support, and clerical personnel engaged in eligible activities; direct cost of travel, rentals, and other normal administrative activities in direct support of the project or projects; basic and specialized training for State and tribal participants; and cost of any contractual services which can be shown to be in direct support of the activities covered by the agreement. Each cooperative agreement shall contain detailed schedules identifying those activities and costs which qualify for funding and the procedures, timing, and mechanics for implementing Federal funding.

**§ 228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.**

As provided at 30 U.S.C. 1736, 50 percent of any civil penalty collected as a result of activities under a cooperative agreement will be shared with the State or Indian tribe performing the cooperative agreement; however, the amount of the civil penalty shared will be deducted from any Federal funding owed under that cooperative agreement. MMS shall maintain records of civil penalties collected and distributed to the States and tribes involved in cooperative agreements. Each quarterly payment of the Federal share of a cooperative agreement will be reduced by the amount of the civil penalties paid to the State or tribe during the prior quarter.

13. 30 CFR Part 229 is amended by adding Subparts A, B, C, and §§ 229.1, 229.2, 229.4, 229.6, 229.10, 229.100, 229.101, 229.102, 229.103, 229.104, 229.105, 229.106, 229.107, 229.108, 229.109, 229.110, and 229.120 to read as follows:

## PART 229—DELEGATION TO STATES

### Subpart A—General Provisions

Sec.
229.1 Purpose.
229.2 Policy.
229.4 Authority.
229.6 Definitions.
229.10 Information collection requirements.

### Subpart B—Oil and Gas, General [Reserved]

### Subpart C—Oil and Gas, Onshore

229.100 Petition for delegation.
229.101 Fact-finding and hearings.
229.102 Hearings.
229.103 Terms of delegation.
229.104 Evidence of Indian agreement to delegation.
229.105 Recordkeeping requirements.
229.106 Standards for carrying out delegated authority.
229.107 Reports from States.
229.108 Examination of the State activities under delegation.
229.109 Reimbursement for costs incurred by a State under the delegation of authority.
229.110 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.
229.120 Withdrawal of Indian lands from delegated authority.

**Authority:** The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

### Subpart A—General Provisions

**§ 229.1 Purpose.**

The purpose of this part is to promote the effective utilization of the capabilities of the States in developing and maintaining an efficient and effective Federal royalty management system.

**§ 229.2 Policy.**

It shall be the policy of the Department of the Interior (DOI) to honor any properly made petition from the Chief Executive or other appopriate official of a State seeking delegation of authority under the provisions of 30 U.S.C. 1735 and to make a delegation to conduct audits and related investigations when the Secretary finds that the provisions of 30 U.S.C. 1735 have been complied with or can be complied with by a State seeking the delegation.

**§ 229.4 Authority.**

The Secretary of the DOI is authorized under provisons of 30 U.S.C. 1735 to delegate authority to States to conduct audits and related investigations with respect to all Federal lands within a State, and to those Indian lands to which a State has received permission from the respective Indian tribe(s) or allottee(s) to carry out audit activities under a delegation from the Secretray.

**§ 229.6 Definitions.**

The definitions contained in 30 U.S.C. 1702 and in Part 228 of this chapter apply to the activities carried out under the provisions of this part.

**§ 229.10 Information collection requirements.**

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

### Subpart B—Oil and Gas, General—[Reserved]

### Subpart C—Oil and Gas, Onshore

**§ 229.100 Petition for delegation.**

(a) The governor or other authorized official of any State which contains Federal oil and gas leases, or Indian oil and gas leases where the Indian tribe and allottees have given the State an affirmative indication of their desire for the State to undertake certain royalty management-related activities on their lands, may petition the Secretary to assume responsibilities to conduct audits and related investigations of royalty related matters affecting Federal or Indian oil and gas leases within the State.

(b) A State may enter into a delegation of authority under this part without affecting a State's ability to enter into a cooperative agreement under Part 228 of this chapter.

(c) The Secretary shall carry out all factfinding and hearings he may decide are necessary in order to approve or disapprove the petition.

(d) In the event that the Secretary denies the petition, the Secretary must provide the State with the specific reasons for denial of the petition. The State will then have 60 days to either contest or correct specific deficiencies and to reapply for a delegation of authority.

(e) No petition may be acted upon by the Secretary until the regulation requirement of § 229.106 of the subpart is effective.

**§ 229.101 Fact-finding and hearings.**

(a) Upon receipt of a petition for delegation from a State, the Secretary shall appoint a representative to conduct a hearing or hearings to carry out factfinding and determine the ability of the petitioning State to carry out the delegated responsibilities requested in accordance with the provisions of this part.

(b) The Secretary's representative, after proper notice in the **Federal Register** and other appropriate media within the State, shall hold one or more public hearings to determine whether:

(1) The State has an acceptable plan for carrying out delegated responsibilities and if it is likely that the State will provide adequate resources to achieve the purposes of this Part (30 U.S.C. 1735);

(2) The State has the ability to put in place a process within 60 days of the grant of delegation which will assure the Secretary that the functions to be delegated to the State can be effectively carried out;

(3) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary in accordance with the requirements at 30 U.S.C. 1735;

(4) The State's plan to carry out the delegated authority will be in accordance with the MMS standards; and

(5) The State's plan to carry out the delegated authority will be coordinated with MMS and the Office of Inspector General audit efforts to eliminate added burden on any lessee or group of lessees operating Federal or Indian oil and gas leases within the State.

**§ 229.102 Hearings.**

A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.

**§ 229.103 Terms of delegation.**

(a) Delegations of authority shall be valid for a period of 3 years and may be renewable for an additional consecutive 3-year period upon request of the State and after the appropriate factfinding required in § 229.101. Delegations are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

(b) A delegation of authority may be terminated at any time and upon any terms and conditions as mutually agreed upon by the parties.

(c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.

(d) The Department may terminate a delegation of authority when it is determined, after opportunity for a hearing, that the State has failed to substantially comply with the provisions of the delegation of authority.

(e) No action to initiate formal hearing proceedings for termination shall be taken until the Department has notified the State in writing of alleged deficiencies and allowed the State 120 days to correct the deficiencies.

(f) Termination of a delegation shall not bar a subsequent request by a State to regain a delegation of authority.

**§ 229.104 Evidence of Indian agreement to delegation.**

In the case of a State seeking a delegation of authority for Indian lands as well as Federal lands, the State petition to the Secretary must be supported by an appropriate resolution or resolutions of tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.

**§ 229.105 Recordkeeping requirements.**

The State shall maintain all records, working papers, reports, and correspondence of individual lessees, operators, and interest holders for review and inspection by representatives of the Secretary including the Office of the Inspector General. All materials must be maintained for a period specified by the Department and shall be maintained by the State in a separate record or file maintenance system in a safe and secure fashion.

**§ 229.106 Standards for carrying out delegated authority.**

The Department, after proper rulemaking procedure, shall establish uniform minimum acceptable standards for carrying out activities under the provisions of this part. The standards shall be no more stringent than those applicable to similar activities of the Department. Standards shall be promulgated by rule as soon as practicable after the effective date of final issuance of these regulations.

**§ 229.107 Reports from States.**

The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. The report shall include:

(a) A statistical summary of the activities carried out, e.g., number of audits performed, accounts reconciled, and other actions taken;

(b) A summary of costs incurred during the previous quarter for which the State is seeking reimbursement; and

(c) A schedule of changes which the State proposes to make from its approved plan.

**§ 229.108 Examination of the State activities under delegation.**

(a) The Department will carry out an annual examination of the State's delegated activities undertaken under the delegation of authority.

(b) The examination required by this section will consist of a management review and a fiscal examination and evaluation to determine—

(1) That activities being carried out by the State under the delegation of authority meet the standards established by the Department and in particular the provisions of 30 U.S.C. 1735; and

(2) That costs incurred by the State under the delegation of authority are eligible for reimbursement by the Department.

**§ 229.109 Reimbursement for costs incurred by a State under the delegation of authority.**

(a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI, on a quarterly basis, a summary of costs incurred for which the State is seeking reimbursement. Only costs as defined under the provisions of 30 U.S.C. 1735 are eligible for reimbursement.

(b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.

**§ 229.110 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.**

Fifty percent of any civil penalty resulting from activities under a delegation of authority shall be shared with the delegated State. However, the amount of the civil penalty shared will be deducted from any Federal funding owed under a delegation of authority under the provisions of 30 U.S.C. 1735. MMS shall maintain records of civil penalties collected and distributed to the States involved in 30 U.S.C. 1735 delegations. Each quarterly payment will be reduced by the amount of the civil penalties paid to the delegated State or tribe during the prior quarter.

**§ 229.120 Withdrawal of Indian lands from delegated authority.**

If at any time an Indian tribe or an individual Indian allottee determines that it wishes to withdraw from the State delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State. Once the petition has been received, the State shall within 30 days cease all activities being carried out under the delegation of authority on the lands covered by the petition for the tribe or allottee.

## PART 241—PENALTIES

14. The authority for Part 241 reads as follows:

Authority: The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) as amended; the Act of May 11, 1938 (25 U.S.C. 396a–396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended; the Act of December 12, 1980 (Pub. L. 96–514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), as amended; section 2 of Reorganization Plan

No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

15. 30 CFR Part 241 Subpart A is amended by adding § 241.20 to read as follows:

**§ 241.20 Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.**

(a) Whenever a lessee, operator, revenue payor, or other authorized person fails to comply with any regulations, orders or notices, the appropriate MMS official shall give the lessee, operator, revenue payor, or other authorized person notice in writing to remedy any violations.

(b) Failure by the lessee, operator, revenue payor, or other authorized person, or other party to complete the necessary remedial action within the time and in the manner prescribed by the notice may subject the lease to cancellation proceedings pursuant to 30 CFR 250.12 for offshore leases, 43 CFR Subpart 3163 and 3108 for Federal onshore leases, or provisions of 25 CFR Indian leases.

(c) The lessee, operator, revenue payor, or other authorized person, shall be subject to a penalty of not more than $500 per day for each day the violation specified in the notice continues beyond the date specified in the notice, not to exceed 60 days. In addition to this penalty or in lieu thereof, MMS can take steps to cancel the lease.

(d) No penalty under this section shall be assessed until the person charged with a violation has been given the opportunity for a hearing.

Hearings shall be held by the appropriate MMS official whose findings shall be conclusive unless an appeal is taken pursuant to 30 CFR Part 243.

16. 30 CFR Part 241 Subpart B is amended by adding §§ 241.50, 241.51, and 241.52 to read as follows:

**Subpart B—Oil and Gas, General**

Sec.
241.50 Definitions.
241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.
241.52 Criminal penalties.

**Authority:** The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

## Subpart B—Oil and Gas, General

**§ 241.50 Definitions.**

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

**§ 241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.**

(a)(1) *Notice of noncompliance.* If the MMS believes that any person has failed or refused to comply with any statute, regulation, rule, order, lease, or permit governing the determination and collection of royalties on Federal or Indian lands or on the Outer Continental Shelf, the MMS may issue a notice of noncompliance which shall set forth the nature of the violation and the remedial action required.

(2) The notice of noncompliance shall be served by personal service by an authorized representative of the MMS or by registered mail. Service by registered mail shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier.

(3) When a notice of noncompliance is issued by the MMS under this section:

(i) Unless the violation is corrected within 20 days (or such longer time as specified in the notice) from the date that the notice is served, the person upon whom the notice is served shall be liable for a penalty of up to $500 per violation for each day such violation continues, dating from the date of service of the notice;

(ii) Unless the violation is corrected within 40 days (or such longer time as specified in the notice) from the date that the notice is served, the person upon whom the notice is served shall be liable for a penalty of up to $5,000 per violation for each day such violation continues;

(iii) If the person upon whom the notice is served does not correct the violation within 20 days (or such longer time as specified in the notice) from the date that the notice is served, such person may, by that date, request a hearing on the record by filing a written request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(4) If the person upon whom a notice of noncompliance has been served pursuant to paragraph (a)(3) of this section corrects the violations within 20 days (or such longer time as specified in the notice) from the date that the notice is served, no penalties shall be assessed by the MMS under this section and the person shall not be entitled to a hearing on the record provided for in paragraph (a)(3)(iii) of this section. The person may appeal the notice of noncompliance or other disputed MMS decision or order in accordance with the appeals procedures in 30 CFR Part 243.

(b)(1) *Notice of noncompliance for intentional violations.* In addition to the provisions of paragraph (a) of this section, the MMS may issue a notice of noncompliance for intentional violations, which shall set forth the nature of the violation and the remedial action required, to any person who—

(i) Knowingly or willfully fails to make any payment due by the date as specified by statute, regulation, order, or terms of the lease;

(ii) Knowingly or willfully fails to submit or submits false, inaccurate, or misleading data to the MMS in support of a royalty, rental, bonus, or other payment; or

(iii) Knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information.

(2) A person served with a notice of noncompliance for an intentional violation under this paragraph shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.

(3) The notice of noncompliance for intentional violation shall be served in accordance with paragraph (a)(2) of this section.

(4) A person who has been served with a notice of noncompliance for intentional violation issued pursuant to this subsection shall have 20 days from the date of service to file a written request for a hearing on the record with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(c) *Penalty notice.* The MMS shall issue a penalty notice to any person subject to penalties under this section. The penalty notice shall set forth the amount of the penalty applicable for each day that the violation continues. The penalty amount shall be determined by MMS taking into account the severity of the violation and the person's history of noncompliance. The penalty for each day that a violation continues shall not exceed the amounts specified in paragraphs (a) and (b), of this section as applicable.

(d) Penalties imposed under this section shall be in addition to interest assessed on payments not received by the MMS by the due date and assessments for later or incorrect reporting pursuant to Part 218 of this Chapter.

(e) If the person served with a notice of noncompliance requests a hearing on the record pursuant to paragraph (a)(3)(iii) or subparagraph (b)(4) of this section, penalties shall accrue each day until the person corrects the violations set forth in the notice of noncompliance.

The Director, MMS, may suspend the requirement to correct the violations pending completion of the hearings provided by this section, but only if the Director, MMS, suspends the obligation in writing, and then only upon a determination, at the discretion of the Director, that such suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage. The amount of the bond must be sufficient to cover any disputed amounts plus accrued penalties and interest. The MMS may require, at any time, adjustment in the amount of the bond for increases in the amount of the underlying obligations determined by MMS to be due, for penalties or for interest.

(f) *Hearing.* If a person served with a notice of noncompliance has requested a hearing on the record in accordance with subparagraphs (a)(3)(iii) or (b)(4) of this section, the hearing shall be conducted by an Administrative Law Judge (Departmental), Office of Hearings and Appeals. After the hearing, the Administrative Law Judge shall issue a decision in accordance with the evidence presented and applicable law. Any party to a case adversely affected by a decision of the Administrative Law Judge may appeal that decision to the Interior Board of Land Appeals in accordance with the procedures set forth in 43 CFR Part 4. A decision by the Interior Board of Land Appeals shall be a final order which may be appealed in accordance with paragraph (i) of this section.

(g) The Director of the MMS shall issue an order assessing the penalty, in accordance with the penalty notice, against any person subject to penalties under paragraphs (a) or (b) of this section who does not request a hearing on the record as provided in paragraphs (a)(3)(iii) or (b)(4) of this section. The penalty assessment must be paid within 30 days of its issuance and shall be a final order subject to collection pursuant to the provisions of paragraph (j) of this section.

(h) On a case-by-case basis the Secretary, or his/her authorized representative, may compromise or reduce civil penalties under this section. The amount of any penalty under this section, as finally determined, may be deducted from any sums owing by the United States to the person charged.

(i) Any person who has requested a hearing in accordance with paragraph (a) or (b) of this section within the time prescribed for such a hearing and who is aggrieved by a final order may seek review of such order in the United States District Court for the judicial district in which the violation allegedly took place. Review by the District Court shall be only on the administrative record and not *de novo*. Such action shall be barred unless filed within 90 days after the final order.

(j) If any person fails to pay an assessment of a civil penalty under this section after the order making the assessment has become a final order, and if such person has not filed a petition for judicial review in accordance with paragraph (i) of this section, or, after a court, in an action brought under this section, has entered a final judgment in favor of the Secretary, the Court shall have jurisdiction to award the amount assessed plus interest assessed from the date of the expiration of the 90-day period referred to in paragraph (i) of this section. The amount of any penalty, as finally determined, may be deducted from any sum owing by the United States to the person charged.

**§ 241.52 Criminal penalties.**

Any person who commits an act for which a civil penalty is provided at 30 U.S.C. 1719 shall be subject to criminal penalties as provided at 30 U.S.C. 1720.

## PART 243—APPEALS—ROYALTY MANAGEMENT PROGRAM

17. 30 CFR Part 243 is amended by adding Subpart A to read as follows:

### Subpart A—General Provisions

Sec.
243.1 Procedure.
243.2 Effectiveness of orders or decisions pending appeal.

**Authority:** R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; section 32, 41 Stat. 450, 30 U.S.C. 189; section 5, 44 Stat. 1058, 30 U.S.C. 285; section 10, 61 Stat. 915, 20 U.S.C. 359; § 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; section 24, 84 Stat. 1573, 30 U.S.C. 1023, 30 U.S.C. 1701 *et seq.*

**§ 243.1 Procedure.**

Except as may otherwise be provided in Part 241 hereof, an order or decision issued under regulations administered by the Royalty Management Program may be appealed in accordance with the provisions of Part 290 of this Chapter.

**§ 243.2 Effectiveness of orders or decisions pending appeals.**

Compliance with any orders or decisions, issued by the Royalty Management Program after August 12, 1983, including payments of additional royalty, rents, bonuses, penalties or other assessments, shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the Director, MMS, (or by the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved), and then only upon a determination, at the discretion of the Director or Deputy Associate Secretary for Indian Affairs, that such suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

[FR Doc. 84-25018 Filed 9-20-84; 8:45 am]
BILLING CODE 4310-MR-M

federal register

Friday
September 21, 1984

## Part VIII

# Department of the Interior

**Bureau of Land Management**

**43 CFR Part 3160**

**Onshore Oil and Gas Operations; Implementation of the Federal Oil and Gas Royalty Management Act of 1982; Final Rule**

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[Circular No. 2553]

## Onshore Oil and Gas Operations; Implementation of the Federal Oil and Gas Royalty Management Act of 1982

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** The final rulemaking revises the existing regulations by adding new provisions pertaining to operations on onshore Federal and Indian (except Osage) oil and gas leases to implement those portions of the Federal Oil and Gas Royalty Management Act of 1982 which apply to onshore field operations. This final rulemaking does not address those portions of the Federal Oil and Gas Royalty Management Act pertaining to onshore leasing, Outer Continental Shelf operations or revenue accountability, except to the extent that the onshore leasing revenue accountability provisions affect or interact with field operations.

**EFFECTIVE DATE:** October 22, 1984.

**ADDRESS:** Inquiries or suggestions should be sent to: Director (630), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:**

Eddie R. Wyatt (202) 653–2133

or

Robert C. Bruce (202) 343–8735.

**SUPPLEMENTARY INFORMATION:** The proposed rulemaking that would revise the oil and gas operating regulations to incorporate the operational requirements of the Federal Oil and Gas Royalty Management Act was published in the **Federal Register** on September 16, 1983 (48 FR 41783), with a 45-day comment period. During the comment period, comments were received from 27 different sources; 15 from oil and gas companies; 4 from Indian tribes; 3 from oil and gas industry associations; 1 from an Indian tribal association; 1 from a wildlife association; 1 from a State government; and 2 from Federal agencies. All of the comments were given careful consideration during the decisionmaking process on the final rulemaking. If a change was made in the final rulemaking due to comments, that change is described in this preamble. If no change was made, even though requested by the comments, the reason for not accepting the change is discussed.

### General

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) focuses primarily on royalty and rental collection, but also includes provisions relating to on-the-ground operations. As a result of Secretarial Order No. 3087 dated December 3, 1982, and amended on February 7, 1983, the Bureau of Land Management was delegated authority to administer onshore minerals operations and the Minerals Management Service was delegated authority to administer accountability functions. Therefore, the Service has published a companion proposed rulemaking, which amends Title 30 of the Code of Federal Regulations, which addresses the revenue accountability functions affected by the Federal Oil and Gas Royalty Management Act. The Bureau, in addition to this rulemaking, published on February 3, 1984, a proposed rulemaking (48 FR 4217) which addresses the lease reinstatement provisions of title IV of the Act. The changes made by this rulemaking, while substantial, relate to only a portion of the Act and are limited in scope to the sections of the Act that affect operation regulations.

Several comments suggested that the 45-day comment period was not sufficient to permit in-depth analysis of the substantial revisions made by the proposed rulemaking in the existing oil and gas operation regulations and requested an extension of the comment period. The requests for an extension of the comment period were considered, with attention being given to the complexity of the changes made by the proposed rulemaking. A decision was made not to grant the extension, because it is important that the Federal Oil and Gas Royalty Management Act regulations of the Bureau and Service be issued at approximately the same time, and be made effective as soon as possible. Further, the comments received indicate that the public did, in fact, have enough time to do a careful and thorough analysis of the rulemaking. These efforts are appreciated.

One comment raised several policy questions, i.e., the recourse available to an Indian Tribe if the Bureau of Land Management does not conduct inspections that are satisfactory to the Tribe, the presumed denial of proprietary data to a Tribe under the proposed revision of the confidentiality section, the level of communication between the Minerals Management Service and the Bureau and the distribution of civil penalty funds. The comment suggested that the final rulemaking contain provisions covering each of these elements. With the exeption of the provision for safeguarding proprietary information, which is discussed more fully in response to those comments specifically directed to § 3162.8, these questions are policy issues that are more properly considered in other areas rather than as part of this final rulemaking. This final rulemaking prescribes standards for lessees and operators to follow in conducting operations on Federal and Indian oil and gas leases and the Bureau's responsibility for inspecting those operations. Other questions should more properly be addressed in other ways. The rulemaking should not contain additional, inappropriate issues.

Several comments suggested that the proposed rulemaking, particularly with regard to the administrative penalties, exceeds the intent of Congress and the specific provisions of the Federal Oil and Gas Royalty management Act. These comments suggested that the inclusion of items in a listing of common violations does not in and of itself constitute a sufficient reason for those listed items to be considered violations. In preparing the proposed rulemaking and this final rulemaking, the Department of the Interior made every effort to have the rulemaking language track the language of the Act. As part of the preparation effort, consideration was given to the legislative history of the Act in those instances where the provisions of the Act were not clear. It is agreed that the listing of certain actions in a list of violations does not, in and of itself, constitute sufficient reason for that action to be considered a violation. However, each of the violations included in the list of violations currently in use is derived from other regulations, orders or lease terms. Generally, any citation for a violation issued to a lessee will include a reference to the specific provisions violated. The administrative penalties are modified by the final rulemaking and those modifications are discussed in detail later in this preamble.

One comment suggested that the penalty level in the final rulemaking be related to the lease production level to preclude penalties being assessed on a marginally economic lease, thus causing premature abandonment. The suggestion has not been adopted in the final rulemaking because it is not proper to have a dual standard of compliance based on lease economics. However, in response to this comment and others relating to the excessive nature of the penalty provisions in the proposed rulemaking, the final rulemaking

includes a cap on the maximum amount of each level of civil penalty. This change will prevent a penalty from becoming overly disproportionate to the original violation while remaining an effective deterrent to continued noncompliance. The final rulemaking includes a cap on most penalties of 60 days from the date of notice or report and on other penalties of 20 days from such date. If corrective action has not occurred when any of the maximums are reached, lease cancellation action shall be initiated. When a transporter's penalty reaches the maximum, action shall be taken to terminate its right to remove and transport productions from Federal and Indian leases within a specified area for a specified period of time.

Another comment discussed the mechanics of filing an application for a permit to drill and the amount of paperwork involved with that application. The provisions of the existing regulations relating to obtaining a permit to drill were not included in the proposed rulemaking. This being the fact, it would be inappropriate to consider any change in those provisions as part of this final rulemaking. However, most of the issues discussed in the comment are addressed in the publication of Operating Order No. 1 in the Federal Register of October 21, 1983 (48 FR 1983) corrected December 20, 1983 (48 FR 56226). Thus the issues should have been discussed in connection with that document.

One comment advised that a number of elements were missing from the existing regulations in 43 CFR Part 3160 and were not included in the proposed rulemaking. The comment recommended that these missing elements be added to this final rulemaking, i.e.: requiring the filing of run tickets, meter proving data, royalty rate changes and documentation of theft, venting and flaring gas; setting forth of the responsibility of sub-lessees; monthly reconciliation of accounts; annual audits; role of Indian tribes in joint audits; reference to the Production Accounting and Audit System and the Automated Financial System; acknowledging the power of the tribal/State government as lessors in inspections and investigations; and collecting of interest and penalties on underpaid royalties. Most of the foregoing points are within the jurisdiction of the Minerals Management Service and are covered in the companion rulemaking being issued by the Service. Responsibilities of assignees (sub-lessees) and adjustments of royalty rates on Indian lands fall under the jurisdiction of the Bureau of Indian Affairs and are currently included in 25 CFR Parts 211, 212, 213 and 217. The authority of State government lessors to inspect and regulate operations of their lands is not properly part of this rulemaking because the Bureau of Land Management's authority is limited to Federal and Indian lands, except as authorized by a unit or communitization agreement. Indian tribes are free to conduct whatever investigations and inspections they deem necessary on their lands and in accordance with their own separate authority. However, title II of the Federal Oil and Gas Royalty Management Act and the regulations in 43 CFR Part 3160 only apply to cooperative agreements with Indian tribes to perform those inspections and investigations for which the Bureau of Land Management is responsible.

The following discussion relates to comments that were directed to specific sections of the proposed rulemaking.

**Comments**

*Section 3160.0–5 Definitions.*

One comment suggested that authorized representatives be provided with identification which includes indicia of their authority and, further, that they be obligated to protect any proprietary data obtained during an inspection or investigation under the same responsibility as the Secretary of the Interior. The term "authorized officer" refers to a Bureau of Land Management employee who has been delegated authority to perform the duties set out in the regulations. The term "authorized representative" was added as a definition by the proposed rulemaking to refer to someone other than a Bureau employee who is authorized by the Bureau to conduct certain facets of the Bureau's duties. Any such authorized representative will be provided an official identification card which will show the extent of his/her authority. Provisions for the protection of proprietary data will be included in all cooperative agreements, delegations to States and contracts in accordance with specific provisions of the Federal Oil and Gas Royalty Management Act. No change has been made in this term in the final rulemaking.

One comment advised that the definition of the term "lease", when taken in context with the definition of the terms "lease site" and "lessee", is broad enough to include private and State lands included in Federal units and suggested that all the definitions be strictly limited so that they apply only to Federal and Indian leases. The final rulemaking does not adopt the suggestion made by the comment and the definitions are unchanged. The principle of unitization, or other pooling, is that operations on any committed lease are deemed to be on or for the benefit of any other committed lease. Since all committed leases within a communitized area or unit participating area share in the total production from the communitized tract or participating area regardless of the ownership of the mineral estate where the wells are located, the Bureau of Land Management must have some limited authority to obtain needed data and to inspect non-Federal and non-Indian sites to assure that the Federal and Indian interests are protected. This limited authority is spelled out in the formal agreement, i.e., unit, communitization or gas storage. If the agreement fails to provide such limited authority to the Bureau or if the United States merely accepts the agreement rather than formally approving it, usually in the case of nominal Federal or Indian interest ownership therein, these regulations do not apply to operations on private or State lands.

Two comments advised that the definition of the term "lessee" is troublesome. One comment suggested that designated operators be included in the definition of lessees. The other comment suggested that the definition does not precisely track the definition in the Federal Oil and Gas Royalty Management Act, but stated that the major concern with the definition is that notices of penalty should also be sent to the actual lessee if the operator is someone other than the lessee. This term is difficult to define, especially in light of the varying interpretations of the terms "lessee" and "operator" in common usage in various segments of government and industry. While the final rulemaking does not make and change in the definition of the term, there is no intent either to broaden or to restrict the legal definition of the terms "lessee" or "operator", or to define the ultimate responsibilities of the entities involved in lease ownership. It is important to keep in mind that the regulations in part 3160 apply to operations on or for the benefit of Federal and Indian oil and gas leases and are focused on setting standards for those actually conducting those operations. Therefore, as a convenience, the term "lessee" is used in these regulations to include both lessees and operators. In actual practice, the Bureau of Land Management initially will look to the person actually conducting the operations on the lease to correct any

violations found or to pay any penalties imposed. If someone other than the lessee is the operator of the lease, copies of the notice of penalty issued to the operator will be mailed to the lessee.

*Section 3161.3 Inspection.*

One comment suggested that the final rulemaking amend this section by inserting the phrase "or capable of producing" between the word "producing" and the words "or is expected to produce" in the first sentence to clarify that high capacity shut-in leases will receive at least an annual inspection also. This recommended change, while having some merit, was not adopted by the final rulemaking because the language of the proposed rulemaking was taken directly from the Federal Oil and Gas Royalty Management Act.

Several comments on this section suggested that the priorities of inspections on leases be determined only after individual needs were considered. One suggestion was that State and Indian tribe requests for specific inspections receive the highest priority. Another comment suggested that all producing Indian leases should be inspected a number of times each year even though it was acknowledged that the Bureau of Land Management does not have a sufficient number of inspectors to inspect all leases, both Federal and Indian, several times each year. One comment advised that the Federal Oil and Gas Royalty Management Act requires the Director, Bureau of Land Management, to develop guidelines setting forth the coverage and frequency of inspections, but that this aspect was not addressed in the proposed rulemaking. The comment requested that the guidelines be developed and published in the **Federal Register** for public comment. In addition to other comments on the term "inspections", several of the comments requested that the term "significant quantities", used in the term "inspections", be added to the definitions in the final rulemaking and used as the basis for at least annual inspections. The general theme of all of these comments is that inspection frequency and coverage be spelled out in the final rulemaking. These suggestions have not been adopted by the final rulemaking. The regulations in part 3160 only establish minimum standards as to what is to be accomplished. How the standard is to be met is more properly included in manual, instruction memoranda or other internal guidelines. The Bureau has a manual chapter in effect which establishes guidelines concerning what is to be inspected on producing leases. In addition, each Bureau District office prepares an annual inspection plan based on the Bureau's Inspection and Enforcement Strategy, which sets forth the frequency of inspection for leases in that District. The inspection frequency is based on several criteria, such as: (1) Significant production; (2) history on non-compliance; (3) amount of available work force and funding; and (4) a set-aside of time and resources to accommodate requests for specific inspections received from the Minerals Management Service, the States and Indian tribes. The Bureau believes that this system is superior to formalizing the procedures in regulations and that it satisfies the requirements of the Federal Oil and Gas Royalty Management Act.

One comment suggested that standard terms and funding provisions pertaining to cooperative agreements and delegations for inspection authority be added by the final rulemaking. This suggestion was not adopted by the final rulemaking. There are oil and gas operations on Federal lands in 22 different States. In order to accommodate the differing requirements of the many involved States, the regulations are kept as simple as possible, i.e., merely providing the authority to enter into such arrangements in accordance with the Federal Oil and Gas Royalty Management Act, leaving funding, delegation terms and cooperative agreement terms open, constrained only by the specific provisions of the Act applicable thereto.

Several comments expressed concern that inspector qualifications were not part of the proposed rulemaking, nor were they included in the existing regulations in Part 3160. These comments recommended various experience levels, industry training courses that should be taken and demonstration of judgmental capacity that should be included in the final rulemaking as qualification standards for inspectors. These recommendations have not been adopted by the final rulemaking. The Bureau of Land Management acknowledges that an individual does not naturally possess the knowledge needed to be an effective inspector in this program. However, the majority of the inspectors now in the Bureau's District offices were employed by the Geological Survey and the Minerals Management Service. Further, the Bureau has continued Survey/Service training programs and is in the process of developing more intensive training courses, some of which use industry experts as instructors. This training will be available to any State or Indian inspectors as the need arises as a result of cooperative agreements or delegations of authority being completed. Position qualification standards for employment as an inspector are on record as are the standards for promotion of inspectors. These documents and procedures are much too detailed and involved to be included in these operating regulations whose main focus is on standards to be applied to oilfield operations. Further, personnel standards and hiring procedures, which are subject to constant change, do not properly belong in regulations.

Several comments suggested that the term "cooperative agreement site" in the first sentence of § 3161.3(a) of the proposed rulemaking is misleading and confusing due to the use of the term cooperative agreements in the context of inspection functions. This suggestion has been adopted and the final rulemaking deletes this phrase. In addition, the section has been clarified by adding at the end of paragraph (a) language which describes the sites to be inspected.

One comment suggested deleting the figure "1" from the phrase "significant quantities of oil or gas in any 1 year" as it appears in paragraph (a). The final rulemaking adopts this suggestion and deletes the figure "1".

One comment questioned whether the Bureau of Indian Affairs is involved in this section and in other sections of this proposed rulemaking. They suggested this be clarified by including the Bureau of Indian Affairs authorities in this area. The final rulemaking has not adopted this suggestion because Secretarial Order No. 3087, as amended (48 FR 8983), delegates the responsibility for activities covered by part 3160 to the Bureau of Land Management for both Federal and Indian leases. In addition, § 3160.0–3 contains reference to the statutory authority for operations on both tribal and allotted lands.

*Section 3162.1 General requirements.*

Several comments advised that the requirement to permit inspections of lease sites and records normally kept on those sites is an onerous burden unless limited to normal business hours since it would require operators to maintain supervisory personnel at the lease sites 24 hours a day. While agreeing with the principle raised by the comments, the final rulemaking does not limit the inspection period for all inspections to "normal" business hours. To do so would preclude inspections at other times and also would require prescribing

what is meant by the term "normal business hours." However, routine inspections of records will generally be conducted during normal business hours. Therefore, a sentence has been added to the final rulemaking that provides that "(I)nspections involving record examination shall normally be conducted during those hours when responsible persons are expected to be present at the facility being inspected." Drilling and completion operations usually operate 24 hours a day until finished. Truck and pipeline transporters may operate 24 hours a day. In addition, emergency or other investigation processes may require an inspector's presence at a lease site outside of normal business hours.

Several comments suggested that immediate access to leases and records is inconvenient, unsafe for the inspector, causes problems with landowners when other than Federal or Indian surface is involved and creates litigious situations concerning damage to company property or injury to the inspectors, particularly considering that non-Bureau of Land Management employees may be making inspections. The comments recommended that at least a 24-hour notice be given prior to an inspection. The final rulemaking does not accept these recommendations and the provisions for immediate access to the lease sites and records for inspection purposes remain part of the final rulemaking. The language of the final rulemaking follows the language of the Federal Oil and Gas Royalty Management Act. While the recommended 24-hour notification might be in order for routine, detailed producing lease inspections, it is simply not practical to require such notice as a condition precedent to all inspections considering the various types of inspections conducted i.e., non-detailed fly-over or drive-through, rehabilitation of abandoned sites, drilling and workover, meter proving, oil and water spills, accident investigations, transporter documentation and abandonment operations. It is beyond the scope of the regulations in part 3160 to discuss tort liabilities incident to inspection procedures or to attempt to resolve difficulties with surface landowners and, further, it is questionable whether a day's prior notice would actually resolve either of the perceived problems.

One comment advised that a penalty of $10,000 per day for violation of § 3162.1(b) seems excessive. No change has been made in the final rulemaking as a result of this comment since the Federal Oil and Gas Royalty Management Act prescribes a penalty of up to $10,000 per day for such violations. However, neither the Act nor the regulations require the maximum penalty to be assessed in each case.

One comment argues that § 3162.1(b) expands the Bureau of Land Management's right to inspect lease sites to include "records normally kept on the lease" by citing section 103(a) of the Federal Oil and Gas Royalty Management Act which provides the Secretary of the Interior must formally request record examination in conjunction with an audit or investigation and recommends the deletion of the language by the final rulemaking. The final rulemaking does not adopt the recommendation. The Department of the Interior interprets the first sentence of section 103(a) of the Act as requiring the establishment and maintenance of reasonable records by regulation and the second sentence of that section permits examination of those records immediately upon request of a duly authorized inspector.

*Section 3162.4–1 Well records and reports.*

One comment recommended that the copies of logs required by § 3162.4–1(a) be subject to restrictions pertaining to protection of proprietary data. No change is needed in this section to protect these data because they are already protected by § 3162.8.

Several comments suggested alternatives to reporting by the 5th business day new or resumed production other than that required by § 3162.4–1(b). The Federal Oil and Gas Royalty Management Act is explicit in this regard and the only question open to discussion is how this reporting is to be accomplished. The recommendations made in the comments are addressed as follows: the requirement for reporting by the fifth day applies to wells located on private and State lands which are subject to federally approved unit or communitization agreements under which Federal or Indian leases share in production. This subject is part of a previous discussion pertaining to operations in areas subject to such agreeements. The rulemaking does not limit the reporting requirement only to Federal and Indian lease wells as requested in the comment because section 102(b)(3) of the Act clearly states "* * * begins production on a lease site or allocated to a lease site * * *". The Well Completion Report and Log Form does not provide the needed information, as it reports only that the well has been completed or recompleted for production and not necessarily that it has commenced production. A letter postmarked not later than the 5th business day after production begins will not satisfy the reporting requirement, as the receipt of the data by the Bureau of Land Management would necessarily occur sometime after said 5th business day. The 30-day reporting requirement for monthly reports which appeared in the former 30 CFR Part 221, which now appears at 43 CFR 3162.4–3, does not satisfy the specific reporting requirements of section 102(b)(3) of the Act. The Act specifies that the requirement for reporting by the fifth day is supplemental to and not in lieu of the monthly reporting requirement. The reporting requirement for wells idle more than 90 days is specific in the Act with regard to both new and recompleted wells. The level of violation for knowingly or willfully failing to report new or resumed production is specific in section 109(c)(3) of the Act and, therefore, seems to have been considered very important by the Congress. Thus, the Bureau is reluctant to classify an unintentional violation in this regard as minor. The need for definition of the term "begins production" was consistent in most of the comments. The comments suggested the insertion of words such as "commercial," or "into facilities for which sales can be conducted," or "into permanent facilities". These would not adequately describe what "begins production" means. The final rulemaking does insert the phrase "on which royalty is due" between the words "production" and "anywhere on a lease site" to more properly describe which production must be reported by the 5th business day after "production begins or is resumed."

Consistent comments concerning the language of § 3162.4–1(d) of the proposed rulemaking were to the effect the Bureau of Land Management action is an unjustified, unreasonable and unauthorized extension of the records retention provision of section 103(b) of the Federal Oil and Gas Royalty Management Act. The records retention provisions appear in two sections of the regulations, § 3162.4–1 for well records and reports and § 3162.7–1 for disposition of production. Experience has shown that most lessees routinely maintain records covering the complete history of any well drilled and the production equipment used on the lease for so long as the lessee owns the lease and/or it is producing. This would usually be for the life of the lease since information, including data on dryholes or failures, is essential to continued ownership and operation of the lease.

These are the data that it was anticipated lessees would keep when the records retention provision was added to § 3162.4–1 and the requirement for their retention is authorized by other sources in addition to the Act. In reviewing § 3162.4–1(a), it is noted that "disposition of leasehold products" was included in duplication of § 3162.7–1 so the final rulemaking removes those words from § 3162.4–1(a). However, in response to the comments advising that the provisions for retention of reports were inconsistent, the final rulemaking does modify § 3162.4–1(d) to only require retention for 6 years from the date the records are generated.

While it is believed that good business practice in the operation of Federal and Indian leases will dictate retention of such well records for a longer period, this will no longer be a requirement of the regulations.

*Section 3162.7–1 Disposition of production.*

Two comments requested that the definition of the term "appropriate law enforcement officer" as used in § 3162.7–1(c) be expanded in the final rulemaking to include tribal law enforcement officers when the operation is on Indian lands. The final rulemaking does not make the requested change. It is beyond the purview of these oil and gas operating regulations to attempt to expand, limit or otherwise delineate the jurisdictional authority of any law enforcement officer. The term "appropriate law enforcement officer," as used in this section, would include tribal law enforcement officers on Indian lands. However, the language is permissive, i.e., those officers may use the regulation as authority, in addition to other authority, but they are not obligated to do so. In addition, the language of the rulemaking is taken directly from the Act.

One comment advised that application of § 3162.7–1(d) must be limited to those leases issued after the effective date of the Federal Oil and Gas Royalty Management Act. The final rulemaking did not adopt this recommended change because section 305 of the Act clearly provides that the provisions of the Act apply to leases issued before, on or after the date of its enactment unless it would result in an alteration of express and specific provisions of a lease issued prior to the effective date of the Act.

Several comments advised that the term "intended first destination" of oil or gas, particularly when transported by pipeline, is very difficult to comply with. The point raised in the comment is well taken. The phrase is derived from sections 102 (c)(1) and (c)(2) of the Federal Oil and Gas Royalty Management Act, but when taken in context with section 103(a), it is apparent that the provision is directed toward data concerning the first purchaser rather than the actual geographic destination. Therefore, the phrase "intended first destination" in the proposed rulemaking has been replaced in the final rulemaking by the phrase "intended first purchaser."

One comment requested that the term "person engaged in transportation of oil or gas" be clarified to indicate whether the transporter or the consignor is the party referred to in the definition. The final rulemaking does not further define this term. In many cases, the consignee, the transporter and the consignor are one and the same corporate entity. In other cases, they are closely related even though separate corporate entities. In still other cases, there are genuine arms-length relationships between some or all of the parties. Finally, in the case of contract truckers, there is no relationship to either the consignee or consignor, except for the contractual obligation. Therefore, both the Federal Oil and Gas Royalty Management Act and this rulemaking are aimed at whatever entity is actually engaged in moving the oil or gas, regardless of whether his/her status is that of a producer, purchaser or merely transporter, or any combination thereof.

One comment suggested dividing paragraph (c) into more readily identifiable and competent segments. The final rulemaking has adopted this suggestion, with the paragraph being divided according to requirements of the **Federal Register**.

*Section 3162.8 Confidentiality.*

Several comments requested inclusion of the word "audit" with the word "investigation" and discussed the semantics of the two words to show either that they are related in meaning or, alternately, that they are unrelated in meaning. Comments pointed out that section 202 of the Federal Oil and Gas Royalty Management Act uses the words "inspection," "auditing," "investigation" or "enforcement" together. The final rulemaking has not adopted this suggestion. This final rulemaking applies only to matters within the jurisdiction of the Bureau of Land Management. Secretarial Order No. 3087, as amended, delegates the authority for audits solely to the Minerals Management Service. The Bureau, of course, will remain available to the Service as a cooperator in any audit activity in a consultative capacity when needed and requested by the Service. The Bureau considers inspection to be an integral part of any investigation.

One comment discussed the two consecutive 12-month periods of confidentiality in § 3162.8(a) of the existing regulations and seemed to be requesting revisions of that section. The proposed rulemaking did not address § 3162.8(a) and it would be inappropriate to make any substantive revision of that section in this final rulemaking. The final rulemaking does not amend § 3162.8(a).

Several comments expressed concern that the proposed rulemaking would bar Indian tribes from receiving data they need unless they waive their sovereign immunity. Operators expressed concern that confidential data they have provided be protected to the same degree that it has been afforded in the past by Department of the Interior employees. The operators insist that any entity, such as a State, Indian tribe or Indian allottee, and particularly individuals associated with those entities, be accountable for unauthorized disclosure or mis-use of the confidential data. Title II of the Federal Oil and Gas Royalty Management Act relates to cooperative agreements with States and Indian tribes and delegation of authority to the States. Section 203 pertains to information provided under Title II. Within the various divisions of State governments, the States receive the same sensitive data as that received by the Department, though it may not be as concentrated as it is in the files of the Department. The Department has maintained a long-standing policy that Indian tribes and Indian allottees may have access to any data in Departmental files that pertain to their leases. Section 3162.8(a) of the existing regulations applies only to that data specifically requested for an investigation and does not affect that traditional relationship. Sections 3162.8 (e), (f) and (g), as amended by the proposed and final rulemakings, repeat the Federal Oil and Gas Royalty Management Act verbatim as to its application to oil and gas operations. Section 3162.8(e) of the final rulemaking supplements, rather than derogates, the Indian lessor's customary right to data affecting Indian leases. Sections 3162.8 (f) and (g) firmly place responsibility for unauthorized disclosure or misuse of confidential data on all entities, including any individuals conducting investigations, at least equal to that of the United States, its Departments and agencies and its employees. Reference to "this Act" in the last sentence of § 3162.8(g) without

firm antecedent in the operating regulations is confusing. The final rulemaking clarifies this sentence by replacing the phrase "this Act" with the phrase "Title II of the Federal Oil and Gas Royalty Management Act."

*Section 3163.3 Assessments for noncompliance.*

Two comments suggested that certain of the assessments provided for in this section of the existing regulations are *de facto* penalties and should either be removed by the final rulemaking or applied under the procedures prescribed by section 109 of the Federal Oil and Gas Royalty Management Act and § 3163.3 of the existing regulations. The final rulemaking does not adopt either of these suggested changes because such assessments do not constitute penalties. While these assessments may appear to be penalties, they are merely compensation to the United States for damages to resources or existing improvements and the added administrative cost to the United States caused by reason of a lessee's failure to comply with the regulations in this part and the resultant need for regulatory action to obtain a correction of the deficiency. Since the penalty provisions in both the proposed and final rulemakings are imposed for the continued disregard of orders to correct, there is no longer a need to continue assessments during such noncompliance and, therefore, the final rulemaking modifies § 3163.3 to indicate that any assessment for a violation will be a one-time charge.

*Section 3163.4–1 Administrative penalties.*

This section of the proposed rulemaking drew, by far, the greatest number of comments. All of the respondents, except the four Indian tribes, provided lengthy comments. Many of the comments, including those from oil and gas companies and associates, seemed contradictory in that they criticized the proposed rulemaking for its length and complexity, while at the same time requested more detail or definitions. The following discussion is in response to the points raised in the comments.

The most consistent thread in the comments was to the effect that the Mineral Leasing Act penalties set forth in § 3163.4–1(a) are duplicated by the Federal Oil and Gas Royalty Management Act penalties in § 3163.4–1(b), causing "unconstitutional double jeopardy" for the same violation. The comments requested that the final rulemaking remove § 3163.4–1(a) in its entirety. The penalty system included under both § 3163.4–1 (a) and (b) (1) and (2) of the proposed rulemaking was designated to penalize failure to correct violations and not to penalize the violations themselves. If violations are corrected within the time allowed for such corrections under these sections, then no penalty is assessed. Many of the comments advised that the proposed rulemaking is an unauthorized and illegal expansion of both the Federal Oil and Gas Royalty Management Act and the Mineral Leasing Act. Many of those same comments requested, in the event that both § 3163.4–1(a) and (b) are retained by the final rulemaking, that the phrase "(N)ormally, a penalty would only be assessed for violations involving serious threats to health, safety, property or the environment, or for continuous disregard of orders" appearing in the existing § 3163.4 be reinstated in § 3163.4–1(a) by the final rulemaking or, more explicitly, that § 3163.4–1(a) be limited to forfeiture, cancellation or reinstatement provisions expressly part of the Mineral Leasing Act. Sections 188, 189, 352 and 359 of Title 30 of the United States Code provide the Secretary of the Interior's authority to promulgate the penalties provided in § 3163.4–1(a) of this final rulemaking. The Federal Oil and Gas Royalty Management Act (30 U.S.C. 1753(a)) specifically provided that the new penalties provided in the Act were in addition to existing penalties. While the final rulemaking does not adopt any of these suggestions, several changes have been made in order to provide a more unified system of penalties for continued noncompliance. Procedural requirements set forth in § 3163.4–1(b) of the proposed rulemaking and mandated by the Federal Oil and Gas Royalty Management Act were not repeated under § 3163.4–1(a) of the final rulemaking, as requested by several comments, because such procedural requirements are not mandated by the Mineral Leasing Act as they are in the Federal Oil and Gas Royalty Management Act. The maximum amount of a penalty under § 3163.4–1(a) is modified by the final rulemaking from $1,000 to $500 per day for consistency between the two authorities. In addition, the language of § 3163.4–1(a)(2) of the proposed rulemaking has been revised by the final rulemaking to be consistent with that of § 3163.4–1(b) of the final rulemaking and the original intent. The phrase "may: subject the lessee to a penalty* * *" as it appeared in the proposed rulemaking was misleading since the use of the appropriate tables to determine whether a penalty is to be assessed and its amount is mandatory, not a discretionary action.

Several comments requested that the open-ended beginning time for compliance under § 3163.4–1 of the proposed rulemaking be conformed to the 20-day or longer time frame appearing in § 3163.4–1(b) of the proposed rulemaking. These suggestions have not been adopted by the final rulemaking because there are a number of violations that must not be permitted to continue for 20 days, such as pollution and safety related violations, before corrective action is taken. When such occurances are detected, the Secretary must have the means to compel corrective action immediately. However, to the extent that Congress provided specific penalty authority in section 109 of the Federal Oil and Gas Royalty Management Act, the Secretary no longer needs to rely on the authority of then current mineral leasing laws. Therefore, the final rulemaking has been modified to make it clear that § 3163.4–1(a) penalties only will be used in cases where a violation requires corrective action in less than 20 days and there is a failure to do so within the time allowed. In addition, when such penalties are imposed, they will run through the 20th day of noncompliance when, if not corrected, a penalty under § 3163.4–1(b) will be instituted and will be effective from the date of the original notice. This will eliminate the appearance of double penalties for the same act or failure to correct a deficiency while providing continued authority to require prompt compliance when it is necessary.

One comment suggested that the phrase "or his/her representative" be removed from § 3163.4–1(a) as there is a question as to whether or not an "authorized representative" as defined in this part will have authority to issue orders to a lessee. The final rulemaking has adopted this suggestion and had deleted the language.

As previously stated, all administrative penalties now provide for a maximum amount as well as specific reference to additional actions which are to be instituted should the maximum be reached without the required abatement action.

Several comments advised that the complexity and inflexibility of § 3163.4–1(e) of the proposed rulemaking, redesignated § 3163.4–1(f) by the final rulemaking, will make it difficult to apply and suggested that the methodology of penalty assessment more properly belongs in Bureau of Land Management internal guidance or, if it remains in the regulation, that it should be clearly labeled as guidance rather

than as the established standard. Several comments suggested that the penalty provisions of section 109 of the Federal Oil and Gas Royalty Management Act are sufficiently detailed to stand by themselves, if recast in the form of regulations, and there is no need to amplify thereon as was done in the proposed rulemaking. On the other hand, several comments advised that the list of common violations compiled by the Director, Bureau of Land Management, should not be effective until published in the **Federal Register** for public comment and thus, by implication, be made a part of the regulations. The final rulemaking retains the basic penalty determination section of § 3163.4–1(e) of the proposed rulemaking, except that subparagraph (5) and proposed Table A are no longer needed since the $1,000 per day penalties have been eliminated by the final rulemaking. This necessitated redesignating all remaining penalty provisions and Tables in § 3163.4–1(e) of the final rulemaking. The first column of Penalty Conversion Table A in the final rulemaking, Table B in the proposed rulemaking, will now be used for penalties under both §§ 3163.4–1 (a) and (b).

If the level of penalties for failure to correct violations and method of calculating the levels is clearly stated in regulations, everyone involved will be better able to determine whether or not failure to correct a particular action is subject to penalty and whether the level of a penalty is appropriate. This should result in consistent, nationwide application. Further, the provisions of §§ 3463.4–1 (d) and (e) of the final rulemaking are very similar to the existing regulations of the Mine Safety and Health Administration in 30 CFR Part 100 and of the Office of Surface Mining in 30 CFR Part 845 for other mineral operations. Thus, nationwide consistency among mineral commodity operations with respect to penalties is promoted.

Several comments object to the inclusion of the "history of previous violations" provision appearing in § 3163.4–1(e)(4) of the proposed rulemaking and requested clarification or definition of the phrase "operator-by-operator" and "lease-by-lease." One comment advised that the Federal Oil and Gas Royalty Management Act does not authorize creation of a history file. One comment questioned which violations should be counted in such histories, i.e., any Incident of Noncompliance issued, or only those for which a penalty had been paid, and further, if any entry might be expunged from the history when corrections have been made. Several comments suggested that if a history is to be compiled, a 36-month revolving history is too long and that it should not include more than 12 months. Another issue raised by these comments was that the February 1, 1983, commencement date is inappropriate, and that the starting date for the history should not be any earlier than the effective date of this final rulemaking. Finally, one comment advised that it is a point of law that any violation or failure to correct a violation must be adjudicated strictly upon the circumstances applicable to the individual case and that no other action, or inaction, of the person charged may affect that adjudication unless specifically related to the individual infraction at hand. The final rulemaking has not changed the language of § 3163.4–1(e)(4) of the proposed rulemaking. The history of violation concept is referred to in section 101(b)(1) of the Act which outlines the duties of the Secretary of the Interior. It is agreed that it is pertinent to consider only the circumstances at hand in an individual matter to determine whether or not a specific failure to correct a violation has occurred and that other actions or inactions of the person charged with the violation should have no bearing upon that determination. However, it is equally appropriate, once a determination is made that failure to correct a violation has occurred, to include the past history of the person charged in calculating the level of penalty to be applied. Inasmuch as the Act requires only annual inspection, a 12-month revolving period for history of violations would have no meaning, and a 3-inspection cycle is reasonable. The effective date of February 1, 1983, is also reasonable as it is the first day of the month following the enactment of the Federal Oil and Gas Royalty Management Act. The lact of regulations in an intervening period should not derogate the Act's provisions. Finally, the final rulemaking did not change the phrases "lease-by-lease" as was suggested by a few of the comments, but did replace the phrase "operator-by-operator" with the phrase "lessee-by-lessee" for consistency. The widest geographical boundary for accumulation of a history of violations is the lease and if there is more than one operator on that lease, the actions of one will have no bearing on the history of any of the others. In the case of transporters, there is no direct connection with any lease or lease boundary so the geographical boundary chosen was that of the various districts of the Bureau of Land Management.

Several comments made the observation that the Federal Oil and Gas Royalty Management Act requires that notices of proposed penalties be sent by registered mail rather than by certified mail as prescribed in the proposed rulemaking. Several comments also suggested that the final rulemaking should prescribe that any such notice also be sent to the lessee of record, if different from the operator. The term "certified mail" remains in the final rulemaking because the term "registered mail" as used in the Act has been interpreted to mean U.S. Postal Service mail service "Registered Mail, Return Receipt Requested" or "Certified Mail, Return Receipt Requested."

The final rulemaking did not change this section to require that any violation notices be sent to the lessee, if other than the operator, because other sections of the existing regulation require service upon the lessee of record.

One comment requested that the phrase "or by contract or by Secretarially approved tribal ordinance" be added to § 3163.4–1(b)(9) of the proposed rulemaking, designated § 3163.4–1(b)(10) in the final rulemaking, and the phrase "or other payment income" be added to the phrase "royalty income" where it appears in § 3163.4–1(d) (1), (2) and (3) of the proposed rulemaking. The final rulemaking did adopt another recommended change to § 3163.4–1(b)(9) of the proposed rulemaking, redesignated § 3163.4–1(b)(10) by the final rulemaking, which will accommodate tribal ordinances, but did not make the "contact" or "other payment" changes that were requested. The final rulemaking reflects only Bureau of Land Management authorities and responsibilities as they relate to operations per Secretarial Order No. 3087, as amended.

Contract provisions negotiated by Indian tribes under the Indian Mineral Development Act of 1982 are more properly the subject matter of Title 25 of the Code of Federal Regulations and revenue collection is the responsibility of the Minerals Management Service.

Several comments suggested technical or clarification revisions not of a policy or substantive nature. Those suggestions are discussed individually as follows:

In § 3163.4–1(b)(2), the phrase "paragraph (1) of this paragraph" is confusing. The final rulemaking makes only a minor change in this paragraph for clarification because the phrase "corrective action is not taken" as used in section 109(h) of the Federal Oil and

Gas Royalty Management Act has been interpreted to mean corrective action not completed. One comment suggested that the phrase "knowingly and willfully" more properly reflects the intent of Congress that does the phrase "knowingly or willfully" appearing in the Act and in § 3163.4–1 (b)(4) and (b)(5) of the proposed rulemaking. The final rulemaking does not adopt the suggested change because the language of the proposed rulemaking follows the language of the Act which is clear. Another comment suggested that the word "compromise" in § 3163.4–1(b)(7) of the proposed rulemaking, redesignated § 3163.4–1(b)(8) by the final rulemaking, be changed to "remit" as specified in section 109(i) of the Act. The final rulemaking does not make the suggested change because the phrase "compromise or reduce" used in section 109(g) of the Act seems overriding. One comment pointed out that the last sentence of § 3163.4–1(b)(7) of the proposed rulemaking seems out of context. After careful review of § 3163.4–1(b)(7) of the proposed rulemaking, the final rulemaking has added the final sentence of § 3163.4–1(b)(7) of the proposed rulemaking to § 3163.5(c). One comment suggested that the term "in this title" appearing in § 3163.4–1(b)(9) of the proposed rulemaking is much to narrow in scope and more properly should read "in any other provision of law." This suggested change has been adopted by the final rulemaking but redesignated the section as § 3163.4–1(b)(10). Finally, one comment pointed out two errors in Penalty Conversion Table–A in § 3163.4–1(e)(5)(i) of the proposed rulemaking. However, as previously stated, this Table has been eliminated.

*Section 3163.5 Assessments and administrative penalties.*

Two comments suggested that § 3163.5(a) of the proposed rulemaking be removed and § 3163.5(b) be renumbered as paragraph (a) since the comments had earlier suggested the removal of § 3163.3. The final rulemaking did not adopt the suggested changes since the final rulemaking did retain § 3163.3 for reasons previously discussed in this preamble.

The principal authors of this final rulemaking are Eddie R. Wyatt, Gilbert O. Lockwood and Stephen H. Spector, all of the Washington Office, Bureau of Land Management, assisted by field officials of the Colorado, New Mexico, and Wyoming State offices, and the Office of Legislation and Regulatory Management, Bureau of Land Management and the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Even though the final rulemaking establishes new and substantial penalties for violations of law, regulations, lease terms or directives, the cost or economic effect will be minimal or non-existent so long as lessees and operators comply with the existing requirements or take corrective action in a timely manner. Cooperative agreements with the States or Indian tribes, delegations of authority to the States or contractor performed inspections will have no economic effect or cost to industry as this final rulemaking only addresses who may be authorized to conduct various regulatory activities.

The final rulemaking imposes no additional recordkeeping or reporting requirements requiring additional clearance by the Office of Management and Budget. The change made to § 3162.4–1(d) by the final rulemaking will reduce existing requirements for retention of well records. The information collection requirements have already been approved by the Office of Management and Budget and assigned clearance numbers 1004–0134, 1004–0135, 1004–0136, 1004–0137 and 1004–0138.

**List of Subjects in 43 CFR Part 3160**

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—minerals resources, Indian lands—minerals resources, Reporting and recordkeeping requirements.

Under the authority of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) and Executive Order 12291 (46 FR 13193), Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows.

Dated: August 15, 1984.

**Garry E. Carruthers,**

*Acting Secretary of the Interior.*

## PART 3160—ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for Part 3160 is amended by adding the phrase "the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701]; and the Indian Mineral Development Act of 1982 [25 U.S.C. 2102]."

**§ 3160.0–5 [Amended]**

2. Section 3160.0–5 is amended by:

A. Adding the term *Authorized Representative* to read:

*Authorized Representative.* Any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation, or contract.

B. Adding the term *Federal Lands* to read:

*Federal Lands.* All lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

C. Revising the term *Lease* to read:

*Lease.* Any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas.

D. Removing the term *Leased Lands, Leasehold;*

E. Adding the term *Lease Site* to read:

*Lease Site.* Any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized pursuant to a lease.

F. Revising the term *Lessee* to read:

*Lessee.* The party authorized by or through a lease or an approved assignment thereof, to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convenience of reference throughout this part, the term lessee also refers to and includes the owners of approved operating rights and designated operators.

G. Adding the term *Person* to read:

*Person.* Any individual, firm, corporation, association, partnership, consortium or joint venture.

3. A new § 3161.3 is added to read:

**§ 3161.3 Inspections.**

(a) The authorized officer shall establish procedures to ensure that each Federal and Indian lease site which is producing or is expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives shall be inspected at least once annually. Similarly, each lease site on non-Federal or non-Indian lands subject to a formal agreement such as a unit or communitization agreement which has been approved by the Department of the Interior and in which the United States

or the Indian lessors share in production shall be inspected annually whenever any of the foregoing criteria are applicable.

(b) In accomplishing the inspections, the authorized officer may utilize Bureau Personnel, may enter cooperative agreements with States of Indian Tribes, may delegate the inspection authority to any State, or may contract with non-Federal Governmental entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

**§ 3162.1 [Amended]**

4. Section 3162.1 is amended by designating the existing paragraph as paragraph (a) and adding new paragraph (b) and (c) to read:

(b) The lessee shall permit properly identified authorized representatives to enter upon, travel across and inspect lease sites and records normally kept on the lease pertinent thereto without advance notice. Inspections normally will be conducted during those hours when responsible persons are expected to be present at the operation being inspected. Such permission shall include access to secured facilities on such lease sites for the purpose of making any inspection or investigation for determining whether there is compliance with the mineral leasing laws, the regulations in this part, and any applicable orders notices or directives.

(c) For the purpose of making any inspection or investigation, the Secretary or his authorized representative shall have the same right to enter upon or travel across any lease site as the lessee or operator has. acquired by purchase, condemnation or otherwise.

**§ 3162.4-1 [Amended]**

5. Section 3162.4-1 is amended by:

A. Amending paragraph (a) by removing the phrase "disposition of leasehold products" from the first sentence;

B. Revising paragraph (c) to read:

(c) Not later than the 5th business day after any well begins production on which royalty is due anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off production for more than 90 days, the operator shall notify the authorized officer by letter or sundry notice, Form 3160-5, or orally to be followed by a letter or sundry notice, of the date on which such production has begun or resumed.

C. Adding a new paragraph (d) to read:

(d) All records and reports required by this section shall be maintained for 6 years from the date they were generated. In addition, if the Secretary, or his/her designee notifies the recordholder that the Department of the Interior has initiated or is participating in an audit or investigation involving such records, the records shall be maintained until the Secretary, or his/her designee, releases the recordholder from the obligation to maintain such records.

**§ 3162.7-1 [Amended]**

6. Section 3162.7-1 is amended by:

A. Revising paragraphs (c) and (d) to read:

(c) (1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry on his/her person, in his/her vehicle, or in his/her immediate control, documentation showing at a minimum; the amount, origin, and intended first purchaser of the oil.

(2) Any person engaged in transporting any oil or gas by pipline from any lease site, or allocated to any lease site, shall maintain documentation showing, at a minimum, the amount, origin, and intended first purchaser of such oil or gas.

(3) On any lease site, any authorized representative who is properly identified may stop and inspect any motor vehicle that he/she has probable cause to believe is carrying oil from any such lease site, or allocated to such lease site, to determine whether the driver possesses proper documentation for the load of oil.

(4) Any authorized representative who is properly identified and who is accompanied by an appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he/she has probable cause to believe the vehicle is carrying oil from a lease site, or allocated to a lease site, to determine whether the driver possesses proper documentation for the load of oil.

(d) The lessee shall conduct operations in such a manner as to prevent avoidable loss of oil and gas. A lessee shall be liable for royalty payments on oil or gas lost or wasted from a lease site, or allocated to a lease site, when such loss or waste is due to negligence on the part of the lessee of such lease, or due to the failure of the lessee to comply with any regulation, order or citation issued pursuant to this part.

B. Adding a new paragraph (f) to read:

(f) Any records generated under this section shall be maintained for 6 years from the date they were generated or, if notified by the Secretary, or his designee, that such records are involved in an audit or investigation, the records shall be maintained until the recordholder is released by the Secretary from the obligation to maintain them.

**§ 3162.7-2 [Amended]**

7. Section 3162.7-2 is amended by removing from the beginning of the first paragraph the figure "(a)" and by removing paragraph (b) in its entirety.

**§ 3162.7-3 [Amended]**

8. Section 3162.7-3 is amended by removing from the beginning of the first paragraph the figure "(a)" and by removing paragraph (b) in its entirety.

9. Section 3162.8 is amended by adding new paragraphs (e), (f) and (g) to read:

**§ 3162.8 Confidentiality.**

* * * * *

(e) Trade secrets, proprietary and other confidential information obtained pursuant to this part shall be made available to States and Indian Tribes upon their request for the purpose of conducting an investigation if:

(1) such State or Indian Tribe consents in writing to restrict the dissemination of the information to those who are directly involved in an investigation under a cooperative agreement approved by the Secretary, and who need to know;

(2) such State or Indian Tribe accepts liability for wrongful disclosure;

(3) in the case of a State, such State demonstrates that such information is essential to the conduct of an investigation or to litigation; and

(4) in the case of an Indian Tribe, such Tribe demonstrates that such information is essential to the conduct of an investigation and waives sovereign immunity by express consent for wrongful disclosure by such Tribe.

(f) The United States shall not be liable for the wrongful disclosure by any individual, State, or Indian Tribe of any information provided to such individual, State, or Indian Tribe pursuant to any cooperative agreement or a delegation.

(g) Whenever any individual, State or Indian Tribe has obtained possession of information pursuant to a cooperative agreement or any individual or State has obtained possession of information pursuant to a delegation of authority, the individual shall be subject to the same provisions of law with respect to the

disclosure of such information as would apply to an officer or employee of the United States or of any Department or agency thereof and the State or Indian tribe shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any Department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information or other confidential information under Title II of the Federal Oil and Gas Royalty Management Act may be required to disclose such information under State Law.

**§ 3163.3 [Amended]**

10. Section 3163.3 is amended by amending paragraph (e) by removing the last sentence of the introductory paragraph and by inserting immediately prior to the figure "$100" the phrase "or a production facility,".

**§ 3163.4 [Amended]**

11. Section 3163.4 is amended by removing all after the title and by adding new section 3163.4–1 and 3163.4–2 to read:

**§ 3163.4–1 Administrative penalties.**

(a) *Mineral Leasing Act* (1) Whenever a lessee fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, the authorized officer shall give the lessee notice in writing to remedy any defaults or violations.

(2) If there is a failure to complete the necessary remedial action within the time and in the manner prescribed by the notice, the lessee shall be liable for a penalty of not more than $500 per day for each day the violation continues beyond the date specified in the notice through the 20th day of such noncompliance.

(3) A penalty shall be imposed under paragraph (a) of this section for the failure to abate violations which are required to be corrected in less than 20 days from the date of the report or notice.

(4) A notice of proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice on their behalf. Any person authorized by the lessee to submit reports, notices, affidavits, records, or other information required by regulations in this part or who is authorized by the lessee to conduct or supervise operations subject to regulations in this part may receive the notices. If no designation pertaining to that lease has been filed, the notice shall be served as previously described. A person charged with a violation and served with a notice of civil penalty under this paragraph may request a technical and procedural review under § 3165.3 of this title within 10 working days of receipt of the notice. Such review shall be limited to the issues of whether a violation actually existed and, if so, whether the gravity attached to the violation was appropriate, and whether a reasonable abatement period was prescribed. Within 30 days of service of a notice of penalty, or within 15 days of receipt of the decision on the technical and procedural review, whichever is later, the person charged shall either file an appeal pursuant to part 4 of this title or pay the civil penalty.

(b) *Federal Oil and Gas Royalty Management Act* (1) Whenever a lessee fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder, the authorized officer shall notify the lessee in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice as previously issued under paragraph (a) of this section. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. This notice shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier.

(2) If the violation specified in paragraph (b)(1) of this paragraph is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of not more than $5,000 per violation for each day the violation continues, not to exceed a maximum of 60 days, dating from the date of such notice or report.

(3) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(4) Whenever a transporter fails to permit inspection of proper documentation by any authorized representative, as provided in § 3162.7–1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

(5) Any person who:

(i) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or

(ii) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, form 3160–5, or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed; shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

(6) Any person who:

(i) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(ii) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal of Indian lease site without having valid legal authority to do so; or

(iii) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal of Indian lease site; shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

(7)(i) Notice of violation imposed by the authorized officer under this section shall be by personal service or by certified mail. Any person may designate a representative to receive any notice of their behalf. Any person who is authorized by the lessee to submit reports, notices, affidavits, records data or other information required by this part or who is authorized by the lessee to conduct or supervise operations subject to regulations in this part may receive the notices. If no designation has been filed, the notice shall be served as previously described.

(ii) A person charged with a violation and served with a notice of civil penalty may request a technical and procedural review under § 3165.3 of this title within 10 working days of receipt of the notice. Such review shall be limited to the issues of whether a violation actually existed and, if so, whether the gravity attached to the violation was appropriate, and whether a reasonable abatement period was prescribed. Within 30 days of service of a notice of penalty, or within 15 days of receipt of the decision on the technical and procedural review, whichever is later, the person charged shall either request a hearing on the record or pay the civil penalty. A request for a hearing shall be filed within the time allowed in the office of the State Director having jurisdiction of the lands covered by the lease. No civil penalty shall be assessed under this section until the person charged with the violation has been given the opportunity for a hearing on the record under Part 4 of this title.

(8) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under paragraph (b) of this section. In compromising or reducing the amount of a civil penalty under paragraph (b) of this section, the Secretary shall state on the record the reasons for his/her determinations.

(9) Any person who has requested a hearing in accordance with paragraph (b)(7) of this section and who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after the Secretary's final order.

(10) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of law.

(11) If the violation continues beyond the 60-day maximum specified in paragraph (b)(2) of this section or beyond the 20-day maximum specified in paragraphs (b)(5) and (b)(6) of this section, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(12) If the violation continues beyond the 20-day maximum specified in paragraph (b)(4) of this section, the District Manager shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that District Manager or to remove any crude oil or liquid hydrocarbons allocated to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and the related penalty paid.

(c) If any person fails to pay an assessment of a civil penalty under paragraph (b) of this section after the order making the assessment has become a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by paragraph (b)(9) of this section. Judgment by the court shall include an order to pay.

(d) The common drilling, production and abandonment related violations are categorized into 3 noncompliance ranges. The category for any violation is the gravity level to be used for that violation. Based on individual circumstances and with the appropriate documentation, the gravity of a violation may be upgraded or downgraded by 1 level. The Director shall establish a detailed list of potential violations. The violations shall be either:

(1) A minor violation which does not affect the safety of the workplace, nor does it degrade the environment or affect the amount of royalty income; or

(2) A moderate violation, which if left uncorrected, may eventually affect the safety of the workplace, degrade the environment and/or affect royalty income; or

(3) A major violation which has the immediate potential to affect the safety of the workplace, degrade the environment and/or affect the royalty income.

(e) Determination of Penalty Amount for paragraphs (a) and (b) of this section are as follows:

(1) The amount of the administrative penalty proposed shall be based upon the formula set forth in this subsection. The formula is based on 2 criteria: i.e., the gravity of the violation; and the lessee's or transporter's history of previous violations;

(2) The appropriate number of penalty points shall be assigned to each criterion using the appropriate tables as denoted and the 2 numbers shall then be totaled, and the point accumulation converted into a dollar per day amount by using Penalty Conversion Table A, B, C or D, as appropriate, and the amounts added, if necessary.

(3) Table I—Gravity of the Violation:

| Classification | Penalty points |
|---|---|
| Minor violations | 11 |
| Moderate violations | 41 |
| Major violations | 71 |

(4) Table II—Lessee's or Transporter's History of Past Violations:

| | |
|---|---|
| Minor violations | Number × ½ = |
| Moderate violations | Number × 2 = |
| Major violations | Number × 5 = |

Total—(rounded down to the nearest whole number) (maximum of 29).

History of previous violations standards. History is based on the number of violations issued in a preceding 36-month period beginning February 1, 1983. The history of previous violations may account for a maximum of 29 penalty points. The penalty points shall be calculated on an lessee-by-lessee and lease-by-lease basis and, in the case of transporters, on a transporter-by-transporter basis within the jurisdictional area of each Bureau of Land Management District Office.

(5) Penalty Conversion Table—A (Lessees):

(i) The following penalty conversion tables are for violations not corrected within the time allowed in paragraph (a) of this section, or by the 20th day under paragraph (b)(1) of this section, or by the 40th day under paragraph (b)(2) of this section or such other time period as the authorized officer may specify and shall be used to convert the accumulation of penalty points from Tables I and II above to the appropriate dollar per day proposed penalty.

PENALTY CONVERSION TABLE—A

| Points | Not corrected for up to 40 days-penalty/ dollars per day under paragraph (a) and/or (b) | Not corrected in 40 days—penalty/ dollars per day |
|---|---|---|
| 40 | 75 | 750 |
| 41 | 79 | 790 |
| 42 | 82 | 820 |
| 43 | 86 | 860 |
| 44 | 89 | 890 |
| 45 | 93 | 930 |
| 46 | 97 | 970 |
| 47 | 101 | 1,010 |
| 48 | 105 | 1,050 |
| 49 | 109 | 1,090 |
| 50 | 113 | 1,130 |
| 51 | 117 | 1,170 |
| 52 | 122 | 1,220 |
| 53 | 126 | 1,260 |
| 54 | 131 | 1,310 |
| 55 | 135 | 1,350 |
| 56 | 140 | 1,400 |
| 57 | 145 | 1,450 |
| 58 | 150 | 1,500 |
| 59 | 156 | 1,560 |
| 60 | 160 | 1,600 |
| 61 | 166 | 1,660 |

PENALTY CONVERSION TABLE—A—Continued

| Points | Not corrected for up to 40 days—penalty/ dollars per day under paragraph (a) and/or (b) | Not corrected in 40 days—penalty/ dollars per day |
|---|---|---|
| 62 | 171 | 1,710 |
| 63 | 177 | 1,770 |
| 64 | 182 | 1,820 |
| 65 | 188 | 1,880 |
| 66 | 194 | 1,940 |
| 67 | 200 | 2,000 |
| 68 | 206 | 2,060 |
| 69 | 212 | 2,120 |
| 70 | 218 | 2,180 |
| 71 | 225 | 2,250 |
| 72 | 233 | 2,330 |
| 73 | 243 | 2,430 |
| 74 | 250 | 2,500 |
| 75 | 258 | 2,580 |
| 76 | 266 | 2,660 |
| 77 | 274 | 2,740 |
| 78 | 282 | 2,820 |
| 79 | 290 | 2,900 |
| 80 | 298 | 2,980 |
| 81 | 306 | 3,060 |
| 82 | 315 | 3,150 |
| 83 | 323 | 3,230 |
| 84 | 332 | 3,320 |
| 85 | 340 | 3,400 |
| 86 | 349 | 3,490 |
| 87 | 358 | 3,580 |
| 88 | 367 | 3,670 |
| 89 | 376 | 3,760 |
| 90 | 385 | 3,850 |
| 91 | 395 | 3,950 |
| 92 | 405 | 4,050 |
| 93 | 415 | 4,150 |
| 94 | 425 | 4,250 |
| 95 | 435 | 4,350 |
| 96 | 448 | 4,480 |
| 97 | 461 | 4,610 |
| 98 | 474 | 4,740 |
| 99 | 487 | 4,870 |
| 100 | 500 | 5,000 |

(ii) In order to focus particularly on serious violations, while also considering an operator's past compliance history, no dollar penalty shall be proposed for violations totaling less than 40 penalty points.

(6) Penalty Conversion Table A (Transporters):

The amount of the proposed civil penalty for failure of a transporter to permit inspection of proper documentation required by paragraph (b)(4) of this section shall be determined by formula based on the following criteria: i.e., the violation shall be considered a major violation (see Table I); and the transporter's history of previous violations (see Table II). Penalty points shall be assigned to each criterion and the 2 numbers shall then be totaled, and the point accumulation converted to a dollar per day amount by using the first column of "Penalty Conversion Table A"

(7) Penalty Conversion Table (B):

(i) The amount of the proposed civil penalty for violation of paragraph (b)(5) of this section shall be determined by the formula based on the following criteria; i.e., the specific violation (Table III); and the lessee's history of previous violations (Table II).

(ii) Penalty points shall be assigned to each criterion and the 2 numbers shall then be totaled, and the point accumulation converted to a dollar per day amount by using "Penalty Conversion Table B."

TABLE III—TYPE OF VIOLATION

| Violation | Penalty points |
|---|---|
| Fail to permit entry upon the leasehold | 70 |
| Fails to permit inspection | 60 |
| Knowingly or willfully fails to notify after well begins or resumes production by the 5th business day thereafter | 65 |

(iii) The following penalty conversion table shall be used to convert the accumulation of penalty points from Tables II and III to the appropriate per day proposed monetary penalty.

PENALTY CONVERSION TABLE—B

| Points | Penalty dollars per day |
|---|---|
| 60 | 3,600 |
| 61 | 3,720 |
| 62 | 3,840 |
| 63 | 3,970 |
| 64 | 4,100 |
| 65 | 4,220 |
| 66 | 4,360 |
| 67 | 4,490 |
| 68 | 4,620 |
| 69 | 4,760 |
| 70 | 4,900 |
| 71 | 5,040 |
| 72 | 5,180 |
| 73 | 5,330 |
| 74 | 5,480 |
| 75 | 5,630 |
| 76 | 5,780 |
| 77 | 5,930 |
| 78 | 6,080 |
| 79 | 6,240 |
| 80 | 6,400 |
| 81 | 6,560 |
| 82 | 6,720 |
| 83 | 6,890 |
| 84 | 7,060 |
| 85 | 7,220 |
| 86 | 7,400 |
| 87 | 7,570 |
| 88 | 7,740 |
| 89 | 7,920 |
| 90 | 8,100 |
| 91 | 8,280 |
| 92 | 8,460 |
| 93 | 8,650 |
| 94 | 8,840 |
| 95 | 9,030 |
| 96 | 9,220 |
| 97 | 9,410 |
| 98 | 9,600 |
| 99 | 9,800 |
| 100 and above | 10,000 |

(8) Penalty Conversion Table—C:

(i) The amount of the proposed civil penalty for violations of paragraph (b)(6) of this section shall be determined by the formula based on the following criteria: i.e., the specific violation (Table IV); and the lessee's history of previous violations (Table II).

(ii) Penalty points shall be assigned to each criterion and the 2 numbers shall then be totaled, and the point accumulation converted to a dollar per day amount by using "Penalty Conversion Table—C."

TABLE IV—TYPE OF VIOLATION

| Violation | Penalty points |
|---|---|
| Knowingly or willfully prepares, maintains or submits false or misleading written information | 70 |
| Knowingly or willfuly prepares, maintains or submits inaccurate written information | 60 |
| Knowingly or willfully removes, uses or diverts oil or gas from any lease without having legal authority to do so | 70 |
| Purchases, accepts, sells, transport or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted | 70 |

(iii) The following penalty conversion table shall be used to convert the accumulation of penalty points from Tables II and IV to the appropriate per day proposed monetary penalty.

PENALTY CONVERSION TABLE—C

| Points | Penalty dollars per day |
|---|---|
| 60 | 9,000 |
| 61 | 9,300 |
| 62 | 9,600 |
| 63 | 9,925 |
| 64 | 10,250 |
| 65 | 10,550 |
| 66 | 10,900 |
| 67 | 11,225 |
| 68 | 11,550 |
| 69 | 11,900 |
| 70 | 12,250 |
| 71 | 12,600 |
| 72 | 12,950 |
| 73 | 13,325 |
| 74 | 13,700 |
| 75 | 14,075 |
| 76 | 14,450 |
| 77 | 14,825 |
| 78 | 15,200 |
| 79 | 15,600 |
| 80 | 16,000 |
| 81 | 16,400 |
| 82 | 16,800 |
| 83 | 17,225 |
| 84 | 17,650 |
| 85 | 18,050 |
| 86 | 18,500 |
| 87 | 18,925 |
| 88 | 19,350 |
| 89 | 19,800 |
| 90 | 20,250 |
| 91 | 20,700 |
| 92 | 21,150 |
| 93 | 21,625 |
| 94 | 22,100 |
| 95 | 22,575 |
| 96 | 23,050 |
| 97 | 23,525 |
| 98 | 24,000 |
| 99 | 24,500 |
| 100 and above | 25,000 |

**§ 3163.4–2 Criminal penalties.**

Any person who commits an act for which a civil penalty is provided in § 3163.4–1(b)(6) of this title shall, upon conviction, be punished by a fine of not

more than $50,000 or by imprisonment for not more than 2 years or both.

12. Section 3163.5 is amended by:

A. Revising the title and paragraphs (a) and (b) to read:

**§ 3163.5 Assessments and administrative penalties.**

(a) Assessments made under § 3163.3 of this title are due upon issuance and shall be paid within 30 days of receipt of certified mail written notice or personal service, as directed by the authorized officer in the notice. Failure to pay assessed damages timely will be subject to late payment charges as prescribed under Title 30 CFR Group 202.

(b) Administrative penalties under § 3163.4–1 of this title shall be paid within 30 days of completion of any final order of the Secretary or the final order of the Court.

B. Adding to the end of paragraph (c) the sentence "The amount of any civil penalty under § 3163.4–1(b) of this title, as finally determined, may be deducted from any sums owing by the United States to the person charged."

13. A new § 3163.6 is added to read as follows:

**§ 3163.6 Injunction and specific performance.**

(a) In addition to any other remedy under this part or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States to:

(1) restrain any violation of the Federal Oil and Gas Royalty and Management Act or any mineral leasing law of the United States; or

(2) compel the taking of any action required by or under the Act or any mineral leasing law of the United States.

(b) A civil action described in paragraph (a) may be brought only in the United States district court of the judicial district wherein the act, omission or transaction constituting a violation under the Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

[FR Doc. 84–25036 Filed 9–20–84; 8:45 am]

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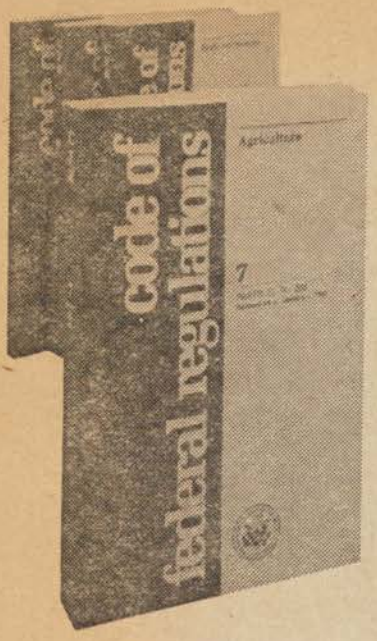


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