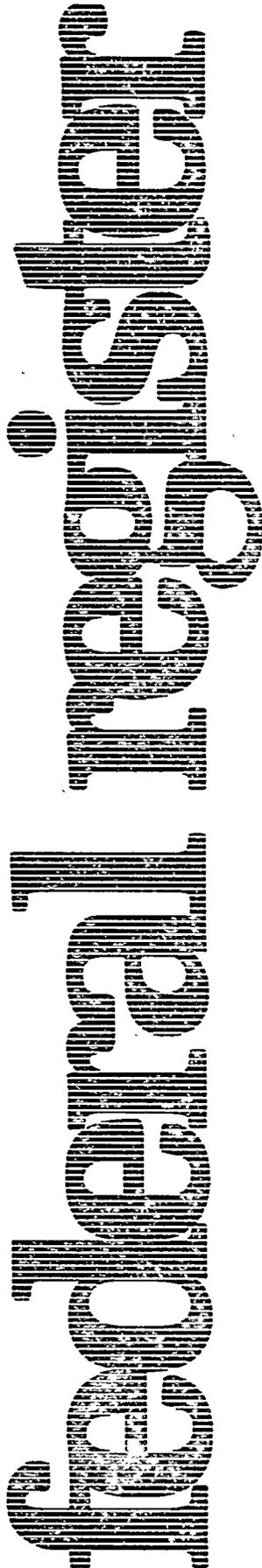


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Friday  
January 6, 1984



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## Selected Subjects

**Administrative Practice and Procedure**  
Coast Guard  
National Oceanic and Atmospheric Administration

**Aviation Safety**  
Federal Aviation Administration

**Communications Common Carriers**  
Federal Communications Commission

**Crop Insurance**  
Federal Crop Insurance Corporation

**Gift Taxes**  
Internal Revenue Service

**Hazardous Substances**  
Environmental Protection Agency

**Historic Preservation**  
Agriculture Department  
Defense Department  
Interior Department  
Tennessee Valley Authority

**Marketing Agreements**  
Agricultural Marketing Service

**Military Personnel**  
Air Force Department

**National Banks**  
Comptroller of Currency

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There are no restrictions on the republication of material appearing in the Federal Register.

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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### Occupational Safety and Health

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### Pesticides and Pests

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### Postal Service

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### Television

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Title 3—

Proclamation 5144 of January 3, 1984

The President

National Consumers Week, 1984

By the President of the United States of America

**A Proclamation**

The American consumer has been blessed by the freedom to participate in a social, economic, and governmental system that is unparalleled in any other land. Since the founding of this country, Americans have benefitted from the fruits of a free society. We are free to learn, free to choose a vocation, free to produce, and free to purchase. These fundamental freedoms and the willingness of our people to work hard have helped make America great. Americans are prosperous and enjoy a standard of living that is the envy of the world. It is appropriate to focus special attention on consumers and the important role they play in our economic and social system.

We have emerged from a recession on a wave of consumer optimism that dramatically proves the truth of this year's slogan—"Consumers Mean Business." Our economic recovery program has dramatically lowered inflation and interest rates, giving buyers more disposable income. Consumers are reacting to the Nation's resurgent economy by purchasing homes, automobiles, durable goods, and those products or services which enhance the quality of life. With greater purchasing power, it is important that consumers have access to the latest information.

Consumers need to understand the market economy, both here and abroad, and their options for earning, spending, saving, and investing income. Increased consumer and economic education in schools, workshops, the media, and the distribution of informative materials from government and business give consumers a greater appreciation of their rights and responsibilities in our incomparable American economy.

Those who are sensitive to consumer needs and services and recognize that well-informed consumers mean business—repeat sales and sound market relationships—can expect to be rewarded with continuing opportunities to serve and profit. Wise consumers, properly informed and working with business representatives at all levels, can assure that our marketplace operates on mutual trust and fairness.

By working together in the voluntary spirit that has always distinguished the character of Americans in all walks of life, we strengthen our free enterprise system and secure basic consumer rights for all.

Let us show appreciation during National Consumers Week for our many freedoms and work together to enhance the consumer's economic equity in the marketplace.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning April 23, 1984, as National Consumer's Week.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of Jan., in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

A handwritten signature in cursive script that reads "Ronald Reagan". The signature is written in dark ink and is positioned to the right of the main text of the proclamation.

[FR Doc. 84-397

Filed 1-4-84; 11:24 am]

Billing code 3195-01-M

## Presidential Documents

Proclamation 5145 of January 3, 1984

### Small Business Week, 1984

By the President of the United States of America

#### A Proclamation

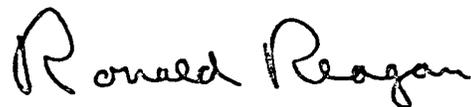
America's strength lies in the ingenuity and perseverance of its people. No other group of Americans better exemplifies these qualities than the Nation's small business owners, who contribute daily to our economic well-being.

The willingness of these individuals to embrace the challenges of competition and independence ensures that our lives are enriched with new opportunities and innovations. When their resourcefulness and resilience are melded with an economic system that allows them to pursue their goals and harness the dynamic forces of the marketplace, new products and technologies are developed, jobs are created, and the young and unskilled are trained for more productive lives. With each new opportunity our commitment to liberty is strengthened; with each new accomplishment our faith in ourselves is reaffirmed.

Entrepreneurs are the standard-bearers of economic progress and the stalwarts of the energizing forces of the free market. As we embark upon a new era of economic growth and development, we should encourage small business owners by acknowledging their tremendous importance as the main-springs of continued economic and individual progress for our Nation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 6, 1984, as Small Business Week. I call upon the American people to join with me in saluting the small business owners of our Nation during this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of Jan., in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.





## Presidential Documents

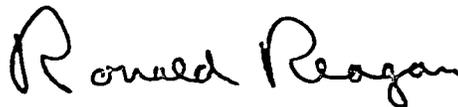
Executive Order 12457 of January 3, 1984

### President's Commission on Industrial Competitiveness

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to increase the membership and extend the life of the President's Commission on Industrial Competitiveness, it is hereby ordered that Executive Order No. 12428 of June 28, 1983, as amended, is further amended as follows:

(a) The second sentence of Section 1(a) shall read: "The Commission shall be composed of no more than thirty-five members appointed or designated by the President."

(b) Section 4(b) shall read: "The Commission shall terminate on December 31, 1984, unless sooner extended."



THE WHITE HOUSE,  
January 3, 1984.



# Rules and Regulations

Federal Register

Vol. 49, No. 4

Friday, January 6, 1984

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 month.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 413

[Amendment No. 2]

#### Texas Citrus Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby amends the Texas Citrus Crop Insurance Regulations (7 CFR Part 413), effective for the 1984 and succeeding crop years, by (1) changing the policy to make it easier to read; (2) providing that damage due to fire is only insurable where good grove management practices relating to weed control and tree prunings are carried out; (3) permitting determination of indemnities based on the acreage report rather than at loss adjustment time; (4) providing a coverage if the insured does not select one; (5) adding a 60-day claim for indemnity provision; (6) adding a section regarding appraisals following the end of the insurance policy for unharvested acreage; (7) adding a hail/fire provision for uninsured causes; (8) changing the cancellation/termination dates to conform to farming practices; (9) providing that any change in the policy will be available in the service office by a certain date; (10) providing for unit determination when the acreage report is filed; and (11) adding three sections concerning "descriptive headings," "determinations," and "notices."

In addition, FCIC issues a new subsection in the Texas citrus crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to

information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring Texas citrus in accordance with Secretary's Memorandum No. 1512-1, requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to comply with OMB regulations requiring publication of OMB control numbers assigned to information collection requirements in these regulations.

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

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

On Thursday, August 4, 1983, FCIC published a notice of proposed rulemaking in the Federal Register at 48

FR 35427, amending the policy for insuring citrus in Texas in accordance with the provisions of Secretary's Memorandum No. 1512-1, and issuing a new subsection to contain control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, with the exception of minor and non-substantive corrections to language, the proposed rule as published at 48 FR 35427 is hereby issued as a final rule to be effective beginning with the 1984 crop year.

#### List of Subjects in 7 CFR Part 413

Crop insurance, Texas citrus.

Final Rule

#### PART 413—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Texas Citrus Crop Insurance Regulations, effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 413 is:

Authority: Secs. 508, 518, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1508, 1516).

2. 7 CFR Part 413 is amended in the Table of Contents thereof by removing the word "Reserved" from § 413.3 and inserting, in its place, the words "OMB control numbers."

3. 7 CFR 413.3 is amended by removing the word "Reserved" in the title thereof and inserting, in its place, the following:

§ 413.3 OMB control numbers.

The information collection requirements contained in these regulations (7 U.S.C. Part 413) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

§ 413.7 [Amended]

4. 7 CFR § 413.7(d) is amended by removing the Texas Citrus Crop



[Percent adjustments for unfavorable insurance experience]

	Number of loss years through previous year <sup>1</sup>															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio <sup>2</sup> through previous crop year	100	100	100	102	104	106	109	110	112	114	116	118	120	122	124	128
1.10 to 1.19	100	100	100	104	103	112	116	120	124	123	132	133	140	144	143	152
1.20 to 1.39	100	100	100	103	116	124	132	140	143	150	164	172	180	183	198	204
1.40 to 1.69	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
1.70 to 1.99	100	100	100	116	123	140	152	164	170	183	199	212	224	235	243	260
2.00 to 2.49	100	100	100	130	134	148	162	170	180	194	210	222	248	250	274	283
2.50 to 3.24	100	100	105	124	140	159	172	183	194	220	230	252	263	284	300	300
3.25 to 3.99	100	100	110	128	146	164	182	199	216	230	254	272	290	300	300	300
4.00 to 4.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
5.00 to 5.99	100	100	120	136	153	169	187	204	240	263	279	300	300	300	300	300
6.00 and up	100	100	120	136	153	169	187	204	240	263	279	300	300	300	300	300

<sup>1</sup> For premium adjustment purposes, only the years during which premiums were earned shall be considered.  
<sup>2</sup> Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.  
<sup>3</sup> Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

- (1) the contract of your estate or surviving spouse in case of your death;
- (2) the contract of the person who succeeds you if such person had previously participated in the grove operation; or
- (3) your contract if you stop grove operations in one county and start grove operations in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a shall be applicable.

6. Deductions for debt. Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period. a. Insurance attaches on December 1 prior to the crop year, except that for the first crop year if we accept the application after that date, insurance shall attach on the tenth day after you sign the application.

b. Insurance ends at the earliest of:

- (1) total destruction of the citrus;
- (2) harvest;
- (3) final adjustment of a loss; or
- (4) May 31 of the calendar year following the normal year of bloom.

8. Notice of damage or loss. a. In case of damage or probable loss:

- (1) You must give us written notice promptly:
  - (a) after insured damage to the citrus becomes apparent, giving the date(s) and cause(s) of such damage; or
  - (b) if you decide not to further care for or harvest any part of the citrus on the unit.
- (2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.
- (3) If probable loss is later determined, immediate notice shall be given. If harvest will begin after the end of the insurance period, notice shall be given on or before the

calendar date for the end of the insurance period (see section 7b(4)).

b. You must obtain written consent from us before you destroy any of the citrus which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity. a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

- (1) total destruction of the citrus on the unit;
- (2) harvest of the unit; or
- (3) the calendar date for the end of the insurance period (see section 7b(4)).

b. We shall not pay any indemnity unless you:

- (1) establish the total production of citrus on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and
- (2) furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

- (1) multiplying the insured acreage by the production guarantee;
- (2) subtracting therefrom the total production of citrus to be counted (see section 9e);
- (3) multiplying the remainder by the price election; and
- (4) multiplying this product by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

e. The total production to be counted for a unit shall include all harvested and appraised production.

- (1) Any citrus production which is not marketed as fresh fruit and due to insurable causes does not contain 120 or more gallons of juice per ton, shall be adjusted by:
  - (a) dividing the gallons of juice per ton obtained from damaged citrus by 120; and
  - (b) multiplying the result by the number of tons of such citrus. If individual records are not available, an average juice content shall be used.
- (2) Where the actuarial table provides for and you elect the fresh fruit option, citrus

production which is not marketable as fresh fruit due to insurable causes shall be adjusted by:

- (a) dividing the value per ton of the damaged citrus by the price of undamaged citrus; and
- (b) multiplying the results by the number of tons of such citrus. The applicable price for undamaged citrus shall be: (i) the local market price the week before damage occurred, or (ii) the contract price if the contract was entered into between the producer and buyer before damage occurred.

(3) Any production shall be considered marketed or marketable as fresh fruit unless due to insurable causes, such production was not marketed as fresh fruit.

(4) In the absence of acceptable records to determine the disposition of harvested citrus, we shall determine such disposition and the amount of such production to be counted for the unit.

(5) Any citrus on the ground which is not picked up and marketed shall be considered lost if the damage was due to an insured cause.

(6) Appraised production to be counted shall include:

- (a) unharvested production, and potential production lost due to uninsured causes and failure to follow recognized good citrus grove practices;
- (b) not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent.

(7) Any appraisal we have made on insured acreage shall be considered production to count unless the appraised production:

- (a) is not harvested before the harvest of the insured citrus type becomes general in the county;
- (b) is harvested; or
- (c) is further damaged by an insured cause.

(8) We may determine the amount of production of any unharvested citrus on the basis of field appraisals conducted after the end of the insurance period.

(9) When you have elected to exclude hail and fire as insured causes of loss and the citrus is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(10) The commingled production of units shall be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You shall not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event shall we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance and fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) the amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) the amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud. We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such avoidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share. If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of indemnity. You may only assign to another party your right to an indemnity for the crop year on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.) Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery at our option shall belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and access to grove. You shall keep, for two years after the time of loss,

records of the harvesting, storage, shipment, sale or other disposition of all citrus produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us shall have access to such records and the grove for purposes related to the contract.

15. Life of contract: Cancellation and termination. a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) if deducted from an indemnity claim shall be the date you sign the claim; or

(2) if deducted from payment under another program administered by the United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are November 30.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. However, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. Contract changes. We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by August 31 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms. For the purposes of Texas citrus crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding citrus insurance in the county.

b. "Contiguous land" means land which is touching at any point except that land which

is separated by only a public or private right-of-way shall be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the period beginning with the date insurance attaches to the citrus crop and extending through normal harvest time, and shall be designated by the calendar year following the year in which the bloom is normally set.

e. "Harvest" means the severance of mature citrus from the tree either by pulling, picking, or severing by mechanical or chemical means, or picking up the marketable fruit from the ground.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the citrus or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of any one of the citrus types referred to in section 2 of this policy, located on contiguous land, on the date insurance attaches for the crop year:

(1) in which you have a 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the citrus on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any acreage and share of or reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings. The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations. All determinations required by the policy shall be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices. All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

#### Appendix—A

##### Counties Designated for Texas Citrus Crop Insurance—7 CFR Part 413

The following counties are designated for Texas Citrus Crop Insurance under the provisions of 7 CFR 413.1.

Crop: Citrus—State: Texas

Cameron  
Hidalgo  
Willacy

Approved by the Board of Directors on April 28, 1983.

Dated: December 28, 1983.

Peter F. Cole,  
Secretary, Federal Crop Insurance Corporation.

Approved by:  
Edward Hews,  
Acting Manager.

[FR Doc. 84-285 Filed 1-5-84; 8:45 am]  
BILLING CODE 3410-03-M

#### 7 CFR Part 421

[Amdt. No. 3]

##### Cotton Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby amends the Cotton Crop Insurance Regulations as contained in 7 CFR Part 421, effective for the 1984 and succeeding crop years to make certain changes in the policy for insuring cotton and to issue a new section containing the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring cotton in accordance with Secretary's Memorandum No. 1512-1, requiring a review of the regulations as to the need, currency, clarity, and effectiveness.

**EFFECTIVE DATE:** These regulations become effective on February 6, 1984.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this

rule and the impact of implementing each option is available upon request from Peter F. Cole.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981), and constitutes a review as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small businesses or other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

On Thursday, August 4, 1983, FCIC published a notice of proposed rulemaking in the Federal Register at 48 FR 35435. The public was given until September 19, 1983, to submit comments on the proposed rule. FCIC, on October 25, 1983, published a supplemental notice of policy rulemaking at 48 FR 49250, and extended the comment period until November 9, 1983. The purpose of the supplemental notice was to propose additional changes in the cotton crop insurance policy to provide insurance coverage for cotton based solely on actual production records of the producer instead of the previous method of establishing coverage based on area data. There were no comments received.

The method of determining coverages based on actual production records has been strongly urged in recent years by producers and commodity groups who feel that basing yield guarantees for cotton insurance on actual production will assure that those yields reflect the true production capacity of each producer. On June 21, 1983, the Board of Directors of FCIC approved making the actual yield production history a basis for yield guarantees beginning in the

1984 crop year. Prior to that date several meetings were held with producers and commodity groups discussing these changes. The method of using the actual production history also addresses a common complaint among insured producers that their individual yields are far superior to the area yield data on which present guarantees are based.

FCIC also implements a new premium adjustment table in the cotton crop insurance policy to shift the emphasis from premium adjustment based on severity (loss ratio) to frequency of loss. A premium adjustment factor is determined by (a) computing the average yield by using the individual production record, either actual or established, for a base period, (b) multiplying the average yield times the elected level of coverage to establish the guarantee, and (c) comparing the actual yield by year to the guarantee. Any year in which the actual yield falls below the guarantee is considered a "loss year." The number of loss years occurring determines the premium adjustment factor. FCIC also revises the definition for "county," "new ground," and "unit".

For the 1984 crop year, FCIC will determine the premium adjustment factor on a 5-year period (1978-1982). Determining the actual yields for comparison purposes prior to 1978 is considered to be impractical. Using the 5-year period, the maximum number of loss years would be 5. After the 1984 crop year 1978 will continue to be the first year of the base period until a base period of ten years has been reached.

The policy as revised with the changes proposed on August 4, 1983, at 48 FR 35435, and the additional changes proposed on October 25, 1983, at 48 FR 49250, is published herein in its entirety.

#### List of Subjects in 7 CFR Part 421

Crop insurance, Cotton.  
Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby amends the Cotton Crop Insurance Regulations (7 CFR Part 421), effective for the 1984 and succeeding crop years in the following instances:

#### PART 421—[AMENDED]

1. The Authority citation for 7 CFR Part 421 is:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 421 is amended in the Table of Contents thereof by removing the word "Reserved" from § 421.3, and

inserting, in its place, the words "OMB control numbers assigned pursuant to the Paperwork Reduction Act."

3. 7 CFR Part 421.3 is revised to read as follows:

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

The information collection requirements contained in these regulations (7 CFR Part 421) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

**§ 421.7 [Amended]**

4. 7 CFR 421.7(d) is amended by removing the Cotton Crop Insurance Policy therein, and substituting the following:

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

*Cotton—Crop Insurance Policy*

(This is a continuous contract. Refer to Section 15.)

**AGREEMENT TO INSURE:** We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

**Terms and Conditions**

**1. Causes of loss.**

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Insects;
- (4) Plant disease;
- (5) Wildlife;
- (6) Earthquake; or
- (7) Volcanic eruption;

Unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We shall not insure against any loss of production due to:

- (1) The neglect or malfeasance of you, any member of your household, your tenants or employees;
- (2) The failure to follow recognized good cotton farming practices;
- (3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project; or
- (4) Any cause not specified in section 1a as an insured loss.

**2. Crop, acreage, and share insured.**

a. The crop insured shall be American Upland lint cotton which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be cotton planted on insurable acreage

as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect. The acreage insured of skip-row cotton shall be the acreage occupied by the rows of cotton after eliminating the skipped-row portions, unless other acreage determinations are provided by the actuarial table.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured cotton at the time of planting.

d. We do not insure any acreage:

- (1) Which is non-irrigated and from which a hay crop was harvested or on which a small grain crop reached the heading stage in the same calendar year;
- (2) Planted in excess of the limitations established by any program administered by the United States Department of Agriculture;
- (3) Which is new ground acreage;
- (4) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
- (5) Which is irrigated and an irrigated practice is not provided for by the actuarial table, unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
- (6) Which is destroyed and we determine it is practical to replant to cotton, and such acreage is not replanted;
- (7) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;
- (8) Planted to a type or variety of cotton not established as adapted to the area or excluded by the actuarial table; or
- (9) Which you have elected to exclude, (the exclusion must be by unit, in writing, on our form, and made before the closing date for submitting applications as established by the actuarial table), except that, if a unit is acquired after such date, an exclusion may be filed up to 15 days after the acquisition but not later than the acreage reporting date (see section 3).

e. Where insurance is provided for an irrigated practice:

- (1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good cotton irrigation practice at the time of planting; and
- (2) Any loss of production caused by failure to carry out a good cotton irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice. You shall report on our form:

a. All the acreage of cotton in the county in which you have a share;

- b. The practice; and
- c. Your share at the time of planting.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any cotton planted in the county. This report shall be submitted annually on or before the reporting date established by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. The production guarantees in the actuarial table are the second stage guarantees. The first stage guarantee is 60 percent of the second stage guarantee. The stages are:

(1) First Stage—From planting until 50 days after the final planting date or until the shedding of the first blooms, whichever occurs first (we may limit the liability to the first stage if the cotton was damaged during this period to the extent that farmers generally would not further care for the cotton); or

(2) Second Stage—all insured cotton after the first stage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election before the closing date for submitting applications for the crop year as established by the actuarial table.

**5. Annual premium.**

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

**PREMIUM ADJUSTMENT TABLE 1**

Number of loss years *	0	1	2	3	4	5+
Percentage adjustment.....	80	100	115	135	165	200

\* The Experience Period used for determining the number of "loss years" for the 1984 crop year shall be the period beginning with the 1978 crop year and extending through the 1982 crop year for the 1984 policy. The experience period will expand each year (the first year of the base period being 1978) until a 10-year base period is reached.

\* A "Loss Year" is defined as a year in which the yield, actual or established, is below the production guarantee for the unit or practice (where the unit consists of more than one practice).

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

**6. Deductions for debt.**

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered

by the United States Department of Agriculture or its Agencies

7. Insurance period.

Insurance attaches when the cotton is planted and ends at the earliest of:

- a. Total destruction of the cotton;
- b. Removal of the cotton from the field;
- c. Final adjustment of a loss; or
- d. The date immediately following planting as follows:

- (1) Arizona, California, New Mexico, Oklahoma and all Texas counties except those listed in (2). January 31.
- (2) Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, Dimmit Counties, Texas and all Texas counties south thereof. September 30.
- (3) All other states. December 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the cotton on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the cotton and given written consent. We shall not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice shall be given and a representative sample of unharvested cotton (at least 10 feet wide and the entire length of the field) shall be left for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

4. In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the cotton on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period (see section 7d).

b. You may not destroy any cotton on which an indemnity shall be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the cotton which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the cotton on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of cotton on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see section 9a);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you results in a lower premium than the premium determined to be due, the indemnity shall be reduced proportionately.

e. The total production to be counted for a unit shall include all harvested and appraised production.

(1) When mature cotton (harvested or unharvested) has been damaged solely by insured causes, the production to count shall be reduced if, on the date the final notice of loss is given by the insured, the price quotation for cotton of like quality (price quotation "A") at the applicable spot market is less than 75 percent of price quotation "B". Price quotation "B" shall be that day's spot market price quotation at the same market for cotton of the grade, staple length, and micronaire reading shown by the actuarial table for this purpose. The pounds of production to be counted shall be determined by multiplying the number of pounds (harvested and appraised) of mature cotton by price quotation "A" and dividing the result by 75 percent of price quotation "B".

(2) Appraised production to be counted shall include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(b) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the difference between the first and second stage production guarantee for acreage not covered by (a) and (b) above and which does not qualify for the second stage guarantee will be counted except as provided in (d) below; and

(d) The entire appraisal for uninsured causes shall be counted.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use shall be considered production unless such acreage:

(a) Is not put to another use before harvest of cotton becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(4) The cotton stalks shall not be destroyed on any acreage for which an indemnity is claimed, until we give consent. An appraisal of not less than the second stage guarantee may be made on acreage where the stalks have been destroyed without our consent.

(5) We may determine the amount of production of any unharvested cotton on the basis of field appraisals conducted after the end of the insurance period.

(6) When you have elected to exclude hail and fire as insured causes of loss and the cotton is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(7) The commingled production of units shall be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You shall not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1503(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event shall we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the cotton is planted for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right of indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may only assign to another party your right to an indemnity for the crop year on our form and with our approval. The assignee

shall have the right to submit the loss notices and forms required by the contract.

**13. Subrogation.** (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

**14. Records and access to farm.**

You shall keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all cotton produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

**15. Life of contract: Cancellation and termination.**

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

- (1) If deducted from an indemnity claim shall be the date you sign the claim; or
- (2) If deducted from payment under another program administered by United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina and Winkler, Ector, Upton, Reagan, Sterling, Coke, Concho, McCulloch, San Saba, Mills, Hamilton, Bexar, Johnson, Tarrant, Wico, Cooke Counties, Texas and all Texas counties lying south thereof to and including Maverick, Zavalla, Frio, Atascosa, Karnes, Gonzalez, Lavaca, Wharton and Matagorda Counties, Texas.	March 31.
All other Texas counties and all other states.	April 15.

e. If you die or are judicially declared incompetent, or the insured entity is other than an individual and such entity is

dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

**16. Contract changes.**

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

**17. Meaning of terms.**

For the purposes of cotton crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding cotton insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Cotton" means only American Upland Cotton.

d. "County" means the county shown on the application and:

- (1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and
- (2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

e. "Crop year" means the period within which the cotton is normally grown and shall be designated by the calendar year in which the cotton is normally harvested.

f. "Final Notice of Loss" means the date you give "Final Notice" as shown on the FCI-74, Claim for Indemnity.

g. "Harvest" means the removal of the seed cotton from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

h. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

i. "Insured" means the person who submitted the application accepted by us.

j. "Mature Cotton" means cotton which can be harvested either manually or mechanically and shall include both unharvested and harvested cotton.

k. "New ground acreage" means any acreage which has not been planted to a crop in any one of the previous three crop years,

except that acreage in tame hay or rotation pasture during the previous crop year shall not be considered new ground acreage.

l. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

m. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. "Skip-row" means planting patterns consisting of alternating rows of cotton and fallow rows (or rows of another crop) as defined by ASCS.

o. "Spot market" means a market so designated by the Secretary of Agriculture by Regulation (7 CFR 27.93) pursuant to 26 U.S.C. 4862.

p. "Tenant" means a person who rents land from another person for a share of the cotton or a share of the proceeds therefrom.

q. "Unit" means that acreage of insurable cotton identified by a single ASCS Farm Serial Number, in which you have a share, at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss. FCIC may reject or modify any ASCS constitution or reconstitution for the purpose of unit definition, if FCIC determines that the constitution or reconstitution was made in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain unfair or disproportionate advantage under this policy.

r. "Yield" means (1) the actual yield as reported to ASCS or (2) the yield as established by ASCS or us.

**18. Descriptive headings.**

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

**19. Determinations.**

All determinations required by the policy shall be made by us. If you disagree with our determinations you may obtain reconsideration or appeal those determinations in accordance with Appeal Regulations.

**20. Notices.**

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

**Appendix A—Counties Designated for Cotton Crop Insurance—7 CFR Part 421**

The following counties are designated for Cotton Crop Insurance under the provisions of 7 CFR 421.1.



Navarro	Schleicher	Walker
Nolan	Scurry	Waller
Nueces	Schakelford	Ward
Palo Pinto	Sherman	Washington
Parker	Starr	Webb
Parmer	Stephens	Wharton
Pecos	Sterling	Wheeler
Presido	Stonewall	Wichita
Rains	Swisher	Wilbarger
Randall	Tarrant	Willacy
Reagan	Taylor	Williamson
Red River	Terry	Wilson
Reeves	Throckmorton	Wise
Refugio	Tom Green	Yoakum
Robertson	Travis	Young
Rockwall	Upton	Zapata
Runnels	Uvalde	Zavala
Rusk	Van Zandt	
San Patricio	Victoria	

**Crop: Colton, State: Virginia**

Brunswick      Greenville      Southampton

Done in Washington, D.C., on September 15, 1983.

Peter F. Cole,  
Secretary, Federal Crop Insurance Corporation.

Approved December 28, 1983.

Edward Hews,  
Acting Manager.

[FR Doc. 84-269 Filed 1-5-84; 8:45 am]

BILLING CODE 3410-03-M

**7 CFR Part 432****Corn Crop Insurance Regulations; Corrections**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** The final rulemaking for the Corn Crop Insurance Regulations, published in the Federal Register on April 24, 1981, at 46 FR 23213, contained an error in inadvertently omitting a county in Texas where such insurance is otherwise authorized to be offered. This notice is being published to correct that error.

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

**ADDRESS:** Any suggestions or inquiries on this notice should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

**PART—432 [CORRECTED]**

7 CFR Part 432 is corrected in Appendix B under the listing of counties for corn crop insurance in Texas, found at 46 FR 23216 in the center column thereof, by inserting the word

"Glasscock" immediately below the word "Frio" and immediately above the word "Gray."

Issued in Washington, D.C., on December 22, 1983.

Dated: December 27, 1983.

Peter F. Cole,  
Secretary, Federal Crop Insurance Corporation.

Approved by:  
Glen V. Bjorklund,  
Acting Manager.

[FR Doc. 84-291 Filed 1-5-84; 8:45 am]

BILLING CODE 3410-03-M

**Agricultural Marketing Service****7 CFR Part 910**

[Lemon Regs. 445 and 444, Amdt. 1]

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

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period January 8-14, 1984, and increases the quantity of lemons that may be shipped during the period January 1-7, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

**DATES:** The regulation becomes effective January 8, 1984, and the amendment is effective for the period January 1-7, 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 the recommendations and information

submitted by the Lemon Administrative Committee and upon other available information. It is hereby 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 January 3, 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 weeks. The committee reports the demand for lemons 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 and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. 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]**

1. Section 910.745 is added as follows:

**§ 910.745 Lemon regulation 445.**

The quantity of lemons grown in California and Arizona which may be handled during the period January 8, 1984, through January 14, 1984, is established at 210,000 cartons.

2. Section 910.744 Lemon Regulation 444 (48 FR 57468) is revised to read as follows:

**§ 910.744 Lemon regulation 444.**

The quantity of lemons grown in California and Arizona which may be handled during the period January 1, 1984, through January 7, 1984 is established at 230,000 cartons.

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

Dated: January 5, 1984.

Charles R. Brader,  
Director, Fruit and Vegetable Division,  
Agricultural Marketing Service.

[FR Doc. 84-532 Filed 1-5-84; 11:30 am]

BILLING CODE 3410-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

#### 24 CFR Part 51

[Docket No. R-83-774; FR-1187]

### Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule clarifies and expands current HUD policy governing properties exposed to unusual hazards in the vicinity of civil and military airports. The effect of the rule is to limit the HUD financial assistance given to projects that are not compatible with land use plans around civil airports and military airfields. This rule makes HUD policy consistent with existing Department of Defense (DOD) and Federal Aviation Administration (FAA) policies and programs, and with Office of Management and Budget directives.

**EFFECTIVE DATE:** Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** James F. Miller or Gretchen Van Hyning, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410; (202) 755-7225. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

**Effect of the Rule**

This regulation amends 24 CFR Part 51 to add a new Subpart D which establishes a specific Departmental policy on siting HUD assisted projects in Runway Clear Zones, Clear Zones and Accident Potential Zones. The regulation applies principally to new construction or substantial or major modernization and rehabilitation. In cases of the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone there is a requirement that the buyer be provided

with information regarding the location of the property in a Runway Clear Zone or Clear Zone. The regulation applies to most HUD programs including Community Development Block Grants and Urban Development Action Grants. The regulation applies to all military airfields and to civil commercial service airports.

In general, HUD will not provide assistance for actions to take place in Runway Clear Zones at civil airports or Clear Zones at military airfields. A Runway Clear Zone typically includes about 80 acres and a Clear Zone includes about 200 acres. There are Runway Clear Zones and Clear Zones at each end of each active runway at the airport or airfield. Assistance may be provided if the proposed project or facility is one which is not frequently used or occupied by people and the airport operator will provide written assurances that the land is not planned for acquisition as part of a clear zone acquisition program.

HUD will only provide assistance for projects in Accident Potential Zones at military airfields if the project is basically consistent with the recommendations of the Department of Defense's *Land Use Compatibility Guidelines For Accident Potential Zones* contained in 32 CFR Part 258. This policy only applies to military airfields as there are no Accident Potential Zones at civil airports.

**Background**

The problem of preventing incompatible development around our civil airports and military airfields is a long-standing one. As centers of economic activity, civil airports and military airfields naturally attract development. At the same time the noise and accident potential problems that are inevitable side effects of aircraft operations make many types of development unsuitable for locations in the immediate vicinity of the airports and airfields. While these problems have existed for quite some time, the record of local, state and Federal response has been spotty and uneven.

In the early 1970's, the General Services Administration looked at the issue of compatible development around Federal airfields and found that the general increase of development surrounding Federal airfields had not always considered the noise levels and safety factors of flight operations. In order to increase the level of consideration given to noise and safety by at least the Federal agencies whose decisions affected land use around Federal airfields, the General Services Administration issued, in 1975, a Federal

Management Circular (FMC 75-2 *Compatible Land Uses At Federal Airfields*) which specifically directed all Federal agencies to make sure that their actions were compatible with the land use recommendations prepared by the operating agencies for Federally owned airports and airfields.

As background justification for this policy, GSA concluded:

Federal airfields are employment centers. Nearby land holdings are attractive investments for housing developments, supportive business activities, and service industries. The general increase of development surrounding Federal airfields has not always considered noise levels and safety factors of flight operations. Complaints from residential and business owners have in some instances caused such actions as reduced takeoff weight, restriction of hours of operation, reduction of the number of flights, changes in takeoff and landing patterns, and noise abatement procedures. This type of action results in declining operating efficiencies which sometimes lead to closure or reduction in mission capability of multimillion dollar installations. (40 FR 48348 (Oct. 15, 1975), 34 CFR 238.2(b))

The Circular required the Department of Defense and other Federal agencies that hold and/or operate airfields to develop and update airfield land use plans for each Federal airfield.

Each plan shall contain an analysis of land use compatibility problems and potential solutions which can serve as the basis for Federal real property acquisition and disposal decisions. (40 FR 48347, 34 CFR 238.4(a))

GSA recognized that other Federal agencies that do not hold and/or operate Federal airports administer programs that affect land uses near such airports. Their actions could significantly affect the safety of airport operations and of those using the facilities assisted by these agencies. The Circular placed an affirmative obligation on these agencies to adjust their policies to be consistent with the mandate of the Circular:

All Federal agencies (in addition to those operating airfields) having programs which affect or may affect the use of land near Federal airfields shall ensure that their programs serve to foster compatible land use in accordance with the plans developed by the operating agencies. (40 FR 48347, 34 CFR Part 238.5(c))

The safety problem has been documented by the United States Air Force which conducted a study of all major accidents that occurred within a 10 nautical mile radius of Air Force installations during the period 1968 through 1972 and which found that a very high percentage of all aircraft accidents took place in the immediate

area beyond the runway. Of the 369 accidents studied, over 73% occurred either on the runway or within 15,000 feet of the end of the runway. The remaining 26% were scattered throughout the 10 nautical mile radius area. Similar data for civilian aircraft crashes show that over 80% of all air carrier accidents over the past 20 plus years have occurred within 3,000 feet of the end of the runway (approximately the area that would normally be defined as the Runway Clear Zone). (Air Line Pilots Association, *ALPA Rescue and Fire Committee Position Papers*, Washington, D.C., April 1981, p. 12) Thus, while it is impossible to predict if or when an accident may occur at a given airport or airfield, it is possible to predict where an accident is most likely to take place.

Both the Department of Defense and the Federal Aviation Administration have programs designed to bring the highest risk areas, called Runway Clear Zones at civil airports and Clear Zones at military airfields, under the control of the airport operator, thus ensuring that no incompatible development takes place. Even though these programs have been in existence for a number of years, however, there are still areas that are not controlled by the airport operators. In addition, at military airfields there are two other areas of significant accident potential, known as Accident Potential Zones, that are not part of any purchase program.

#### HUD's Regulatory Response

At the time Federal Management Circular 75-2 was issued, HUD already had in place a policy which addressed the noise issue. This policy established standards of acceptability for noise levels at sites proposed for HUD assistance, subsidy or insurance. The policy also established requirements for noise attenuation. Under this policy, noise sensitive projects in the highest noise areas would not normally be approved for HUD assistance, subsidy or insurance. This policy has been updated as a regulation and to reflect improved techniques for describing the noise environment. The current HUD noise policy is contained in the Code of Federal Regulations, Title 24 Part 51, Subpart B.

For many years HUD assumed that its noise policy, in combination with guidance on unusual hazards that was contained in Housing valuation handbooks, was adequate to prevent HUD funds from being used to promote development in these high accident potential areas. Since these areas were so close to the ends of the runways, it was assumed that they would also be

exposed to high noise levels. Over the past few years, however, HUD has discovered that there are some instances where portions of Runway Clear Zones, Clear Zones and Accident Potential Zones are not in the highest noise level areas and as a result HUD funds could be used to assist in the development of incompatible uses. (For example, HUD recently reviewed an environmental assessment for a project proposed at an Air Force installation where almost the entire Accident Potential Zone was in an area that was completely acceptable on the basis of noise alone.) In addition it was found that the guidance on unusual hazards in the Housing handbooks was not specific enough to cover Runway Clear Zones, Clear Zones and Accident Potential Zones. HUD regulations, therefore, were not totally in compliance with the Federal Management Circular and additional guidance for the field was necessary. Thus it was determined that this regulation should be issued.

#### Public Comment

On December 18, 1980 HUD published in the Federal Register, at 45 FR 83261, a proposal to add a new Subpart D to 24 CFR Part 51. Sixteen comments were received from a variety of organizations and public agencies. Seven, including letters from the Department of the Navy, the Department of the Air Force, the Aviation Department of Kansas City, the Air Line Pilots Association, the City of San Antonio, the Public Health Service and the Columbus Metropolitan Airport of Columbus, Georgia, supported the regulation.

Four others (including comments from the Air Transport Association and the Santa Barbara Airport Land Use Commission) raised concerns over the possible application of Accident Potential Zones to civil airports. HUD never intended to define Accident Potential Zones around civil airports since it would be inappropriate to make such an extrapolation from the military experience. The final regulation is revised to make it clear that the Accident Potential Zone will apply only to military, not civil, airports. The only areas around civil airports that the regulation will affect are those contained within the Runway Clear Zones as defined by FAA regulation 14 CFR Part 152.

Two comments which raised questions about the applicability of the regulation seemed to indicate that there was some confusion as to which airports were affected. One commentator, for example, was unclear as to whether the regulation would apply to privately owned airports, or to heliports or

rotorcraft facilities. To avoid ambiguity as to whether the policy applies to an area near a given airport, HUD has limited the applicability of the regulation to those existing airports listed as commercial service airports in the *National Plan of Integrated Airport Systems*. (The National Plan of Integrated Airport Systems is prepared by the Federal Aviation Administration as required by the Airport and Airway Improvement Act of 1982.) The current Plan lists 566 airports as air carrier airports. While this change is more limited than the coverage originally proposed, the Department considers the severity of the problem to be greatest at these airports because of the size and type of aircraft flown and the size of the Runway Clear Zones involved. These airports are also a readily identifiable group, thus preventing problems from arising over whether a given airport is or is not affected by this regulation.

At this point, it should be noted that the Federal Management Circular itself only addresses those civil airports owned or operated by the Federal government. (The Federally owned airports are Washington National Airport and Dulles International Airport, both in the Washington, D.C. area.) All commercial service airports, however, whether Federally owned or not, generate economic activity and attract growth and therefore experience the same problems discussed in the Circular. The Air Line Pilots Association's findings, discussed above, on the pattern of accidents was based on a survey of all commercial service airports, not just the Federally owned ones. This situation accounts, in part, for the broad reach of the FAA requirements for airport operators to identify and, if at all possible, control the Runway Clear Zones at all air carrier airports. (14 CFR Part 152) Since the problems identified in the Federal Management Circular are common to civil airports not covered by the Circular, the Department finds it appropriate to apply this regulation to all commercial service airports and not just the Federally owned or operated ones specifically covered by the Federal Management Circular.

The remaining comments touched on a variety of points. First, the Federal Aviation Administration indicated that while they certainly supported compatible land use planning, they did not agree with the use of phrases such as high risk areas or Accident Potential Zones. HUD has deleted the phrase high risk areas from the regulation, however the term Accident Potential Zone is a specific Department of Defense term

which must be used relative to military airports to insure accuracy. This term does not apply to civil airports. In another comment the Environmental Protection Agency urged HUD to strengthen the policy on Clear Zones and Runway Clear Zones and to limit the authority of block grant city certifying officers to approve projects in the Accident Potential Zones. HUD believes that the policy as proposed adequately addresses the concern and that to make the policy much more stringent would create a regulatory burden that is disproportionate to the problem. Finally, an engineering firm from Illinois commented that they felt the regulation would jeopardize the redevelopment and rehabilitation of many buildings currently located in either Runway Clear Zones or in Clear Zones and Accident Potential Zones. While there will be an impact upon some existing structures, the number will be fairly small. Most Runway Clear Zones, Clear Zones and Accident Potential Zones do not currently contain extensive development. The purpose of the regulation is to help ensure that further development does not take place. Existing programs should not encourage the continued location of people in Accident Potential Zones.

#### Implementation

The following discussion clarifies several implementation issues.

First, the regulation provides discretion for approval of projects in the Accident Potential Zones at military airfields. This discretion is limited by guidance provided to HUD field offices and Community Block Grant recipients. Section 51.203(b) states that, to be approved, projects in the Accident Potential Zones must be consistent with the recommendations in the *Land Use Compatibility Guidelines for Accident Potential Zones* contained in DOD Instruction 4165.57, 32 CFR Part 256. These guidelines were developed during the Air Force study of Air Force aircraft accidents and provide fairly detailed recommendations for an extensive list of land uses. They will give field staff sufficient guidance to make sure that there is a reasonably consistent pattern of approvals.

Second, the regulation states that the only Runway Clear Zones, Clear Zones and Accident Potential Zones that will be used to implement this part will be those prepared in accordance with the appropriate FAA or DOD regulation. In most cases the dimensions of the Runway Clear Zone, Clear Zone or Accident Potential Zone will have been published as part of a public report such as an Environmental Impact Statement

or an Air Installation Compatible Use Zone (AICUZ) report. Many field offices already have these documents on file, particularly the military's AICUZ reports. HUD will continue its coordination with the FAA and the military to make sure that field offices have ready access to the reports.

Finally, it is the environmental officers in the HUD field offices who will bear the primary responsibility for implementing this rule. They will do so as part of the normal project review process, using existing forms and procedures. As part of the Department's overall environmental regulations, 24 CFR Part 50, forms were developed to document compliance with a variety of environmental standards including all Departmental standards for the general category of hazards. Part 51 is cited as the general reference for this category and as a subpart to Part 51, this rule would automatically be included. The forms contained in Part 50 were designed for use for all types of Departmental actions, including those exempted from the environmental assessment requirements of the National Environmental Policy Act of 1969.

#### Other Supplementary Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, Department of HUD, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it only

affects a limited number of airports and airfields. The number of civil airports and military airfields covered totals less than 1000 nationally, therefore the potential for significant impact is small.

The Department has also determined that this regulation represents the most cost effective way to help prevent incompatible development in the Runway Clear Zones, Clear Zones and Accident Potential Zones and that the potential benefits to society outweigh any potential costs.

The basic benefit of this regulation will be to reduce the chances for people and property to be exposed to the hazards associated with aircraft operations. The people who receive the benefit will be the public at large. A secondary benefit is to protect the investments of HUD and local governments by limiting the number and type of projects located in these hazardous areas. A final benefit is to protect the investments of the Department of Defense, the Federal Aviation Administration and local aviation authorities. The presence of incompatible development in the Runway Clear Zones, Clear Zones or Accident Potential Zones often is a basis for pressure for airports and airfields to close or to cease or limit operations.

Since this regulation is not the type of regulation which requires local government, private industry or individuals to actually do something, it does not generate any direct costs to local government, private industry or individuals. The regulation may, however, generate some indirect costs, or reduce expected profits in that it would limit the types of development that could occur with HUD assistance in these areas. It is impossible to predict whether this would ever actually be a problem. There are too many other local variables which would be at work. Factors such as local markets for various types of land use, the suitability of the land for the various uses, and local planning and zoning would all influence the value of the land.

HUD does not, however, anticipate that the indirect costs would be significant on a nationwide basis because: (a) The amount of land where HUD participation would be most severely limited is not really all that great, about 89 acres at civil airports and 200 acres at military airfields, and (b) in the other areas, not all uses are prohibited from HUD assistance, thus the land can still be productively used, it simply may not be the use the owner or local government originally had in mind.

This rule is listed at 48 FR 18089 as item CPD-20-79 in the Department's Semiannual Agenda of Regulations published on April 25, 1983 pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

#### List of Subjects in 24 CFR Part 51

Noise control, Quiet Communities Act.

#### PART 51—[AMENDED]

Accordingly, Title 24, Part 51 of the CFR is amended by adding a new Subpart D to read as follows:

#### Subpart D—Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

##### Sec.

- 51.300 Purpose.
- 51.301 Definitions.
- 51.302 Coverage.
- 51.303 General policy.
- 51.304 Responsibilities.
- 51.305 Implementation.

Authority: Section 2 of the Housing Act of 1949 as amended, 42 U.S.C. 1441, affirmed by Section 2 of the Housing and Urban Development Act of 1969, Pub. L. No. 90-448; Section 7(d) of the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3535(d); Office of Management and Budget, Federal Management Circular 75-2: Compatible Land Uses At Federal Airfields.

#### Subpart D—Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

##### § 51.300 Purpose.

(a) The Department of Housing and Urban Development finds that HUD assisted or insured projects and their occupants in Runway Clear Zones, Clear Zones and Accident Potential Zones are exposed to a significant risk of personal injury or property damage from aircraft accidents.

(b) It is the purpose of this Subpart to promote compatible land uses around civil airports and military airfields by identifying suitable land uses for Runway Clear Zones at civil airports and Clear Zones and Accident Potential Zones at military airfields and by establishing them as standards for providing HUD assistance, subsidy or insurance.

##### § 51.301 Definitions.

For the purposes of this regulation, the following definitions apply:

(a) Accident Potential Zone. An area at military airfields which is beyond the Clear Zone. The standards for the Accident Potential Zones are set out in Department of Defense Instruction 4165.57, "Air Installations Compatible

Use Zones," November 8, 1977, 32 CFR Part 256. There are no Accident Potential Zones at civil airports.

(b) Airport Operator. The civilian or military agency, group or individual which exercises control over the operations of the civil airport or military airfield.

(c) Civil Airport. An existing commercial service airport as designated in the National Plan of Integrated Airport Systems prepared by the Federal Aviation Administration in accordance with Section 504 of the Airport and Airway Improvement Act of 1982.

(d) Runway Clear Zones and Clear Zones. Areas immediately beyond the ends of a runway. The standards for Runway Clear Zones for civil airports are established by FAA regulation 14 CFR Part 152. The standards for Clear Zones for military airfields are established by DOD Instruction 4165.57, 32 CFR Part 256.

##### § 51.302 Coverage.

(a) These policies apply to HUD programs which provide assistance, subsidy or insurance for construction, land development, new communities, community development or redevelopment or any other provision of facilities and services which are designed to make land available for construction. When the HUD assistance, subsidy or insurance is used to make land available for construction rather than for the actual construction, the provision of the HUD assistance, subsidy or insurance shall be dependent upon whether the facility to be built is itself acceptable in accordance with the standards in § 51.303.

(b) These policies apply not only to new construction but also to substantial or major modernization and rehabilitation and to any other program which significantly prolongs the physical or economic life of existing facilities or which, in the case of Accident Potential Zones:

(1) Changes the use of the facility so that it becomes one which is no longer acceptable in accordance with the standards contained in § 51.303(b);

(2) Significantly increases the density or number of people at the site; or

(3) Introduces explosive, flammable or toxic materials to the area.

(c) Except as noted in § 51.303(a)(3), these policies do not apply to HUD programs where the action only involves the purchase, sale or rental of an existing property without significantly prolonging the physical or economic life of the property.

(d) The policies do not apply to research or demonstration projects

which do not result in new construction or reconstruction, to interstate land sales registration, or to any action or emergency assistance which is provided to save lives, protect property, protect public health and safety, or remove debris and wreckage.

##### § 51.303 General policy.

It is HUD's general policy to apply standards to prevent incompatible development around civil airports and military airfields.

(a) HUD policy for actions in Runway Clear Zones and Clear Zones.

(1) HUD policy is not to provide any assistance, subsidy or insurance for projects and actions covered by this part except as stated in § 51.303(a)(2) below.

(2) If a project proposed for HUD assistance, subsidy or insurance is one which will not be frequently used or occupied by people, HUD policy is to provide assistance, subsidy or insurance only when written assurances are provided to HUD by the airport operator to the effect that there are no plans to purchase the land involved with such facilities as part of a Runway Clear Zone or Clear Zone acquisition program.

(3) Special notification requirements for Runway Clear Zones and Clear Zones. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, HUD (or the Grant Recipient under Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301 *et seq.*) shall advise the buyer that the property is in a Runway Clear Zone or Clear Zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

(b) HUD policy for actions in Accident Potential Zones at Military Airfields.

HUD policy is to discourage the provision of any assistance, subsidy or insurance for projects and actions in the Accident Potential Zones. To be approved, projects must be generally consistent with the recommendations in the *Land Use Compatibility Guidelines For Accident Potential Zones* chart contained in DOD Instruction 4165.57, 32 CFR Part 256.

##### § 51.304 Responsibilities.

(a) The following persons have the authority to approve actions in Accident Potential Zones:

(1) For Title I of the Housing and Community Development Act of 1974, as

amended, 42 U.S.C. 5301 *et seq*: the certifying officer of the grant recipient as defined in Part 58 of this Title.

(2) For all other HUD programs: the program personnel having approval authority for the project.

(b) The following persons have the authority to approve actions in Runway Clear Zones and Accident Potential Zones:

(1) For Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301 *et seq*: The certifying officer of the grant recipient as defined in Part 58 of this Title.

(2) For all other HUD programs: the Regional Administrator.

#### § 51.305 Implementation.

(a) Projects already approved for assistance. This regulation does not apply to any project approved for assistance prior to the effective date of the regulation whether the project was actually under construction at that date or not.

(b) Acceptable data on Runway Clear Zones, Clear Zones and Accident Potential Zones. The only Runway Clear Zones, Clear Zones and Accident Potential Zones which will be recognized in applying this part are those provided by the airport operators and which for civil airports are defined in accordance with FAA regulations 14 CFR Part 152 or for military airfields, DOD Instruction 4165.57, 32 CFR Part 256. All data, including changes, related to the dimensions of Runway Clear Zones for civil airports shall be verified with the nearest FAA Airports District Office before use by HUD.

(c) Changes in Runway Clear Zones, Clear Zones, and Accident Potential Zones. If changes in the Runway Clear Zones, Clear Zones or Accident Potential Zones are made, the field offices shall immediately adopt these revised zones for use in reviewing proposed projects.

(d) The decision to approve projects in the Runway Clear Zones, Clear Zones and Accident Potential Zones must be documented as part of the environmental assessment or, when no assessment is required, as part of the project file.

Dated: December 30, 1983.

Samuel R. Pierce, Jr.,  
Secretary of Housing and Urban Development.

[FR Doc. 84-378 Filed 1-5-84; 8:45 am]  
BILLING CODE 4210-32-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1910

#### Commercial Diving Operations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Deletion of rules vacated by court decision.

**SUMMARY:** Section 1910.411, Medical Requirements, contained in the standard for commercial diving operations, Subpart T of Part 1910, was vacated by the U.S. Court of Appeals for the Fifth Circuit. In accordance with the Court's decision, the section is being removed from Title 29 of the Code of Federal Regulations.

**EFFECTIVE DATE:** The deletion is effective January 6, 1984.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foster, Room N3641, Office of Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 (202) 523-8151.

**SUPPLEMENTARY INFORMATION:** The Occupational Safety and Health Administration published a final standard for commercial diving operations, 29 CFR §§ 1910.401-1910.441, at 42 FR 37650 on July 22, 1977. The regulation was effective on October 20, 1977.

Within the 60-day period provided by section 6(f) of the Occupational Safety and Health Act of 1970, a petition for review was filed in the United States Court of Appeals for the Fifth Circuit challenging among other things, the validity of § 1910.411, the medical requirements section. The Court, in *Taylor Diving and Salvage v. U.S. Department of Labor* (599 F.2d 622) (5th Cir., 1979), held § 1910.411 to be invalid and vacated that section.

In accordance with the decision of the United States Court of Appeals for the Fifth Circuit, the section on medical requirements in the commercial diving standard, § 1910.411, is deleted in its entirety.

#### List of Subjects in 29 CFR Part 1910

Diving, Occupational safety and health.

#### PART 1910—[AMENDED]

Accordingly, pursuant to sections 6 and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1600, 29 U.S.C. 655, 657), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29

CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations is amended as follows:

#### § 1910.411 [Removed]

Section 1910.411 is removed.

Signed at Washington, D.C., this 3d day of January 1984.

Thomas G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 84-378 Filed 1-5-84; 8:45 am]

BILLING CODE 4510-22-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### 32 CFR Part 885

#### Appointment of Officers in the Regular Air Force

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

**SUMMARY:** The Department of the Air Force is amending its regulations by removing Part 885—Appointment of officers in the regular Air Force, of Chapter VII, Title 32. The source document, Air Force Regulation (AFR) 36-5 has been revised. It is intended for internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

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

**FOR FURTHER INFORMATION CONTACT:** Maj Isaacs, HQ AFMFC/MFCAJB2, Randolph AFB, TX 78159, Telephone (512) 652-2975.

#### SUPPLEMENTARY INFORMATION:

#### List of Subjects in 32 CFR Part 885

Military personnel, Armed Forces Reserves.

#### PART 885—[REMOVED]

Accordingly, 32 CFR is amended by removing Part 885

Authority: 10 U.S.C. 8012.

Winnibal F. Holmes,  
Air Force Federal Register Liaison Officer.

[FR Doc. 84-378 Filed 1-5-84; 8:45 am]

BILLING CODE 5010-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[PP 3E2880/R632; PH-FRL 2504-1]

**Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Paraquat**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This rule establishes a tolerance for residues of the desiccant, defoliant, and herbicide paraquat in or on the raw agricultural commodity acerola. This regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

**EFFECTIVE DATE:** Effective on January 6, 1984.

**ADDRESS:** Written objections may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Donald Stubbs, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

**SUPPLEMENTARY INFORMATION:** EPA issued a proposed rule, published in the Federal Register of November 9, 1983 (48 FR 51492), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 3E2880 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Florida and Puerto Rico proposing that 40 CFR 180.205 be amended by establishing a tolerance for residues of the pesticide paraquat (1,1'-dimethyl-4,4'-bipyridinium ion) derived from application of either the bis (methyl sulfate) or the dichloride salt (both calculated as the cation) in or on the raw agricultural commodity acerola at 0.05 part per million.

There were no comments received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. The pesticide is considered useful for the purpose for which the tolerance

is sought. It is concluded that the tolerance would protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. (Sec. 408(e), 68 Stat. 512 (21 U.S.C. 346a(e)))

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 23, 1983.

James M. Conlon,  
Acting Director, Office of Pesticide Programs.

**PART 180—[AMENDED]**

Therefore, 40 CFR 180.205 is amended by adding, and alphabetically inserting, the raw agricultural commodity acerola, to read as follows:

**§ 180.205 Paraquat; tolerances for residues.**

\* \* \* \* \*

Commodities	Parts per million
Acerola.....	0.05

\* \* \* \* \*

[FR Doc. 84-466 Filed 1-5-84; 8:45 am]

BILLING CODE 6560-50-14

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Ch. 1**

[CC Docket No. 83-372; FCC 83-598]

**Deregulation of Mobile Customer Premises Equipment**

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order on Reconsideration.

**SUMMARY:** The Order was adopted in response to an Emergency Petition for

Reconsideration submitted by American Telephone and Telegraph Company regarding *Deregulation of Mobile Customer Premises Equipment*, CC Docket No. 83-372, Report and Order, FCC 83-507, 48 FR 54618 (released Nov. 7, 1983). The Order requires AT&T to transfer to AT&T Information Systems embedded customer premises equipment (CPE) used in mobile telephone service and received from the Bell Operating Companies pursuant to the divestiture of the Bell System. The Order is necessary to prevent unnecessary costs which would be incurred by AT&T, and which would be borne by AT&T ratepayers, if this CPE were to remain under tariff regulation after divestiture. The intended effect of the Order is to remove this equipment from tariff regulation, and to require AT&T to transfer this equipment to AT&T Information Systems, as of January 1, 1984, thus avoiding costs which would result if AT&T were required to place this equipment under tariff.

**EFFECTIVE DATE:** December 30, 1983.

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

**FOR FURTHER INFORMATION CONTACT:** John Cimko, Jr., (202) 632-9342.

**Memorandum Opinion and Order on Reconstruction**

Adopted: December 22, 1983.

Released: December 29, 1983.

By the Commission: Commissioner Patrick not participating.

In the Matter of Deregulation of Mobile Customer Premises Equipment; CC Docket No. 83-372; FCC 83-598.

**I. Introduction**

1. We have before us an Emergency Petition for Reconsideration submitted by American Telephone and Telegraph Company (AT&T) on December 2, 1983 (AT&T Petition).<sup>1</sup> AT&T argues generally that there is no need to delay the detariffing of embedded mobile customer premises equipment (CPE),<sup>2</sup> that there is sufficient competition in the mobile CPE marketplace to support detariffing at this time, that continued tariffing after divestiture of the Bell

<sup>1</sup> AT&T also filed a Motion for Expedited Briefing Schedule on the same date. That motion was granted with modifications by the Chief, Common Carrier Bureau, acting under delegated authority. Deregulation of Mobile Customer Premises Equipment, CC Docket No. 83-372, Order, Mimeo No. 1233, 48 FR 55465 (released Dec. 6, 1983).

<sup>2</sup> For purposes of this proceeding, mobile CPE includes all equipment used in connection with services licensed under Part 22 of the Rules and Regulations of the Commission. These services are domestic public land mobile radio service (including airborne service), rural radio service, and offshore telecommunications service.

System<sup>3</sup> would incur unwarranted costs associated with the establishment and operation of an embedded base organization (EBO) for the embedded mobile equipment, and that AT&T would fully satisfy Commission concerns regarding the detariffing of this equipment by applying sale and price predictability requirements recently established by the Commission<sup>4</sup> to the embedded mobile equipment after its transfer to AT&T Information Systems (ATTIS).

2. For the reasons discussed in Part IV, *infra*, we shall grant the AT&T Petition, subject to the limitations and conditions we establish in this Order. As a result of our action in adopting this Order, AT&T shall be required to transfer embedded mobile CPE to ATTIS at the time of divestiture.

## II. Background

3. The Commission, in *Second Computer Inquiry*,<sup>5</sup> decided to exclude mobile CPE from the procedures established in that proceeding for the deregulation of telephone equipment.<sup>6</sup> This approach was taken in *Second Computer Inquiry* in part because the Commission was addressing the regulation of mobile CPE in a separate proceeding, *Cellular Communications Systems*.<sup>7</sup> In a subsequent action in that

separate proceeding, we ordered that mobile telephone equipment used in connection with cellular systems must be deregulated. *Cellular Communications Systems*, CC Docket No. 79-318, Report and Order, 89 FCC 2d 469 (1981).

4. On April 7, 1983, we adopted a *Notice of Proposed Rulemaking* in this proceeding,<sup>8</sup> noting that "[a]t this point, the mobile telephone used in conventional common carrier mobile radio services constitutes the only piece of two-way voice terminal equipment that is accorded disparate treatment \* \* \* under *Second Computer Inquiry*. *Notice* at para. 3. We proposed to deregulate mobile telephone equipment, "thereby conforming our treatment of it with our treatment of all other CPE." *Id.* We also indicated that we would preempt state authority to the extent necessary to achieve this deregulation. *Id.*

5. Most parties filing comments regarding the *Notice* supported complete deregulation of mobile CPE. See *Deregulation of Mobile Customer Premises Equipment*, CC Docket No. 83-372, Report and Order, FCC 83-507, 48 FR 54618, at para. 2 & n.3 (released Nov. 7, 1983) (hereinafter *Order*). Most commenters argued that the Commission should detariff mobile CPE on a bifurcated basis similar to the approach taken in *Second Computer Inquiry*. It was suggested that new mobile CPE could be detariffed as of January 1, 1984, while a transition period could be established for the detariffing of embedded mobile CPE. See *id.* at para. 5. AT&T, however, favored completed deregulation in one step, without any distinction between new and embedded equipment.<sup>9</sup>

6. In the *Order*, which we adopted on November 7, 1983, we decided to include mobile CPE within the general policies of *Second Computer Inquiry* and we preempted state authority to achieve this result. *Order* at para. 7. We also required that mobile CPE be detariffed on a phased basis; new mobile CPE would be detariffed as of January 1, 1984, but embedded CPE "will remain

subject to tariff until the manner of detariffing it is determined." *Id.* at para. 9. We indicated that these determinations would be made in a separate proceeding.<sup>10</sup> We noted that the separate proceeding specifically would resolve issues relating to capital recovery and accounting methodologies which had been raised by an Independent telephone company in commenting on the *Notice*. *Id.* at para. 10 n.9.

## III. Positions of the Parties

### A. AT&T Petition for Reconsideration

7. In asking the Commission to reconsider its decision to delay the detariffing of embedded mobile CPE, AT&T makes the following arguments. First, there is no need for continued tariff regulation of this equipment. AT&T argues that the concern expressed in *Second Computer Inquiry* that CPE be disassociated from a carrier's utility service and removed from the separations process already has been satisfied with regard to embedded mobile CPE because this equipment has been excluded from the interstate jurisdictional separations allocation process. AT&T Petition at 4; see AT&T Reply Comments at 3. AT&T further argues that valuation issues relating to embedded mobile CPE can easily be resolved by applying the valuation principles established by the Commission in *CPE Detariffing Order*. AT&T endorses the valuation approach we followed in that proceeding. AT&T Petition at 4-5. AT&T also argues that bifurcation is unnecessary because there already is adequate competition in mobile telephone equipment, citing the number of manufacturers and suppliers of this equipment, AT&T's non-dominant position and its declining share of sales of this equipment, and the fact that Western Electric does not manufacture the mobile CPE currently in the embedded base. *Id.* at 6-7. AT&T also notes that, as a further guarantee, it "will apply its price predictability and sale program to this [embedded mobile]

<sup>3</sup> The Bell Operating Companies (BOCs) will be divested from the Bell System as of January 1, 1984, in accordance with a decision rendered by the United States District Court for the District of Columbia in *United States v. American Tel. & Tel. Co.*, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 103 S.Ct. 1240 (1983).

<sup>4</sup> See *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)*, CC Docket No. 81-893, and *American Telephone and Telegraph Company, Request for Approval To Supplement the Capitalization of AT&T Information Systems in Connection with the Transfers of Embedded Customer Premises Equipment*, File No. ENF 83-18 (hereinafter *CPE Detariffing Proceeding*), Report and Order, FCC 83-551 (released Dec. 15, 1983) (hereinafter *CPE Detariffing Order*).

<sup>5</sup> Amendment of Section 64.702 of the Commission's Rules and Regulations (*Second Computer Inquiry*), 77 FCC 2d 384 (Final Decision), *reconsideration*, 84 FCC 2d 50 (1980) (*Reconsideration Order*), *further reconsideration*, 83 FCC 2d 512 (1981) (*Further Reconsideration Order*), *aff'd sub nom. Computer & Communications Industry Ass'n v. FCC*, 693 F.2d 193 (D.C.Cir. 1982), *cert. denied sub nom. Louisiana Pub. Serv. Comm'n v. FCC*, 103 S.Ct. 2109 (1983).

<sup>6</sup> See Final Decision, 77 FCC 2d at 447 n.57; *Reconsideration Order*, 84 FCC 2d at 70; *Further Reconsideration Order*, 83 FCC 2d at 513 n.1.

<sup>7</sup> An inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, CC Docket No. 79-318, *Notice of Inquiry and Notice of Proposed Rulemaking*, 78 FCC 2d 934 (1980), Report and Order, 85 FCC 2d 469 (1981), *reconsideration*, 89 FCC 2d 58, *further reconsideration*, 90 FCC 2d 571 (1982) (*Cellular Communications Systems*).

<sup>8</sup> *Deregulation of Mobile Customer Premises Equipment*, CC Docket No. 83-372, *Notice of Proposed Rulemaking*, FCC 83-141, 48 FR 20352 (released Apr. 24, 1983) (hereinafter *Notice*).

<sup>9</sup> AT&T indicated that:

The ambiguity surrounding the regulatory status of the equipment under consideration has made it difficult for some carriers to plan for the future. Accordingly, AT&T suggests that the Commission follow the approach taken in the *Second Computer Inquiry* and make deregulation of this CPE effective at some future date, (e.g., January 1, 1984). This will enable carriers to develop their long range plans in a more certain environment.

AT&T Comments on Notice, June 6, 1983, at 3.

<sup>10</sup> The separate proceeding was instituted on the same date. See *CPE Detariffing Proceeding*, CC Docket No. 81-833, *Further Notice of Proposed Rulemaking*, FCC 83-506 (released Nov. 7, 1983) (hereinafter *CPE Detariffing Further Notice*). In that action, we sought comment regarding (1) the accounting methods which should be adopted for removing embedded mobile CPE for regulated books of account; (2) rules for valuing embedded mobile CPE to be removed from regulated service; (3) the role of the states in establishing procedures for deregulating mobile CPE; and (4) the length of a transition period for detariffing this equipment. *CPE Detariffing Further Notice* at para. 2. We tentatively concluded that December 31, 1987, should be the deadline for the complete detariffing of embedded mobile equipment. *Id.*

CPE in the same manner as approved by the FCC for AT&T embedded CPE" in *CPE Detariffing Order*. *Id.* at 7. This action by AT&T would begin immediately at the time of detariffing. *Id.*

8. Second, AT&T argues that "if embedded mobile CPE is not detariffed by the date of divestiture, AT&T will be required to create an embedded base operation to maintain this equipment under tariff." *Id.* at 8. AT&T estimates that \$1.3 million in start-up costs and \$2.3 million annual incremental costs would be incurred as a result of establishing an EBO to maintain the embedded base for mobile CPE. *Id.*<sup>11</sup> AT&T further contends that costs under continued tariff regulation would increase with the decline in the size of the embedded base because the costs of the EBO organization would be spread over a diminishing number of customers. *Id.* at 9-10.

9. Third, AT&T maintains that we can detariff embedded mobile CPE offered by the Bell System as of January 1, 1984, and still go forward with our rulemaking to implement *Second Computer Inquiry* principles regarding this equipment. AT&T notes that "[d]uring the interim period [from January 1, 1984, until the completion of the implementation rulemaking proceeding] AT&T would agree to freeze the price of all embedded mobile CPE at existing tariff rates so that the Commission's final decision in that proceeding would not be prejudiced." *Id.* at 10-11.

#### B. Comments

10. Several parties filed comments regarding the AT&T Petition,<sup>12</sup> and none of the commenters addressing the issue object to the detariffing of Bell System embedded mobile equipment at the time of divestiture.<sup>13</sup> California indicates that it would not oppose immediate transfer of embedded mobile equipment to ATTIS if an appropriate sale and

<sup>11</sup> AT&T asserts that these costs are not justified in view of the fact that the Bell System embedded base is comprised of only approximately 20,000 telephones nationwide. This means, according to AT&T, that the expense of maintaining an EBO for embedded mobile CPE would result in costs to be recovered from mobile CPE customers of approximately \$115 more per mobile telephone annually compared to providing the CPE on a detariffed basis. AT&T Petition at 9.

<sup>12</sup> Comments were filed by People of the State of California and the Public Utilities Commission of the State of California (California), GTE Service Corporation (GTE), Telocator Network of America (Telocator), United States Telephone Association (USTA), and United Telephone System, Inc. (UTS).

<sup>13</sup> See California Comments at 1; GTE Comments at 2; Telocator Comments at 2; USTA Comments at 1. UTS takes no position regarding whether embedded mobile CPE should be transferred to ATTIS at the time of divestiture. UTS Comments at 1.

price predictability program were established. California Comments at 1. GTE argues that expedited detariffing should be limited to AT&T, favoring a transitional approach for other carriers which "would allow telephone companies which made investments under regulation to recover such investments under regulation." GTE Comments at 2-3. Telocator endorses the AT&T Petition and argues that embedded mobile CPE owned by radio common carriers also should be detariffed as of January 1, 1984. Telocator Comments at 2 *passim*. USTA does not oppose immediate detariffing in the case of AT&T, but "strongly opposes such a 'flashcut' scheme for the Independents." USTA Comments at 1.

#### IV. Discussion

11. A common theme of our decisions in *Second Computer Inquiry* has been our view that tariff regulation of embedded customer premises equipment is no longer warranted.<sup>14</sup> We have further emphasized this view in *CPE Detariffing Order*, concluding that "continued regulation of CPE is not necessary and in fact could impede the further growth of \* \* \* competition."<sup>15</sup> We also have taken note of the fact that the divestiture of the Bell System has created special problems regarding the embedded CPE base of the Bell System and has made it important for us to attempt to resolve issues relating to this embedded base contemporaneously with divestiture.<sup>16</sup>

12. In addressing mobile CPE in this proceeding, we have concluded that "the provision of mobile telephone CPE should be deregulated." *Order* at para. 7. We also have noted that "there is no substantial reason to treat conventional mobile CPE differently from cellular and landline CPE." *Id.* We indicated in the *Order* that a primary reason for our delaying the detariffing of embedded CPE used in mobile service is "to afford the public the opportunity to comment on whether specific procedures proposed in Docket No. 81-893 should also be applied to embedded mobile CPE." *Id.* at para. 10 (footnote omitted). We adopted *CPE Detariffing Further Notice* in order to solicit public comment before resolving issues related to the embedded base used in mobile service.

<sup>14</sup> See Final Decision, 77 FCC 2d at 388, 439, 441; Reconsideration Order, 84 FCC 2d at 65; Further Reconsideration Order, 88 FCC 2d at 513.

<sup>15</sup> *CPE Detariffing Order* at para. 3; see *CPE Detariffing Proceeding, Notice of Proposed Rulemaking*, FCC 83-181, 48 FR 29891, at para. 84 (released June 21, 1983) (hereinafter *CPE Detariffing Notice*).

<sup>16</sup> See *CPE Detariffing Order* at para. 6; *CPE Detariffing Notice* at para. 81.

13. Upon reviewing the AT&T Petition and other comments in this proceeding, we now are convinced that permitting AT&T to transfer embedded mobile CPE to ATTIS as of the date of divestiture will serve the public interest and will not in any way prejudice our further consideration of issues relating to this equipment in *CPE Detariffing Proceeding*. Under AT&T's proposal, which we are accepting to the extent reflected in this Order, valuation questions and issues relating to the terms and conditions of a sale and price predictability program for embedded mobile CPE will not be decided with any finality here, but rather will be decided in *CPE Detariffing Proceeding*. The fact that we now are permitting immediate transfer of this equipment to ATTIS will not have a bearing upon our subsequent resolution of these issues because our approval of the AT&T Petition does not in any way limit or constrict our authority to impose valuation requirements, to fix the duration of the price predictability period, to impose terms and conditions for the sale and lease of embedded mobile CPE during the transition period, and to address other matters relating to the deregulation of this equipment.<sup>17</sup>

14. In short, ratepayers and current customers using embedded mobile CPE provided by the BOCs will not be disadvantaged by our action in this Order. Protecting the interests of

<sup>17</sup> We have concluded that embedded mobile CPE provided by the Independent telephone companies shall not be affected by our action in this Order. There is no need to authorize or require the immediate detariffing of embedded mobile CPE provided by the Independents because this CPE is not affected by divestiture. Hence, the factors which make it advisable for us to permit AT&T to transfer embedded mobile CPE to ATTIS at the time of divestiture have no application to the Independents. Issues regarding the provision of embedded mobile CPE by the Independents will be resolved in our subsequent action in *CPE Detariffing Proceeding*. Further, AT&T notes that its Petition was not directed toward mobile CPE owned by the Independents. See AT&T Reply Comments at 2.

For similar reasons, we conclude that our action in this Order shall not apply to embedded mobile CPE owned by the radio common carriers. We reject Telocator's assertion that, since the radio common carriers generally have not participated in separations and settlements, "[t]his fact alone is sufficient justification for the flash-cut deregulation of [their] mobile CPE." Telocator Comments at 3. Our subsequent proceeding will address issues relating to the proper valuation of embedded mobile CPE and the establishment of transitional requirements which properly balance the interests of ratepayers, customers, and investors. In the case of the radio common carriers, there is no need to be deflected from our initial course of delaying the detariffing of embedded equipment until these issues are resolved. This is particularly true because divestiture, which has created exigencies warranting expedited action regarding mobile CPE owned by the Bell System, has no such impact upon the radio common carriers.

ratepayers and in-place customers will be a major concern in our application of the principles of *Second Computer Inquiry* to this embedded mobile CPE in our subsequent proceeding. The protection of ratepayers and in-place customers during the interim period, before we complete action in that proceeding, is ensured by the fact that rates established in current state tariffs for embedded mobile CPE will remain in effect until we take such action. Thus, in-place customers will not be subject to any dislocation as a result of our authorizing the immediate transfer of this equipment to ATTIS.

15. We further conclude that the transfer of embedded mobile CPE to ATTIS at the time of divestiture will not have any adverse impact upon competition in the marketplace for this equipment. There is ample evidence that strong competition already exists for this equipment<sup>18</sup> and that AT&T does not command a dominant position regarding sales of this equipment.<sup>19</sup> This evidence argues in favor of expediting the detariffing of AT&T's embedded mobile equipment. Moreover, our subsequent action in *CPE Detariffing Proceeding* will provide us with an opportunity to fashion a transition to full deregulation of this equipment which ensures that competition will continue to be promoted. Throughout our proceedings regarding embedded CPE we have sought to extend to consumers the benefits of a competitive marketplace.<sup>20</sup> We are confident that our action in this Order, together with our subsequent action in resolving issues regarding embedded mobile CPE, will continue to foster the growth of competition regarding sales of this equipment.

16. In addition to the fact that ratepayers, in-place customers, and competition will not be harmed by the expedited transfer of embedded mobile CPE to ATTIS, we conclude that the impending Bell System divestiture creates an additional overriding justification for permitting this transfer to take place. As we have discussed,<sup>21</sup> divestiture has created special problems regarding the embedded base of the Bell System. The principal problem involves

the fact that, in the absence of our intervening action, AT&T would be required to offer embedded CPE under tariff beginning in 1984 after this equipment is transferred from the BOCs in connection with divestiture. We have avoided this problem in the case of landline embedded CPE by establishing a transitional framework for the deregulation of this equipment. See *CPE Detariffing Order*.

17. Although we have authority to disapprove the transfer of embedded mobile CPE from the BOCs to AT&T, we do not need to exercise this authority here because we agree with the District Court in the divestiture proceeding that transferring this equipment to AT&T is consistent with the public interest. Our concern here involves devising the best means of implementing this transfer. If we were to fail to take action in this proceeding authorizing the immediate transfer of embedded mobile CPE to ATTIS, AT&T would be forced to establish an EBO to offer this equipment under tariff until we disposed of issues involving this equipment in *CPE Detariffing Proceeding*. We already have noted, in connection with our treatment of landline embedded CPE, that the establishment and operation of an EBO would generate substantial costs and that these costs would be borne by ratepayers. *CPE Detariffing Order* at para. 44. As we have indicated,<sup>22</sup> costs associated with setting up and operating an EBO for embedded mobile equipment also would be substantial, in relation to the amount of this equipment owned by the Bell System. AT&T has indicated that:

To establish an embedded base organization for mobile CPE will necessarily involve a myriad of activities, most of which will involve professional personnel, or personnel with specialized expertise. Although it is difficult precisely to state all the activities needed to establish such an organization, those activities would include at least the following: negotiation of the billing, installation, maintenance and accounting contracts.

AT&T Petition, Affidavit of Richard J. Lombardi, at 2. We conclude that the avoidance of these costs is sufficient reason for us to authorize the transfer of embedded mobile CPE to ATTIS at the time of divestiture, particularly since these costs would ultimately be borne by ratepayers, and such a transfer is consistent with the deregulatory goals we have pursued in *Second Computer Inquiry* and will not jeopardize the interests of ratepayers and in-place customers.

<sup>22</sup> See para. 8 & n.11, *supra*.

18. In summary, under our action in this Order, AT&T shall transfer to ATTIS at the time of divestiture embedded mobile CPE received from the BOCs as a result of the divestiture. This transfer shall be made at adjusted net book value, consistent with the principles we established in *CPE Detariffing Order*. ATTIS shall continue to lease this equipment to current customers at rates which are equivalent to state tariff rates currently in effect. These lease rates shall remain in effect until we take subsequent action in *CPE Detariffing Proceeding* to implement *Second Computer Inquiry* principles with regard to embedded mobile CPE. In that subsequent proceeding, we will make any further adjustments to net book value which are necessary in connection with the transfer of the embedded equipment (together with any other arrangements we consider necessary), and we will make any necessary adjustments in the sale program and price predictability period for this equipment, patterned after the action we have taken in *CPE Detariffing Order*. We also will address embedded mobile equipment owned by the Independent telephone companies and the radio common carriers, since that equipment is not affected by the action we are taking today.

19. We shall require the provisions of this Order to take effect on the day following the date of the release of this Order. The Administrative Procedure Act generally requires the effective date of rules to occur at least 30 days following publication in the Federal Register, but permits exceptions "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d). We hereby find good cause for an earlier effective date to exist because of the need for the provisions of this Order to be in place a sufficient time before the divestiture of the Bell System.<sup>23</sup> Such an early effective date will assist in minimizing costs which otherwise would be generated by divestiture, and also will reduce uncertainty regarding the manner in which embedded mobile CPE will be provided during the period immediately following divestiture. AT&T, its customers, and state commissions need to know what ground rules will be in effect regarding embedded mobile CPE, and the urgent nature of this need justifies our

<sup>23</sup> We have made a similar finding with regard to actions we recently have taken which affect landline embedded CPE. *CPE Detariffing Order* at paras. 222-223.

<sup>18</sup> AT&T has pointed out that "[t]here are at least twenty-five manufacturers of mobile CPE—including substantial firms such as General Electric, Motorola, NEC America, Hitachi and OKI Communications \* \* \*." AT&T Petition at 6; see People of the State of California and the Public Utilities Commission of the State of California Comments on Notice, June 2, 1983, at 1.

<sup>19</sup> AT&T's share of mobile CPE sales has been estimated to be 36.2 percent. AT&T Petition at 7.

<sup>20</sup> See, e.g., *CPE Detariffing Order* at para. 217.

<sup>21</sup> See para. 11, *supra*.

providing for an early effective date for the action we are taking today.

#### V. Ordering Clauses

20. Accordingly, it is ordered That, pursuant to Sections 4(i), 4(j), 201-205, 213, 218, 220, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201-205, 213, 218, 220, 303(r), and 403, the policies, rules, and requirements set forth herein are adopted, effective on December 30, 1983.

21. It is further ordered, That the Secretary of the Commission shall provide for the publication of this Order in the Federal Register.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-338 Filed 1-5-84; 8:45 am]

BILLING CODE 6712-01-34

#### 47 CFR Parts 43, 51 and 52

[CC Docket No. 83-666; FCC 83-599]

#### Elimination of Parts 51 and 52 of the Commission's Rules and Amendment of Annual Report Forms R and O

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The Commission is eliminating Part 51 and Part 52 of its Rules and Regulations which prescribe the recordkeeping and reporting requirements for the classification and compensation of employees of telephone and telegraph companies. We are also eliminating two related Schedules of Annual Report Forms R and O. These recordkeeping and reporting requirements are being eliminated because it has been decided that they are no longer needed for the Commission's regulatory purposes. The elimination of these requirements will reduce common carrier recordkeeping and reporting burdens.

**DATE:** Effective February 6, 1984.

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

**FOR FURTHER INFORMATION CONTACT:** Gerald P. Vaughan, Chief, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

#### List of Subjects in 47 CFR Parts 43, 51 and 52

Communications common carriers, Compensation.

#### Report and Order

In the matter of Elimination of Part 51 and Part 52 of the Commission's Rules and Regulations and the Amendment of Annual

Report Forms R and O; CC Docket No. 83-666.

Adopted: December 22, 1983.

Released: December 28, 1983.

By the Commission.

#### I. Introduction

1. In a Notice of Proposed Rulemaking (NPRM) released on July 11, 1983, 48 FR 32612, we proposed to eliminate Part 51 and Part 52 of our Rules and Regulations and to eliminate Schedule 408A and Schedule 408B of Annual Report Forms R and O, respectively. We received no comments opposing our proposals, and this Report and Order eliminates the recordkeeping and reporting requirements as proposed.

2. Part 51 prescribes the recordkeeping requirements for telephone companies regarding the compensation, classification, and counting of employees and describes other related information which should be maintained.<sup>1</sup> Part 52 prescribes a similar recordkeeping and other requirements for wire-telegraph companies.<sup>2 3</sup>

3. Annual Report Form R is a report to be filed by radiotelegraph carriers<sup>4</sup>

<sup>1</sup> Part 51 requires each telephone company to record and include in its annual report to the Commission each year, its employees categorized according to the occupational classifications specified. These classifications include (1) number of male employees; (2) number of female employees; (3) total number of employees; (4) number of scheduled weekly hours; (5) amount of scheduled weekly compensation; and (6) number of employees, other than managerial assistants. Each classification is grouped according to hourly rate of pay.

<sup>2</sup> Part 52 requires each wire-telegraph carrier to classify and count its male and female employees separately each year as of the end of October. Each carrier is also required to maintain records, by classification, indicating the scheduled weekly hours, scheduled weekly compensation, and hourly rate of pay. Further, the carriers are required to classify employees on the basis of character of service. Character of service classifies employees in occupations that are primarily concerned with responsible policy-making, planning, supervising, coordinating, or guiding the work activities of others. These classifications include officials and managerial assistants, professional and semiprofessional employees, telegraph operators and messengers.

<sup>3</sup> Rules governing the classification of telephone employees were first adopted by the Interstate Commerce Commission effective July 1, 1917. These rules remained in effect until they were revised and reissued by the Federal Communications Commission effective July 25, 1944. Part 52, Classification of wire-telegraph employees, was issued by this Commission effective July 11, 1944. These rules did not state how the data would be used for regulatory purposes.

<sup>4</sup> Currently, carriers that report on Annual Report Form R are ITT World Communications, Inc., RCA Global Communications, Inc., TRT Telecommunications, and U.S.-Liberia Radio Corporation.

whose accounting is prescribed in Part 34 of our Rules; and

Annual Report Form O is a report which is required to be filed by wire-telegraph and ocean-cable carriers<sup>5</sup> whose accounting is prescribed in Part 35 of our Rules. These reports, which are filed in accordance with Section 43.21 and Section 1.787 of the Rules, provide information on the stock and stockholders; officers and directors; funded debt; property, franchises and equipment; and financial operations of the reporting companies.

4. We proposed to eliminate the recordkeeping requirements in Part 51 and Part 52 and the related reporting requirements in Forms R and O because we saw no current FCC regulatory purpose being served by these data, we have no statutory mandate to collect these data, and we have been advised by several carriers that similar data are filed with the Bureau of Labor Statistics. We also noted that similar reporting requirements for telephone companies had already been eliminated from Form M by *Amendment of Annual Report Form M*, Docket 82-680, 48 FR 19373 (1983).

#### II. Comments

5. Interested parties were invited to file comments on or before August 10, 1983, and reply comments on or before August 25, 1983. Comments were received from the American Telephone and Telegraph Company, for itself and on behalf of the associated Bell System Operating Companies (AT&T), and RCA Global Communications, Inc. (RCAG). Reply comments were received from Western Union Telegraph Company (Western Union), and GTE Service Corporation and its affiliated domestic telephone companies (GTE).

6. AT&T and GTE support our proposal. They state that the maintenance of records in the specific form required by Part 51 causes unnecessary administrative expenses. In addition, they assert that there is no public interest justification to continue the recordkeeping requirements and that this information is not required to meet any regulatory purpose under the Communications Act. Finally, they believe that continuing the recordkeeping requirements would be contrary to the intent of the Paperwork Reduction Act of 1980. Western Union, in reply comments, also supports the proposal.

<sup>5</sup> Currently, carriers that report on Annual Report Form O are Western Union Telegraph Company; WUI Caribbean, Inc.; Western Union International, Inc., and FTC Communications, Inc.

7. Two comments were submitted in support of our proposal to eliminate Schedules 408A and 408B. RCAG states that it fully supports the Commission's efforts to eliminate the reporting requirements. It states that the proposal to eliminate the reporting requirements is consistent with the Commission's decision in *Amendment of Annual Report Form M, supra*, and accomplishes the purposes of the Paperwork Reduction Act of 1980. AT&T points out that the Commission eliminated the related Form M schedules since it found that the Annual Report Form M reporting requirements relating to employee data were not required to meet the regulatory obligations of either the Commission or the states. AT&T says that similar data are filed with the Bureau of Labor Statistics, the agency with the primary interest in these data.

### III. Discussion

8. Our objective in this proceeding, as stated in the NPRM, is to eliminate certain recordkeeping and reporting requirements, thereby reducing the administrative burden on the regulated companies. This reduction in burden is in the public interest in that any cost savings should ultimately inure to the ratepayer.

9. The NPRM proposed to eliminate Part 51 and Part 52 because of our changing regulatory information needs. The primary purposes of Part 51 and Part 52 are to define and specify how the regulated companies must classify and count employees and also to describe other employee information which must be maintained in order to support certain schedules which are filed with the annual report forms. We have again reviewed our statutory obligations and current needs and see no current or future regulatory purpose for maintaining these data. We agree with AT&T and GTE that the recordkeeping requirements of Part 51 and Part 52 cause the regulated carriers to incur unnecessary recordkeeping expenditures. Also, we concur that the information collection requirements are not imposed to meet any regulatory purpose under Section 219 of the Communications Act which could mandate the continued maintenance of these data. Finally, we agree with the commenting parties that eliminating the requirements of Part 51 and Part 52 would be in furtherance of the Paperwork Reduction Act of 1980 and the Commission's goal of eliminating unnecessary regulations and policies. Therefore, we find that the public interest requires the elimination of Part 51 and Part 52.

10. We tentatively found that the employee classification data are no longer required to meet the regulatory obligations of this Commission. In addition, we pointed out in the NPRM that similar information is reported directly to the Bureau of Labor Statistics, the agency with the primary interest therein, on BLS Form 780 Dtp. This duplication of information gathering among government agencies was also noted by AT&T and GTE. Further, RCAG agrees with our contention that this action is consistent with the Commission's decision to eliminate similar reporting requirements for telephone carriers who filed Annual Report Form M. By eliminating the recordkeeping requirements contained in Part 51 and Part 52, it follows logically that the affected reporting requirements contained in Annual Report Forms R and O should be eliminated. Therefore, we are eliminating Schedule 408A of Annual Report Form R and Schedule 403B of Annual Report Form O.

11. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of Part 51 and Part 52 of the Commission's Rules and Regulations and the amendment of Annual Report Forms R and O will not have a significant economic impact on a substantial number of small entities. The rule change will, however, have a beneficial economic impact and will ease the recordkeeping and reporting requirements of large and small carriers.

### PARTS 51 AND 52—[REMOVED]

12. Accordingly, it is ordered, That pursuant to Sections 4(i), 219 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219 and 220, 47 CFR Parts 51 and 52 are hereby removed effective thirty days after publication of this Order in the Federal Register.

### PART 43—[AMENDED]

13. It is further ordered, That Annual Report Forms R and O are amended in that Schedules 408A and 408B are hereby eliminated effective with the Form R and O Reports for Calendar Year 1983.

14. It is further ordered, That the Secretary shall mail a copy of this *Report and Order* to each state commission.

15. It is further ordered, That this proceeding is terminated.

Federal Communications Commission.  
William J. Tricarico,  
Secretary.  
[FR Doc. 84-0455 Filed 1-5-84; 8:45 am]  
CALLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 71

[OST Docket No. 9; Amdt. 71-29]

### Standard Time Zone Boundaries; Technical Amendments

#### Correction

In FR Doc. 83-32837 appearing on page 55289 in the issue of Monday, December 12, 1983, make the following corrections:

1. In the middle column, first complete paragraph, fourteenth line, "AKST" should have read "AkST".

2. In the same column, second complete paragraph, in the sixteenth and seventeenth lines, "AIST/AIDT" should have read "AIST/AIDT".

CALLING CODE 1000-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 22

### Eagle Permits; Permits for Falconry Purposes

AGENCY: Fish and Wildlife Service,  
Interior.

ACTION: Final rule.

**SUMMARY:** The Fish and Wildlife Service hereby amends 50 CFR Part 22 to allow golden eagles (*Aquila chrysaetos*) to be possessed and transported by qualified individuals for purposes of falconry. These regulations allow golden eagles live captured during depredation control activities, or otherwise legally possessed by permit under 50 CFR Part 22 to be used by holders of master or equivalent falconry permits who have applied for, and received, a Federal permit to possess and transport golden eagles for falconry. Permits will be issued only after all appropriate Federal and State regulations have been complied with. Nothing in this rulemaking prevents any State from imposing and/or enforcing more restrictive State laws and regulations regarding the use of golden eagles in falconry than are contained herein. The Service projects that 30-50 golden eagles

will be required initially to fulfill demand with an additional 5-10 golden eagles required per year thereafter.

**EFFECTIVE DATE:** These regulations will become effective on February 6, 1984.

**FOR FURTHER INFORMATION CONTACT:** William C. Reffalt, Chief, Division of Wildlife Management, Telephone: 202/632-2202.

**SUPPLEMENTARY INFORMATION:** On October 21, 1982, (47 FR 46866), under authority of the Bald and Golden Eagles Protection Act, as amended (16 U.S.C. 668a), the Service proposed to amend 50 CFR Part 22 to allow for the use of golden eagles in falconry. At that time, background information related to golden eagle biology and Service involvement with depredating golden eagles was presented. The 60 day comment period on the proposed rule expired on December 20, 1982. This final rule implements the 1972 amendment to the Bald and Golden Eagles Protection Act (hereafter referred to as the Act).

*Summary of Public Comments and Service Responses.* Written comments concerning the proposed regulations were considered from 22 respondents as follows: State Fish and Game Departments (2); U.S. Fish and Wildlife Service (1); individuals (12); and organizations (7). Of all respondents, six opposed and sixteen supported the proposed rule. After carefully reviewing the comments along with the best available information, the Service has determined that the rule is warranted. Objections to the proposal and Service responses to the objections are listed below.

One individual held that use of golden eagles in falconry was objectionable because of traditional spiritual values held by native Americans. We respect the spiritual values of all individuals and regret that the use of these birds by others for falconry may run counter to these values. However, the Service does not consider this adequate justification to withdraw the proposal since the rule reflects Congressional intent.

Several respondents felt that golden eagles are too powerful and their use in falconry will be hazardous to humans, individual eagles and/or the species. The Service agrees that golden eagles in the hands of falconers may present some risk regarding human safety. However, such risks are primarily to the falconer and not unlike those posed by the handling of any large raptor. Golden eagles are flown in falconry regularly in Europe with no reported safety problems occurring. As regards harmful effects to individual birds and the species, the Service feels that the limited numbers of eagles removed from the

wild—estimated at 30 to 50 initially and 5 to 10 per year thereafter—will have miniscule and transient effect on the golden eagle population which, in the West, is thought to number approximately 60,000 wintering birds. Furthermore, we feel the criteria restricting the use of golden eagles to qualified falconers will ensure, to the maximum extent possible, that individual birds will be properly handled and cared for.

One respondent felt that the use of any wildlife—especially eagles—for personal pleasure is objectionable and does not promote attitudes essential to wildlife preservation. This same individual suggested that the use of captured eagles be restricted to scientific or educational endeavors only. The Service recognizes that some individuals will be offended by the use of these birds in falconry. As previously stated, however, this action simply implements the Act as amended in 1972 which authorizes the use in falconry of depredating golden eagles. In addition, it is felt that this action will provide an opportunity to learn more of the basic biology of golden eagles. For example, golden eagles trained and flown using falconry techniques were extremely valuable in research to develop utility pole design to reduce raptor electrocution problems. The Service also believes that, contrary to the claims of the commentator, golden eagles possessed by falconers will likely provide excellent opportunities for public education and thus promote attitudes and understanding ultimately beneficial to golden eagles. As regards restricting the use of golden eagles for scientific or educational purposes, such uses are already authorized by permit under existing laws and regulations contained in 50 CFR 22.21.

This same respondent also offered that, in the event the proposal was adopted, the final rule be modified to allow no trapping by applicants and further, that permit tenure be limited to five years. Absent any biological or other evidence to the contrary, the Service feels that limiting the duration of permits to five years would provide no useful function. Rather, the Service believes that the regulation as now written provides sufficient safeguards for the health and welfare of eagles maintained under this rule. We do feel that the trapping of eagles should be conducted only by experienced Service employees or by qualified individuals under direct Service supervision and the final rule has been revised to reflect this change. The final rule has also been amended to set forth, in detail, requirements for obtaining permission to

trap for falconry purposes, including requirements of concurrence by State Animal Damage Control officers, demonstration of qualifications to properly trap, mandatory supervision and limited tenure of the permission.

One commentator held that falconers do not have the facilities, ability or interest to maintain golden eagles and should not be authorized to do so. Applications for permits must include a description of the facilities in which the golden eagles will be housed; such facilities must meet minimum Federal falconry standards for facilities and equipment as specified in 50 CFR 21.29. As regards ability, we reiterate that golden eagles are flown regularly in Europe, and, it is felt, falconers in the United States will be equally capable of handling and maintaining these birds. The level of interest among falconers will be evidenced by the number of applications for permits.

One individual expressed the belief that the proposal would allow a few individuals with the necessary financial means to obtain a resource that belongs to all Americans. It is our opinion that the removal from the wild of a minimal number of golden eagles as predicted will have essentially no effect on the golden eagle population in the western United States; all Americans, as they have in the past, will still be able to enjoy this wildlife resource in its natural habitat.

This same person offered that the proposal would lead to abuses such as already occur in falconry. We believe that such a statement could be made for any activity subject to laws and regulations and is not sufficient justification to withdraw the proposal. Furthermore, the conditions, criteria and level of expertise that must be met by applicants to obtain a permit will demonstrate their qualifications, sincerity and previous compliance with wildlife laws and minimize the occurrence of such abuses.

Lastly, this same respondent suggested as an alternative that captured golden eagles should be used to reestablish breeding populations in certain areas of the Great Plains. Such a proposal goes beyond the scope of this rulemaking and will be addressed in the Service's golden eagle resource management document.

One respondent felt the use of golden eagles in falconry is poor wildlife management and will do nothing to solve the basic problem of eagle depredations. Further, it was felt that confusion and possible violations of more restrictive State regulations might result from a dual Federal/State

permitting system for golden eagles and other raptors and suggested that the Service specify which States do or do not allow the use of golden eagles in falconry (whether such birds were trapped within, or imported into, a State). We do not contend that this rule will solve the basic problem of unwanted eagle depredations. This rulemaking simply implements provisions of the amended Act to provide the means by which qualified falconers may obtain golden eagles for use in falconry which, in the past, have been captured and translocated in order to temporarily alleviate depredations; such capture and translocation activities will continue in the future while further efforts will also seek to provide long-term solutions. The Service believes that any such confusion and/or violation of more restrictive State laws will be minimized because no permit to possess and transport golden eagles for falconry will be issued unless and until there is joint concurrence between the Service and an appropriate official of a State listed in paragraph (k) of 50 CFR 21.29. This will assure full Federal/State cooperation and negate the need for the Service to list those States which do or do not allow use of golden eagles in falconry. We have, moreover expressly recognized in the final rule as adopted that nothing in this rule is to be taken as preempting stricter State laws or regulations, and inserted compliance with State law as a condition of permit issuance. We also believe that it is the responsibility of falconers to be aware of State and Federal regulations regarding the use of golden eagles in falconry, and that this awareness will minimize inadvertent violations of these regulations.

Of sixteen respondents favoring the proposal, most provided at least one suggestion they felt would improve the final rule. These suggestions and Service comments are as follows:

A number of respondents, while concurring that a master falconers permit was appropriate, expressed the belief that an additional five years experience at that level would do little to prepare falconers to handle golden eagles and should be eliminated. Experience necessary to become familiar with golden eagle behavior and biology, they stated, could only be gained by actually possessing and handling eagles. The Service agrees that five years' experience as a master falconer is excessive and unwarranted. Appropriately, this requirement has been stricken from the final rule. However, in lieu of this requirement, the Service will place increased reliance on

letters of reference as important indicators of an applicant's capability and suitability to receive golden eagles for falconry purposes. Therefore, it has been determined that all applications must be accompanied by at least two (2) letters of reference rather than one (1) as initially proposed. Additional specifications as to the content of those letters have also been added to the final rule. These letters will be used by the Service to assist in evaluating an applicant's qualifications.

A number of respondents also opposed the type of experience required of individuals submitting letters of reference for applicants. Such eagle experience, they felt, would be more appropriate if it took the form of eagle flying experience irrespective of the species of eagle. We have reconsidered this point and concluded that both flying and handling experience are important in this regard and merit equal consideration. Appropriately, letters of reference that must be submitted with each application may be from individuals with recognized eagle flying experience and/or eagle handling experience. Eagle handling experience as used herein refers, but is not necessarily limited, to experience related to handling pre-Act birds, zoological specimens, rehabilitating eagles or the use of eagles in scientific studies.

Our initial proposal was to allow the use in falconry of golden eagles captured during depredation control activities and/or captive-reared golden eagles. One respondent felt that the use of golden eagles in falconry should be limited to fledged eagles captured during depredation control activities; this, it was felt, would minimize threats to humans and individual birds resulting from the use of imprinted eagles and would eliminate the possibility that non-native golden eagles, through escapes, would contaminate the native gene pool with "foreign" genes. The Service recognizes that golden eagles, casually reared from wild-bred and captive-bred stocks and imprinted to humans, may present certain risks. As previously stated, however, such risks are primarily to the falconer and not unlike those posed by the handling of any large raptor. Golden eagles are flown in falconry regularly in Europe with no reported safety problems. As regards contamination of native gene pools, the Bald Eagle Protection Act was amended in 1962 to prohibit, among a number of other activities, the importation of live golden eagles. Because no golden eagles have been legally imported since that time, therefore, we believe that

introduction of foreign golden eagle genes into the native gene pool is a highly remote possibility of no significant concern or consequence.

Conversely, several respondents felt the final rule should be expanded to also allow the use of, for example, rehabilitated, salvaged and confiscated golden eagles. We agree that some rehabilitated or other legally possessed golden eagles may not be suitable for return to the wild and should be considered for use in falconry. Appropriately, we have expanded the final rule to allow the use in falconry not only of golden eagles taken to resolve livestock depredations but also of golden eagles otherwise legally possessed for which no restrictions exist specifically prohibiting their use for such purposes. The final rule requires documentation of the legality of any currently possessed eagles which are to be qualified under this provision. It is important to reiterate that the primary intent of our original proposal to implement the 1972 amendment to the Act was to provide qualified falconers with depredating golden eagles for use in falconry. Therefore, only eagles taken as independent, free-flying birds will ordinarily be approved for use in falconry. Persons desiring to use for falconry purposes golden eagles lawfully taken and possessed for reasons other than the control of depredations must specifically request this authority; since these may pose special problems, all applicants must state the procedures to be used to prevent such eagles from becoming a hazard.

One respondent felt that authorization should be granted for the sale to falconers of captive-bred and captive-reared eagles as a means of offsetting costs of captive breeding programs. The Act, 16 U.S.C. 669, prohibits the sale of any golden eagle; while the 1972 amendments establish an exception for taking, possession or transportation for falconry, they establish no exception for sale, purchase or barter. Commercialization involves concerns and risks to the species beyond those which we have considered here. Clearly, this proposed activity is beyond Service authority and has not been given further consideration.

This same respondent felt that master falconer's licenses should be issued to individuals with demonstrated pioneering experience in training birds of prey without having to fulfill the minimum time requirement now needed. The Service believes that the mechanism now exists in 50 CFR 21.29 whereby such individuals may be able

to obtain a master falconer's permit provided they pass a State examination, have approved facilities and demonstrate their falconry experience. The Service believes that issuance of "pioneer" falconry permits is the individual State's responsibility. Otherwise, this proposal goes beyond the scope of this rulemaking and need not be given further consideration herein.

One individual suggested that the proposed rule did not specify what housing facilities were acceptable for maintaining eagles. As stated in the proposed rule (see *Issuance Criteria* listed under 50 CFR 22.24(d)), golden eagles legally possessed for falconry under this rulemaking shall be maintained in accordance with Federal falconry standards for facilities and equipment described in 50 CFR 21.29.

One commentator felt the Service should develop and maintain a list of individuals deemed qualified to write letters of reference. The Service considers the creation and maintenance of such a list to be undesirable. Any such list would imply that the Service is unwilling to consider the opinions of unlisted persons, and might be considered an excessive delegation of authority. Rather, the letters of reference from individuals with recognized eagle experience, and of the applicants' choosing, will provide an additional means of evaluating each application while avoiding questions of impropriety.

One respondent felt the final rule should be expanded to allow general falconers, with an eagle sponsor, to possess golden eagles. This, it was stated, was preferable to eagles being destroyed due to a lack of qualified recipients. We believe the requirement that applicants possess, at a minimum, a master falconer or equivalent permit is not excessive and provides reasonable assurance that eagles will be properly handled and maintained. In the event there are more eagles available than falconers qualified to possess them, the Service intends to translocate excess birds as in the past.

Expressing concern for the remnant golden eagle population in the eastern United States, one respondent felt the final rule should specify that only golden eagles captured west of the Mississippi River to resolve depredation problems be authorized for use in falconry; eagles captured east of the Mississippi River should be translocated as per current Service policy. We agree with the assessment that the eastern golden eagle population at present can ill afford the removal from the wild of any birds for use in falconry or any other purpose; appropriate policy will be developed

within the Service at some future time if and when golden eagle depredations in the East become a problem and we initiate trapping efforts. Such a policy, which would take into full consideration this respondent's concerns, would likely specify that priorities be assigned to the possible dispositions of such birds where, for example, the highest priority would be their translocation and release back into the wild and the lowest priority would be their use in falconry. At the present time, however, the trapping and translocation of golden eagles to resolve depredations occurs only in western States. Golden eagles only infrequently cause depredation problems in the East (likely due to various factors including low numbers of golden eagles, sheep and goats, and different land use patterns and livestock husbandry practices from those used in the West). It was and still remains our purpose that golden eagles used in falconry pursuant to this rulemaking be birds that were trapped from western States to resolve depredations. In light of these considerations, we have not felt it necessary to modify the final rule to specifically identify and authorize only western golden eagles for use in falconry.

Comments were received from several respondents that the final rule include a provision that all eagles be banded with removal resistant bands to facilitate identification of individual birds.

The Service agrees and the final rule has been appropriately modified. While we are not presently aware of any bird band for fledgling or adult eagles totally impervious to removal efforts, all bands so issued will be of such materials and construction to minimize removal by individual birds while also minimizing leg damage as a result of these efforts.

One respondent held that the final rule should include a provision for reporting the injury, death or loss of eagles as well as a provision for annual reports on prey taken, especially including protected species or species of concern. The need for reports is recognized. However, the Service believes that such reporting requirements are best addressed and included as conditions of the permit. Furthermore, the Service considers the possibility to be remote that the few golden eagles predicted to be used in falconry will utilize protected species as prey. Appropriately, an annual report on prey species taken cannot be justified and has not been included.

The following listed modifications to the proposed rule were neither addressed in the proposed rule nor mentioned by any respondent, but are now considered necessary and justified

after review of public comments in consultation with Service and Departmental representatives.

The proposed rule referred to authorizations as "letters of authorization." This has been changed to "permit" in the final rule, to conform with general usage in Title 50, CFR.

A permit condition prohibiting the captive breeding of golden eagles possessed for falconry purposes has been added. This stipulation should reduce problems resulting from the use of golden eagles imprinted to humans.

Authority to trap golden eagles from the wild by qualified applicants pursuant to 50 CFR Part 22 Subpart D has been removed as a permitted activity but authority to trap has been included as an action requiring, among other things, special permission from a State Animal Damage Control Supervisor subsequent to issuance of a permit to possess and transport golden eagles for falconry purposes. This rectifies problems which might be caused by unintentional inclusion in the proposed rule of eagles taken under the provision authorizing the trapping of golden eagles by applicants under authority of 50 CFR Part 22 Subpart D, "Depredation Control Orders on Golden Eagles." Under this Subpart, eagles may be taken without a permit when authority is requested by, and issued to, a State governor. A careful examination of the conditions of Subpart D revealed that the Service would lack any control over golden eagles taken pursuant to Subpart D for use in falconry. This lack of authority was never our intention. In addition, addressing the activity of trapping separately from the permitted activities of possession and transport simplifies the language of the final rule and should reduce future confusion while concurrently providing qualified individuals with the necessary authorization to trap golden eagles.

Two permit conditions have been added as a means to further protect the health and welfare of golden eagles possessed pursuant to this rulemaking. These conditions: (1) require notification of the appropriate special agent in charge within a reasonable time period upon the death of a permittee; and (2) require written approval from the appropriate regional director to transfer or dispose of any golden eagles by any means in the event that permittees at some future time become incapable, ineligible or otherwise unwilling to possess and maintain golden eagles. While permittees may provide suggestions for such transfers or disposals, the Service, after considering such suggestions and consulting with

appropriate officials of State agencies, will be solely responsible for final decisions regarding the disposition of such birds.

**Required Determinations:** An assessment of the environmental effects of this rule has been prepared as required by the National Environmental Policy Act of 1969. A determination has been made that this rulemaking action is not a major Federal action significantly affecting the quality of the human environment.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document 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.). As golden eagles are not now a subject of commerce, and under this rule their sale or barter will still be prohibited, any economic effort and impact upon small entities will likely be too small to measure. It is highly unlikely that over fifty persons, all of them already practicing falconers, will initially apply for permits under this rule.

The Environmental Assessment and the Determination of Effects of Rule are available for public inspection, as are all supporting documents, during regular business hours (7:45 am to 4:15 pm) in the Division of Wildlife Management, 1717 H Street, NW., Room 514, Washington, D.C.

**Information Collection Requirements:** This rule allows qualified individuals who possess master or equivalent falconry permits to possess and transport golden eagles for purposes of falconry. Since the information collection requirements associated with falconry permits are cleared under the Paperwork Reduction Act of 1980 (Office of Management and Budget (OMB) approval number 1018-0022) and no further changes in the duties of respondents or burden are anticipated, this rule does not contain information collection requirements which require additional approval from OMB under 44 U.S.C. 3501 et seq.

The author of this rule is Jeffrey L. Horwath, Wildlife Biologist, Division of Wildlife Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

#### List of Subjects in 50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Wildlife.

### Final Falconry Regulations for Use of Golden Eagles

#### PART 22—[AMENDED]

1. The authority citation for 50 CFR Part 22 reads as follows:

Authority: Section 2, Eagle Protection Act of June 8, 1930, Chapter 278, 54 Stat. 251; Pub. L. 87-884, 78 Stat. 1248; section 2, Pub. L. 92-535, 86 Stat. 1085; section 9, Pub. L. 95-616, 92 Stat. 3114 (16 U.S.C. 6683).

2. Amend Table of Contents for 50 CFR 22 by removing the "[Reserved]" after the title for § 22.24.

3. Part 22 of 50 CFR is amended by adding a new § 22.24, which reads as follows:

#### § 22.24 Permits for falconry purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the possession and transportation of golden eagles for falconry purposes.

Note.—The information collections contained in this § 22.24 are cleared by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned approval number 1018-0022. The information is necessary to determine potential permittee's qualifications and is required to obtain a permit.

#### (a) Application procedure.

Applications for permits to possess and transport golden eagles for falconry purposes shall be submitted to the appropriate special agent in charge (see § 13.11(b) of this subchapter). Each application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) A copy of the applicant's master (or equivalent) class permit issued in accordance with 50 CFR 21.28.

(2) A statement of the applicant's experience in handling large raptors, including the species, type of experience and duration of the activity in which the experience was acquired.

(3) At least two (2) letters of reference from individuals with recognized experience in handling and/or flying eagles. Each letter must contain a concise history of the author's experience with eagles. Eagle handling experience is defined as, but is not limited to, the handling of pre-Act birds, zoological specimens, rehabilitating eagles, or scientific studies involving eagles. Each letter must also assess the applicant's capability to properly care for the fly golden eagles in falconry, and recommend the issuance or denial of the permit.

(4) A description of the facilities in which golden eagles will be housed.

(5) If requesting an eagle(s) from the Service, applicants must specify the sex, age and condition of the eagle(s) they will accept.

(6) For eagles already legally possessed, a copy of the permit or other documentation authorizing possession of said birds, and the procedures to be used to minimize or eliminate hazards associated with the use of imprinted birds in falconry.

(7) Name, address, age and experience in handling raptors of any person the applicant proposes to act as an authorized agent in taking possession of golden eagles provided by the Service.

(8) To obtain additional or replacement golden eagles, a request in writing to the appropriate special agent in charge must be tendered, identifying the existing permit and, for replacement eagles, the reason for such replacement.

(b) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits to possess and transport golden eagles for falconry purposes are subject to the following conditions:

(1) Golden eagles possessed for falconry purposes are considered as raptors and must be maintained in accordance with Federal falconry standards described in §§ 21.28 and 21.29 of this subchapter.

(2) Only golden eagles legally obtained may be possessed and transported for falconry purposes.

(3) Captive breeding of golden eagles possessed for falconry purposes is prohibited.

(4) The applicant, or authorized agent, must agree to take possession of a requested golden eagle(s) within 72 hours of notification of availability. Expenses incurred by the applicant in taking possession of said eagle(s) will be the applicant's responsibility.

(5) The golden eagle(s) must be banded with a numbered eagle marker provided by the Service.

(6) All permits issued pursuant to this section shall state on their face that eagles possessed for falconry purposes under authority of this permit may not be transferred or otherwise intentionally disposed of by any means, including release to the wild, without written approval from the appropriate regional director.

(7) All permits issued pursuant to this section shall state on their face that the appropriate special agent in charge must be notified no later than ten (10) days after the death of a permit holder.

(c) *More restrictive State laws.* Nothing in this section shall be construed to prevent a State from making and/or enforcing more

restrictive laws and regulations as regards the use of golden eagles in falconry.

(d) *Issuance criteria.* The Director shall conduct an investigation and shall not issue a permit to possess and transport golden eagles for falconry purposes unless he has determined: that such possession and transportation is compatible with the preservation of golden eagles; that the proposed possession and transportation of golden eagles for falconry is not otherwise prohibited by laws and regulations within the State where the activity is proposed; and that the applicant is qualified to possess and transport golden eagles for falconry purposes. In making the latter determination, the Director shall consider, but shall not necessarily be limited to, the following:

- (1) The applicant's cumulative falconry experience.
- (2) The applicant's demonstrated ability to handle and care for large raptors.
- (3) Information contained in the applicant's letters of reference.

(e) *Tenure of permits.* Any permit to possess and transport golden eagles for falconry purposes is valid for as long as the holder maintains a valid master (or equivalent) class falconry permit or until revoked in writing by the Service.

(f) *Permission to trap golden eagles for falconry purposes.* Applicants desiring to trap golden eagles from the wild for use in falconry must request and obtain permission from the Service prior to exercising this privilege. The following applies to requests:

- (1) Only golden eagles from a specified depredation area may be trapped for falconry purposes.
- (2) Permission to trap golden eagles must be requested in writing from the appropriate State Animal Damage Control (ADC) supervisor subsequent to issuance of the permit to possess and transport golden eagles for falconry purposes.
- (3) Permission to trap will not be granted until the permittee suitably demonstrates to the State ADC supervisor or a designated project leader his/her qualifications and

capabilities to trap golden eagles from the wild.

(4) All such trapping must be conducted under the direct supervision of the State ADC supervisor or designated project leader in the specified depredation area.

(5) Any permission to trap golden eagles from the wild pursuant to this section shall in no case extend more than 90 days from the date of issue.

(6) Upon issuance of permission to trap in accordance with the above conditions, the appropriate special agent in charge will be notified in writing by the State ADC supervisor of the individual's name, address, location of the specified depredation area and tenure of permission to trap golden eagles.

Dated: December 12, 1983.

J. Craig Potter,  
*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 84-276 Filed 1-5-84; 8:45 am]  
BILLING CODE 4310-07-M

# Proposed Rules

Federal Register

Vol. 49, No. 4

Friday, January 6, 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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 83-60]

Rules, Policies and Procedures for Corporate Activities; Organization of a National Bank

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (Office) is proposing to amend its policies and procedures on chartering national banks. The amendments expedite the application process for certain organizers, eliminate a dual publication requirement for bank holding companies and clarify certain Office policies. The proposal is intended to benefit organizers of national banks by more clearly defining Office policy and by removing burdensome and costly regulatory requirements.

**DATE:** Written comments must be submitted on or before February 6, 1984.

**ADDRESSES:** Comments should be directed to: Docket No. 83-60, Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219, Attention: Lynnette Carter. Comments will be available for public inspection and photocopying at the same location.

**FOR FURTHER INFORMATION CONTACT:** Randall J. Miller, Manager, Policy, or Joseph W. Malott, National Bank Examiner/Policy Analyst, Bank Organization and Structure, Office of the Comptroller of the Currency (202) 447-1184.

### SUPPLEMENTARY INFORMATION:

#### Purpose

The purpose of this proposal is to minimize costs and burdens on bank organizers and the Office by clarifying

policies and streamlining the procedures to establish a national bank.

#### Background

This proposal is part of the Office's Corporate Activities Review and Evaluation (CARE) Program. That program is described in the Federal Register (45 FR 68586), dated October 15, 1980, and involves a comprehensive review of Office rules, policies, procedures, and forms governing filings for corporate expansion and structural changes for national banks. The goals of the CARE Program are to minimize the costs and burdens on applicants, the agency and the public; to provide a better understanding of policies; to modify or eliminate rules, policies, procedures, and forms which are unnecessary or lead to inefficiencies; and to remove barriers to competition.

#### Proposal

The Office is proposing to amend those portions of 12 CFR 5.20 which prescribe Office policies and procedures for an applicant to obtain approval to establish a national bank.

The Office is proposing to streamline its application procedures by eliminating the publication requirements of § 5.8 for charter applications sponsored by existing bank holding companies. Holding company applications to establish new banks are subject to Federal Reserve Board public notice requirements. Therefore, the additional notice required by the Office under § 5.8(a) is considered unnecessary and is eliminated.

Presently under § 5.20(c)(1)(iii) an agent is the person named in the application to represent the organizing group. In the future the Office will correspond with a spokesperson who will be designated in the application to represent the organizing group. The spokesperson must be a member of the organizing group and a director of the proposed bank. This change is made because the Office desires to correspond directly with at least one member of the organizing group. This change does not preclude the organizing group from using an agent; however, Office correspondence will be with the organizing group's spokesperson and not with the organizing group's agent.

The Office is amending § 5.20(c)(1)(iv) to streamline its approval process by exempting bank holding companies, individuals the Office considers

experienced in banking, and individuals affiliated with other banking institutions from filing certain portions of the application. Additionally, the Office may waive some procedural steps for a qualified organizing group. These organizing groups may submit less detailed market analyses, financial information, and information on organizers, shareholders, and management. The Office will retain the authority to request more detailed information or to terminate the streamlined process at any time.

For the purposes of exempting a qualified organizing group from filing certain parts of the application the Office will consider an individual experienced in banking if the individual has three or more years of significant involvement in policymaking decisions as a director or as an executive officer in a federally-insured financial institution that, in the opinion of the Office, has operated in a satisfactory manner. Executive officer positions normally will be vice presidents and above as defined by 12 CFR Part 215 (Regulation O). The majority of persons in an organizing group must meet the definition of experienced in banking for the group to be considered experienced in banking. Likewise, bank holding companies may be exempt from certain parts of the application process. Presently the Office considers a holding company eligible for exemption if it has controlled another bank for at least three years prior to submitting the application, will own 25 percent or more of the voting stock of the proposed bank, and in the opinion of the Office the holding company and its subsidiaries have operated in a satisfactory manner.

The Office is proposing to amend its standard procedures on the employment of executive officers for new banks. At present, following preliminary approval for a new national bank charter, applicants must comply with several procedural actions to be granted a charter (§ 5.20(g) and § 5.20(i)(1) EC 7020-19). One of these is to receive the Office's approval to hire or dismiss executive officers prior to the granting of the charter and for two years after. Under the amended procedures, the Office will not approve or sanction managerial choices of organizers, but will retain the right to object to the employment of officers who might have an adverse effect upon the new bank.

The Office's right to object to the hiring of executive officers during a two year period from the date the bank commences business will be included as a condition of approval. Also, the Office will no longer review a bank's decision to dismiss an officer. Accordingly, references to the Office's prior written approval of a proposed executive officer's dismissal will be deleted from § 5.20(c)(3)(ii)(D).

The Office is amending its policy on capital to state that capital must be raised within one year from the date of preliminary approval. The Office will consider extending this period but only under unusual circumstances. The Office believes that one year from the date of preliminary approval is ample time for a new bank to raise capital and that the ability to raise capital within the time period will indicate whether the marketplace will support the proposed institution.

**Regulatory Flexibility Act**

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612) the Secretary of the Treasury has certified that this regulation does not have a significant economic impact on a substantial number of small entities.

**Executive Order 12291**

This rule is not classified as a "major rule" and therefore does not require a regulatory impact analysis.

**List of Subjects in 12 CFR Part 5**

National banks, Procedures for corporate activities.

**Authority and Issuance**

Accordingly, the Comptroller of the Currency proposes to amend 12 CFR Part 5 as follows:

**PART 5—[AMENDED]**

1. The authority citation for Part 5—Rules, Policies, and Procedures for Corporate Activities reads as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. Section 5.20 is amended by revising (c)(1)(iii), (c)(1)(iv), (c)(3)(ii)(C), (c)(3)(ii)(D), and (c)(3)(iii) as follows:

**§ 5.20 Organization of a national bank.**

\* \* \* \* \*  
(c) \* \* \*  
(1) \* \* \*

(iii) When an application is disapproved, the Office sends a letter containing the basis for the disapproval to the spokesperson (a member of the organizing group and a director of the proposed bank who is designated to

correspond with the Office) and other interested parties to the application. When an application is satisfactory, the Office sends a preliminary approval letter to the spokesperson. The preliminary approval letter contains the conditions and procedural requirements (see § 5.20(h) Other Procedures) that the organizing group must fulfill before the Office grants final approval for the bank to open for business.

(iv) Applications sponsored by established bank holding companies, individuals affiliated with other banking institutions, or individuals experienced in banking present a different set of circumstances from applications filed by organizing groups without substantial banking experience. The record of past performance of bank holding companies or directors, management, or individual shareholders of an existing bank which will be affiliated with the proposed bank facilitates Office appraisal of the prospects for success of the proposed bank. The Office evaluates that record of past performance through a review of the holding company's and/or affiliated institution's reports of examination, financial statements, and other information available as a result of its supervisory responsibilities. The Office also reviews the holding company's overall philosophy and plans (strategic, capital, management, profitability, etc.) for consistency and compatibility with the new bank's operating plan. When an established record facilitates analysis, the Office may permit omission of certain parts of the application. However, the record may or may not provide an advantage to the organizing group. In those instances where the proposed bank will be affiliated with a company or institution which is subject to special supervisory concern, the Office may require a full application, approve the application subject to a condition that the affiliate's problems be corrected prior to granting the charter, or deny the application. On the other hand, where the holding company or affiliated institution serves as a substantial source of strength, the Office is likely to approve the application even in markets where economic and competitive conditions are minimally hospitable.

\* \* \* \* \*  
(3) \* \* \*  
(ii) \* \* \*

(C) The identification of competent executive officers (chief executive officer and/or president, cashier or similar position, and other senior personnel) at an early date is beneficial and reflects positively on the appraisal

of the organizing group and its operating plan. As a condition of the charter approval, the Office retains the right to object to and preclude the hiring of any officer for a two year period from the date the bank commences business.

(D) Because various statutory provisions require documents to be executed by either the president or the cashier, or both, a president must be employed prior to solicitation of stock subscriptions and a cashier must be hired prior to the granting of the charter and the commencement of business.

(iii) *Adequacy of capital.* The organizing group should propose initial capital (net of organizational expenses) that is sufficient to support the projected volume and type of business. In determining the adequacy of capital, the Office will consider earnings prospects, economic and competitive conditions in the community to be served, experience and competence of management, risks inherent in the expected assets and liabilities, amount of fixed asset investment, and the dependability of plans to raise, or ability of directors to supply, additional capital when needed. Initial capital should normally be in excess of \$1,000,000, net of any organizational expenses that will be charged to the bank's capital after it commences business. The Office may grant preliminary approval if the proposed initial capital is inadequate, but on balance the application would warrant approval had capital been adequate. Such preliminary approval would be conditional upon the bank raising additional capital prior to the commencement of business. The bank must raise its capital within one year from the date of preliminary approval or preliminary approval will be withdrawn. The Office may grant an extension of this condition under unusual circumstances.

\* \* \* \* \*

3. Section 5.20 is further amended by redesignating paragraphs (c) through (i) as (d) through (j) and by adding a new paragraph (c) to read as follows:

**§ 5.20 Organization of a national bank.**

\* \* \* \* \*

(c) *Rules of general applicability.* Section 5.8(a) does not apply to an application to organize a national bank sponsored by an existing bank holding company if the holding company provides notice of its application to acquire a bank under the rules of the Federal Reserve Board.

Dated: December 6, 1983.

C. T. Conover,  
Comptroller of the Currency.

[FR Doc. 84-170 Filed 1-5-84; 8:45 am]

BILLING CODE 4810-33-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 83-AAL-6]

#### Proposed Expansion of Control 1487, Additional Control Area

AGENCY: Federal Aviation  
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This notice purposes to expand the western boundary of Control, 1487, Additional Control Area, so that it will coincide with the revised boundaries for the Oakland and Anchorage Oceanic Control Areas. This action would allow the Anchorage Air Route Traffic Control Center to utilize domestic air traffic control procedures, which are more efficient than oceanic procedures, in the proposed airspace designation.

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

**ADDRESS:** Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 83-AAL-6, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8783.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views,

or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AAL-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to expand Control 1487, Additional Control Area, westward to a revised common boundary of the Oakland and Anchorage Oceanic Control Areas that will be effective January 19, 1984. Incorporating this airspace as additional control area airspace would enable the FAA to more efficiently utilize the navigable airspace by applying domestic, rather than oceanic, air traffic control procedures. The proposed additional control area airspace is within the air traffic control

radar coverage of the Anchorage Air Route Traffic Control Center and facilitates the use of domestic air traffic control procedures. Section 71.163 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1993.

#### ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10354.

**List of Subjects in 14 CFR Part 71**

Additional control area, Aviation safety.

**The proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**Control 1487 [Amended]**

By deleting the words "a line beginning at" and substituting the words "a line beginning at lat. 58°20'00"N., long. 148°55'00"W.; to". By deleting the word "VORTAC" and substituting the word "VOR/DME". By deleting the words "thence along the eastern boundary of the Anchorage Oceanic CTA/FIR boundary" and substituting the words "to lat. 54°00'00"N., long. 136°00'00"W.; to lat. 56°39'00"N., long. 143°07'00"W.;"

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

**Note.**—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on December 28, 1983.

B. Keith Potts,

Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 84-332 Filed 1-5-84; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 25****Transitional Rule for Increased Annual Gift Tax Exclusion and Unlimited Exclusion for Certain Transfers**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the annual gift tax exclusion and the

unlimited exclusion for certain medical and educational transfers. Changes to the applicable law were made by the Economic Recovery Tax Act of 1981. The regulations would provide the public with the guidance needed to comply with that Act.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by March 6, 1984. The amendments are proposed to be effective for gifts made after December 31, 1981.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, 1111 Constitution Avenue, NW., Attention: CC:LR:T (LR-211-81) Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T: LR-211-81 (202-566-4336), not a toll-free call.

**SUPPLEMENTARY INFORMATION:****Background**

This document contains proposed amendments to the Gift Tax Regulations (26 CFR Part 25) under section 2503 of the Internal Revenue Code of 1954 (Code). These amendments are proposed to conform the regulations to section 441 of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34, 95 Stat. 319) and are to be issued under the authority contained in section 7805 of the Code (68A Stat. 917, 26 U.S.C. 7805).

**In General**

Section 441(a) of the Economic Recovery Tax Act of 1981 increased the annual gift tax exclusion to \$10,000 per donee for gifts made during calendar year 1982 and subsequent years. See § 25.2503-2(a) and 48 FR 40373.

Although the increased exclusion generally applies to transfers made after 1981, many existing instruments provide powers of appointment specifically defined in terms of the section 2503(b) annual gift tax exclusion. To ensure that grantors who did not wish to provide powers in excess of \$3,000 will not be providing powers subject to the increased exclusion because of the reference to section 2503(b), the proposed regulations include a transitional rule which provides that the increased exclusion does not apply to powers granted under certain instruments created before September 12, 1981.

Finally, section 441(b) of the Act added section 2503(e) to the Code, which generally provides that amounts paid on behalf of any individual as

tuition to certain educational organizations or as payment for medical care to any person who provides medical care with respect to that individual will not be considered transfers subject to the gift tax. This exclusion is permitted without regard to the relationship between the donor and donee. Enactment of the new exclusion did not change the rule of prior law that there is no gift if the person paying tuition or medical expenses is discharging a legal obligation of support imposed under applicable local law.

**Tuition Payment**

Under the proposed regulations, the tuition payment must be made directly to the qualifying educational organization. A payment made directly to the individual for tuition expenses does not qualify for the unlimited exclusion from the gift tax.

**Medical Payments**

New section 2503(e) exempts from the gift tax amounts paid directly to a medical care provider for qualifying medical expenses on behalf of another individual. However, amounts that are reimbursed by the donee's insurance company are not excluded from the gift tax. Thus, if a donor pays the qualifying medical care expenses of a donee, the unlimited exclusion from the gift tax applies only to that part of the payment which is not reimbursed by the donee's insurance company. To the extent of the reimbursement by the donee's insurance company, the gift is treated as having been made on the date the reimbursement is received by the donee.

**Comments and Requests for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

**Special Analyses**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that although this document is a notice of

proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

#### Drafting Information

The principal author of these proposed regulations is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

#### List of Subjects in 26 CFR Part 25

Gift taxes.

#### Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 25 are as follows:

#### PART 25—[AMENDED]

Paragraph 1. Section 25.2503-2 is amended by adding paragraphs (d) and (e), immediately after paragraph (c), to read as set forth below.

#### § 25.2503-2 Exclusions from gifts.

(d) *Transitional rule.* The increased annual gift tax exclusion as defined in section 2503(b) shall not apply to any gift subject to a power of appointment granted under an instrument executed before September 12, 1981, and not amended on or after that date, provided that: (1) The power is exercisable after December 31, 1981, (2) the power is expressly defined in terms of, or by reference to, the amount of the gift tax exclusion under section 2503(b) (or the corresponding provision of prior law), and (3) there is not enacted a State law applicable to such instrument which construes the power of appointment as referring to the increased annual gift tax exclusion provided by the Economic Recovery Tax Act of 1981.

(e) *Examples.* The provisions of paragraph (d) of this section may be illustrated by the following examples:

*Example (1).* A executed an instrument to create a trust for the benefit of B on July 2, 1981. The trust granted to B the power, for a period of 90 days after any transfer of cash to the trust, to withdraw from the trust the lesser of the amount of the transferred cash or the amount equal to the section 2503(b) annual gift tax exclusion. The trust was not amended on or after September 12, 1981. No state statute has been enacted which construes the power of appointment as

referring to the increased annual gift tax exclusion provided by the Economic Recovery Tax Act of 1981. Accordingly, the maximum annual gift tax exclusion applicable to any gift subject to the exercise of the power of appointment is \$3,000.

*Example (2).* Assume the same facts as in example (1) except that the power of appointment granted in the trust refers to section 2503(b) as amended at any time. The maximum annual gift tax exclusion applicable to any gift subject to the exercise of the power of appointment is \$10,000.

Par. 2. Section 25.2503-6 is added to read as follows:

§ 25.2503-6 Exclusion for certain qualified transfers for tuition or medical expenses.

(a) *In general.* Section 2503(e) provides that any qualified transfer after December 31, 1981, shall not be treated as a transfer of property by gift for purposes of chapter 12 of subtitle B of the Code. Thus, a qualified transfer on behalf of any individual is excluded in determining the total amount of gifts in calendar year 1982 and subsequent years. This exclusion is available in addition to the \$10,000 annual gift tax exclusion. Furthermore, an exclusion for a qualified transfer is permitted without regard to the relationship between the donor and the donee.

(b) *Qualified transfers—(1) Definition.* For purposes of this paragraph, the term "qualified transfer" means any amount paid on behalf of an individual—

(i) As tuition to a qualifying educational organization for the education or training of that individual, or

(ii) To any person who provides medical care with respect to that individual as payment for the qualifying medical expenses arising from such medical care.

(2) *Tuition expenses.* For purposes of paragraph (b)(1)(i) of this section, a qualifying educational organization is one which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and the regulations thereunder. The unlimited exclusion is permitted for tuition expenses of full or part-time students paid directly to the qualifying educational organization providing the education. No exclusion is permitted for amounts paid for books, supplies, dormitory fees, board, or other similar expenses which do not constitute direct tuition costs.

(3) *Medical expenses.* For purposes of paragraph (b)(1)(ii) of this section, qualifying medical expenses are limited to those expenses listed in section 213(d)(1) (section 213(e)(1) prior to

January 1, 1934) and include expenses incurred essentially for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body. In addition, the unlimited exclusion from the gift tax includes amounts paid for medical insurance on behalf of any individual. The unlimited exclusion from the gift tax does not apply to amounts paid for medical care that are reimbursed by the donee's insurance. Thus, if payment for a medical expense is reimbursed by the donee's insurance company, the donor's payment for that expense, to the extent of the reimbursed amount, is not eligible for the unlimited exclusion from the gift tax and the gift is treated as having been made on the date the reimbursement is received by the donee.

(c) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples.

*Example (1).* In 1932, A made a tuition payment directly to a foreign university on behalf of B. A had no legal obligation to make this payment. The foreign university is described in section 170(b)(1)(A)(ii) of the Code. A's tuition payment is exempt from the gift tax under section 2503(e) of the Code.

*Example (2).* C was seriously injured in an automobile accident in 1932. D, who is unrelated to C, paid C's various medical expenses by checks made payable to the physician. D also paid the hospital for C's hospital bills. These medical and hospital expenses were types described in section 213 of the Code and were not reimbursed by insurance or otherwise. Because the medical and hospital bills paid in 1932 for C were medical expenses within the meaning of section 213 of the Code, and since they were paid directly by D to the person rendering the medical care, they are not treated as transfers subject to the gift tax.

*Example (3).* Assume the same facts as in example (2) except that instead of making the payments directly to the medical service provider, D reimbursed C for the medical expenses which C had previously paid. The payments made by (e) of the Code and are subject to the gift tax to the extent they exceed the \$10,000 annual exclusion provided in section 2503(b).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-2072 Filed 1-5-84; 845 am]  
BILLING CODE 4830-01-M

#### POSTAL SERVICE

#### 39 CFR Part 233

Proposed Regulations on Postal Service Authority to Purchase Articles or Services Offered for Sale by Mail Directly From Mail-Order Merchants

AGENCY: Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes this rule to implement the "test purchase" authority authorized by the Mail Order Consumer Protection Amendments of 1983 for use in investigations of possible violations of the postal false representation statute. It sets forth the procedures to be followed by representatives of the Postal Service in tendering, in person, the price of any item or service offered for sale through the mails.

**DATE:** Comments must be submitted on or before February 6, 1984.

**ADDRESSES:** Written comments should be directed to the Assistant General Counsel, Consumer Protection Division, Law Department, United States Postal Service, Washington, D.C. 20260-1100. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday, in Room 1P613, United States Postal Service Headquarters, 475 L'Enfant Plaza West, S.W., Washington, D.C..

**FOR FURTHER INFORMATION CONTACT:** George C. Davis (202) 245-4385.

**SUPPLEMENTARY INFORMATION:** Section 3005(e)(1) of title 39, enacted by Pub. L. 98-186, is intended to facilitate and expedite the Postal Service's investigation of suspected violations of the false representation statute, 39 U.S.C. 3005, by authorizing the Postal Service to purchase directly from a merchant, at the advertised price, a sample of an article or service offered for sale by mail. Section 3005(e)(2) provides that if a merchant fails to supply a requested article or service, such failure and any reasons for it may be considered by a federal court in deciding whether to issue a temporary restraining order and preliminary injunction to withhold delivery of an advertiser's mail under section 3007 of title 39.

In accordance with section 3005(e)(3), the proposed regulation set forth below requires any individual making a test purchase on behalf of the Postal Service to identify himself as an employee or authorized agent of the Postal Service; to state the nature of the conduct under investigation; and to inform the person to whom the tender offer is made that a failure to complete the transaction may be considered in a section 3007 proceeding. The Postal Service proposes to include this information in a written "Test Purchase Request" which will be delivered, along with a check or money order for the purchase price, to the

person, firm, or corporation to whom the tender offer is made or to his or its representative. In addition, the Postal Service proposes to include a description of the requested article or service, a verbatim statement of the content of 39 U.S.C. 3005, 3007, and directions as to when and where the requested article or service should be provided.

The Postal Service also proposes to require postal representatives making the test purchase to make a record of service, noting the date and place of service and the identity of the person served. Alternatively, the proposed regulations provide that service of the "Test Purchase Request" may be made by certified mail.

The Postal Service believes this proposed implementing regulation provides the best means of meeting the statute's requirement that mail/order merchants be informed of the purpose behind a "Test Purchase Request" as well as the possible consequences that may result from failing to comply with a valid request.

In view of the above considerations, the Postal Service invites public comment on the following proposed amendment of 39 CFR Part 233.

#### List of Subjects in 39 CFR Part 233

Postal Service.

#### PART 233—INSPECTION SERVICE AUTHORITY

In part 233 of 39 CFR, add new § 233.6 reading as follows:

##### § 233.6 Test Purchases Under 39 U.S.C. 3005(e).

(a) *Scope.* This section, which implements 39 U.S.C. 3005(e), supplements any postal regulations or instructions regarding test purchases or test purchase procedures. It is limited to test purchases conducted according to 39 U.S.C. 3005(e).

##### (b) *Definitions.*

(1) *Test Purchase.* The acquisition of any article or service, for which money or property are sought through the mails, from the person or representative offering the article or service. The purpose is to investigate possible violations of postal laws.

(2) *Test Purchase Request.* A written document requesting the sale of an article or service pursuant to 39 U.S.C. 3005(e) and containing the following information:

(i) The name and address of the

person, firm, or corporation to whom the request is directed;

(ii) The name, title, signature, office mailing address, and office telephone number of the person making the request;

(iii) a description of the article or service requested which is sufficient to enable the person to whom the request is made to identify the article or service being sought;

(iv) A statement of the nature of the conduct under investigation;

(v) A statement that the article or service must be tendered at the time and place stated in the purchase request, unless the person making the request and the person to whom it is made agree otherwise in writing;

(vi) A verbatim statement of 39 U.S.C. 3005, 3007; and

(vii) A statement that failure to provide the requested article or service may be considered in a proceeding under 39 U.S.C. 3007 to determine whether probable cause exists to believe that 39 U.S.C. 3005 is being violated.

##### (c) *Service of Test Purchase Request.*

(1) The original of the Test Purchase Request must be delivered to the person, firm, or corporation to whom the request is made or to his or its representative. It must be accompanied by a check or money order in the amount for which the article or service is offered for sale, made payable to the person, firm or corporation making the offer.

(2) The person serving the Test Purchase Request must make and sign a record, stating the date and place of service and the name of the person served. The person making the request must retain a copy of the Test Purchase Request, the record of service, and the money order receipt or cancelled check. Alternatively, the request may be made by certified mail.

(d) *Authorizations.* The Chief Postal Inspector is the principal officer of the Postal Service for the administration of all matters governing test purchases under this section. The Chief Inspector may delegate any or all authority in this regard to any or all postal inspectors.

(39 U.S.C. §§ 401(2), 404(a)(7), 3005(e)(1))

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 04-275 Filed 1-5-84; 9:45 am]

BILLING CODE 7710-12-M

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 799**

**[OPTS-24043; TSH-FRL 2477-6]**

**1,2-Dichloropropane; Proposed Test Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** Under section 4 of The Toxic Substances Control Act (TSCA), EPA is proposing that manufacturers and processors conduct health and environmental effects tests for 1,2-dichloropropane. The proposed health effects tests include neurotoxicity, mutagenicity, teratogenicity, and reproductive effects tests. The proposed environmental effects tests include acute and chronic toxicity tests for aquatic invertebrates, and an aquatic plant test. The testing being proposed will be performed according to protocols submitted by the test sponsor and approved by the Agency in a subsequent rulemaking. This notice constitutes EPA's response to the interagency Testing Committee's (ITC) designation of 1,2-dichloropropane for priority consideration for testing.

**DATE:** Submit written comments on or before March 6, 1984. If persons request time for oral comment by February 21, 1984, EPA will hold a public meeting on March 21, 1984 on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit VI of this preamble.

**ADDRESS:** Submit written comments identified by the document control number (OPTS-42043) in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

Include the document control number (OPTS-42043) on all submissions.

**FOR FURTHER INFORMATION CONTACT:** Jack P. McCarthy, Director TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St. SW., Washington, D.C. 20460, toll free: (800-424-9065), in Washington, D.C.: (554-1404), outside the USA: (Operator 202-554-1404).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The

ITC may designate substances on the list for priority consideration for requiring testing by EPA.

The ITC designated 1,2-dichloropropane (DCP) for priority consideration for environmental and health effects tests in its Third Report, published in the Federal Register on October 30, 1978 (43 FR 50830). The ITC recommended that 1,2-dichloropropane be tested for the following health effects: carcinogenicity, mutagenicity, teratogenicity, and other toxic effects (with emphasis on reproductive and neurological effects). The ITC also recommended that an epidemiological study be performed. Also, the following environmental effects tests were recommended by the ITC: chronic toxicity to fish and invertebrates, effects on avian and mammalian reproduction and behavior, and effects on soil invertebrates and terrestrial insects.

The ITC's testing recommendations were based upon a production volume in 1976 of 71 million pounds, widespread use as a solvent and a potentially high occupational exposure (over 1 million workers). According to the ITC, there is either insufficient information or the available information is unreliable to characterize the carcinogenic, mutagenic, and teratogenic potential of 1,2-dichloropropane. Also, because of a stated structural similarity to 1,2-dibromo-3-chloropropane (DBCP), the ITC recommended that reproductive and neurological effects testing be emphasized in considering testing for the other toxic effects of 1,2-dichloropropane. An epidemiologic study was recommended for 1,2-dichloropropane because of insufficient information about the chemical's human health effects and a potentially large exposure pattern. The ITC recommended environmental effects tests for 1,2-dichloropropane because the chemical's volatility and high specific gravity may result in localized impacts on those environments receiving continuous exposure associated with this chemical's use and disposal. Also, according to the ITC, the potential for DCP to bioaccumulate suggested the need for environmental effects testing to determine the biological significance of exposure.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop appropriate test data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making section 4(a)(1)(A)(i) findings, in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure and release information to determine if there is substantial exposure or release. For the findings under sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the finding under section 4(a)(1)(A)(iii) or 4(a)(1)(B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations concerning 1,2-dichloropropane, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of 1,2-

dichloropropane under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning 1,2-dichloropropane; and published and unpublished data available to the Agency. Based on its evaluation, as described in this proposed rule and the accompanying technical support document, EPA is proposing health and environmental effects testing requirements for 1,2-dichloropropane under section 4(a)(1)(B). By these actions, EPA is responding to the ITC's designation of 1,2-dichloropropane for testing consideration.

## II. 1,2-Dichloropropane

### A. Profile

1,2-Dichloropropane (CAS No. 78-87-5) is a colorless, stable liquid with a chloroform-like odor. The uses of 1,2-dichloropropane are as a solvent for the manufacture of ion exchange resins, as a feedstock for the manufacture of perchlorethylene, in metal degreasing agents, as a component of furniture finish removers and paint removers and as a lead scavenger for fuel anti-knock fluids. The Dow Chemical Company is the only manufacturer of 1,2-dichloropropane in the United States. According to the Dow Chemical Company, three million pounds of 1,2-dichloropropane were marketed in 1982 (Letter from Carlos Bowman to Steven D. Newburg-Rinn, June 3, 1983). 1,2-Dichloropropane is isolated during the manufacture of propylene oxide. Based on propylene oxide production capacity, the annual production capacity of 1,2-dichloropropane is estimated to be between 41-144 million pounds.

### B. Findings

EPA is basing its proposed testing of 1,2-dichloropropane on the authority of section 4(a)(1)(B) of TSCA.

EPA finds that 1,2-dichloropropane is manufactured, processed, and used in substantial quantities, which activities may result in substantial human exposure. Also 1,2-dichloropropane enters or may reasonably be anticipated to enter the environment in substantial quantities. Furthermore, EPA finds that there are insufficient data available to either reasonably determine or predict the result of this exposure and release in the areas of mutagenic, teratogenic, reproductive, and neurotoxic effects, and acute and chronic toxicity for aquatic invertebrates and aquatic plants. Finally, EPA finds that testing is necessary to develop the data needed to

evaluate the potential for 1,2-dichloropropane (DCP's) exposure and release to cause these effects. These findings are based on the following information:

1. Although Dow Chemical Company is the only manufacturer of 1,2-dichloropropane in the United States, the marketing production volume (3 million pounds in 1982), the 1,2-dichloropropane production volume (an estimated 41 million pounds in 1981) and the 1,2-dichloropropane production capacity (41-144 million pounds, based on propylene oxide production capacity) are substantial.

2. Currently available information indicates that a substantial number of people are potentially exposed to 1,2-dichloropropane. Recent consumer product information, for example, indicates that 1,2-dichloropropane is a component of 10 products currently available as paints, varnishes and furniture finish removers produced by 9 manufacturers. There are a large number of consumers that use paint, varnish or furniture finish removers. Also, a large number of workers in various occupations are potentially exposed to 1,2-dichloropropane. According to a recent National Occupational Hazard Survey, there are over 700,000 workers exposed to 1,2-dichloropropane resulting from its manufacture. This conclusion is based on the National Institute for Occupational Safety and Health's identification of 18 occupations in 17 industries, involving over 9,000 workers using 1,2-dichloropropane in non-agricultural applications. Furthermore, 1,2-dichloropropane has been identified as a contaminant of ground water and drinking water. The Suffolk County Department of Health Services, Long Island, New York, has identified 1,2-dichloropropane from non-pesticidal sources in ground water. Also, the Philadelphia Water Department has identified 1,2-dichloropropane in finished drinking water. (6.1/ $\mu\text{g}/\text{L}$ ). The estimated total annual load of 1,2-dichloropropane to the aquatic environment would be approximately 4.9 million pounds. Thus, a large portion of the general population may be exposed to 1,2-dichloropropane, considering the following: the large number of consumers coming into contact with products that contain 1,2-dichloropropane; the large number of workers exposed to 1,2-dichloropropane in various occupations; and the number of people drinking water or coming into contact with water that is contaminated with 1,2-dichloropropane. EPA has concluded that this exposure pattern

constitutes "substantial exposure" as that term is used in section 4 of TSCA.

3. There are insufficient data on the teratogenic, reproductive, mutagenic, and neurotoxic effects upon which to reasonably determine or predict the effects of exposure. Health effects testing, therefore, is necessary to develop these data.

4. Acute, subchronic, and chronic effects tests and an oncogenicity test are not being proposed at this time for 1,2-dichloropropane. The Dow Chemical Company has conducted tests to determine the acute and subchronic effects of 1,2-dichloropropane by the inhalation route of exposure in rats, mice, and rabbits. Also, an NTP 2-year bioassay has been performed to determine the oncogenic potential of 1,2-dichloropropane. The results of this study are still being evaluated. An epidemiologic study is not being proposed because the exposure pattern to 1,2-dichloropropane is so general it is doubtful that an exposed population could be identified that is not exposed to this chemical and other chemicals simultaneously.

5. There are substantial quantities of 1,2-dichloropropane released to the environment. The atmospheric compartment is readily contaminated with 1,2-dichloropropane because 1,2-dichloropropane is very volatile (50 mmHg at 25°C). Total atmospheric releases of 1,2-dichloropropane are estimated to be approximately  $1.4 \times 10^6$  pounds per year. Also, quantities of 1,2-dichloropropane are released to the aquatic environment (4.9 million pounds annually). 1,2-Dichloropropane is used as a solvent for the manufacture of ion exchange resins. One manufacturer of ion exchange resins annually discharges about 500,000 lbs. of 1,2-dichloropropane to the aquatic environment. There are four ion exchange manufacturers in the United States with potentially similar release patterns.

6. There are insufficient data to characterize the effects of 1,2-dichloropropane on aquatic invertebrates and aquatic plants. EPA is proposing studies on acute and chronic toxicity to aquatic invertebrates and effects on algae. There are sufficient data to characterize the effects of 1,2-dichloropropane on soil invertebrates, terrestrial insects and fish.

7. The Agency is not proposing an avian reproduction test for 1,2-dichloropropane because recent unpublished research at ERL-Corvallis has shown that a chemical as volatile as 1,2-dichloropropane is very unlikely to yield useful results if tested for avian

toxicity according to available methodology.

The analysis on which the above findings are based is presented in the 1,2-Dichloropropane Support Document which is available from the TSCA Assistance Office (TAO). The ITC's testing recommendations and EPA's proposed tests are summarized in the table below.

TABLE 1.—PROPOSED TESTS FOR 1,2-DICHLOROPROPANE

Test or study	ITC recommendations	EPA proposed testing
<b>Health Effects</b>		
Acute		No testing.
Subchronic		No testing.
Chronic		No testing.
Neurotoxicity	X	X
Teratogenicity	X	X
Mutagenicity	X	X
Reproductive Effects	X	X
Oncogenicity	X	No testing.
Epidemiology	X	No study requirement.
<b>Environmental Effects</b>		
Soil Invertebrates	X	No testing.
Terrestrial Insects	X	No testing.
Chronic Toxicity to Fish and Invertebrates.	X	Acute and Chronic Toxicity to Aquatic Invertebrates.
Aquatic Plants		Algal Bioassay.
Chronic Effects on Avian and mammalian reproduction and behavior.	X	No testing.

NOTE.—X = testing recommended or proposed.

### C. Test Substance

EPA is proposing that a relatively pure grade of 1,2-dichloropropane be used as the test substance. A purity of 99 percent is specified in this rule so that any chemically induced effects can be more likely attributable to DCP and not chemical contaminants. 1,2-Dichloropropane is currently available with this purity.

### D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures or releases providing the basis for the finding occur during use, distribution, or disposal. Because EPA has found that the manufacturing, processing, and use of 1,2-dichloropropane give rise to substantial exposure and substantial

release, EPA is proposing that persons who manufacture or process, or who intend to manufacture or process, 1,2-dichloropropane at any time from the effective date of this test rule to the end of the reimbursement period be subject to the rule. The end of the reimbursement period ordinarily will be 5 years after the final report is submitted. As discussed in Unit II F., EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement.

### E. Approach to Adoption of Test Rules

1. *General Process.* On March 26, 1982, EPA announced a new approach to adoption of test rules (47 FR 13102). EPA intends to promulgate a general procedural rule in 40 CFR Part 770 which will contain the procedural requirements of this new approach. However, since that procedural rule is not in effect, this proposed rule contains specific procedures for adoption of this test rule. If the general rule is promulgated before this proposal becomes final, the 1,2-dichloropropane rule will be modified to comport with the general procedural provisions.

Under the new approach, test rule development will be a two-phase process. In phase I, EPA will propose that specific testing be required for 1,2-dichloropropane. This phase of the rulemaking will allow the public to comment on the decision to require testing and the specific types of tests to be required. Phase II begins after promulgation of the phase I rule. In phase II, EPA will receive proposed study plans for the specific tests adopted in the phase I rule. EPA will propose those study plans for public comment. After comment, the Agency will adopt the study plans, as proposed or modified, as specific test standards for the tests required by the phase I rule. Persons who submit the study plans will be obligated to perform the tests in accordance with the test standards adopted.

2. *Letter of Intent to Test or Exemption Application.* The proposed rule would require manufacturers and processors of 1,2-dichloropropane to

perform certain tests. Once the rule is in effect, 30 days after publication of the final rule in the Federal Register, each current manufacturer would have 30 days to submit, for each required test set, either a letter of intent to perform the test or an application for exemption. Each manufacturer who submitted a letter of intent to perform a specific test would be obligated, first, to submit, within 90 days of the effective date, a proposed study plan for the test set and, ultimately, to perform the testing.

If manufacturers of 1,2-dichloropropane performed all the required test sets, processors of 1,2-dichloropropane would not be required to test or to submit exemption applications. EPA would automatically grant them exemptions from the requirements of the rule.

If no manufacturer of 1,2-dichloropropane submitted a letter of intent to perform a particular test set within the 30-day period, EPA would publish a notice in the Federal Register to notify all processors of 1,2-dichloropropane. The notice would state that EPA had not received letters of intent to perform certain test sets and that current processors would have 30 days to submit, for each test set remaining, either a letter of intent to perform the test set or an exemption application for that test set. Each processor who submitted a letter of intent to perform a specific test set would be obligated, first, to submit, within 90 days of the publication of the Federal Register notice, a proposed study plan for the test set and, ultimately, to perform the testing.

If no manufacturer or processor submitted a letter of intent to perform a particular test set, EPA would notify all manufacturers and processors, by letter or through the Federal Register, that all exemption applications would be denied and that within 30 days all manufacturers and processors would be in violation of the rule until a proposed study plan is submitted for that test set.

Any person not manufacturing 1,2-dichloropropane at the time the rule goes into effect, who later begins manufacturing before the end of the reimbursement period (40 CFR Part 791), would be required to submit a letter of intent to test or an exemption application for each required test set by the day the person begins manufacture. If EPA has published a notice in the Federal Register telling processors to submit letters of intent or exemption applications for certain test sets, any person not processing 1,2-dichloropropane at the time the rule goes into effect, who later begins

processing before the end of the reimbursement period, would be required to submit a letter of intent to test or an exemption application for each test specific in the Federal Register notice by the day the person begins processing.

**3. Submission and Adoption of Study Plans.** Any manufacturer of 1,2-dichloropropane who submitted a letter of intent to perform a test set would have to submit, within 90 days after the effective date of the rule, a proposed study plan for that test set. In the event manufacturers do not submit letters of intent for all the required test sets, any processor who submits a letter of intent to perform a specific test set would have to submit, within 90 days of the publication of the Federal Register notice which notified processors, a proposed study plan for that test set. Paragraph (e) of the rule describes the contents of a proposed study plan.

EPA proposed generic test methodology requirements (generic test standards) for various health effects in the Federal Register of May 9, 1979 (44 FR 27334), July 26, 1979 (44 FR 44054) and November 21, 1980 (45 FR 77332). In response to concerns about rigid generic test methodology requirements, EPA changed its approach for providing test standards for TSCA section 4 test rules and, instead, issued generic test methodology guidelines to replace the previously proposed generic test methodology requirements. The TSCA guidelines have been published by the National Technical Information Service (NTIS) for health effects (PB 82-232984), environmental effects (PB 82-232992) and chemical fate (PB 82-233008). Good Laboratory Practice (GLP) standards for development of data on physical and chemical properties, persistence, and ecological effects of chemical substances were proposed in the Federal Register of November 21, 1980 (45 FR 77353). Good Laboratory Practice standards for development of data on health effects of chemical substances under TSCA were proposed in the Federal Register on May 9, 1979 (44 FR 27334) and July 26, 1979 (44 FR 44054). These GLP standards will be promulgated as generic requirements. The final TSCA GLP regulations will apply to the 1,2-dichloropropane test rule.

For guidance in preparing study plans, EPA recommends that test sponsors consult the TSCA Test Guidelines and the TSCA GLP standards as referenced above; the Organization for Economic Cooperation and Development's (OECD) Guidelines, as adopted by the OECD Council on May 12, 1981; or the FIFRA

Pesticide Registration Guidelines: Proposed Data Requirements published by the National Technical Information Services (see the Federal Register of November 24, 1982 (47 FR 53192), for a list of these guidelines).

Failure to submit a study plan would be a violation of the rule.

EPA would review the proposed study plans. If they are incomplete, the manufacturer or processor would be notified of the deficiency and would have 15 days to provide appropriate information to make the plan complete. If the information is not provided in 15 days, the manufacturer or processor would be in violation of the rule. In addition, EPA would return to the appropriate stage of the process and require manufacturers or processors, as appropriate, to submit letters of intent, exemption applications, and study plans.

If the proposed study plan is complete, EPA will propose the study plan for public comment. In particular, the request for comments would focus on whether the study plan will ensure that data from the test or test set will be reliable and adequate. There would be a 45-day comment period and the opportunity to present views orally upon request. After considering the public comment, EPA would adopt the study plan as proposed, or as modified in response to comment, as the test standard for the required test set.

The person who submitted the proposed study plan would be required to perform the testing according to that standard. Failure to perform the testing would be a violation of the rule.

#### F. Exemptions

EPA's proposed policy on application for exemptions from section 4 testing requirements was published in the Federal Register of July 18, 1980 (45 FR 48512). EPA intends to promulgate its final procedures for exemptions in 40 CFR Part 770. The exemption procedures described below and included in the proposed rule language are consistent with EPA's current thinking on exemption procedures. If the general rule is promulgated before this proposal becomes final, the 1,2-dichloropropane rule will be modified to comport with the general procedural provisions.

Any manufacturer or processors of 1,2-dichloropropane would be able to apply for an exemption. Any person who has applied for an exemption would not be in violation of the rule until such time as EPA denies the application.

If manufacturers perform all the required testing, processors would be

granted exemptions automatically without having to file applications.

When EPA has received a proposed study plan for a test set and has adopted the plan as the test standard, EPA would conditionally grant all exemption applications for that test set. If the test sponsor later fails to perform the testing, EPA would notify all persons who had submitted exemption applications for that test set that the exemptions would be denied unless within 30 days a manufacturer or processor notified EPA of its intent to perform the testing in accordance with the adopted test standards.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for 1,2-dichloropropane. As noted in Unit II.C. above, EPA is interested in evaluating the effects attributable to 1,2-dichloropropane itself and has specified a relatively pure substance for testing.

#### G. Reporting Requirements

EPA is proposing that all data be reported in accordance with TSCA Good Laboratory Practice (GLP) standards. Such standards were proposed in the Federal Register of May 9, 1979 (44 FR 28369) and November 21, 1980 (45 FR 77332) and will be included in 40 CFR Part 792. EPA has reviewed public comments on the proposed GLP standards and is now developing final GLP standards. The final GLP standards will apply to this rule.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the phase II rulemaking in which study plans are approved.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

#### H. Enforcement Provisions

Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any rule issued under TSCA. The Agency considers that failure to comply with any aspect of a section 4 rule may

be judged to be a violation of sections 15(1) and 15(3) of TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be periodically conducted in accordance with the procedures outlined in TSCA section 11 by authorized representatives of the EPA for the purpose of determining compliance with any final rule for 1,2-dichloropropane. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to TSCA GLP standards and the protocols established in the phase II rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 per day for each violation, with each day of operation in violation constituting a separate violation. This provision would also be applicable primarily to manufacturers or processors who fail to submit a letter of intent to perform testing or an exemption request and who continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of

up to \$25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 10. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4 and the seizure of chemical substances manufactured or processed in violation of the rule.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

#### I. Issues

A site-specific and non site-specific environmental modeling analysis is in the process of being performed by the Agency. The Agency believes, at this time, that environmental effects testing is necessary. However, the Agency is continuing its environmental exposure analysis and is soliciting public comment concerning the need for its proposed testing and the appropriateness of the tests selected.

#### III. Economic Analysis of Proposed Rule

To assess the potential economic impact of this proposed rule, EPA has prepared a Level I economic evaluation that estimates the costs of the required testing and assesses the potential for economic impact by evaluating four market characteristics of the chemical: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations.

Based on a total testing cost of \$144,800 to \$435,600 and an annualized testing cost for 1,2-dichloropropane of \$37,500 to \$112,000, the Level I analysis of 1,2-dichloropropane indicates that the potential for adverse economic effects due to estimated testing costs is low. This conclusion is based on the following observations: (1) 1,2-dichloropropane, a by-product of propylene oxide production, is used mainly as a captive intermediate and has a relatively inelastic demand; (2) the market expectations for propylene oxide and many of its derivatives are favorable (i.e., greater than GNP), assuming economic recovery; (3) Dow

manufactures 1,2-dichloropropane and propylene oxide at two highly integrated plants where minor cost increases can be dispersed over numerous end products; and (4) the estimated total unit test costs (i.e., the test costs for 1,2-dichloropropane and propylene oxide) are negligible, or 0.014 cents per pound or 0.03 percent of the propylene oxide price (46.5 cents per pound) in the upper bound case.

Because the Level I analysis indicates no potential for an adverse economic impact, EPA has determined that a more comprehensive and detailed Level II economic evaluation is not needed for 1,2-dichloropropane.

#### IV. Availability of Test Facilities and Personnel

Section 4(b)(1) requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study "Chemical Testing Industry; Profile of Toxicology Testing, October, 1981," can be obtained from NTIS (PB 82-140773).

The tentative conclusions reached in the laboratory availability study were: (1) The chemical testing industry's anticipation of increased testing requirements has prompted the rapid expansion of testing facilities in recent years. (2) Currently, excess capacity exists in all major testing areas, and surveyed laboratories indicated they could perform about 29 percent more testing. (3) Measurable industry concentration exists, but it is not enough to restrict market entry or control key resources. (4) Currently, capital and professional personnel are the most constraining resources on industry expansion. Capital is understandably a cyclical constraint. However, the constraint imposed by a shortage of professional personnel can be long term because of the lengthy period required for professional preparation. (5) Current personnel numbers appear adequate relative to present testing levels.

On the basis of this study, the Agency believes that there will be available resources to perform the testing in this proposed rule.

#### V. Environmental Impact Statement

EPA is not required to prepare environmental impact statements (EIS), under the National Environmental Policy

Act (NEPA), 41 U.S.C. 4321, for test rules. EPA has determined that voluntary preparation for an EIS is not appropriate for regulations issued under section 4 of TSCA. See the preamble to the Agency's rules for compliance with NEPA published in the Federal Register of November 6, 1979 (44 FR 64174).

#### VI. Public Meetings

If persons wish to present comments on this proposed rule to the EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting in Washington, D.C., 75 days after the proposed rule publication in the Federal Register. This meeting is scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. Information on the exact time and place of the meeting is available from the TSCA Assistance Office.

Persons who wish to attend or present comments at the meeting should call the TSCA Assistance Office by 45 days after publication of this notice in the Federal Register. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and designated EPA participants. Attendees should call the TSCA Assistance Office before making travel plans because the meeting will not be held if members of the public do not request an opportunity to make oral comments.

The Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of the EPA's record for this rulemaking.

#### VII. Rulemaking Record

EPA has established a public record for this proposed rulemaking, docket number (OPTS-42043), which is available for inspection in the OPTS Reading Room, Rm. E-107, 401 M St., SW., Washington, D.C., from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. This record includes basic information the Agency considered in developing this proposal, and appropriate Federal Register notices. The Agency will supplement the record with additional information as it is received. This record includes the following information:

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice of proposed rule making on 1,2-dichloropropane.

(b) Notice containing the ITC designation of 1,2-dichloropropane to the Priority List (43 FR 50630, October 30, 1978).

(c) Notices relating to EPA's health and environmental effects test guidelines and Good Laboratory Practice standards.

(d) Notice of proposed rule making on exemption policy and procedures.

(e) Notice of final rule on reimbursement policy and procedures.

(2) Support Documents: consisting of:

(a) 1,2-Dichloropropane support document.

(b) Economic analysis support document.

(3) Communications before proposal consisting of:

(a) Written public and intra- or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished factual materials, including contractors' reports.

Confidential business information (CBI), while part of the record, is not available for public review.

#### VIII. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the actual annual cost of the testing prescribed for 1,2-dichloropropane is less than \$984,600 over the testing and reimbursement period. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects (less than 0.7 percent a year) on producers' cost or users' prices for this chemical. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic effects of any type as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, will be included in the public record.

#### IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601, *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. Small processors will not perform testing themselves, or will not participate in the organization of the testing effort.

2. Small processors will experience only minor costs in securing exemption from testing requirements.

3. Small processors are unlikely to be affected by reimbursement requirements.

4. There is one manufacturer of 1,2-dichloropropane in the United States that is a large international chemical corporation.

#### X. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the information provisions in test rules are subject to OMB review and are not effective until OMB approves them. OMB is currently reviewing information requirements under section 4 test rules. A notice concerning the results of that review will be published in the Federal Register.

#### XI. Guidelines and Study Plans

The following guidelines and/or study plans cited in this proposed test rulemaking are available from the: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703-487-4050).

NTIS publication No.	Title	Price
PB 82-140773	Chemical Testing Industry: Profile of Toxicological Testing.	\$10.00
PB 82-232834	TSCA Guidelines—Health Effects...	40.00
PB 82-232892	TSCA Guidelines—Environmental Effects.	60.00
PB 83-153908	OECD Guidelines for Aquatic Invertebrate Acute Toxicity Testing, and the FIFRA Guidelines for Hazard Evaluation; Wildlife and Aquatic Organisms.	11.50
PB 83-153916	Postfield Assessment Guidelines....	11.50

#### List of Subjects in 49 CFR Part 789

Testing, Environmental protection, Hazardous materials, Chemicals.

(Sec. 4, Pub. L. 94-469, 80 Stat. 2003; (15 U.S.C. 2601))

Dated: December 23, 1983.

Alvin L. Alm,  
Acting Administrator.

**PART 799—[AMENDED]**

Therefore, it is proposed that a new § 799.1550 be added to Subpart B of proposed Part 799 to read as follows:

**§ 799.1550 1,2-Dichloropropane.**

(a) *Identification of test substance.* (1) 1,2-Dichloropropane (CAS No. 78-87-5), shall be tested in accordance with this section.

(2) 1,2-Dichloropropane of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests and submit data.* (1) All persons who manufacture or process 1,2-dichloropropane from the effective date of this rule (30 days from the publication date of the rule in the Federal Register to the end of the reimbursement period shall submit letters of intent to test, exemption applications and study plans and shall conduct tests and submit data as specified in paragraphs (c), (d), (e), (h), (i), and (j) of this section.

(2) Any person subject to the requirements of this section may apply to EPA for an exemption from study plan submission and testing requirements. Any such application shall be in accordance with paragraph (h) of this section.

(c) *Submission of notice of intent to test or exemption application.* (1) No later than 30 days after the effective date of this rule, each person manufacturing 1,2-dichloropropane as of the effective date of this rule must, for each test set required by paragraphs (i) and (j) of this section, either notify EPA by letter of its intent to perform the test set or submit an application for an exemption from the study plan submission and testing requirements for the test set.

(2) If, by the date specified in paragraph (c)(1) of this section, no manufacturer of 1,2-dichloropropane has notified EPA of its intent to perform testing for a test required by paragraph (i) and (j) of this section, EPA will publish a notice in the Federal Register of this fact specifying the test sets for which no notice of intent has been submitted. No later than 30 days after publication of such a notice, each person processing 1,2-dichloropropane as of the effective date of this rule must, for each test set specified in the Federal Register notice, either notify EPA by letter of its intent to perform the test set or submit an application for an exemption from

the study plan submission and testing requirements for the test set.

(3) Any person not manufacturing 1,2-dichloropropane as of the effective date of this rule who, before the end of the reimbursement period, manufactures 1,2-dichloropropane must comply with the requirements of paragraphs (c)(1) and (d)(1) of this section. For purposes of paragraph (c) of this section, the manufacturer must submit the notice of intent to test or exemption application required by paragraph (c)(1) of this section by the date manufacture begins and must submit any proposed study plan required by paragraph (d)(1) of this section within 60 days of the date manufacture begins.

(4) If a Federal Register notice has been published under paragraphs (c)(2) or (d)(4) of this section, any person not processing 1,2-dichloropropane as of the effective date of this rule who, before the end of the reimbursement period, processes 1,2-dichloropropane, must comply with the requirements of paragraphs (c)(2) and (d)(2) of this section. For purposes of paragraph (c) of this section, the processor must submit the notice of intent to test or exemption application required by paragraph (c)(2) of this section by the date processing begins and must submit any proposed study plan required by paragraph (d)(2) of this section within 60 days of the date processing begins.

(5) Any manufacturer or processor of 1,2-dichloropropane which has notified EPA under paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section of its intent to perform testing for a test set required by paragraphs (i) and (j) of this section must submit a proposed study plan for the test set and must perform that test set in accordance with the test standards in paragraph (k) of this section.

(d) *Submission of proposed study plans.* (1) Manufacturers of 1,2-dichloropropane which notify EPA under paragraph (c)(1) of this section that they intend to perform a test set must submit a proposed study plan for the test set in accordance with paragraph (e) of this rule no later than 90 days after the effective date of this rule. Manufacturers may jointly submit a single proposed study plan if they plan to sponsor or perform the test set jointly. Any manufacturer which, having notified EPA of its intent to perform a test set, fails to submit a proposed study plan for that test set will have been in violation of this section as if no letter of intent to perform the test had been submitted.

(2) Processors of 1,2-dichloropropane which notify EPA under paragraph (c)(2) of this section that they intend to

perform a test set must submit a proposed study plan for the test set in accordance with paragraph (e) of this section no later than 90 days after the publication of the notice specified in paragraph (c)(2) of this section. Processors may jointly submit a single proposed study plan if they plan to sponsor or perform the test set jointly. Any processor which, having notified EPA of its intent to perform a test set, fails to submit a proposed study plan for that test set will have been in violation of this section as if no letter of intent to perform the test set had been submitted.

(3) If EPA determines in accordance with paragraph (f)(1)(i) of this section that a proposed study plan is incomplete and the manufacturer or processor has not, after notice from EPA, submitted appropriate information to make the study plan complete within 15 days, the manufacturer or processor will have been in violation of this section as if no letter of intent to perform the test had been submitted.

(4) If either (i) by the date specified in paragraph (d)(1) of this section a manufacturer of 1,2-dichloropropane, which notified EPA of its intent to perform a test set, has failed to submit a proposed study plan for that test set, or

(ii) A proposed study plan submitted under paragraph (d)(1) of this section has been found to be incomplete under paragraph (f)(1)(i) of this section and the manufacturer has not submitted appropriate information to make the study plan complete within 15 days, EPA will publish a notice in the Federal Register of this fact specifying the test set. The requirements of paragraphs (c)(2) and (d)(2) of this section for processors to submit letters of intent to perform testing, applications for exemption and proposed study plans will apply.

(5) If either (i) by the date specified in paragraph (c)(2) of this section no processor of 1,2-dichloropropane has notified EPA of its intent to perform testing for any test set identified in a Federal Register notice published under paragraphs (c)(2) or (d)(4) of this section,

(ii) By the date specified in paragraph (d)(2) of this section any processor of 1,2-dichloropropane, which notified EPA of its intent to perform a test set, has failed to submit a proposed study plan for that test set, or

(iii) A proposed study plan submitted under paragraph (d)(2) of this section has been found to be incomplete under paragraph (f)(1)(i) of this section and the processor has not submitted appropriate information to make the study plan complete within 15 days, all applications for exemption from the requirements to

submit study plans and to perform tests for the specific test set involved will automatically be denied. EPA will notify every manufacturer and processor of 1,2-dichloropropane that applied for an exemption for the specific test involved of this automatic denial either by letter or by notice in the Federal Register. Each manufacturer or processor of 1,2-dichloropropane for whom an exemption application has been automatically denied will be in violation of this section 30 days from the time that it receives the notice letter or 30 days from the time that the notice is published in the Federal Register, whichever comes first. The violation will continue until a manufacturer or processor of 1,2-dichloropropane submits a proposed study plan for each test set involved.

(6) Any manufacturer or processor of 1,2-dichloropropane may submit a proposed study plan for any test set required by this section at any time, regardless of whether the manufacturer or processor previously submitted an application for exemption from testing for that test set.

(e) *Content of study plans.* (1) All study plans are required to contain the following information:

(i) Identity of the test rule.

(ii) The specific test set covered by the study plan.

(iii) (A) The names and addresses of the test sponsors.

(B) The names, addresses, and telephone numbers of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(C) The name, address, and telephone number of the appropriate individual(s) for oral and written communications with EPA.

(D) (1) The name and address of the testing facility(ies), including the name(s), address(es) and telephone number(s) of the testing facility(ies), administrative officials and project manager(s) responsible for this testing.

(2) Brief summaries of the training and experience of each professional involved in the study, including study director, veterinarian(s), toxicologist(s), pathologist(s) and laboratory assistants.

(iv) Identity and data on the substances being tested, including appropriate physical constants, spectral data, chemical analysis and stability under test and storage conditions.

(v) Study protocol, including rationale for: Species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; a description of diet to be used and its source, including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture

medium and its source; and a summary of expected spontaneous chronic disease (including tumors), genealogy, and life span.

(vi) Schedule for initiation and completion of major phases of long term tests; schedule for submission of interim progress and final reports to EPA.

(2) Information specified under paragraph (e)(1)(iii)(D) of this section is not required in proposed study plans if the information is not available at the time of submission; however, the information must be submitted before the initiation of testing.

(f) *Review and adoption of study plans.* (1) Upon receipt of a proposed study plan, EPA will review the study plan to determine whether it complies with paragraph (e) of this section.

(i) If EPA determines that the proposed study plan does not comply with paragraph (e) of this section, EPA will notify the submitter that the submission is incomplete and identify the deficiencies and the steps necessary to complete the submission. The submitter will have 15 days from the day it receives this notice to submit appropriate information to make the study plan complete. If the submitter fails to provide appropriate information to complete the study plan within this time, the submitter will have been in violation of this section as if no study plan had been submitted.

(ii) If EPA determines the proposed study plan complies with paragraph (e) of this section, EPA will publish a notice in the Federal Register requesting comments on the ability of the study plan to ensure that data from the test set will be reliable and adequate. EPA will provide a 45-day comment period and will provide an opportunity for an oral presentation upon request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or from public comments that further comment is warranted.

(2) After receiving and considering public comment, EPA will adopt the study plan, including time deadlines and reporting schedules, as proposed or as modified in response to EPA review and public comments, as test standards for the testing of 1,2-dichloropropane in paragraph (j) of this section.

(g) *Modification of study plans during conduct of study—*(1) *Application.* Any test set sponsor who wishes to modify the adopted study plan for any test set or study required under this section must submit an application in accordance with this paragraph. Application for modification shall be made in writing to the Chief, Test Rules Development Branch, Office of Toxic

Substances, or by phone, with written confirmation to follow within 10 working days. Applications must include an appropriate explanation of why the modification is necessary.

(2) *Adoption.* To the extent feasible, EPA will seek comment on all substantive changes in study plans. EPA will issue a notice in the Federal Register requesting comments on requested modifications. However, EPA will act on the requested modification without seeking public comment:

(i) if EPA believes that an immediate modification to a study plan is necessary in order to preserve the accuracy or validity of an ongoing study; or

(ii) if EPA determines that a modification clearly does not pose any significant substantive issues. EPA will notify the sponsor of the Agency's approval or disapproval. When the Agency approves a modification, it will publish a notice in the Federal Register indicating that the study plan has been modified.

(h) *Exemption applications.* (1) Any manufacturer or processor of 1,2-dichloropropane may submit an application to EPA for an exemption from submitting proposed study plans for and from performing any or all of the tests sets specified in paragraphs (i) and (j) of this section. The application must include the name and address of the manufacturer or processor and must identify the specific requirements of this section from which the exemption is sought.

(2) No manufacturer or processor of 1,2-dichloropropane will be in violation of the requirement to perform a specific test set under paragraphs (i) and (j) of this section if it has submitted a timely application for an exemption for that test set and the application has not been denied by EPA.

(3) EPA will conditionally grant any requested exemption for a specific test set required by paragraphs (i) and (j) of this section if EPA has received a complete proposed study plan for that test set in accordance with paragraph (e) of this section and has adopted the study plan in accordance with paragraph (f)(2) of this section.

(4) EPA will deny any exemption for a specific test set in paragraphs (i) and (j) of this section if the study sponsor fails to perform the test set or to submit data as required in the test standards adopted under paragraph (k) of this section.

(5) If manufacturers of 1,2-dichloropropane perform all the tests required by paragraphs (i) and (j) of this section, processors of 1,2-

dichloropropane will automatically be granted an exemption from the study plan submission and testing requirements without the need to file an application for exemption.

(i) *Health effects testing*—(1)

*Neurotoxicity*—(i) *Required testing.* The following neurotoxicity test battery shall be performed with 1,2-dichloropropane by inhalation.

(A) A neuropathology test shall be conducted with 1,2-dichloropropane.

(B) A motor activity test shall be conducted with 1,2-dichloropropane.

(C) A functional observation battery shall be conducted with 1,2-dichloropropane.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Neurotoxicity, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83-153916).

(2) *Mutagenic effects—Chromosomal aberrations*—(i) *Required testing.* (A) A dominant lethal assay shall be conducted for 1,2-dichloropropane.

(B) A heritable translocation assay shall be conducted if 1,2-dichloropropane produces a positive result in the dominant lethal assay.

(C) Further testing for chromosomal aberrations is not required if 1,2-dichloropropane produces a negative result in the dominant lethal assay.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Chromosomal Effects, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Genetic Toxicology and the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83-153916).

(3) *Mutagenic effects—Gene mutation*—(i) *Required testing.*

(A) 1,2-Dichloropropane shall be tested in a *Drosophila* sex-linked recessive lethal (SLRL) test because of positive results in *Salmonella* microsomal assays.

(B) A mouse specific locus assay shall be conducted if 1,2-dichloropropane produces a positive result in the *Drosophila* SLRL.

(C) Further testing for gene mutations is not required if 1,2-dichloropropane

produces a negative result in the *Drosophila* SLRL.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Gene Mutations and DNA Effects, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Genetic Toxicology and the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83-153916).

(4) *Teratogenicity*—(i) *Required testing.* Teratogenicity studies shall be conducted with 1,2-dichloropropane. Inhalation shall be the route of administration of the test substance in these studies.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Specific Organ/Tissue Toxicity-Teratogenicity, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects and the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83-153916).

(5) *Reproductive effects*—(i) *Required testing.* Two-generation reproductive effects studies shall be conducted with 1,2-dichloropropane. Inhalation shall be the route of administration of the test substance in these studies.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Specific Organ/Tissue Toxicity—Reproduction/Fertility Effects, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83-153916).

(j) *Environmental effects testing*—(1) *Mysid shrimp acute toxicity test*—(i) *Required testing.* Testing using flow-through systems and measured concentrations shall be conducted with mysid shrimp to develop data on the acute toxicity of 1,2 dichloropropane to aquatic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test Guidelines for the mysid shrimp acute toxicity tests (EG-4) published by NTIS (PB 82-

232992), be consulted. Additional guidance may be obtained by consulting the OECD Guidelines for Aquatic Invertebrate Acute Toxicity Testing, and the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 82-153908).

(2) *Algal Toxicity Testing*—(i) *Required testing.* Testing using systems that control for 1,2-dichloropropane evaporation shall be conducted with marine and freshwater algae.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test Guidelines for Algal Toxicity Tests (EG-8), published by NTIS (PB 82-232992), be consulted. Additional guidance may be obtained by consulting the OECD Guidelines for Aquatic Invertebrate Acute Toxicity Testing and the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908).

(3) *Daphnid and Mysid Chronic Toxicity Test*—(i) *Required testing.* Testing shall be conducted with *D. magna* and the mysid shrimp to develop data on the chronic toxicity of 1,2-dichloropropane to aquatic invertebrates.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Environmental Effects Test Guidelines for the *D. magna* Chronic Toxicity Test (EG-2) and the Mysid Shrimp Chronic Toxicity Test (EG-4) published by NTIS (PB 82-232992) be consulted. Additional guidance may be obtained by consulting the OECD Guidelines for Aquatic Invertebrates Toxicity Testing, and the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908).

(k) *Test standards.* (1) All data must be developed and reported in accordance with the EPA Good Laboratory Practice Regulations in 40 CFR 792

(2) [Reserved].

(l) *Enforcement* (1) If a manufacturer or processor, which notified EPA under paragraph (c) (1) or (2) of this section of its intent to perform testing for a test set required by paragraphs (i) and (j) of this section, fails to perform the test set in accordance with the test standards in paragraph (k) of this section, that failure will be a violation of this section.

(2) EPA will publish a notice in the Federal Register to inform all manufacturers and processors that all exemptions for performance of that test set will be denied unless, within 30 days of the publication of the notice, a manufacturer or processor of 1,2-

dichloropropane notifies EPA by letter that it intends to perform that test set in accordance with the test standards in paragraph (k) of this section.

(3) Any person who fails or refuses to comply with any aspect of this rule is in violation of section 15 of TSCA.

(m) *Availability of study plans.* The various study plans given in this proposed rule are available from the: National Technical Information Service, 5285 Port Royal Road, Springfield, Va 22161, (703-487-4650).

[FR Doc. 84-326 Filed 1-5-84; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 7

[CGD 81-053]

#### Boundary Lines

**AGENCY:** Coast Guard, DOT.

**ACTION:** Reopening of comment period.

**SUMMARY:** In the Federal Register of September 15, 1983 (48 FR 41454), the Coast Guard proposed regulations which would establish boundary lines for the Seagoing Barge Act and more clearly define existing Boundary Lines. The public comment period closed on December 15, 1983. This notice reopens the comment period until March 1, 1984. The comment period is being reopened to allow the public further input. It is also anticipated that the Towing Advisory Safety Committee (TSAC) will comment on the proposed regulations at their Meeting on February 16, 1984.

**DATE:** Comment on the proposed regulations must be received on or before March 1, 1984.

**ADDRESSES:** Comments should be mailed to Commandant (G-CMC/44) (CGD 81-058) U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593. Comments received by the Coast Guard will be available for examination and copying between 8 am and 4 pm, Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/44) room 4402, Coast Guard Headquarters, 2100 2nd Street SW, Washington, D.C. 20593. Comments may also be hand delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** LCDR Patrick A. Turlo (202) 426-1464.

**SUPPLEMENTARY INFORMATION:** The proposed regulations were published in a supplemental notice of proposed rulemaking (SNPRM) in the Federal Register on September 15, 1983 (48 FR -

41454). As stated in the SNPRM, the proposed regulations would establish boundary lines for the Seagoing Barge Act and other statutes. The Towing Safety Advisory Committee (TSAC) is anticipated to comment on the proposed regulations at their meeting on February 16, 1984. The Coast Guard is reopening the comment period until March 1, 1984 to allow the public to provide further input to this rulemaking.

(Sec. 2, Stat. 672 as amended (33 U.S.C. 151); Sec. 6(b)(1) 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.48(b))

Dated: December 30, 1983.

T. F. Tutwiler,

*Captain, U.S. Coast Guard, Acting Deputy Chief, Office of Merchant Marine Safety.*

[FR Doc. 84-381 Filed 1-5-84; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 73 and 74

[MM Docket No. 83-1350; FCC 83-593]

#### Low Power Television and Television Translator Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Communications Commission is seeking comments on proposed rule changes for low power television and television translator service which would modify the present cut-off procedures and eliminate the requirement to file financial information with applications. Comments are also sought on creating a priority class of service for television translator applications. This action is based on the Commission's ongoing review and reevaluation of its rules and policies, and will contribute to providing service to the public in the most efficient, expeditious manner possible.

**DATE:** Comments must be received on or before January 30, 1984. Reply comments must be received on or before February 14, 1984.

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

**FOR FURTHER INFORMATION CONTACT:** Larry Miller, Mass Media Bureau, (202) 632-3894.

#### List of Subjects

47 CFR Part 73

Television.

47 CFR Part 74

Low power television and television translators.

## Proposed Rule Making

In the matter of Low Power Television and Television Translator Service; MM Docket No. 83-1350.

Adopted: December 14, 1983.

Released: December 23, 1983.

By the Commission.

## Introduction and Background

1. The Commission submits for comment several proposals for changes in the processing procedures for low power television and television translator applications. These proposals include: (1) Modification of the cut-off rules to provide for a "window" or date certain for filing applications; (2) elimination of the requirement of filing financial information or certification with applications; and (3) the designation of television translators or certain types of translators as a priority or separate class of service for processing purposes with low power television secondary to it. Since they affect basic processing procedures, the rule changes proposed would apply prospectively to new applications filed. All pending applications and applications which are mutually exclusive with them would be processed pursuant to the present rules. However, in the case of the financial requirements, since compliance is only monitored post-lottery, it would appear to be in the public interest to make the changes apply retroactively to all pending as well as new applicants.

2. The low power television service began with a *Notice of Inquiry* in 1978, 68 FCC 2d 1525 (1978). In September, 1980, the Commission established procedures for processing translator and low power television applications pending the outcome of the inquiry and rule making. *Notice of Interim Processing*, 45 FR 62004, published September 17, 1980. The *Notice of Proposed Rule Making* was adopted at about the same time.<sup>1</sup> Under the interim processing rules, approximately 5,000 applications were received by April of 1981. Due to lack of computer capability necessary to process the applications, the Commission ordered a freeze on the acceptance of new applications, except for several specified exceptions. *Order Imposing Freeze*, 46 FR 2602, published May 11, 1981.

3. Upon the adoption of the *Report and Order*, 51 RR 2d 476, 47 FR 21460, published May 18, 1982 (hereinafter referred to as "*LPTV Report and Order*") applications were grouped into categories or "Tiers" based on location. Those applicants proposing to locate

<sup>1</sup> 45 FR 69178, published October 17, 1980.

their transmitting antennas more than 55.5 miles from any of 212 ranked television markets were placed in Tier I. Tier II was defined as applicants proposing to locate their stations within 55.5 miles of the reference coordinates of ranked markets 101 through 212. Tier III included all remaining applicants proposing a station location within 55.5 miles of the reference coordinates of ranked markets one to 100, inclusive.

4. By the time the *LPTV Report and Order* was adopted, the Commission had received a total of 6,500 applications. Under the tiered system adopted in the *LPTV Report and Order*, applicants proposing to serve Tier I markets were exempted from the freeze. Thus, now an additional 5,500 Tier I applications have been filed bringing the total number of pending applications to 12,000. The need to reevaluate the Commission's processing procedures in view of the number of pending and anticipated applications precipitated a further freeze on the acceptance of new or major change low power television and television translator applications. See *Order*, FCC 83-423, adopted September 15, 1983.

5. The Commission has now conducted a review of its procedures for processing low power television and television translator applications with a view toward simplifying and expediting the procedures. The proposals set forth below are designed to meet this goal. The public is invited to comment on these proposals.

#### Modification of Cut-Off Rules Applicable To Low Power Television and Television Translator Applications

6. The Commission has under consideration a proposal to change the cut-off procedure for low power television and television translator applications. The proposal would establish a series of "windows", opening 30 days or less after Public Notice of the "window" is given. New applicants would then have a limited period, generally five work days or less, in which to file complete and sufficient applications. Acceptance of applications may or may not be restricted to certain tiers or other application groupings. After the limited "window" for filing has passed, new or major change applications in conflict with those already filed would not be accepted. After applications filed during a window are processed, another window will open for the filing of additional applications for channels that then remain available. Applications which are filed pursuant to the proposed rules, if adopted, would not be placed on an A cut-off list, subject to competing

applications, as is the current practice. Instead, all applicants wishing to provide service to any community would need to file during the open window in order to be considered with any other mutually exclusive application filed during the same open window time period. The proposed changes would modify § 73.3572 of the Commission's Rules. The applications would still appear on a lottery public notice pursuant to § 73.3572(f)(2) or a pregrant public notice pursuant to § 73.3572(f)(4).

7. There is substantial precedent for the establishment of firm filing dates for applications. The Supreme Court in *Ashbacher v. FCC*, 326 U.S. 327, 333, n.9 (1945) recognized that the Commission could establish dates for the filing of conflicting applications. See also *Radio Athens, Inc. v. FCC*, 401 F.2d 398 (D.C. Cir. 1968). In *Century Broadcasting Corp. v. FCC*, 310 F.2d 864, (D.C. Cir. 1962), the flexibility of the Commission in fashioning procedural "housekeeping" rules was recognized. The Courts have traditionally required the Commission's cut-off dates to "fairly advise prospective applicants of what is being cut-off by the notice." *Ridge Radio Corp. v. FCC*, 292 F.2d 770, 773 (D.C. Cir. 1961). The proposed rules would comply with this requirement for equal and fair treatment, since all potential applicants would be given adequate notice of the opening of a filing window.

8. Similar open "window" or "date certain" application filing cut-off dates have been adopted for use by the Commission. In relation to applications for cellular communications systems, the Commission adopted a date certain by which all applications for cellular communications systems in the top thirty Standard Metropolitan Statistical Areas had to be filed. *Memorandum Opinion and Order on Reconsideration*, 89 FCC 2d 58 (1982). The Commission subsequently extended this "date certain" one day filing period to markets 31-60 and markets 61-90. *Memorandum Opinion and Order on Further Reconsideration*, 90 FCC 2d 571 (1982).

9. Additionally, in the 900 MHz One-Way Paging System, *First Report and Order*, 89 FCC 2d 1337 (1982), the Commission established an initial 60 days "window" which began 90 days after the *Report and Order* was published in the Federal Register, in which applicants could file for 900 MHz paging authorizations. Upon reconsideration this window approach was extended to the three 900 MHz nationwide paging frequencies by *Memorandum Opinion and Order on Reconsideration (Part 2)*, 53 RR 2d 1238 (1983), *appeal docketed, sub nom.*,

*National Association of Regulatory Utility Commissioners v. FCC*, No. 83-1485, D.C. Cir., May 5, 1983. After those applications were processed, the Common Carrier Bureau could reopen the "window" for additional filings for any remaining frequencies. In the Private Radio Bureau a "window" has also been used. See *Second Report and Order* in PR Docket No. 79-191, 90 FCC 2d 1281 (1982) at para. 205. Most recently in the Instructional Television Fixed Service—Multipoint Distribution Service Reallocation (ITFS-MDS) proceeding, General Docket No. 80-112, *Report and Order*, 48 FR 33873, adopted May 26, 1983, the Commission established a "date certain" application filing approach for the newly created multi-channel MDS systems. The date set was the 45th day after publication of the Order in the Federal Register. The Commission, by Public Notice released August 4, 1983, later clarified this Order to allow applications to be filed during a six day "window."

10. The "date certain" or "window" filing period eliminates the practice of "misappropriating information," which occurs when one applicant copies another applicant's proposals. *Cellular Further Reconsideration, supra* at n. 3. As stated in the ITFS-MDS *Report and Order, supra* at p. 33893:

Our experience with both MDS and the more recently authorized Digital Electronic Message Service (DEMS) has taught us that some applicants merely copy applications that have previously been filed and resubmit them with the names changed. We believe that this kind of activity does smack of the "land rush" or "gold rush" mentality that concerned many of the commentators in this proceeding. Our experience with single channel MDS applications is that in many instances a local entity will perceive the need for service in its community and file the appropriate application only to have another entity file a competing application on the final day allowed by our Rules thereby delaying the introduction of service to the public. We do not believe that such activity is in the public interest.

11. These problems are also evident in the low power television and television translator service, where local entities will file for a service in their community only to have an average of four competing applications filed on the A cut-off date. This practice has seriously retarded the processing of applications and implementation of the low power television service.

12. Considering all of the foregoing, the Commission now seeks comments on whether it would be appropriate to use periodic "windows" for filing low power television and television translator applications. Comments are

invited as to appropriate groupings for a given window period. Specifically, groupings by tier, geographic location, market size, and channel number should be addressed. Each of these approaches to segmenting the universe of potential applications appears to present problems due to the potential for creating a daisy chain effect or prejudicing other applicants. For instance, acceptance or grant of an application for a community in State A may prejudice or preclude consideration of an application in an adjacent community in State B. Likewise, acceptance or grant of an application for Channel A may prejudice or preclude consideration of an application on adjacent Channel B. In addition, specific comments are sought as to whether the procedure should allow for the unrestricted filing of applications nationwide during a "window" period. Comments are also invited as to any other procedures that would effectively expedite consideration of low power television and television translator applications.

#### Elimination of Financial Showing Required for Low Power Television and Television Translator Applications

13. The Commission is now proposing to eliminate the requirement that applicants for low power television and television translator authorizations file any information, or certification, concerning their financial qualifications. We believe that the public interest can be protected by strictly enforcing the one year construction period. Thus, the applicant would not need to have the financial ability at the time the application is filed. Financial ability will not be determined *a priori*.

14. The Commission historically has requested various types of information from broadcast applicants concerning their costs to construct and operate proposed stations and the financing available to meet these costs. These financial requirements have changed over the years based on the Commission's interpretation as to what is in the public interest, convenience or necessity. The Communications Act of 1934, as amended, has been held to provide judicially enforceable constraints on the Commission's exercise of authority as well as entitling the Commission to considerable judicial deference in determining what the public interest entails. *Office of Communications of the United Church of Christ v. FCC*, — F2d —, 53 RR 2d 1371 (D.C. Cir. 1983); See also *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981); *FCC v. National Citizens Committee for Broadcasting*, 436 U.S.

775 (1978); *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946). Pursuant to Section 308(b) "all applications for station licenses \* \* \* shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station \* \* \*." <sup>2</sup> (Emphasis added.) Thus, we believe that the Commission's inquiry into the financial qualifications of its applicants is discretionary. The United States Court of Appeals for the District of Columbia Circuit stated:

Also, the provisions of 47 U.S.C. 308(b) authorizing consideration of factors of 'citizenship, character, and financial, technical and other qualifications' is not violated because it does not require scrutiny of an applicant's financial fitness. That section leaves it within the discretion of the Commission to decide which facts relating to such factors it wishes to have set forth in applications. Since this leaves the Commission free to have no facts set forth on any of these matters, if it finds such action appropriate, it follows necessarily that the Commission is not required to consider financial fitness if it deems it irrelevant to its regulatory scheme. [*National Association of Regulatory Utility Commissioners v. FCC*, 525 F2d 630, 645 (D.C. Cir. 1976). (Hereinafter "NARUC I")]

15. In *NARUC I* the court upheld the Commission's action in creating Specialized Mobile Radio Systems ("SMRS"), Cellular Radio Systems and reserving spectrum in the 900 MHz band for Land Mobile Service, *Memorandum Opinion and Order* in Docket No. 18262, 51 FCC 2d 945 (1975). In that docket the Commission had determined that competition would assure that the frequencies allocated for SMRS would best be utilized in the public interest. The Commission determined that its new SMRS rules did not violate the Communications Act. In meeting the obligations of Section 308(b), the Commission detailed all of the requirements for obtaining an authorization for an SMR system. Information was requested for applicants on legal, character, technical, operational and frequency loading factors. The Commission, however, did not require the applicants to show that they had the financial qualifications to construct the proposed facilities. Instead, strict construction deadlines for the authorized facilities were established. Authorized trunked SMR systems were required to begin construction within six months and complete construction within one year from the date of grant. Specific "loading" standards were set forth in

<sup>2</sup> 47 U.S.C. 308(b)(1981).

the rules. If the licensee did not meet the construction or loading requirements the frequency would be made available for use by other qualified applicants. "This method, in our view, is preferable to the examination of a financial statement to ensure the frequencies assigned will be used effectively. The Communications Act gives us ample flexibility in this area to adopt measures most conducive . . . to the proper dispatch of [our] business and to the ends of justice." Section 4(i) of the Act. See *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940). *Memorandum Opinion and Order* in Docket No. 18262, *supra* at 960. The Commission subsequently followed the reasoning of *NARUC I* in its decision to eliminate the financial qualifications requirement in the Public Mobile Radio Service under Part 22 of the Commission's Rules. *Public Mobile Radio Service*, 82 FCC 2d 152 (1980).

16. The Commission now requires that an applicant for a low power television or television translator construction permit certify that it is financially qualified.<sup>3</sup> However, the Commission retained the option of requesting additional information if circumstances warranted. The Commission noted that in its experience, actual operation was rarely effectuated as itemized in the application which required a detailed listing of projected expenditures and sources of funds. The strict financial requirements therefore were of little help to the Commission in making a public interest determination. We also noted that our "get tough" policy on not extending construction permits for applicants who are either financially unwilling or unable to construct was being enforced. After consideration of all relevant factors we determined that use of the financial certification process would cause no significant harm when balanced against expedited processing and prompt institution of service to the public.

17. There are several reasons why elimination of financial information concerning low power television and television translator applications is particularly appropriate. First, a strict construction period of one year is applied to all low power television and television translator permittees. Therefore, a post-lottery enforcement mechanism is in place that will provide for the termination of authorizations won without appropriate financial backing. Second, because low power television is a new service, financial

<sup>3</sup> Financial certification was extended to Low Power Television service in *LPTV Report and Order*, *supra*.

commitments may not be available until after construction permits are granted. Moreover, the financing actually used to construct the facility may, and often does, differ from that originally proposed. Finally, elimination of financial information in applications may also make it easier for minorities and women to enter this new service. Interested parties are invited to comment on this proposal.

#### Separation of Processing Procedures for Low Power Television and Television Translators

18. Television translator service was traditionally designed to "provide a means whereby the signals of television broadcast stations may be retransmitted to areas in which direct reception of such television broadcast stations is unsatisfactory due to distance or intervening terrain barriers". See § 74.731 of the Commission's Rules. Translators are used by state public television and educational organizations to rebroadcast the signals of non-commercial television stations throughout their state jurisdictions. Further, television translators are used by full service stations to provide service to shadowed areas within the Grade B contour. Service to these areas may also be necessary to the economic viability of some of the full service television stations. Translators also act as an extension of the full service facilities by bringing that programming to the rural and underserved markets.

19. When the Commission established the low power television service, it hoped to balance two principal goals for television service. One of these goals was to recognize the contribution that the traditional translator had played in the past. Therefore we attempted not to adopt rules that would make translator service more difficult to provide, especially in isolated rural areas where the need for television service is greatest. A second goal was to provide maximum flexibility for new originating services to come into being, easily and at low cost, and to provide for expansion of existing translator service. *Notice of Proposed Rule Making, supra* at paragraph 6.

20. Among the 12,000 low power television applications that have been filed, there are only about 1,000 television translator applicants. Because both television translator and low power television applicants compete for the same frequencies, with the *Low Power Television Report and Order* and *Lottery Report and Order* the Commission effectively combined them for purposes of application processing. Although there is a legitimate technical

basis for combining low power television and television translators, applicants for traditional translator service have now been delayed by the onslaught of thousands of applications for low power television. Based on the experience the Commission has gained since the implementation of the low power television rules, the Commission is seeking comment on whether the balance between the two goals needs some adjustment. The rules have created an environment of substantial flexibility for low power television applicants. However, this flexibility may be at the expense of our goal to provide conventional television service to isolated rural areas. Accordingly, a remedy may be required. Thus, while we recognize and still support the substantial interests in providing opportunities for entry by new telecommunications participants offering new local programming alternatives, we believe that we should at least ask in this notice whether an alternative processing scheme would better serve these goals. Therefore, we request comments on several alternatives directed toward reaching these goals and seek comment on whether any of these alternatives or any remedy at all is desirable.

21. First, unlike our present processing procedures, the window cut-off approach, which would not highlight any specific application, should diminish the likelihood of competing applications in unserved or underserved areas. Secondly, even in those instances where mutually exclusive applications are filed and the translator applicant loses in the lottery, in many cases the television translator applicant will be able to file a new application during a subsequent open window after reengineering its proposed facilities to avoid conflict. If commentors do not believe that the window approach will be sufficient to meet our goals, other alternatives include according translators a higher priority than low power television stations.<sup>4</sup> Pursuant to this proposal if a new or major change low power television application and a new or major change television translator application were mutually exclusive, the low power television application would not be accepted for filing. If there were mutually exclusive television translator applications the licensee would be determined by use of a lottery.

22. Other alternatives include giving a priority only to those television

<sup>4</sup> If television translators are made a priority for processing purposes, any change from translator service to low power television service will then become an application for major change as defined in § 73.3572 of the Commission's Rules.

translators necessary to fill in a full service facility's city grade, Grade A or Grade B contours. Another option is to permit separate open filing windows for translators. Pursuant to this proposal there would be alternating filing windows for television translators and low power television applications.

23. With respect to the alternatives set forth above, it is important to recognize that many low power television stations actually function during part of their respective operations as translators.<sup>5</sup> The low power television service was established to permit more flexible use of low cost television equipment in order to provide a variety of market program offerings. The proposed translator priority struction would prejudice these stations with resulting disadvantage to both services. For example, the proposal to define the change from a translator to a low power station as a major change increases the burdens on those translators wishing to become low power stations and to provide local programming. In order to avoid abuse of any priorities accorded to television translators, some means would be required to prohibit the filing of applications for translators that are intended for conversion to low power stations at a later date. Further, low power television provides a local origination service. It is not clear that the unmet needs for basic translators outweigh the benefits of a more flexible, market oriented low power television service. By awarding a blank priority to television translators we may find ourselves authorizing the rebroadcast of the programs of a distant television station in a well-served market over programming tailored to the local community. Considering all of the foregoing, comments on the various alternatives proposed or any other possible alternatives are solicited. Adoption of the changes proposed herein may affect certain of the Commission's Rules, including §§ 73.3564, 73.3572, 73.3591 and 74.732.

24. The rules proposed herein are intended to apply to the low power television and television translator service. While not the subject of this proceeding, the public may wish to file separate comments on the feasibility of the elimination of cut-off rules and financial qualifications in the other broadcast services. However, rule

<sup>5</sup> Section 74.701(f) of the Commission's Rules defines a low power television station as "A station authorized under the provisions of this Subpart that may retransmit the programs and signals of a television broadcast station and that may originate programming in any amount greater than 30 seconds per hour and/or operates a subscription service."

changes in the other broadcast services, if any, will be initiated through a separate notice of proposed rule making.

#### Administrative Matters

25. Authority for this proposed rulemaking is contained in section 1, 3, 4 (i) and (j), 303, 308, 309 and 403 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 30, 1984 and reply comments on or before February 14, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

26. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding

must prepare a written summary of that presentation on the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

27. As required by section 603 of the Regulatory Flexibility Act. The FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 98-354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*) (1981).

28. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting documents. If participants want each Commissioner to receive a personal copy of their comments, an original plus eleven copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. For information on this proceeding, contact Larry A. Miller, Mass Media Bureau, (202) 632-3894.

Federal Communications Commission.  
William J. Tricarico,  
Secretary.

#### Appendix A—Initial Regulatory Flexibility Analysis

##### I. Reason for Action

In this proceeding, we seek to develop a record and to elicit comments on proposed rules. The proposed rules are part of the Commission's ongoing review and reevaluation of its rules and policies.

##### II. Objective

The proceeding will elicit comments on the public interest benefits and costs of the proposed rule changes in accordance with fulfilling the mandate of Section 308(b) of the Communications Act of 1934, as amended.

##### III. Legal Basis

The legal basis for eliciting comments on these proposals to change our rules is found in Sections 4 and 303 of the Communications Act.

##### IV. Description, Potential Impact, and Number of Small Facilities Affected

The time and costs involved in proceedings concerning parties seeking authorizations for new low power television or television translator stations would be reduced. Small entities could benefit from not having to expend the time and incur the costs involved in the application stage relating to financial showings.

##### V. Recording, Record Keeping and Other Compliance Requirements

There is no additional impact.

##### VI. Federal Rules Which Overlap, Duplicate or Conflict With the Proposed Rules

There is no overlap, duplication or conflict.

##### VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent With Stated Objectives

There is no significant alternative.

# Notices

Federal Register

Vol. 49, No. 4

Friday, January 6, 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

#### Black Hills National Forest Grazing Advisory Board; Notice of Meeting

The Black Hills National Forest Grazing Advisory Board will meet at 1:00 p.m. on February 9, 1984 at the Helitack Base located approximately one mile south of Hill City, South Dakota. The purpose of this meeting is to announce new board members, acquaint the new members with the allotment management plans and range betterment funds, review the comments on the 1984 Range Betterment Fund Program and to obtain views on the Board's functions for the coming year.

The meeting will be open to the public. Persons who wish to attend should notify Craig Whittkiend, Black Hills National Forest, phone 605/673-2251.

Dated: December 22, 1983.

James R. Mathers,  
Forest Supervisor.

[FR Doc. 84-353 Filed 1-5-84; 8:45 am]  
BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Office of the Secretary

#### Privacy Act of 1974

AGENCY: Office of the Secretary, Commerce.

ACTION: Revision of system of records to provide for disclosures to consumer reporting agencies.

SUMMARY: This notice revises the information which the Department of Commerce has published describing eight systems of records maintained which are subject to the Debt Collection Act of 1982 (Pub. L. 97-365). They are DEPT-1, DEPT-2, DEPT-9, DEPT-13,

DEPT-16, DEPT-17, DEPT-18, and NTIS-1.

Except for the addition of the provision for disclosures to consumer reporting agencies, all other changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the publication of the notices in the Federal Register on December 31, 1981 (48 FR 63498).

The eight revised systems notices are published in their entirety below. This notice does not require a public comment period.

EFFECTIVE DATE: January 6, 1984.

FOR FURTHER INFORMATION CONTACT: Roger Mallett, Department of Commerce, Washington, D.C. 20230, telephone 202-377-2324 for debt collection matters, or Lester G. Welch, Department of Commerce, Washington, D.C. 20230, telephone 202-377-4217, for Privacy Act matters.

Dated: December 30, 1983.

Marilyn S. McLennan,  
Chief, Information Management Division,  
Department of Commerce.

#### COMMERCE/DEPT-1

##### SYSTEM NAME:

Attendance, Leave, and Payroll Records of Employees and Certain Other Persons—COMMERCE/DEPT-1

##### SYSTEM LOCATION:

For employees of Departmental Offices, BEA, BIE, Census, EDA, ITA, MBDA, NBS, NOAA, NTIA, NTIS, PAT-TM, USTS, Offices of Federal Cochairmen, RAPCs, and ARC: Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Gaithersburg, Maryland 20878.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commerce Department employees and certain other persons as categorized by organizational component above.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, social security number and employee number, service computation date, grade, step, and salary; organization (code), retirement of FICA date as applicable; Federal, state, and local tax deductions, as appropriate; IRS tax lien data; savings bond and charity deductions; regular and optional

Government life insurance deduction(s), health insurance deduction and plan of code; cash award data; jury duty data; military leave data; pay differentials; union dues deductions; allotments, by type and amount; financial institution code and employee account number, type of account; leave status and leave data of all types (including annual, compensatory, jury duty, maternity, military, retirement disability, sick, transferred, absence without leave, and without pay); time and attendance records, including number of regular, overtime, holiday, Sunday, and other hours worked; pay period number and ending date; cost of living allowances; mailing address; coowner and/or beneficiary of bonds, marital status and number of dependents; and "Notification of Personnel Action". The individual records listed herein are included only as pertinent or applicable to the individual employee.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Title 31 U.S.C. 66a, 492, Title 44 U.S.C. 3101, 3309.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal of data to U.S. Treasury and employee-designated financial institutions to effect issuance of paycheck to employees and distribution of pay according to employee directions for savings bonds, allotments, alimony, child support, and other authorized purposes.

Reporting: tax withholding to Internal Revenue Service and appropriate State and local taxing authorities; FICA deductions to the Social Security Administration; dues deductions to labor unions; withholdings for health and life insurance to the insurance carriers and the U.S. Office of Personnel Management; charity contribution deductions to agents of charitable institutions; annual W-2 statements to taxing authorities and the individual; wage, employment, and separation information to state unemployment compensation agencies, to the Department of Labor to determine eligibility for unemployment compensation, and to housing authorities for low-cost housing applications; and NOAA Corps data to U.S. Office of Personnel Management for

preparation of statistical materials. Also, see routine use paragraphs 1-5 and 8-13 of Prefactor Statement.

**DISCLOSURE OF CONSUMER REPORTING AGENCIES:**

*Disclosures pursuant to 5 U.S.C. 522a(b)(12):* Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a (f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Both manual and machine-readable.

**RETRIEVABILITY:**

By name and/or employee or social security number.

**SAFEGUARDS:**

Physical, technical and administrative security is maintained, with all storage equipment and/or rooms locked when not in use. Admittance, when open, is restricted to authorized personnel only. All payroll personnel and computer operators and programmers are instructed and cautioned on the confidentiality of the records.

**RETENTION AND DISPOSAL:**

Retained on site until after GAO audit, then disposed of, or transferred either to Federal Records Storage Centers in accordance with the fiscal records program approval by GAO, as appropriate, or general Record Schedules of GSA.

**SYSTEM MANAGER(S) AND ADDRESS:**

Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Gaithersburg, Maryland 20878.

**NOTIFICATION PROCEDURE:**

For BEA records, information may be obtained from: Chief, Management and Organization Branch, BEA, Tower Building, 1401 K Street, N.W., Washington, D.C. 20230.

For BIE records, information may be obtained from: Administrative Officer, BIE, Room 4845 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

For Census records, information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For EDA records, information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, D.C. 20230.

For ITA records, information may be obtained from: Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230.

For MBDA records, information may be obtained from: Privacy Officer, Office of Chief Counsel, MBDA, U.S. Department of Commerce, Washington, D.C. 20230.

For NBS and NTIS records, information may be obtained from: Deputy Director for Information Systems, Room A1105, Administration Building, National Bureau of Standards, Washington, D.C. 20234.

For NOAA records, information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213 Herbert C. Hoover Bldg., 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

For NTIA records, information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504;

For PAT—TM records, information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231;

For USTS records, information may be obtained from: Director, Office of Administration, USTS, U.S. Department of Commerce, Washington, D.C. 20230; and

For all other records, information may be obtained from: Director, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name, social security number, and time or organization unit of employment pursuant to the inquiry provisions of the Department's Rules which appear in 15 CFR Part 4b.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: same address of the desired location as stated in the Notification section above.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address for desired location.

**RECORD SOURCE CATEGORIES:**

Subject individuals, those authorized by the individual to furnish information, supervisors, timekeepers, official personnel records, and IRS.

**COMMERCE/DEPT-2**

**SYSTEM NAME:**

Accounts Receivable—COMMERCE/DEPT-2.

**SYSTEM LOCATION:**

a. For Departmental offices, BEA, BIE, ITA, USTS, MBDA, Offices of Federal Cochairmen, RAPCs, and ARC: Office of Financial Operations, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

b. For NBS and NTIA: National Bureau of Standards, Office of the Comptroller, Administration Building, Washington, D.C. 20234.

c. For NOAA: Office of Budget and Finance, National Oceanic and Atmospheric Administration, Room 6811 Herbert C. Hoover Bldg., 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

d. For PAT-TM: Office of Finance, U.S. Patent and Trademark Office, 2021 Jefferson Davis Highway, Arlington, Virginia 22202.

e. For CENSUS: Finance Division, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

f. For NTIS: Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

g. For EDA: Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Debtors owing money to organizational components identified in a through g including employees, former employees, business firms, general public, and institutions.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name and address; amount owed, and service, overpayment or other accounting therefor, invoice number, if any.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 5701-09; 31 U.S.C. 951-953, 4 CFR 102.4, FPMR 101-7; Treasury Fiscal Requirements Manual.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Billing debtors, reporting delinquent debts to credit bureaus, reporting to Office of Personnel Management for liquidating debts from retirement and other benefits, and routine uses 1-5 and 8-13 of the Prefatory Statement.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

*Disclosures pursuant to 5 U.S.C. 552a(b)(12):* Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Both manual and machine-readable records.

**RETRIEVABILITY:**

By name, and invoice number as appropriate.

**SAFEGUARDS:**

Physical security, handling by authorized personnel only.

**RETENTION AND DISPOSAL:**

Retained until payment is received and account is audited, then disposed of in accordance with Records Control Schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

For records at location a.: Director, Office of Financial Operations, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location b.: Comptroller, Office of the Comptroller, National Bureau of Standards, Administration Building, Washington, D.C. 20234.

For records at location c.: Director, Office of Budget and Finance, NOAA, Room 6811, Herbert C. Hoover Bldg., 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

For records at location e.: Director, Office of Finance, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For records at location e.: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location f.: Chief, Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

For records at location g.: Chief, Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

**NOTIFICATION PROCEDURE:**

For BIE records at location a., information may be obtained from: Administrative Officer, BIE, Room 4845,

14th and Constitution Avenue, N.W., Washington, D.C. 20230;

For ITA records at location a., information may be obtained from: Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230;

For USTS records at location a., information may be obtained from: Director, Office of Administration, USTS, U.S. Department of Commerce, Washington, D.C. 20230; and

For all other records at location a., information may be obtained from: Director, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230.

For NBS records at location b., information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Washington, D.C. 20234;

For NTIA records at location b., information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504;

For records at location c., information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213 Herbert C. Hoover Bldg., 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

For records at location d., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231; and

For records at location e., information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location f., information may be obtained from: Associate Director for Financial and Administrative Management, National Technical Information Service, Springfield, Virginia 22161.

For records at location g., information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name and address, and invoice number as appropriate, pursuant to the inquiry provisions of the Department's Rules which appear in 15 CFR Part 4b.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: same address as stated in the Notification section above.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual

concerned appear in 15 CFR Part 4b. Use above address.

**RECORD SOURCE CATEGORIES:**

Subject individual, those authorized by the individual to furnish information, contracting officer as appropriate, accounting records.

**COMMERCE/DEPT-9****SYSTEM NAME:**

Travel Records (Domestic and Foreign) of Employees and Certain Other Persons—COMMERCE/DEPT-9.

**SYSTEM LOCATION:**

a. For employees of Departmental Offices, BEA, BIE, Census (for travel paid on or after July 1, 1932), EDA, ITA, MBDA, NBS, NOAA (except employees of NOAA regional offices listed in c. below), NTIA, NTIS, PAT-TM, USTS, Offices of Federal Cochairmen, and RAPCs; members of DOC Advisory Committees; employees and certain other persons associated with ARC; and private citizens invited to visit the Department: Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Gaithersburg, Maryland 20878.

b. For employees of CENSUS (for travel paid prior to July 1, 1932): Finance Division, Bureau of the Census, Federal Building 3, Washington, D.C. 20233 and the following Regional Offices for intermittent CENSUS employees: 1365 Peachtree Street, N.E., Atlanta, Georgia 30309; 441 Stuart Street, Boston, Massachusetts 02116; 230 South Tryon Street, Charlotte, North Carolina 28202; 55 East Jackson Boulevard, Chicago, Illinois 60604; 1100 Commerce Street, Dallas, Texas 75242; 7655 W. Mississippi Avenue (P.O. Box 26750), Denver, Colorado 80226; 231 W. Lafayette, Detroit, Michigan 48226; One Gateway Center, 4th and State Streets, Kansas City, Kansas 66101; 11777 San Vicente Boulevard, Los Angeles, California 90049; 26 Federal Plaza, New York City, New York 10278; 600 Arch Street, Philadelphia, Pennsylvania 19106; and 1700 Westlake Avenue, Seattle, Washington 98109.

c. For employees of NOAA regional offices: DOC/NOAA/EASC, RAS/EC5, 235 Monticello Avenue, Norfolk, Virginia 23510; DOC/NOAA/MASC, RAS/MC7, Room 5524, 325 Broadway, Boulder, Colorado 80303; DOC/NOAA/WASC, RAS/WC5, Operations Building, 7600 Sand Point Way, N.E., Seattle, Washington 98115; and DOC/NOAA/CASC, RAS/CC5, Federal Building, Room 1758, 601 E. 12th Street, Kansas City, Missouri 64108.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees, Advisory Committee Members, State Representatives of ARC, and official guests of the Department.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, address, social security number; destination, itinerary, mode and purpose of travel; dates; expenses including amounts advanced (if any), amounts claimed, and amounts reimbursed; travel orders, travel vouchers, receipts, and passport record card.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Budget and Accounting Act of 1921; Accounting and Auditing Act of 1950; and Federal Claim Collection Act of 1966.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Transmittal to U.S. Treasury for payment, to State Department for passports, and see paragraphs 1-5 and 9-13 of the Prefatory Statement.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

*Disclosures pursuant to 5 U.S.C. 552a(b)(12):* Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Manual and machine-readable.

**RETRIEVABILITY:**

Filed by name, social security number, or travel order number.

**SAFEGUARDS:**

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Retained according to GSA Federal Travel Regulations, and then disposed of according to unit's Records Control Schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

For records at location a., Director, Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Gaithersburg, Maryland 20878.

For records at location b., Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233 and the Director of the particular Regional Office listed above.

For records at location c., the Director of the particular Administrative Support Center listed above.

**NOTIFICATION PROCEDURE:**

For BEA records at location a., information may be obtained from: Chief, Management and Organization Branch, BEA, Tower Building, 1401 K Street, N.W., Washington, D.C. 20230;

For BIE records at location a., information may be obtained from: Administrative Officer, BIE, Room 4845, 14th and Constitution Avenue, N.W., Washington, D.C. 20230;

For Census records at locations a. and b., information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233;

For EDA records at location a., information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230;

For IIA records at location a., information may be obtained from: Director, Office of Management and Systems, IIA, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records at location a., information may be obtained from: Privacy Office, Office of Chief Counsel, MBDA, U.S. Department of Commerce, Washington, D.C. 20230;

For NBS records at location a., information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Washington, D.C. 20234.

For NOAA records at locations a. and c., information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213, Herbert C. Hoover Bldg., 14th and Constitution Avenue, N.W., Washington, D.C. 20230;

For NTIA records at location a., information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

For PAT-TM records at location a., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For USTS records at location a., information may be obtained from: Director, Office of Administration,

USTS, U.S. Department of Commerce, Washington, D.C. 20230; and

For all other records at location a., information may be obtained from: Director, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name, travel order number, if known, and date of travel, in accordance with the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: same address as stated in the Notification section above.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

**RECORD SOURCE CATEGORIES:**

Subject individual, those authorized by the individual to furnish information, supervisors, and finance (or accounting) office standard references.

**COMMERCE/DEPT-13****SYSTEM NAME:**

Investigative and Security Records—COMMERCE/DEPT-13.

**SYSTEM LOCATION:**

Departmental Office of Investigations and Security, OS, Main Commerce Bldg., Washington, D.C. 20230.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Nominees, members, and former members of public advisory committees, trade missions, and export councils; employees, former employees, and prospective employees; research associates; and guest workers. Employees of contractors used, or which may be used, by the Department on national security classified projects. Principal officers of some contractors used, or which may be used by the Department, Principal officers and some employees of organizations, firms, or institutions which were recipients or beneficiaries, or prospective recipients or beneficiaries, of grants, loans, or loan guarantee programs of the Department prior to May 9, 1980.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name; address; date and place of birth; Social Security Number; citizenship; physical characteristics; employment and military service history; credit references and credit records; education; medical history;

arrest records; Federal employee relatives; dates and purpose of visits to foreign countries; passport numbers; names of spouses, relatives, references, and personal associates; activities; and security; and suitability materials. This system does not include records of EEO investigations. Such records are covered in a government-wide system noticed by the then Office of Personnel Management and now the responsibility of the Equal Employment Opportunity Commission. For assistance contact the Privacy Officer for the Office of the Secretary.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Orders 10450, 11478, 12065, 5 U.S.C. 301 and 7531-332; 15 U.S.C. 1501 et. seq.; 28 U.S.C. 533-535; 44 U.S.C. 3101; and Equal Employment Act of 1972.

**ROUTINE USED OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information concerning nominees, members and former members of public advisory committees may be disclosed: (a) To OMB in connection with its committee management responsibilities; (b) to other Federal agencies which have joint responsibility for advisory committees or which receive or utilize advice of the committees; and (c) to a Federal, state or local agency, private organization or individual as necessary to obtain information in connection with a decision concerning appointment or reappointment of an individual to committee membership.

Information concerning (1) nominees, members, and former members of trade missions and export councils; (2) current employees, former employees, and prospective employees; (3) research associates; (4) guest workers; (5) employees of contractors used, or which may be used, by the Department on national security classified projects; (6) principal officers of some contractors used, or which may be used, by the Department; and (7) principal officers and some employees of organizations, firms or institutions which are recipients or beneficiaries or prospective recipients or beneficiaries of grants, loans, guarantee or other assistance programs of the Department;— may be disclosed to a private organization or individual as necessary to obtain information in connection with a decision concerning the assignment, hiring, or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit. See

routine use paragraphs in Prefatory Statement.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES**

*Disclosures pursuant to 5 U.S.C. 552a(b)(12):* Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1988 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

Filed alphabetically by name.

**SAFEGUARDS:**

Locked cabinets in secure rooms in guarded buildings, and used only by authorized screened personnel.

**RETENTION AND DISPOSAL**

When cases are closed, records are disposed of in accordance with the unit's Records Control Schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Investigations and Security, OS, Main Commerce Building, Washington, D.C. 20230.

**NOTIFICATION PROCEDURE:**

Information may be obtained from: Director, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230. Requester should provide name and association with the Department, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

**RECORD ACCESS PROCEDURE:**

Requests from individuals should be addressed to: Same address as stated in the Notification section above.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

**RECORD SOURCE CATEGORIES:**

Subject individuals; OPM, FBI and other Federal, state, and local agencies; individuals and organizations that have pertinent knowledge about the subject; and, those authorized by the individual to furnish information.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5), all information and material in the record which meets the criteria of these subsections are exempted from the notice, access, and contest requirements under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the agency regulations because of the necessity to exempt this information and material in order to accomplish this law enforcement function of the agency, to prevent disclosure of classified information as required by Executive Order 12065, to assure the protection of the President, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of information, and to avoid endangering these sources and law enforcement personnel.

**COMMERCE/DEPT-16**

**SYSTEM NAME:**

Property Accountability Files—  
COMMERCE/DEPT-16

**SYSTEM LOCATION:**

a. For all libraries of the Department. For listing, see Directory of Libraries in the United States Department of Commerce, 1972, Department of Commerce, Washington, D.C.; or American Library Directory, biennial, R.R. Bowker Company, New York City.

b. For employees of CENSUS: Administrative Service Division, Bureau of the Census, Federal Building 4, Washington, D.C. 20233, and the following Census Regional Offices: 1365 Peachtree Street, NE, Atlanta, Georgia 30309; 441 Stuart Street, Boston, Massachusetts 02116; 230 South Tryon Street, Charlotte, North Carolina 28202; 55 East Jackson Boulevard, Chicago, Illinois 60604; 1100 Commerce Street, Dallas, Texas 75242; 7655 W. Mississippi Avenue (P.O. Box 26750), Denver, Colorado 80226; 231 W. Lafayette, Detroit, Michigan 48226; One Gateway Center, 4th and State Streets, Kansas City, Kansas 66101; 11777 San Vicente Boulevard, Los Angeles, California 90049; 28 Federal Plaza, New York City, New York 10278; 600 Arch Street, Philadelphia, Pennsylvania 19106; and 1700 Westlake Avenue, Seattle, Washington 98109.

c. For employees of NBS: Security Office, National Bureau of Standards, Administration Building, Washington, D.C. 20234. Instrument Shops Division, Shops Building, NBS, Washington, D.C. 20234; and Security Office, Radio Building, NBS, Boulder, Colorado 80302.

d. For employees of PAT-TM: Users Services Section, Scientific Library, U.S. Patent and Trademark Office, Washington, D.C. 20231.

e. For NTLA: Office of Administration, National Telecommunications and Information Administration, 1800 G Street, N.W., Washington, D.C. 20504.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees, general public, institutions, and anyone who charges out or signs for books or other materials.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name; telephone number, title of book; identification of property or equipment; home and business address; employee I.D. number, position, job title; grade; organization; explanations for items not accounted for, correspondence; clearance; and, key number.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 44 U.S.C. 3101; 40 U.S.C. 481-92; 15 U.S.C. 1518.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See routine use paragraphs 1-5 and 9-13 of Prefatory Statement.

**DISCLOSURE OF CONSUMER REPORTING AGENCIES:**

*Disclosures pursuant to 5 U.S.C. 552a(b)(12):* Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(1)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper copy in file folders and trays and machine-readable media.

**RETRIEVABILITY:**

Filed alphabetically by name.

**SAFEGUARDS:**

Records are located in lockable metal file cabinets, or lockable desks, or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Retained until property is accounted for, then disposed of in accordance with unit's Record Control Schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

For records at location a.: The head of the respective library.

For records at location b.: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233, and the Director of the particular Regional Office listed above.

For records at location c.: Security Officer, National Bureau of Standards, Administration Building, Washington, D.C. 20234.

For records at location d.: Program Manager, Scientific Library, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For records at location e.: Director of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, 1800 G Street, NW., Washington, D.C. 20504.

**NOTIFICATION PROCEDURE:**

For records at location a.: Address communication to the library's parent organization (e.g., National Bureau of Standards) Attention: Privacy Officer, or use the Privacy Officer's Official position title and address as listed in Appendix B to the Department's rules which appear in 15 CFR Part 4b.

For records at location b.: Information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location c.: Information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Washington, D.C. 20234.

For records at location d.: Information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231.

For records at location e.: Information may be obtained from: Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, 1800 G Street, NW., Washington, D.C. 20504.

Requester should provide name and address pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: same address as stated in the Notification section above.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for access, for contesting contents, and appealing

initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

**RECORD SOURCE CATEGORIES:**

Subject individual, those authorized by the individual to furnish information, book cards, and supply person providing the equipment.

**COMMERCE/DEPT-17**

**SYSTEM NAME:**

Records of Cash Receipts—  
COMMERCE/DEPT-17.

**SYSTEM LOCATION:**

a. For Departmental offices, BEA, BIE, ITA, MBDA, USTS, Offices of Federal Cochairmen, RAPCs, and ARC; Office of Financial Operations, OS, U.S. Department of Commerce, 14th and Constitution Ave., N.W., Washington, D.C. 20230.

b. For NTIS: Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

c. For PAT-TM: Office of Finance, U.S. Patent and Trademark Office, 2021 Jefferson Davis Highway, Arlington, Virginia 22202.

d. For Census: Finance Division, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

e. For NTIA: Office of Administration, National Telecommunications and Information Administration, 1800 G Street, N.W., Washington, D.C. 20504

f. For EDA: Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals paying for goods or services, reimbursing overpayments, or otherwise delivering cash to the Department.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, the goods or service purchased, amount, date, check number, division or office, bank deposit, treasury deposit number.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

31 U.S.C. 66(a).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See routine use paragraphs 1-5 and 9-13 of the Prefatory Statement.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Manual and machine-readable.

**RETRIEVABILITY:**

Name and/or account or case number.

**SAFEGUARDS:**

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those whose official duties require access.

**RETENTION AND DISPOSAL:**

Permanently maintained.

**SYSTEM MANAGER(S) AND ADDRESSES:**

For records at location a.: Director, Office of Financial Operations, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location b.: Chief, Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

For records at location c.: Director, Office of Finance, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For records at location d.: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location e.: Director of Administration, National Telecommunications and Information Administration, 1800 G Street, N.W., Washington, D.C. 20504.

For records at location f.: Chief, Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

**NOTIFICATION PROCEDURE:**

For BEA records at location a., information may be obtained from: Chief, Management and Organization Branch, BEA, Tower Building, 1401 K Street, N.W., Washington, D.C. 20230;

For BIE records at location a., information may be obtained from: Administration Officer, BIE, Room 4845, 14th and Constitution Avenue, N.W., Washington, D.C. 20230;

For ITA records at location a., information may be obtained from: Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records at location a., information may be obtained from: Privacy Officer, Office of Chief Counsel, MBDA, U.S. Department of Commerce, Washington, D.C. 20230;

For USTS record at location a., information may be obtained from: Director, Office of Administration, USTS, U.S. Department of Commerce, Washington, D.C. 20230; and

For all other records at location a., information may be obtained from: Director, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location b., information may be obtained from: Associate Director for Financial and Administrative Management, National Technical Information Service, Springfield, Virginia 22161.

For records at location c., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For records at location d., information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location e., information may be obtained from: Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20504.

For records at location f., information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name, address, date of receipt, and check number or case number pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

**RECORD ACCESS PROCEDURE:**

Requests from individuals should be addressed to; same address as stated in the Notification section above.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

**RECORD SOURCE CATEGORIES:**

Subject individual and those authorized by the individual to furnish information.

**COMMERCE/DEPT-18****SYSTEM NAME:**

Employees Personnel Files Not Covered By Notices of Other Agencies—COMMERCE/DEPT-18.

**SYSTEM LOCATION:**

a. For all Departmental employees: Departmental Office of Personnel, Room 15001, U.S. Department of Commerce, Washington, D.C. 20230 (for automated records and for selected records relating to Senior Executive Service and Departmental Honor Awards).

b. For employees of Departmental Offices, Offices of Federal Cochairmen, RAPC's, ARC, BEA, BIE, NTIA, NTIS, MBDA, and USTS: Departmental Office of Personnel Operations, Room 5003, U.S. Department of Commerce, Washington, D.C. 20230; Washington, D.C. 20230;

c. For employees of the CENSUS: Office of Personnel, Bureau of Census, Federal Building 3, Room 3260, Washington, D.C. 20233;

d. For employees of ITA: Office of Personnel, International Trade Administration, Room 3512, U.S. Department of Commerce, Washington, D.C. 20230;

e. For employees of NBS: Office of Personnel, National Bureau of Standards, Administration Building Room A123, Washington, D.C. 20334;

f. For employees of NOAA: Office of Personnel, National Oceanic and Atmospheric Administration, Rockville, Maryland 20852, and the following Administrative Support Centers: DOC/NOAA/EASC, RAS/EC5, 235 Monticello Avenue, Norfolk, Virginia 23510; DOC/NOAA/MASC, RAS/MC7, Room 5524, 325 Broadway, Boulder, Colorado 80303; DOC/NOAA/WASC, RAS/WC5, Operations Building, 7600 Sand Point Way, N.E., Seattle, Washington 98115; and DOC/NOAA/CASC, RAS/CC5, Federal Building, Room 1753, 631 E. 12th Street, Kansas City, Missouri 64103.

g. For employees of PAT-TM: Office of Personnel, U.S. Patent and Trademark Office, U.S. Department of Commerce, Room 9C03, Crystal Plaza 2, Arlington, Virginia 22202;

h. For employees of EDA: Personnel Management Division, Economic Development Administration, Room 7089, U.S. Department of Commerce, Washington, D.C. 20230; and

i. For any Department employee: The immediate office of an employee's supervisor(s), for records which have been disclosed to someone else.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

All personnel records in the Department which are subject to the Privacy Act but are not covered in the notices of systems of records published by other agencies with influence upon personnel management in the Department, such as the Office of Personnel Management, Merit System Protection Board, Equal Employment Opportunity Commission, Department of State or Department of Labor. The records of this system may include, but are not limited to: Employee Development; Incentive Awards; Employee Relations; Grievance Records; Medical; Work-related Injury or Illness Claims; Grievance Records; Medical; Career Management Program; Ship Personnel; Employee Overseas Assignments; Minority Group Statistics Program; Work Performance and Appraisal Records; including supervisory records which have been disclosed; Re-employment and Priority Placement Programs; Executive Assignments and Merit Pay Actions; Merit Assignment Programs; Retirements Within-Grade Denials (Reconsideration File); and, Automated Employee Information System.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 44 U.S.C. 3101; 5 U.S.C. 4101 et seq., 5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954-1958 Comp. p218, E.O. 12107, 3 CFR 1978 Comp. p264; and Federal Personnel Manual and related directives of the agencies cited above.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

a. Information concerning current or former employees may be disclosed to a private organization or individual as necessary to obtain information in connection with a decision concerning the assignment, hiring, or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to officials of the Office of Personnel Management, Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity

Commission, the Department of State, or the Department of Labor when requested in performance of their authorized duties.

d. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To provide information to officials or labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

f. See routine uses paragraphs in the Prefatory Statement.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

*Disclosures pursuant to 5 U.S.C. 552a(b)(12):* Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1968 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Manual and machine-readable.

**RETRIEVABILITY:**

Filed by name and/or social security number.

**SAFEGUARDS:**

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those official duties require access.

**RETENTION AND DISPOSAL:**

Retained according to Unit's Records Control Schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

For records at location a.: Director, Office of Personnel, Room 5001, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location b.: Director, Office of Personnel Operations, Room 5008, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location c.: Chief of Personnel, Bureau of the Census, Federal Building 3, Room 3260, Washington, D.C. 20233;

For records at location d.: Director, Office of Personnel, International Trade Administration, U.S. Department of Commerce, Room 3512, Washington, D.C. 20230;

For records at location e.: Chief, Personnel Division, National Bureau of

Standards, Administration Building, Room A123, Washington, D.C. 20234;

For records at location f.: Chief, Personnel Division, WSC5, National Oceanic and Atmospheric Administration, NBOC2, Rockville, Maryland 20852, and the Director of the particular Administrative Support Center listed above;

For records at location g.: Personnel Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Room 9C08, Crystal Plaza 2, Arlington, Virginia 22202;

For records at location h.: Personnel Management Division, Economic Development Administration, Room 7089, Washington, D.C. 20230; and

For records at location i.: Employee's supervisor(s).

**NOTIFICATION PROCEDURE:**

For BEA records at locations a. and b., information may be obtained from: Chief, Management and Organization Branch, BEA, Tower Building, 1401 K Street, N.W., Washington, D.C. 20230;

For BIE records at locations a. and b., information may be obtained from: Administrative Officer, BIE, Room 4845, 14th & Constitution Avenue, N.W., Washington, D.C. 20230;

For NTIA records at locations a. and b., information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504;

For NTIS records at locations a. and b., information may be obtained from: Privacy Officer, NTIS, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records at locations a. and b., information may be obtained from: Privacy Officer, Office of Chief Counsel, MBDA, U.S. Department of Commerce, Washington, D.C. 20230;

For USTS records at locations a. and b., information may be obtained from: Director, Office of Administration, USTS, U.S. Department of Commerce, Washington, D.C. 20230;

For all other records at locations a. and b., information may be obtained from: Director, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location c., information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233;

For records at location d., information may be obtained from: Privacy Act Officer, Office of Management and Systems, International Trade Administration, Room 3102, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location e., information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Washington, D.C. 20234;

For records at location f., information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213, Herbert C. Hoover Bldg., 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

For records at location g., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231;

For the records at location h., information may be obtained from: Personnel Management Division, Economic Development Administration, Room 7089, U.S. Department of Commerce, Washington, D.C. 20230; and

For records at location i., information may be obtained from: Privacy office for employee's unit.

Requester should provide name, social security number, and time or organization unit of employment pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

#### RECORD ACCESS PROCEDURE:

Request from individuals should be addressed to: same address as stated in the Notification section above.

#### CONTESTING RECORD PROCEDURES:

The department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

#### RECORD SOURCE CATEGORIES:

Subject individual and those authorized by the individual to furnish information; others involved in references of the individual; physicians; employee's supervisor; for grievance records information is also provided by the testimony of witnesses, by agency officials, and from related correspondence from organizations or persons.

#### COMMERCE/NTIS-1

#### SYSTEM NAME:

Individuals interested in NTIS Publications, Shipped Order Addresses, Customer Account Records, and Subscriber Files—COMMERCE/NTIS-1.

#### SYSTEM LOCATION:

(Automated Data Processing Division & Document Distribution and Reproduction Division,) OFFICE OF

#### COMPUTER AND COMMUNICATIONS SERVICE AND DOCUMENT SERVICES DIVISIONS, NTIS 5285 Port Royal Road, Springfield, Va. 22161

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who order and/or purchase products and services from NTIS and all individuals who have requested (that they be placed on the NTIS promotional mailing list) NTIS PROMOTIONAL LITERATURE.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; nine-digit taxpayer identification number; items ordered; items sent; amount of purchases, date order received; date order mailed; NTIS deposit account or customer code number; total charge to date; whether account collectible or not; categories of publications ordered by each purchaser; when subscription expired; amount on deposit.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 1151-57; 41 U.S.C. 104, 44 U.S.C. 3101.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in the system are disclosed to NTIS sales agents; and to individuals, organizations, Federal agencies, and State and local governments contributing publications to NTIS for their market research and sales accounting purposes, through the mechanism of providing them the names and addresses of individuals (and others) who have purchased their publications. Also see general routine uses (#1 through 6, #8 through 10, and #12 of Prefatory Statement noticed in the Federal Register on October 2, 1975 (40 FR 45635), and amended on November 7, 1975 (40 FR 52074) and August 17, 1976 (41 FR 34805), #4, #5, #9 and #13 OF PREFATORY STATEMENT.

#### DISCLOSURE TO CONSUMER REPORTING AGENCIES:

*Disclosures pursuant to 5 U.S.C. 552a(b)(12):* Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1973 (31 U.S.C. 3701(a)(3)).

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Paper records in file folders, film files, magnetic tape and disc files.

#### RETRIEVABILITY:

Filed by individual identifier such as deposit account number or credit card account number.

#### SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal tape vaults in secured rooms or premises with access limited to those whose official duties require access. **THE DATA CAN ALSO BE OBTAINED AT IN-HOUSE COMPUTER TERMINALS USED BY THOSE WHOSE OFFICIAL NTIS DUTIES REQUIRE ACCESS.**

#### RETENTION AND DISPOSAL:

Records are updated regularly and maintained indefinitely.

#### SYSTEM MANAGER(S) AND ADDRESS:

Chief, (Automated Data Processing Division) OFFICE OF COMPUTER AND COMMUNICATIONS SERVICES, NTIS, (5285 Port Royal Road.) Springfield, Va. 22161.

#### NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Office of Administrative Management, NTIS, (Sills Building,) Springfield, Va. 22161. Requester should provide name and address in accordance with the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

#### RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: same address as stated in the notification section above.

#### CONTESTING RECORD PROCEDURES:

The Department rules for access, for contesting contents and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

#### RECORD SOURCE CATEGORIES:

Subject individuals and NTIS transaction files.

[FR Doc. 84-27 Filed 1-5-84; 8:45 am]

BILLING CODE 3510-07-11

#### International Trade Administration

#### Application for Duty-Free Entry of Scientific Articles; Correction

In FR Doc. 83-31746 appearing at page 53589 in the Federal Register of November 23, 1983, Docket Number 83-350 is correct to read: INSTRUMENT:

Patch Clamp System, Model L/M-EPC-7.

Frank W. Creel,

*Acting Director, Statutory Import Programs Staff.*

(Catalog of Federal Domestic Assistance Program No. 11.105; Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 84-282 Filed 1-5-84; 8:45 am]

BILLING CODE 3510-DS-1

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1986 (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.

**Docket No. 84-18. Applicant:** Rockefeller University, 1230 York Avenue, New York, NY 10021. **Instrument:** Gas Chromatograph/Mass Spectrometer/Data System, Model VG 70-250. **Manufacturer:** VG Instruments, United Kingdom. **Intended Use:** Determination of mass spectra at both high and low resolution, involving both positive and negative ionization and utilizing electron ionization, chemical ionization and fast atom bombardment methods of ionization. The low resolution spectra will be obtained for qualitative identification of the samples and/or the components thereof, and the high resolution measurements will be made for the same purposes and also to determine the atomic compositions of the samples. A second type of measurement will involve quantitative measurements of the amounts of various materials present using the technique of multiple ion monitoring. **Application received by Commissioner of Customs:** December 7, 1983.

**Docket No. 84-19. Applicant:** Department of the Interior, U.S. Geological Survey/Branch of Geophysics, Box 25046, Mail Stop 964, Denver, CO 80225. **Instrument:** Terrain Conductivity Meter, Model EM 34-3. **Manufacturer:** Geonics Ltd., Canada. **Intended use:** Study of soils and rock and their distribution from the surface to depths of about 200 feet. The primary objectives of these studies are to develop geophysical methods and strategies employing more than one method for locating buried waste dumps and plumes from underground injection of fluids. Secondary objectives are to develop geophysical methods which are useful in the assessment of mineral

resources. **Application received by Commissioner of Customs:** December 7, 1983.

**Docket No. 84-20. Applicant:** U.S. Environment Protection Agency, Environmental Research Laboratory, 6201 Congdon Boulevard, Duluth, MN 55804. **Instrument:** Electron Microscope, Model JEM-1200EX with Accessories. **Manufacturer:** JEOL, USA, Inc., Japan. **Intended use:** Tissues from aquatic organisms exposed to toxicants will be examined for evidence of cellular damage. Microscopic particles isolated from tissues or environmental samples will be characterized. Investigations will be conducted to determine toxicity, bioaccumulation and bioavailability of pollutants. **Application received by Commissioner of Customs:** December 7, 1983.

**Docket No. 84-21. Applicant:** University of Illinois at Urbana-Champaign, Purchasing Division, 508 S. Wright Street, Urbana, IL 61801. **Instrument:** Electron Microscope, Model EM 430 with Accessories. **Manufacturer:** N.V. Philips Gloeilampenfabrieken, The Netherlands. **Intended use:** Studies on semiconductors, ceramics, metals and alloys, coal and other minerals. The aim of the investigations will be varied but, in general, the objective will be "microcharacterization". **Application received by Commissioner of Customs:** December 7, 1983.

**Docket No. 84-22. Applicant:** The University of Iowa Hospitals & Clinics, Department of Hospital Dentistry, Iowa City, IA 52242. **Instrument:** Installation Kit Components for use in Osseointegration. **Manufacturer:** AB Bofors Nebelpharma, Sweden. **Intended use:** Clinical study of the principle of Osseointegration which provides a new and unique system of anchoring dental prothesis to the jaws. **Application received by Commissioner of Customs:** December 7, 1983.

**Docket No. 84-23. Applicant:** Emory University School of Medicine, Atlanta, GA 30322. **Instrument:** Electron Microscope, Model JEM 100CX with Accessories. **Manufacturer:** JEOL Ltd., Japan. **Intended use:** Studies on the relationship of structure to function in excitable and secretory cells. Materials to be examined will include primarily thin sections and heavy metal replicas of central nervous system neurons, retinal photoreceptors, cardiac myocytes, gastric mucosa cells and pancreatic cells. **Education—Instruction** of medical students, graduate students and postdoctoral trainees in electron microscopic techniques. **Application received by Commissioner of Customs:** December 7, 1983.

**Docket No. 84-25. Applicant:** University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. **Instrument:** Ion Microanalyzer, Model IMS.3f with Accessories. **Manufacturer:** Cameca, France. **Intended use:** Research involving the study of three-dimensional trace element and isotopic variations in a variety of naturally occurring terrestrial materials, materials of meteoritic origin and samples synthesized in a number of research efforts designed to simulate geochemical and cosmochemical phenomenon. **Application received by Commissioner of Customs:** December 7, 1983.

**Docket No. 84-26. Applicant:** Emory University, Yerkes Primate Research Center, Atlanta, GA 30322. **Instrument:** Scanning Electron Microscope, Model DS-130, with Accessories. **Manufacturer:** Akashi-Seisakusho Ltd., Japan. **Intended use:** Study of the structure of biological cells and tissues and macromolecular structures of biological origin in a system allowing SEM, STEM and analytical capabilities. Two of the prime research endeavors will be the study of the ultrastructure of the spermatozoa head and of chromosome banding. **Application received by Commissioner of Customs:** December 7, 1983.

**Docket No. 84-27. Applicant:** University of Southern California, University Park, Los Angeles, CA 90089. **Instrument:** Electron Microscope, Model JEM 100CXII with Accessories. **Manufacturer:** JEOL Ltd., Japan. **Intended use:** Studies of bacterial and eukaryotic DNA and RNA molecules, both natural and cloned variants; DNA replicating forms; tissue sections from mammalian lung and muscle; tissue sections of synapses and neuromuscular junctions; replicas of freeze-fractured specimens. **Education—Demonstrations** in the courses—Biological Sciences 466L—Micro-technique and Biological Sciences 571L—Electron Microscopy II to familiarize students with the capabilities of electron microscopy, with methods of specimen preparation and proper techniques for use and maintenance of electron microscopes and ancillary instrumentation. **Application received by Commissioner of Customs:** December 7, 1983.

(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. 84-281 Filed 1-5-84; 8:45 am]

BILLING CODE 3510-DS-1

**Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance**

Petitions have been accepted for filing from the following firms: (1) Hitchcock Chain Company, 49 Freeway Drive, Cranston, Rhode Island 02920, producer of jewelry chains (accepted November 28, 1983); (2) New England Transformer Company, Inc., 1172 Walnut Street, Newton, Massachusetts 02161, producer of electronic transformers (accepted November 28, 1983); (3) Vanguard Glass Fabricators, Inc., 600 N. Centennial Street, Zeeland, Michigan 49464, producer of mirrors and other fabricated glass (accepted November 30, 1983); (4) Buck Stove Corporation, P.O. Drawer 8789, Asheville, North Carolina 28914, producer of stoves and accessories (accepted November 30, 1983); (5) Tri-City Sportswear, Inc., 523 5th Avenue, Troy, New York 12181, producer of women's jackets, skirts and dresses (accepted December 1, 1983); (6) Faulkner Land & Livestock, Inc., Route 2, Gooding, Idaho 83330, producer of cattle, lambs, wool, and other agricultural products (accepted December 1, 1983); (7) Airway Industries, Inc., Airway Park, Ellwood City, Pennsylvania 16117, producer of luggage and briefcases (accepted December 1, 1983); (8) Key Marine, Inc., 4401 E. 11th Avenue, Hialeah, Florida 33012, producer of marine hardware and exhaust systems and other metal castings and fabrications (accepted December 2, 1983); (9) ElectroSyn Corporation, 480 Neponset Street, Canton, Massachusetts 02021, producer of pressure and vacuum calibrators and transmitters (gauges) (accepted December 5, 1983); (10) Berger Industries, Inc., P.O. Box 31, Metuchen, New Jersey 08840, producer of tubing and tubing products (accepted December 5, 1983); (11) Mid-Hudson Leather Goods Company, Inc., 118 Ann Street, Newburgh, New York 12550, producer of handbags (accepted December 6, 1983); (12) Carolere Jewelers, Inc., 69 Sprague Street, Providence, Rhode Island 02907, producer of jewelry (accepted December 6, 1983); (13) Cedar Point Packing Company, 723 South Sound, Coos Bay, Oregon 97420, processor of meat (accepted December 6, 1983); (14) Automatic Screw Machine Products Company, 240 West 83rd Street, Hinsdale, Illinois 60521, producer of industrial fasteners (accepted December 6, 1983); (15) Lowery Handbags, 37-11 48th Avenue, Sunnyside, New York 11101, producer of women's handbags (accepted December 6, 1983); (16) Centre Luggage Manufacturing Corporation, 128

32nd Street, Brooklyn, New York 11232, producer of luggage, tote bags and portfolios (accepted December 8, 1983); (17) Lummus Industries, Inc., P.O. Box 1260, Columbus, Georgia 31934, producer of textile machinery and parts (accepted December 8, 1983); (18) Paradise Wholesale Fence, Inc., 134-11 Hillside Avenue, Jamaica, New York 11413, producer of fencing and gates (accepted December 8, 1983); (19) Wire Rope Corporation of America, Inc., 699 North 2nd Street, St. Joseph, Missouri 64501, producer of wire rope and slings (accepted December 9, 1983); (20) Namsco, Inc., 333 31st Avenue, Bellwood, Illinois 60104, producer of automotive wheel covers (accepted December 9, 1983); (21) Hull Corporation, Davisville Road, Hatboro, Pennsylvania 19040, producer of plastic molding and pharmaceutical machinery (accepted December 9, 1983); (22) Henry Mann, Inc., Mann Road, Huntingdon Valley, Pennsylvania 19003, producer of electronic production equipment (accepted December 9, 1983); (23) Deister Concentrator Company, Inc., 801 Glasgow Avenue, Fort Wayne, Indiana 46803, producer of mining equipment (accepted December 12, 1983); (24) Samic Manufacturing Company, Victoria Mount, Johnston, Rhode Island 02919, producer of jewelry findings (accepted December 12, 1983); (25) Fort Lock Corporation, 3000 N. River Road, River Grove, Illinois 60171, producer of locks and locking devices (accepted December 12, 1983); (26) Climatic Control Systems & Engineering, Inc., P.O. Box 1836, Harrison, Arkansas 72601, producer of cooling systems for greenhouses and poultry houses (accepted December 12, 1983); (27) All Minerals Corporation, P.O. Box 7680, Murray, Utah 84107, producer of barite and bentonite (accepted December 12, 1983); (28) Meloni Tool Company, Inc., 25 Oakdale Avenue, Johnston, Rhode Island 02919, producer of jewelry findings (accepted December 12, 1983); (29) Botticelli, Inc., Nine Warren Avenue, North Providence, Rhode Island 02911, producer of jewelry (accepted December 12, 1983); (30) Chester Apparel, Inc., 1117 Walnut Street, Chester, Pennsylvania 19013, producer of women's dresses (accepted December 13, 1983); (31) M.J.L. Manufacturing Company, Inc., 222 Varet Street, Brooklyn, New York 11208, producer of apparel trim (accepted December 13, 1983); (32) Marva Industries, Inc., 1460 Broadway, New York, New York 10036, producer of textiles (accepted December 13, 1983); (33) Goodall Rubber Company, P.O. Box

8237, Trenton, New Jersey 03650, producer of hose, belting and other rubber and plastic products (accepted December 13, 1983); (34) Pedersons Unlimited, Inc., 114 Washbourne Avenue, Paynesville, Minnesota 55362, producer of men's and women's shirts and warm-up suits (accepted December 14, 1983); (35) Electric Silver Company, Inc., 10024 Cochiti, S.E., Albuquerque, New Mexico 87123, producer of lighter cases, jewelry and jewelry findings (accepted December 14, 1983); (36) Gim Metal Products, Inc., 164 Glem Cone Road, Carle Place, New York 11514, producer of lighting fixtures, lamp parts and fan components (accepted December 14, 1983); (37) Hampton Industries, Inc., P.O. Box 614, Kinston, North Carolina 28501, producer of men's, women's and children's shirts, pajamas and robes (accepted December 15, 1983); (38) Standard Tool and Manufacturing Company, 738 Schuyler Avenue, Lyndhurst, New Jersey 07071, producer of injection molding machines, other machines and parts (accepted December 16, 1983); (39) Medonca's Candies, Ltd., 2829 Kilihaui Street, Honolulu, Hawaii 96819, producer of coconut food products (accepted December 20, 1983); (40) Fermented Products, Inc., P.O. Box 1483, Mason City, Iowa 50401, producer of animal feed and fertilizer ingredients (accepted December 20, 1983); (41) Mountain States Metal Products, Inc., 4975-A Miller Street, Wheatridge, Colorado 80033, producer of metal stampings (accepted December 22, 1983); (42) EFCO, Inc., 1253 West 12th Street, Erie, Pennsylvania 16512, producer of metal-forming machinery (accepted December 23, 1983); (43) Manistee Forge Corporation, 159 Brickyard Road, Manistee, Michigan 49860, producer of steel forgings (accepted December 23, 1983); and (40) Kunzmann Chain Company, 180 Service Avenue, Warwick, Rhode Island 02883, producer of jewelry chains (accepted December 23, 1983).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Insofar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,  
Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 84-283, Filed 1-5-84; 8:45 am]

BILLING CODE 3510-DR-11

[A-588-019]

**Cyanuric Acid and Its Chlorinated Derivatives; Postponement of Final Antidumping Determination and Postponement of Hearing**

**AGENCY:** International Trade Administration, Commerce.  
**ACTION:** Notice.

**SUMMARY:** This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for a respondent who accounts for a significant proportion of exports of the merchandise which is the subject of this investigation, that the final determination be postponed until not later than 105 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and, that the Department has determined to postpone its final determination as to whether sales of cyanuric acid and its chlorinated derivatives have occurred at less than fair value, until not later than February 23, 1984.

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

**FOR FURTHER INFORMATION CONTACT:** Mary Martin, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1778.

**SUPPLEMENTARY INFORMATION:** On June 20, 1983, the Department of Commerce (the Department) published notice in the Federal Register (48 FR 29037) that it was initiating under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether cyanuric acid and its chlorinated derivatives were being or were likely to be, sold at less than fair value. On November 18, 1983, the Department published a preliminary determination of sales at less than fair value with respect to this merchandise (48 FR 52497). The notice stated that if this investigation proceeded normally we would make our final determination by January 24, 1983.

On December 9, 1983, counsel for a respondent who accounts for a significant proportion of the exports of the merchandise which is the subject of this investigation requested that the Department extend the period for the final determination until not later than 105 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination if an exporter who accounts for a significant proportion of the merchandise which is the subject of the investigation requests an extension after an affirmative preliminary determination.

Accordingly, the Department will issue a final determination in this case not later than February 23, 1984.

The hearing originally scheduled for December 20, 1983, at 10:00 a.m. has been postponed. The new hearing date is January 23, 1984, at 10:00 a.m., in room 3092, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Interested parties who requested to participate in the December 20, 1983, hearing must now submit prehearing briefs in at least 10 copies to the Deputy Assistant Secretary by January 16, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of the notice's publication, at the above address and in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-283 Filed 1-5-84; 8:45 am]

BILLING CODE 3510-D5-11

[C-580-034]

**Fresh Cut Roses From Israel; Final Results of Administrative Review of Countervailing Duty Order**

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

**ACTION:** Notice of final results of Administrative Review of Countervailing Duty Order.

**SUMMARY:** On October 31, 1983, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on fresh cut roses from Israel. The review covers the period October 1, 1980 through September 30, 1981.

We gave interested parties an opportunity to comment on the preliminary results. After our review of the one comment received, the final results of the review are the same as the preliminary results.

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

**FOR FURTHER INFORMATION CONTACT:** Alan Long or Laura Kneale, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 31, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 50140) the preliminary results of its administrative review of the countervailing duty order on fresh cut roses from Israel (45 FR 58516, September 4, 1980). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by the review are shipments of Israeli fresh cut roses. Such merchandise is currently classifiable under item 192.1800 of the Tariff Schedules of the United States Annotated. The review covers the period October 1, 1980 through September 30, 1981 and ten programs: (1) The Encouragement of Capital Investment Law ("the ECIL"); (2) Government-Guaranteed Minimum Price program; (3) preferential short-term financing; (4) government funding of AGREXCO; (5) cash payments to growers for greenhouses; (6) cash payments to packing houses; (7) cash payments from the Export Promotion Fund; (8) fuel grants to rose growers; (9)

long-term loans granted to AGREXCO; and (10) a capital fund for AGREXCO.

#### Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from the Government of Israel.

*Comment:* The Ministry of Finance of the Government of Israel contends that the Department erred in calculating the estimated subsidy from the Export Production Fund, one of the three funds for preferential short-term financing. The Department calculated the benefit from this fund in dollars. The correct method of calculating the subsidy is to use lira, since loans granted under this fund are denominated in lira. To calculate a best evidence estimate of credit eligibility, the Department should multiply the dollar value of the prior period's exports by the exchange rate prevailing at the commencement of the growing year, when the credit was received, and multiply this lira value of exports by the rate of credit formula for loan eligibility. Then, based on that amount of principal, in calculating the subsidy, the Department should divide the lira amount of interest savings by the exchange rate prevailing at the end of the growing year, when the loans are repaid, and divide this dollar value of the benefit by the dollar value of exports during the year. This methodology would eliminate any inflationary effect and take into account the real interest.

*Department's Position:* In administering this fund, the Bank of Israel adjusts quarterly credit eligibility, including the exchange rate used in the rate of credit formula. Therefore, calculating eligibility by using the dollar/lira exchange rate prevailing at the commencement of the growing season would underestimate the amount of credit available to exporters. Furthermore, the Ministry of Finance is assuming that all loans under this fund are received at the beginning of the growing year and repaid at the end of the growing year. However, firms may borrow at any time during the year, up to their line of credit. In the absence of actual loan information, it is the Department's practice to assume uniform borrowing over the course of the year. See "Final Results of Administrative Review of Countervailing Duty Order" regarding Spanish ferroalloys (48 FR 34493, July 29, 1983). Therefore, it is more appropriate to use the average exchange rate, weighted by days, during the period of review to calculate both credit eligibility and the *ad valorem* subsidy. Since these two currency conversions calculations cancel each other out when the same

exchange rate is used for both, we have estimated the amount of interest savings in dollars. If we calculate the interest saved in lira, using an average exchange rate, we would obtain identical results.

#### Final Results of the Review

After review of the comment received, the final results of the review are the same as the preliminary results. We determine the aggregate net subsidy to be 27.94 percent for the period October 1, 1980 through September 30, 1981.

The Department will instruct the Customs Service to assess countervailing duties of 27.94 percent of the f.o.b. invoice price on any shipments exported on or after October 1, 1980 and entered, or withdrawn from warehouse, for consumption on or before September 31, 1981.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, of 22.56 percent of the entered value on any shipment of Israeli fresh cut roses entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: December 28, 1983.

C. Christopher Parlin,  
Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-304 Filed 1-5-84; 8:45 am]  
BILLING CODE 3510-25-M

[Case No. 648]

Sven Olof Hakanson (Hakansson),  
Hagtornsvagen 2-4, Taby, Sweden;  
Order Temporarily Denying Export Privileges

The Department of Commerce (the Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations (15 CFR Parts 367-393 (1983)) (the Regulations), has petitioned the Hearing Commissioner for an order

temporarily denying all export privileges to Sven Olof Hakanson (Hakansson), of Taby, Sweden (the respondent).

The Department states that the respondent is under investigation by the Department's Office of Export Enforcement and that the investigation gives it reason to believe: (1) That, without obtaining specific authorization from the Department, the respondent engaged in transactions involving U.S.-origin commodities with Richard Mueller, a person previously denied all U.S. export privileges until May 31, 2001, by Order dated August 6, 1931; (2) that the respondent engaged in other transactions involving U.S.-origin commodities without authorization from the Department, and (3) that the respondent may in the future attempt to engage in transactions involving U.S.-origin commodities or technical data without the required authorization from the Department, including transactions with persons denied all U.S. export privileges, unless appropriate action is taken to preclude such attempts.

Based on the showing made by the Department, I find that an order temporarily denying all export privileges to Sven Olof Hakanson (Hakansson) and to parties related to him is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (Supp. V 1981)), and the Regulations, and to permit completion of the Department's investigation.

Anyone who is now or may in the future be dealing with the above-named respondent or any related party in transactions that in any way involve U.S.-origin commodities or technical data is specifically alerted to the provisions of Paragraph IV below.

Accordingly, it is hereby ordered:

I. All outstanding validated export licenses in which respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondent, his successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States

or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in the preparation or filing of any export license application or reexport authorization, or of any document to be submitted therewith, (c) in the obtaining or using of any validated or general export license or other export control document, (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent, but also to his agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which the respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. Those parties now known to be affiliated with the respondent, and which are accordingly subject to the provisions of this order, are:

Kerstin Ingegard Kakanson  
(Hakanson), Hagtornsvagen 2-4,  
Taby, Sweden;  
Sunitron AB, Hagtornsvagen 2-4, Taby,  
Sweden; and  
Solec AB (Solek AB), Hagtornsvagen 2-  
4, Taby, Sweden.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or any related party may obtain any benefit therefrom or have any interest in or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in

whole or in part, or to be exported by, to, or for the respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 338.19(b) of the Regulations, the respondent or any related party may move at any time to vacate or modify this temporary denial order by filing with the Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room 6716, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, an appropriate motion for relief and may also request an oral hearing thereon, which, if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This order is effective immediately. It remains in effect until the final disposition of any administrative or judicial proceedings initiated against the respondent as a result of the ongoing investigation. A copy of this order and Parts 387 and 388 of the Regulations shall be served upon the respondent and the above-named related parties.

Dated: December 29, 1983, 4:30 p.m. EST.  
Thomas W. Hoya,  
Hearing Commissioner.  
[FR Doc. 84-383 Filed 1-5-84; 8:45 am]  
BILLING CODE 3510-25-31

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

**Soliciting Public Comment on Bilateral  
Textile Consultations With the  
Government of the Republic of  
Indonesia on Categories 331 (Gloves),  
341 (Woven Blouses), and 604 (Non-  
Cellulosic Spun Yarn)**

January 3, 1984

On December 29 and 30, 1983 the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of the Republic of Indonesia to enter into consultations concerning exports to the United States in Categories 331, 341 and 604, produced or manufactured in Indonesia.

The purpose of this notice is to advise that, if no solution is agreed upon between the two governments within sixty days of the date of delivery of the aforementioned notes, entry and

withdrawal from warehouse for consumption of textile products in Categories 331, 341 and 604, produced or manufactured in Indonesia and exported to the United States during the indicated twelve-month periods may be restrained at the following amounts:

Category	12-month level of restraint
331	246,592 dozen pairs (Dec. 29, 1983-Dec. 28, 1984).
341	234,064 dozen (Dec. 30, 1983-Dec. 29, 1984).
604	474,630 pounds (Dec. 29, 1983-Dec. 28, 1984).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 331, 341 and 604, is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, it is requested that comments be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,  
Chairman, Committee for the Implementation  
of Textile Agreements.

[FR Doc. 84-380 Filed 1-5-84; 8:45 am]  
BILLING CODE 3510-DR-M

#### Announcing Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products, Produced or Manufactured in Taiwan

December 30, 1983

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 January 9,

1984. For further information contact William Boyd, International Trade Specialist (202/377-4212).

**Background**

Under the terms of the bilateral agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan, the United States Government has decided to convert to specific limits in 1984 the levels for textile products in Categories 314, 315, 317, 319, 320, 336, 342, 350, 433, 434, 444, 447, 448, 612, 613, part of 631, 636, 637, 642, 643, 644, 650, and parts of 669, which are exported during 1984. The letter to the Commissioner of Customs which follows this notice establishes the new specific limits.

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) and May 3, 1983 (48 FR 19924), and December 14, 1983 (48 FR 55607).

Walter C. Lenahan,

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

December 30, 1983

Committee for the Implementation of Textile Agreements

Commissioner of Customs,  
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 201 of the Agricultural Act of 1956, as amended [7 U.S.C. 1854], and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1978, as extended on December 15, 1977 and December 22, 1981; pursuant to the bilateral textile agreement of November 18, 1982, concerning cotton, wool and man-made fiber textile products from Taiwan; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 9, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in the following categories, produced or manufactured in Taiwan, and exported during 1984, in excess of the indicated levels of restraint:

Category	12-month level of restraint
314	3,274,843 square yards.
315	27,069,100 square yards.
317	16,335,452 square yards.
319	18,553,453 square yards.
320	31,313,224 square yards.
336	60,443 dozen.
342	179,449 dozen.
350	92,365 dozen.
433	12,342 dozen.
434	9,113 dozen.
444	14,497 dozen.

Category	12-month level of restraint
447	5,314 dozen.
448	11,075 dozen.
612	2,025,600 square yards.
613	27,431,572 square yards.
631 <sup>1</sup>	239,000 dozen pairs.
636	322,575 dozen.
637	627,000 dozen.
642	574,000 dozen.
643	49,425 dozen.
644	159,240 dozen.
650	49,514 dozen.
669 pt. <sup>2</sup>	512,550 pounds.
669 pt. <sup>3</sup>	1,629,622 pounds.
669 pt. <sup>4</sup>	1,629,724 pounds.

<sup>1</sup>In Category 631, only TSUSA numbers 7043215, 7045525, and 7045530.

<sup>2</sup>In Category 669, only TSUSA No. 6554501.

<sup>3</sup>In Category 669, only TSUSA number 6594520 and 3554530.

<sup>4</sup>In Category 669, only TSUSA numbers 603-1105 and 339.6210

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of November 18, 1982, which provide, in part, that: (1) Specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year; (2) certain specific limits and sublimits may be increased for carryforward, if agreed in consultations; (3) and administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

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) and December 14, 1983 (48 FR 55607).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the authorities in Taiwan and with respect to imports of cotton, wool and man-made fiber textile products from Taiwan has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements*

(FR Doc. 84-561 Filed 1-5-84, 8:45 am)

CALLING CODE 3510-07-11

**Solicitation of Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China**

CITA is Soliciting of Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China to include a Review of Trade in Categories 317, 435, 433, and 669 and Controlling Imports in these Categories:

(1) Soliciting public comment on bilateral textile consultations with the Government of the People's Republic of China concerning trade in Categories 317 (Twill and Sateen), 435 (Women's, Girls' and Infants' Coats), 433 (Knit Shirts and Blouses), and 669 (Other Manufacturers of Man-Made Fibers); and

(2) Controlling imports of Categories 317, 435, 433, and 669, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on December 30, 1983 and extends through March 23, 1984.

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), and December 14, 1983 (48 FR 55637).

**Summary**

On December 30, 1983, pursuant to the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 19, 1983 between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning import into the United States of textile products in Categories 317, 435, 433, and 669, exported from the People's Republic of China.

Anyone wishing to comment or provide data or information regarding the treatment of these categories under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textiles and apparel included in this category, is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, it is requested that comments be submitted promptly. Comments or information submitted in response to this notice will

be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Under the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of these products during the ninety-day period to the following amounts:

Category	90-day level of restraint (Dec. 30, 1983-Mar. 28, 1984)
317.....	3,045,735 square yards.
435.....	6,051 dozen.
438.....	8,507 dozen.
669.....	500,234 pounds.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve-months following the ninety-day consultation period to the following amounts:

Category	12-month level of restraint (Mar. 29, 1984-Mar. 28, 1985)
317.....	6,708,249 square yards.
435.....	13,893 dozen.
438.....	12,074 dozen.
669.....	1,270,611 pounds.

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Categories 317, 435, 438, and 669, for the ninety-day period, at the levels described above. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the Federal Register.

In the event the limits established for Categories 317, 435, 438, and 669 for the ninety-day period are exceeded, such excess amounts, if allowed to enter at

the end of the restraint period, shall be charged to the levels (described above) defined in the agreement for the subsequent twelve-month period.

Effective Date: January 9, 1984.

For Further Information Contact: Diana Bass, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

Supplementary Information: On August 19, 1983 there was published in the Federal Register (48 FR 37685) a letter to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1983. The notice document which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Categories 317, 435, 438, and 669 which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in Categories 317, 435, 438, and 669, produced or manufactured in the People's Republic of China and exported during the indicated ninety-day period, in excess of the designated levels.

Walter C. Lenahan,  
Chairman, Committee for the Implementation of Textile Agreements.

December 30, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,  
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1958, as amended (7 U.S.C. 1854), pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 9, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 317, 435, 438 and 669, produced or manufactured in the People's Republic of China, and exported during the

ninety-day period which began on December 30, 1983 and extends through March 28, 1984, in excess of the indicated levels of restraint:

Category	90-day levels of restraint <sup>1</sup>
317.....	3,045,735 square yards.
435.....	6,051 dozen.
438.....	8,507 dozen.
669.....	500,234 pounds.

<sup>1</sup> The levels of restraint have not been adjusted to reflect any imports exported after December 29, 1983.

Textile products in Categories 317, 435, 438 and 669, which have been exported to the United States prior to December 30, 1983 shall not be subject to this directive.

Textile products in Categories 317, 435, 438 and 669, which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

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 19324), and December 14, 1983 (48 FR 55807).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of the People's Republic of China and with respect to imports of cotton, wool and man-made fiber textile products from the People's Republic of China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,  
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-370 Filed 1-5-84; 8:45 am]

BILLING CODE 3510-02-1

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1984; Addition

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 commodity to be produced by workshops for the blind and other severely handicapped.  
EFFECTIVE DATE: January 6, 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 July 22, 1983, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (48 FR 33513) of proposed addition to Procurement List 1984, October 18, 1983 (48 FR 48415).

After consideration of the relevant matter presented, the Committee has determined that the commodity 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:

- The action will not result in any additional reporting, recordkeeping or other compliance requirements.
- The action will not have a serious economic impact on any contractor for the commodity listed.
- The action will result in authorizing small entities to produce a commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1984:

Class 8115

Box, Shipping, Vertical Star Packs: 8115-00-192-1603, 8115-00-192-1604, 8115-00-192-1605

C. W. Fletcher,  
Executive Director.

[FR Doc. 84-340 Filed 1-5-84; 8:45 am]  
BILLING CODE 6920-33-M

#### Procurement List 1984; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1984 a commodity to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: February 8, 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:** This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1984, October 18, 1983 (48 FR 48415):

Class 8330

Shelter, Half, Tent, Complete: 8330-01-020-6936

SIC 7349

Janitorial Service, Federal Center South, 4735 E. Marginal Way, Seattle, Washington  
C. W. Fletcher,  
Executive Director.

[FR Doc. 84-330 Filed 1-5-84; 8:45 am]  
BILLING CODE 6920-33-M

#### DEPARTMENT OF EDUCATION

##### National Advisory Council on Indian Education; Meeting

**AGENCY:** National Advisory Council on Indian Education, Ed.

**ACTION:** Notice of closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Search Committee of the National Advisory Council on Indian Education. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

**DATE:** January 19-20, 1984.

**ADDRESS:** National Advisory Council on Indian Education, 425 13th Street NW., Suite 326, Washington D.C. 20004.

**FOR FURTHER INFORMATION CONTACT:** Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 425 13th Street NW., Suite 326, Washington D.C. 20004. 202/370-8882.

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under Section 441(a) of the Indian Education Act (Title IV of Pub. L. 92-318), through advising Congress, the Secretary of Education, the Under Secretary of Education and

the Assistant Secretary for Elementary and Secondary Education with regard to programs benefiting Indian Children and adults.

On January 19, 1984, from 9:00 A.M. until conclusion of business, the Search Committee will be reviewing personal credentials of the candidates to be interviewed for the position of Director, Indian Education Programs. On January 20, 1984, from 9:00 A.M. until conclusion of business, the Search Committee will be interviewing candidates for the position of Director, Indian Education Programs. The entire meeting of the Search Committee will be closed to the public. These interviews will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (b) of Section 552b(c) of Title 5 U.S.C.

The public is being given less than fifteen days notice of this meeting due to difficulty in arranging single interview times for all candidates.

A summary of the activities of the closed meeting and related matters which would be informative to the public consistent with the policy of Section 552b(c) of Title 5 U.S.C. will be available to the public within 14 days of the meeting at the Council's office, 425 13th Street, NW., Suite 326, Washington, D.C. 20004.

Dated: January 3, 1984. Signed at Washington, D.C.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 84-230 Filed 1-5-84; 8:45 am]  
BILLING CODE 4000-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59142; OTS-FRL-2500-7]

**Copolymer of Acrylic Acid with Alkyl Methacrylates and an Alkyl Acrylate; Premanufacture Exemption Application**

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

**ACTION:** Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA.

Requirements for test marketing exemption (Time) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting of the exemption.

**DATE:** Written comments by: January 23, 1984.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-59142]" and the specific TME number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Margaret Stasikowski, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, D.C. 20460.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

#### TME 84-17

*Close of Review Period.* February 2, 1984.

*Manufacturer.* Confidential.

*Chemical.* (G) Copolymer of acrylic acid with alkyl methacrylates and an alkyl acrylate.

*Use/Production.* (G) A dispersive use as an industrially applied coating. Prod. range: 2,000 kg/yr, 3 mos.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture and processing: dermal, a total of 15 workers, up to 2 hrs/da, up to 16 da/yr.

*Environmental Release/Disposal.* 3 kg/batch released to land. Disposal by incineration and approved landfill.

Dated: December 23, 1983

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-10 Filed 1-5-84; 8:45 am]

BILLING CODE 6520-50-11

[OPTS-51500; BH-FRL 2503-7]

#### Certain Chemicals; Premanufacture Notices

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

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-six PMNs and provides a summary of each.

**DATES:** Close of Review Period:

PMN 84-283, 84-284, 84-285, 84-286, 84-287, 84-288, 84-289 and 84-290—March 21, 1984.

PMN 84-291, 84-292, 84-293, 84-294, 84-295, 84-296, 84-297, 84-298, 84-299, 84-300, 84-301, 84-302, 84-303 and 84-304—March 26, 1984.

PMN 84-305, 84-306, 84-307 and 84-308—March 27, 1984.

Written comments by:

PMN 84-283, 84-284, 84-285, 84-286, 84-287, 84-288, 84-289 and 84-290—February 20, 1984.

PMN 84-291, 84-292, 84-293, 84-294, 84-295, 84-296, 84-297, 84-298, 84-299, 84-300, 84-301, 84-302, 84-303 and 84-304—February 25, 1984.

PMN 84-305, 84-306, 84-307 and 84-308—February 26, 1984.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-51500]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

**FOR FURTHER INFORMATION CONTACT:** Margaret Stasikowski, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received

by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-283

*Manufacturer.* E. I. du Pont de Nemours & Company, Inc.

*Chemical.* (G) Polymer of substituted alkyl acrylates.

*Use/Production.* (G) Fabric finish, industrial use, non-dispersive. Prod. range: 8,000-50,000 kg/yr.

*Toxicity Data.* No data on the PMN substance submitted.

*Exposure.* Manufacture: dermal, a total of 2 workers, up to 4 hrs/da, up to 100 da/yr.

*Environmental Release/Disposal.* 10 kg/batch released. Disposal by on-site waste water treatment.

PMN 84-284

*Manufacturer.* Confidential.

*Chemical.* (G) Mercapto carboxylic acid ester reaction product with olefin.

*Use/Production.* (G) Plastic additive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal.

*Environmental Release/Disposal.* No release.

PMN 84-285

*Manufacturer.* Confidential.

*Chemical.* (G) Methyl-oxo-ethyl-disubstituted heteromonocycle.

*Use/Production.* (G) Destructive use. Prod. range: Confidential.

*Toxicity Data.* No data on the PMN substance submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

PMN 84-286

*Importer.* Confidential.

*Chemical.* (G) 3-methyl substituted aliphatic nitrile.

*Use/Import.* (S) Industrial commercial, and consumer perfumery material for use in compounding of perfumes. Import range: Confidential.

*Toxicity Data.* Acute oral: > 10 ml/kg; Irritation: Skin—Slight to moderate, Eye—Slight to moderate; Ames Test: Non-mutagenic; Skin sensitization: Non-sensitizer.

*Exposure.* Import: dermal.

*Environmental Release/Disposal.* No release.

PMN 84-287

*Importer.* Confidential.

*Chemical.* (G) 3-methyl substituted aliphatic nitrile.

*Use/Import.* (S) Industrial, commercial, and consumer perfumery

material for use in compounding of perfumes. Import range: Confidential.

*Toxicity Data.* Acute oral: Between 2 and 5 ml/kg; Irritation: Skin—Slight to moderate, Eye—Slight to strong; Ames Test: Non-mutagenic; Skin sensitization: Non-sensitizer.

*Exposure.* Import: dermal.

*Environmental Release/Disposal.* No release.

**PMN 84-283**

*Importer.* Confidential.

*Chemical.* (G) 2-methyl substituted aliphatic nitrile.

*Use/Import.* (S) Industrial, commercial, and consumer perfumery material for use in compounding of perfumes. Import range: Confidential.

*Toxicity Data.* Acute oral: > 2 ml/kg; Irritation: Skin—Slight to moderate, Eye—Slight to moderate; Ames Test: Non-mutagenic; Skin sensitization: Weak sensitizer.

*Exposure.* Import: dermal.

*Environmental Release/Disposal.* No release.

**PMN 84-289**

*Manufacturer.* Shell Oil Company.

*Chemical.* (G) Alkylated onium salt, substituted sulfur compound, substituted sulfide.

*Use/Production.* (G) Catalyst for amine cured epoxy resins. Prod. range: Confidential.

*Toxicity Data.* 14 Day dermal application study—Severe irritation.

*Exposure.* Confidential.

*Environmental Release/Disposal.* 0.5–1.0 kg/day released to land. Disposal by incineration, landfill and navigable waterway.

**PMN 84-290**

*Manufacturer.* Confidential.

*Chemical.* (G) Reaction product of glycerin, ethylene oxide and hydrocarbyl halide.

*Use/Production.* (G) Reactive additive for plastic. Prod. range: Confidential.

*Toxicity Data.* Acute oral: > 5.0 gm/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Essentially non-irritant, Eye—Mild and transient; Inhalation: Slight; Skin sensitization: Negative.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-291**

*Manufacturer.* Confidential.

*Chemical.* (G) Reaction product of alkenylsuccinic anhydride and substituted alcohol.

*Use/Production.* (G) Destructive use. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.*

Release to land. Disposal by incineration and landfill.

**PMN 84-292**

*Manufacturer.* King Industries, Inc.

*Chemical.* (S) Naphthalene sulfonic acid, diisononyl-, compound with morpholine.

*Use/Production.* (S) Industrial catalyst for thermosetting coatings for metal surfaces. Prod. range: Confidential.

*Toxicity Data.* Acute oral: > 5.0 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Moderate, Eye—Severe; Inhalation LC<sub>50</sub>: 40.56 mg/1/hr.

*Exposure.* Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 12 da/yr.

*Environmental Release/Disposal.* 1 kg/batch released to land. Disposal by incineration and landfill.

**PMN 84-293**

*Manufacturer.* Confidential.

*Chemical.* (G) Di-alkyl methyl amine.

*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-294**

*Manufacturer.* Confidential.

*Chemical.* (S) 1-cyclopentylidene-4-ethoxycarbonylpiperazinium tetrafluoroborate.

*Use/Production.* (G) Chemical intermediate. Prod. range: 12–24 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: a total of 2 workers, up to 1.2 hrs/da, up to 8 da/yr.

*Environmental Release/Disposal.* Less than 0.1–0.8 kg/batch released into control technology only.

**PMN 84-295**

*Manufacturer.* Confidential.

*Chemical.* (G) Disubstituted piperazine salt.

*Use/Production.* (G) Chemical intermediate. Prod. range: 8–16 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, total of 2 workers, up to 0.8 hr/da, up to 9 da/yr.

*Environmental Release/Disposal.* 0.1 kg/batch released into control technology only.

**PMN 84-293**

*Manufacturer.* Confidential.

*Chemical.* (S) 2-methyl-3-(3-sulfopropyl)naphtho(2,3-d)thiazolium hydroxide inner salt.

*Use/Production.* (G) Chemical intermediate. Prod. range: 5–9 kg/yr.

*Toxicity Data.* No data on the PMN substance submitted.

*Exposure.* Manufacture: dermal, a total of 2 workers, up to 1.0 hr/da, up to 3 da/yr.

*Environmental Release/Disposal.* Less than 0.1–0.2 kg/batch released into control technology only.

**PMN 84-297**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane polymer.

*Use/Production.* (G) Non-dispersive formulation adhesive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-293**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane polymer.

*Use/Production.* (G) Non-dispersive formulation adhesive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-299**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane polymer.

*Use/Production.* (G) Non-dispersive formulation adhesive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-300**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane polymer.

*Use/Production.* (G) Non-dispersive formulation adhesive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-301**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane polymer.

*Use/Production.* (G) Non-dispersive formulation adhesive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-302**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane polymer.

*Use/Production.* (G) Non-dispersive formulation adhesive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

PMN 84-303

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane polymer.

*Use/Production.* (G) Non-dispersive formulation adhesive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

PMN 84-304

*Manufacturer.* Confidential.

*Chemical.* (G) Benzyl di-alkyl methyl quaternary ammonium chloride.

*Use/Production.* (G) Paint thickener.

Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

PMN 84-305

*Manufacturer.* The Dow Chemical Company.

*Chemical.* (S) 2-propenoic acid, 2-methyl-,2-(((1-methyl-propylidene)amino)oxy)carbonyl)amino ethyl ester.

*Use/Production.* (S) Industrial and commercial polymerizable blocked isocyanate for crosslinking in polymers. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal and inhalation, a total of < 16 workers, up to 2 hrs/da, up to 30 da/yr.

*Environmental Release/Disposal.* Confidential.

PMN 84-306

*Manufacturer.* The Dow Chemical Company.

*Chemical.* (S) Benzoic acid, 2-(((2-methyl-1-oxo-2-propenyl)oxy)ethyl)amino)carbonyl)oxy-, methyl ester.

*Use/Production.* (S) Industrial and commercial polymerizable blocked isocyanate for crosslinking in polymers. Prod. range: Confidential.

*Toxicity Data.* Acute oral. Moderate.

*Exposure.* Manufacture: dermal and inhalation, a total of < 16 workers, up to 2 hrs/da, up to 30 da/yr.

*Environmental Release/Disposal.* Confidential.

PMN 84-307

*Manufacturer.* The Dow Chemical Company.

*Chemical.* (S) 2-propenoic acid, 2-methyl-, 2-((hexahydro 2-oxo-1H-azepin-1-yl)carbonyl)amino)ethyl ester.

*Use/Production.* (S) Industrial and commercial polymerizable blocked isocyanate for crosslinking in polymers. Prod. range: Confidential.

*Toxicity Data.* Acute oral: > 5,000 mg/kg; Irritation: Skin—Slight to moderate, Eye—Moderate.

*Exposure.* Manufacture: dermal and inhalation, a total of < 16 workers, up to 2 hrs/da, up to 30 da/yr.

*Environmental Release/Disposal.* Confidential.

PMN 84-308

*Manufacturer.* Confidential.

*Chemical.* (G) Benzenamine, 2-substituted-4-[2-[5-substituted-2,3-dihydro-1,3,3-trialkyl-1H-indol-2-yl]ethenyl]-.

*Use/Production.* (G) Coating for commercial use article. Import range: Confidential.

*Toxicity Data.* No data on the PMN substance submitted.

*Exposure.* Import: a total of 15 workers.

*Environmental Release/Disposal.* 0.4 kg/batch released to land. Disposal by incineration and landfill.

Dated: December 30, 1983.

V. Paul Fuschini,  
Acting Director, Information Management Division.

[FR Doc. 84-327 Filed 1-5-84; 8:45 am]

BILLING CODE 6580-50-18

[OPTS-59143; BH-FRL 2503-8]

**Certain Chemicals; Premanufacture Exemption Applications**

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

**ACTION:** Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of five applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

**DATE:** Written comments by January 23, 1984.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-59143]" and the specific TME number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Margaret Stasikowski, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

**TME 84-18**

*Close of Review Period.* February 2, 1984.

*Manufacturer.* GasChem, Inc.

*Chemical.* (G) Castor oil polymer.

*Use/Production.* (S) Used for industrial applications. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal and inhalation, a total of 20-40 workers, up to 20 mins/da.

*Environmental Release/Disposal.* No release.

**TME 84-19**

*Close of Review Period.* February 5, 1984.

*Manufacturer.* American Hoechst Corporation.

*Chemical.* (S) Benzendiazonium, 2-methoxy-4-(phenylamino)-, sulfate

*Use/Production.* (S) Diazo photoresist produced to improve photospeed. Prod. range: < 1 kg.

*Toxicity Data.* No data on the TME substance submitted.

*Exposure.* Manufacture: inhalation, a total of 1 worker, less than 1/2 hr.

*Environmental Release/Disposal.* No release.

**TME 84-20**

*Manufacturer.* Confidential.

**Chemical.** (G) Further clarification needed before information can be released to the Public Files.

**Use/Production.** Confidential. Prod. range: Confidential.

**Toxicity Data.** No data on the TME substance submitted.

**Exposure.** Confidential.

**Environmental Release/Disposal.** Confidential.

#### TME 84-21

**Manufacturer.** Confidential.

**Chemical.** (G) Further clarification needed before information can be released to the Public Files.

**Use/Production.** Confidential. Prod. range: Confidential.

**Toxicity Data.** No data on the TME substance submitted.

**Exposure.** Confidential.

**Environmental Release/Disposal.** Confidential.

#### TME 84-22

**Manufacturer.** Confidential.

**Chemical.** (G) Further clarification needed before information can be released to the Public Files.

**Use/Production.** Confidential. Prod. range: Confidential.

**Toxicity Data.** No data on the TME substance submitted.

**Exposure.** Confidential.

**Environmental Release/Disposal.** Confidential.

Dated: December 30, 1983.

V. Paul Fuschini,

*Acting Director, Information Management Division.*

[FR Doc. 84-328 Filed 1-5-84; 8:45 am]

BILLING CODE 6560-50-11

#### [ER-FRL-2503-6]

**Availability of Environmental Impact Statements Filed December 27 Through December 30, 1983 Pursuant to 40 CFR 1506.9**

#### Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 830676, draft, EPA, MD, Parkway Wastewater Treatment Facilities, upgrading, grant, Prince Georges Co., due: Feb. 20, 1984.

EIS No. 830677, draft, AFS, APH, SEV, PRO, gypsy moth suppression and eradication projects, due: Feb. 25, 1984.

EIS No. 830678, report, COE, MI, Sault Ste. Marie Federal facilities, O/M, Soo Locks closure, Chippewa County.

EIS No. 830679, draft, SCS, TN, MS, Tuscumbia River watershed, flood control plan, due: Feb. 20, 1984.

EIS No. 830680, draft, EPA, MD, Western Branch WWT Facilities, upgrading, grant, Prince Georges County, due: Feb. 20, 1984.

EIS No. 830681, draft, FAA, WI, Austin Staebel Field Airport, runway ext., Brown Co., due: Feb. 20, 1984.

EIS No. 830682, draft, SCS, MO, IA, West Fork of Big Creek watershed, multipurpose and flood control plan, due: Feb. 20, 1984.

EIS No. 830683, draft, FHW, AL, Talladega Scenic Dr., completion, Bulls Gap to Piedmont, Talladega National Forest, due: Feb. 20, 1984.

EIS No. 830684, draft, DOE, MD, Brandon Shores Generating Station, units 1 & 2, coal conversion, prohibition orders, Anne Arundel Co., due: Feb. 20, 1984.

EIS No. 830685, final, BLM, NV, Wells Resource Area, multiple use resource mgmt. plan, Elko District, Elko Co., due: Feb. 2, 1984.

EIS No. 830686, draft, MMS, OR, CA, PAC, Gorda Ridge Area, polymetallic sulfide minerals, exploration, development and production, lease offering, due: Feb. 29, 1984.

EIS No. 830687, draft, EPA, WI, Geneva Lake Area WWT Facilities, const./upgrading/expansion, grant, Walworth County, due: Feb. 20, 1984.

#### Amended Notices

EIS No. 830630, final, CDB, MA, North Station urban renewal project, CDB grant, Suffolk Co., due: Jan. 23, 1984. Published FR 12-09-83—Review extended.

EIS No. 830652, final, COE, MS, Hattiesburg-Petal flood control, Leaf River, Forrest Co., due: Jan. 30, 1984. Published FR 12-23-84—Review period reestablished.

EIS No. 830666, final, AFS, AK, Alaska regional plan, standards/guidelines, due: Jan. 30, 1984. Published FR 12-30-83—incorrect due date.

Dated: January 3, 1984.

John Meagher,

*Acting Director, Office of Federal Activities.*

[FR Doc. 84-332 Filed 1-5-84; 8:45 am]

BILLING CODE 6500-50-11

#### FEDERAL COMMUNICATIONS COMMISSION

##### Industry Advisory Committee on Technical Standards for DBS Service; Subcommittee Meetings

There will be meetings of the three subcommittees of the Advisory Committee on DBS Standards, in January 1984. The pertinent information is as follows:

• **Encryption Standards:** Chairman—J. Krauss (301 258-8164) January 18, 1984

@ 10:00 AM RCA D. Sarnoff Research Center Princeton, New Jersey Lab Phone No.: (609) 734-2000.

• **Transmission Standards:** Chairman—J. Ramasastry (212 975-1727) January 19, 1984 @ 9:30 AM NBC-TV, 30 Rockefeller Plaza; NY, NY (6th Avenue at 48th Street) Room 930, (use studio elevators) (D. Musson, NBC, (212) 644-3546)

• **Receiver Standards:** Chairman—P. Heinerschold (612 642-4529) January 19, 1984 @ 2:00 PM NBC, 30 Rockefeller Plaza; NY, NY Room 930 (use studio elevators)

The general agenda for the three meetings is as follows:

1. Approval of minutes of previous meeting.
2. Approval of agenda.
3. Discussion of reports of working groups.
4. Other business.
5. Date of next meeting.

Those seeking further information may contact the above or Bruno Patten FCC/OST (202) 653-3093.

William J. Tricarico,  
*Secretary, Federal Communications Commission.*

[FR Doc. 84-340 Filed 1-5-84; 8:45 am]

BILLING CODE 6712-01-11

#### [Report No. 1439]

##### Petitions for Reconsideration of Actions in Rulemaking Proceedings

December 27, 1983.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

**Subject: Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor. (CC Docket No. 79-252)**

Filed by: Herbert E. Marks, Laurel R. Bergold & Diane J. Cornell, Attorneys for The State of Hawaii on 12-19-83. Lloyd D. Young, Regulatory Counsel for TRT Telecommunications Corporation on 12-19-83. F. Thomas Tuttle & Donald J. Elardo for Satellite Business Systems on 12-19-83. Randall B. Lowe, Attorney for Allnet Communications Services, Inc., on 12-19-83. Francine J. Berry & George Finkelstein, Attorneys for American Telephone and Telegraph Company on 12-19-83.

Subject: Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Cabo Rojo and Hormigueros, Puerto Rico). (BC Docket No. 82-729)

Filed by: Robert A. DePont, Attorney for David Ortiz Radio Corporation on 12-12-83.

William J. Tricarico,  
Secretary, Federal Communications  
Commission.

[FR Doc. 84-348 Filed 1-5-84; 8:45 am]  
BILLING CODE 6712-01-11

### TIAG Auditing and Regulatory Subcommittee Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a two day meeting of the Telecommunications Industry Advisory Group's (TIAG) Auditing and Regulatory Subcommittee scheduled to meet on Monday, January 23, 1984 and Tuesday, January 24, 1984. The meeting will be held at 10:00 a.m. in Room 1276, 12th Floor of Arthur Andersen & Co. offices located at 1345 Avenue of the Americas, New York, New York, and will be open to the public. The agenda is as follows:

- I. General Administrative Matters
- II. Discussion of Comments of Steering Committee on Tax Paper
- III. Comments on Proposed Tax Accounts
- IV. Presentation of Oral Statements
- V. Adjournment

With prior approval of Subcommittee Chairman Hugh A. Gower, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of the Subcommittee objectives. Anyone not a member of the Subcommittee and wishing to make an oral presentation should contact Mr. Gower (404/658-1776) at least five days prior to the meeting date.

William J. Tricarico,  
Secretary, Federal Communications  
Commission.

[FR Doc. 84-347 Filed 1-5-84; 8:45 am]  
BILLING CODE 6712-01-11

## FEDERAL MARITIME COMMISSION

### Filing and Approval of Agreement

The Federal Maritime Commission hereby gives notice that on December 23, 1983, the following agreement was filed with the Commission pursuant to section 15 of the Shipping Act, 1916, as amended by section 4 of the Maritime Labor Agreements Act of 1980, Pub. L. 96-325, 94 Stat. 1021, and was deemed

approved that date, to the extent it constitutes an assessment agreement as described in the fifth paragraph of section 15, Shipping Act, 1916.

Agreement No.: LM-81-2  
Title: Pacific Maritime Association Assessment Agreement  
Synopsis: This agreement amends the basis Agreement LM-81 (CFS Program Fund/Implementation Procedures). The amendment reflects certain changes in the method which provide for collection of container tonnage assessments based on container revenue units.

Filing agent: Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111

The Federal Maritime Commission hereby gives notice that on December 22, 1983, the following agreement was filed with the Commission pursuant to section 15 of the Shipping Act, 1916, as amended by section 4 of the Maritime Labor Agreements Act of 1980, Pub. L. 96-325, 94 Stat. 1021, and was deemed approved that date, to the extent it constitutes an assessment agreement as described in the fifth paragraph of section 15, Shipping Act, 1916.

Agreement No.: LM-84  
Title: Pacific Maritime Association Assessment Agreement  
Synopsis: Agreement No. LM-84 is an agreement among the members of Pacific Maritime Association concerning assessments to pay International Longshoremen's and Warehousemen's Union and Pacific Maritime Association Employee Benefit Costs.

Filing agent: Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111

By Order of the Federal Maritime Commission.

Dated: January 3, 1984.  
Francis C. Hurney,  
Secretary.  
[FR Doc. 84-325 Filed 1-5-84; 8:45 am]  
BILLING CODE 6730-01-11

### Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties

may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 57-131  
Title: Pacific Westbound Conference.  
Parties:

American President Lines, Ltd.  
Japan Line, Ltd.  
Kawasaki Kisen Kaisha, Ltd.  
Korea Marine Transport Co., Ltd.  
Mitsui O.S.K. Lines, Ltd.  
Moller-Maersk Line, A.P.  
Nippon Yusen Kaisha  
Orient Overseas Container Line, Inc.  
Sea-Land Service, Inc.  
Showa Line Ltd.  
United States Lines, Inc.  
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Agreement No. 57-131 would amend the basic agreement to clarify that the Chairman (who is not an Owners' representative and is therefore not included automatically as an ex officio member of the PWC Owners' Management Committee) is consistently treated on "such other permanent or ad hoc committees as Owners may from time to time establish".

Filing Party: R. Frederic Fisher, Esquire, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No.: 8900-23.  
Title: The 8900 Lines.  
Parties:

Barber Blue Sea Line  
Hellenic Lines Ltd.  
A.P. Moller-Maersk Line  
Nedlloyd Lines  
Sea-Land Service Inc.  
The National Shipping Company of Saudi Arabia  
United Arab Shipping Co.  
Waterman-Isthmian Line

Synopsis: The proposed amendment would enlarge the scope of the "8900" Lines Agreement so as to include cargo originating either at U.S. inland points or at U.S. Pacific coastal points and moving the Arabian Gulf ports and points, via Atlantic and Gulf coast ports already

served by the Agreement. This would provide the "8900" Lines with both "microbridge and minibridge authority."

Filing Party: Marc J. Fink, Esq., Billing, Sher & Jones, 2033 K Street—Suite 300, Washington, D.C. 20006.

By Order of the Federal Maritime Commission.

Dated: December 30, 1983.

Francis C. Hursey,  
Secretary.

[FR Doc. 84-294 Filed 1-5-84; 8:45 am]  
BILLING CODE 4730-01-02

## FEDERAL RESERVE SYSTEM

### Mercantile Texas Corp.; Acquisition of Bank Shares by a Bank Holding Company

Mercantile Texas Corporation, Dallas, Texas, has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to acquire Southwest Bancshares, Inc., Houston, Texas, and its banking subsidiaries: Bank of the Southwest, N.A., Houston, Texas; The First National Bank of Longview, Longview, Texas; The Village National Bank, Houston, Texas; Long Point National Bank, Houston, Texas; Continental National Bank of Fort Worth, Fort Worth, Texas; First Denton County National Bank, Denton, Texas; Bank of the Southwest, N.A., Brownsville, Texas; The First National Bank of Port Arthur, Port Arthur, Texas; Westchase National Bank, Houston, Texas; Westbury National Bank, Houston, Texas; Intercontinental Bank, N.A., Houston, Texas; Houston Southwest Bank, Houston, Texas; Arlington Bank of Commerce, Arlington, Texas; Citizens Bank, Irving, Texas; Baybrook National Bank, Friendswood, Texas; Gulf Freeway National Bank, Houston, Texas; Lewisville National Bank, Lewisville, Texas; Dallas Bank and Trust Company, Dallas, Texas; Century Bank and Trust Company, Garland, Texas; The Woodlands National Bank, The Woodlands, Texas; County National Bank of Orange, Orange, Texas; Bank of San Felipe Green, N.A., Houston, Texas; Texas Bank of Beaumont, Beaumont, Texas; American National Bank of Garland, Garland, Texas; Fort Worth Bank and Trust, Fort Worth, Texas; Mansfield State Bank, Mansfield, Texas; The First National Bank of Eules, Eules, Texas; Copperfield National Bank, Houston, Texas; The Mercantile National Bank of Corpus Christi, Corpus Christi, Texas; First Pasadena State Bank, Pasadena, Texas; Republic State Bank, Houston, Texas; Preston State Bank, Dallas,

Texas; Bank of the Southwest, N.A., Harlingen, Texas; The First National Bank of Brenham, Brenham, Texas; The Marshall National Bank, Marshall, Texas; Bank of the Southwest, N.A., Odessa, Texas; Westhollow National Bank, Houston, Texas; San Antonio Bank and Trust Company, San Antonio, Texas; and Bank of the Southwest, N.A., Las Colinas, Irving, Texas. In addition, Mercantile Southwest Financial Corporation, Dallas, Texas, a wholly-owned subsidiary of Mercantile Texas Corporation, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring all of the subsidiary banks of Mercantile Texas Corporation and Southwest Bancshares, Inc. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Mercantile Texas Corporation, Dallas, Texas, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Southwest Bancshares Life Insurance Company, Houston, Texas.

Applicant states that the proposed subsidiary would engage in the activities of underwriting credit life and credit accident and health insurance in connection with extensions of credit by Southwest Bancshares' subsidiary banks, and the geographic area to be served is the State of Texas. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., not later than January 27, 1984.

\* Board of Governors of the Federal Reserve System, December 30, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-324 Filed 1-5-84; 8:45 am]  
BILLING CODE 6210-01-01

### Nevada First Thrift and Nevada First Development Corp.; Formation of Bank Holding Companies

Nevada First Thrift, Reno, Nevada, and its subsidiary, Nevada First Development Corporation, Reno, Nevada, have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1642(a)(1)) to become bank holding companies by acquiring 93.7 percent of the voting shares of Nevada First Bank, Reno, Nevada, a proposed new bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1642(c)).

Nevada First Thrift and its subsidiary, Nevada First Development Corporation, have also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain certain nonbanking activities and the following nonbanking subsidiaries: Silver State Thrift and Loan Association, Reno, Nevada ("Silver State"), and Lori Insurance Company, Ltd., Grand Turk, Turks & Caicos Islands, British West Indies ("Lori").

Applicants state that these subsidiaries would engage in the following activities: Silver State would make loans for its own account, operate as a thrift company (an entity similar to an industrial loan company) in the manner authorized by Nevada law, perform the escrow agent activities that may be performed by a trust company, act as agent for the sale of credit life and credit health and accident insurance, and sell credit-related property insurance as permitted for finance company subsidiaries of bank holding companies; and Lori would engage in the activity of reinsuring credit life insurance. In addition, Applicant Nevada First Thrift would engage directly in all activities engaged

in by Silver State, and would also lease personal property where the lease is equivalent to an extension of credit and perform appraisals of real estate in support of credit requests. These activities would be performed from offices of Applicant Nevada First Thrift in Reno, Nevada, and from offices of Applicants' subsidiaries in Reno, Nevada, and Grand Turk, Turks and Caicos Islands, British West Indies. The geographic areas to be served are: by Applicant Nevada First Thrift and by Lori, the State of Nevada; and by Silver State, the Reno/Sparks, Nevada, Ranally Metropolitan Area. The above activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. not later than January 27, 1984.

Board of Governors of the Federal Reserve System, December 30, 1983.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 84-322, Filed 1-5-84; 8:45 am]

BILLING CODE 6210-01-M

### North Central Financial Corp., et al., Proposed de Novo Nonbank Activities by Bank Holding Companies

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and

§ 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *North Central Financial Corporation*, Emporium, Pennsylvania (data processing activities; Pennsylvania, New York): To engage, through its subsidiary, Provision Software Services, Inc., in the processing of financial, banking or economic data and the sale of related software programs for financial institutions, hospitals and local municipalities. This activity will take place in Emporium, Pennsylvania, serving the entire United States. Comments on this application must be received not later than January 30, 1984.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan (mortgage banking activities; Kentucky): To engage, through its subsidiary, NBD Mortgage Company, in mortgage banking activities, including the making and acquiring of mortgage loans for its own account and for the

account of others and such other extensions of credit as would be made by a mortgage company. These activities would be conducted from an office in Lexington, Kentucky, serving the State of Kentucky. Comments on this application must be received not later than January 25, 1984.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California (financing, leasing and servicing activities; United States): To engage through its subsidiary, Security Pacific Leasing Corporation in financing, leasing and servicing activities with respect to personal property and equipment and real property. These activities would be conducted from an office of Security Pacific Leasing Corporation located in Cincinnati, Ohio, serving the United States. Comments on this application must be received not later than January 30, 1984.

2. *Viejo Bancorp*, Mission Viejo, California (escrow activities; California): To engage through its subsidiary, Viejo Escrow Corporation, in providing services as an escrow agent in escrow transactions as permitted by Regulation Y (12 CFR 225.4(a)(4)). These activities will be conducted in Mission Viejo, California, and Viejo Escrow Corporation will serve the entire State of California. Comments on this application must be received not later than January 30, 1984.

Board of Governors of the Federal Reserve System, January 3, 1984.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 84-384 Filed 1-5-84; 8:45 am]

BILLING CODE 6210-01-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 December 30,

**Public Health Service****National Institutes of Health**

**Subject:** Audiovisual Selection-Acquisition Study—new

**Respondents:** Individuals  
**OMB Desk Officer:** Fay S. Iudicello

**Centers for Disease Control**

**Subject:** National Nosocomial Infections Study (0920-0012)—revision

**Respondents:** Hospitals  
**OMB Desk Officer:** Fay S. Iudicello

**Health Resources and Services Administration**

**Subject:** Health Education Assistance Loan Promissory Note (Variable and Fixed Rates)—existing collection

**Respondents:** Individuals, schools, and loan institutions  
**OMB Desk Officer:** Fay S. Iudicello

**Food and Drug Administration**

**Subject:** Request for Certification of an Insulin Batch—existing collection

**Respondents:** Businesses  
**Subject:** Use of Impact-Resistant Lenses in Eye-glasses and Sun-glasses—new

**Respondents:** Manufacturers of Impact-Resistant Lenses  
**OMB Desk Officer:** Bruce Artim

**Health Care Financing Administration**

**Subject:** 1984 Long-term Care Survey—new

**Respondents:** Likely candidates of long-term care

**Subject:** Demonstration Project for Calculating Adjusted Average Per Capita Costs (0938-0092)—extension/no change

**Respondents:** Nursing homes in project service areas

**Subject:** Clinical Social Workers Questionnaire—new

**Respondents:** A sample of clinical social workers

**OMB Desk Officer:** Fay S. Iudicello

**Office of Human Development Services**

**Subject:** Head Start Program Information Report (PIR) (0980-0017)—revision

**Respondents:** Head Start Programs  
**OMB Desk Officer:** Milo Sunderhauf

**Office of the Secretary**

**Subject:** Self-evaluation and Recordkeeping Required by the Regulation Implementing section 504 of the Rehabilitation Act of 1973 (45 CFR 84.6(c))—existing collection

**Respondents:** State and local governments, businesses, and not-for-profit institutions

**OMB Desk Officer:** Milo Sunderhauf

**Social Security Administration**

**Subject:** Statement of Death by Funeral Director (0980-0142)—revision

**Respondents:** Selective funeral directors

**Subject:** Statement for Determining Continuing Eligibility for supplemental Security Income Payments (SSA-8203)—new

**Respondents:** A sample of SSI recipients  
**OMB Desk Officer:** Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-8511.

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 Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: December 29, 1983.

Wallace O. Keene

*Acting Deputy Assistant Secretary for Management Analysis and Systems*

[FR Doc. 84-012 Filed 1-5-84; 8:45 am]

BILLING CODE 4160-04-11

**Food and Drug Administration**

[Docket No. 82F-0337]

**Air Products and Chemicals, Inc.; Withdrawal of Petition for Food Additive**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the withdrawal without prejudice of a petition (FAP 2B3660) proposing that the food additive regulations be amended to provide for the safe use of the ethylene oxide adduct of 2,4,7,9-tetramethyl-5-decyn-4,7-diol as an adjuvant in paper and paperboard for food contact.

**FOR FURTHER INFORMATION CONTACT:** James H. Maryanski, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued.

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Air Products and Chemicals, Inc., Box 353, Allentown, PA 18105, has withdrawn its petition (FAP 2B3660), notice of which was published in the Federal Register of December 3, 1982 (47 FR 54547).

December 27, 1983.

Richard J. Ronk,

*Acting Director, Bureau of Foods.*

[FR Doc. 84-012 Filed 1-5-84; 8:45 am]

BILLING CODE 4160-01-11

[Docket No. 83C-0310]

**Paragon Optical, Inc.; Amended Filing of Color Additive Petition**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the notice of filing of a Paragon Optical, Inc., petition proposing that the color additive regulations be amended to provide for the safe use of D&C Red No. 17 for coloring contact lenses. This notice announces that the petition also proposes that the color additive regulations be amended to provide for the safe use of D&C Yellow No. 10.

**FOR FURTHER INFORMATION CONTACT:** Mary W. Lipien, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202-472-5740.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 703(d), 74 Stat. 402-403 (21 U.S.C. 376(d))), notice was given in the Federal Register of October 21, 1983 (48 FR 48870) that a petition (CAP 3C0162) had been filed by Paragon Optical, Inc., Mesa, AZ 85201, proposing that the color additive regulations be amended to provide for the safe use of D&C Red No. 17 for coloring contact lenses. Notice is now given that the petition proposes that the color additive regulations be amended to provide for the safe use of D&C Yellow No. 10, in addition to D&C Red No. 17 for coloring contact lenses.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The Agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 27, 1983.

Richard J. Ronk,

*Acting Director, Bureau of Foods.*

[FR Doc. 84-012 Filed 1-5-84; 8:45 am]

BILLING CODE 4160-01-11

**Public Health Service****National Toxicology Program, Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation; Meeting**

Notice is hereby given of a meeting of the Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation, National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, to be held on January 13, 1984, Hubert Humphrey Building, Room 337-339A, 200 Independence Avenue, S.W., Washington, D.C. The meeting will begin at 9:00 a.m. and end at approximately 4:00 p.m.

The meeting will be held to review the progress of the Ad Hoc Panel's preliminary draft report, to remove duplication as necessary, and to generally prepare the report for public distribution. No public comments will be taken at this meeting nor will any documents be distributed.

Due to an administrative oversight, this meeting was not published in the Federal Register for the full 15-day period normally required. Therefore, a copy of this notice has been mailed to everyone on the Ad Hoc Panel Mailing List. Attendance is limited only by space available. For further information regarding the meeting, please contact the Panel Secretary, Ms. Riley, at the address below or telephone 919-541-7621 or FTS 629-7621. The official Government representative for this meeting will be Dr. David P. Rall, NTP. Dr. John Doull Chairman, Ad Hoc Panel on Chemical Carcinogenesis Testing & Evaluation, c/o Ms. Janet Riley, Secretary to the Panel, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

Dated: January 4, 1984.

David P. Rall,  
Director, National Toxicology Program.

[FR Doc. 84-524 Filed 1-5-84; 10:57 am]

BILLING CODE 4140-01-M

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. D-83-722; FR-1836]

**Office of the Manager, New Orleans Office; Designation**

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of order of succession.

**SUMMARY:** The Manager is designating officials who may serve as Acting Manager during the absence, disability,

or vacancy in the position of the Manager.

**EFFECTIVE DATE:** This designation is effective September 8, 1983.

**FOR FURTHER INFORMATION CONTACT:** Ann Hallan, Chief, Management and Budget Branch, Comptroller Division, Office of Administration, Fort Worth Regional Office, Department of Housing and Urban Development, 221 W. Lancaster, P.O. Box 2905, Fort Worth, Texas 76113, Telephone (817) 870-5451 (this is not a toll-free number).

**Designation**

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager;
  2. Director, Community Planning and Development Division;
  3. Chief, Counsel;
  4. Director, Housing Development Division;
  5. Director, Housing Management Division;
  6. Director, Fair Housing and Equal Opportunity Division; and
  7. Director, Administrative Division.
- This designation supersedes the designation effective July 13, 1983.

**Authority:** Delegation of Authority by the Secretary effective October 1, 1970; 36 FR 3389, February 23, 1971.

Richard J. Franco,  
Manager, New Orleans Office.

Dick Eudaly,  
Regional Administrator—Regional Housing Commissioner, Region VI.

[FR Doc. 84-378 Filed 1-5-84; 8:45 am]  
BILLING CODE 4210-32-M

**Office of the Secretary**

[Docket No. D-83-721; FR-1909]

**Delegation of Concurrent Authority to the General Deputy Assistant Secretary for Public and Indian Housing**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Delegation of concurrent authority.

**SUMMARY:** The Secretary of Housing and Urban Development is delegating to the General Deputy Assistant Secretary for

Public and Indian Housing all authority vested in the position of Assistant Secretary for Public and Indian Housing.  
**EFFECTIVE DATE:** December 30, 1983.

**FOR FURTHER INFORMATION CONTACT:** David D. White, Assistant General Counsel for Administrative Law, Room 10254, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-7137. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** The Secretary of Housing and Urban Development recently established within the Department a new position of Assistant Secretary for Public and Indian Housing to carry out the Department's programs relating to public housing and Indian housing. On September 7, 1983, the Secretary of the Department delegated to the Assistant Secretary for Public and Indian Housing all authority necessary to carry out the responsibilities of the Office. (See the Delegation of Authority published in the Federal Register on September 13, 1983, 48 FR 41097.)

In the Delegation of Authority issued today, the Secretary is delegating concurrent authority for implementation of the Department's public housing and Indian housing programs to the General Deputy Assistant Secretary for Public and Indian Housing.

The General Deputy Assistant Secretary for Public and Indian Housing is hereby delegated, concurrently with the Assistant Secretary for Public and Indian Housing, all authority currently delegated to the Assistant Secretary for Public and Indian Housing.

**Authority:** Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 30, 1983.

Samuel R. Pierce, Jr.,  
Secretary, Department of Housing and Urban Development.

[FR Doc. 84-377 Filed 1-5-84; 8:45 am]  
BILLING CODE 4210-32-M

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Irrigation Operation and Maintenance Charges; Water Charges and Related Information on the Wapato Irrigation Project, Washington**

This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant

Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 171.1(e) of Part 171, Subchapter I, Chapter I, of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information on the Wapato Irrigation Project for Calendar Year 1984 and subsequent years. This notice is proposed pursuant to the authority contained in the Acts of August 1, 1914 (38 Stat. 583) and March 7, 1938 (45 Stat. 210).

The purpose of this notice is to announce an increase in the assessment rates commensurate with actual operation and maintenance costs on the Wapato Irrigation Project. The proposed assessment increases for 1984 amount to \$2.00 per acre on the Wapato-Status Unit and \$0.75 per acre on the Ahtanum and Toppenish-Simcoe Units.

The public is welcome to participate in the rule making process of the Department of the Interior. Accordingly, interested persons may submit written comments, views or arguments with respect to the proposed rates and related regulations to the Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, within 30 calendar days of this publication.

**Wapato Irrigation Project—General**

The Wapato Irrigation Project, which consists of the Ahtanum Unit, Toppenish-Simcoe Unit, and Wapato-Status Unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in Part 171, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations (42 FR 30362, June 14, 1977).

**Irrigation Season**

Water will be available for irrigation purposes from April 1 to September 30 each year. These dates may be varied as much as 20 days when weather conditions and the necessity for doing maintenance work warrants doing so.

**Request for Water Delivery and Changes**

Requests for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be

made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules. Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

**Time for Payment of Water Charges**

The assessments fixed by these regulations shall become due April 1 of each year and are payable on or before that date. To all charges assessed against lands in patent in fee ownership, and those paid by lessees of Indian lands direct to the project office, remaining unpaid on July 1 following the due date, there shall be added a penalty of one and one-half percent for each month, or fraction thereof, from the due date until the charges are paid.

**Charges for Special Services**

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1984 and subsequent years until further notice, as detailed below:

- (1) Requests for Irrigation Accounts and Status Reports, Per Report..... \$15.00
- (2) Requests for Verification of Account Delinquency Status, Per report..... 10.00
- (3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee), Per Bill..... 10.00
- (4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill..... 10.00
- (5) Requests for Other Special Services Similar to the above, when appropriate, Per Report..... 10.00
- (6) Requests for elimination of lands from the Project:  
In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee..... (10.00)

**Ahtanum Unit Charges**

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1984 and subsequent years until further notice, is fixed at \$7.00 per acre per annum for

land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a billing charge of \$5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus \$5. A one acre charge shall be levied on all tracts of less than one acre.

**Toppenish-Simcoe Unit**

**Charges**

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1984 and subsequent years until further notice, is fixed at \$7.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(b) In addition to the foregoing charges there shall be collected a billing charge of \$5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus \$5. A one acre charge shall be levied on all tracts of less than one acre.

**Wapato-Status Unit**

**Charges**

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Status Unit are fixed for the Calendar Year 1984 and subsequent years until further notice as follows:

- (1) Minimum charge for all tracts..... \$22.50
- (2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works Lands ..... 22.50
- (3) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre ..... 2.20
- (4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works Lands..... 23.00

(b) In addition to the foregoing charges there shall be collected a billing charge of \$5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus \$5. A one acre charge shall be levied against all tracts of less than one acre.

**Assessable Lands**

The assessable lands of the Wapato-Status Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior, except land which has never been cultivated if in the opinion of the Project Engineer the cost of preparing such land for irrigation is so high as to preclude its being leased at this time for agricultural purposes.

(b) All Indian trust (A or B) land not designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on land that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer.

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

Jack Hunt,

Area Director.

[FR Doc. 84-203 Filed 1-5-84; 8:45 am]

BILLING CODE 4310-02-M

#### Sault Ste. Marie Indian Reservation, Michigan; Addition of Land to the Sault Ste. Marie Indian Reservation

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. On December 20, 1983, pursuant to the authority contained in Section 7 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the following described land, located in Chippewa County, Michigan, was added to and made a part of the Sault Ste. Marie Indian Reservation for the exclusive use of Indians entitled by enrollment or by tribal membership to residence on such reservation.

That part of the N $\frac{1}{2}$  of Section 16, Township 47 North, Range 1 East, lying West of the Methodist Mission Reserve, and That part of the N $\frac{1}{2}$ SW $\frac{1}{4}$ , of Section 16, Township 47 North, Range 1 East, lying West of the Methodist Mission Reserve.

Subject to all valid existing easements, reservations, and rights-of-way of record.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-209 Filed 1-5-84; 8:45 am]

BILLING CODE 4310-02-M

#### Bureau of Land Management

[A 9052]

#### Arizona; Conveyance of Public Land

December 27, 1983.

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 208 of the Federal Land Policy and Management Act of 1976 in exchange for privately owned land. The land transferred to private ownership is described as:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 21 W.,

Sec. 14, lots 3, 6, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ N $\frac{1}{2}$ S  
W $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ ,

Comprising 212.74 acres in Mohave County.

Land acquired by the United States is described as:

T. 12 N., R. 19 W.,

Sec. 4, SW $\frac{3}{4}$ ,

Sec. 11, N $\frac{1}{2}$ ,

Comprising 439 acres in Mohave County.

The exchange was based on equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and acquisition of private land by the Federal Government.

The land acquired by the Federal Government in this exchange will not be opened to acquisition or entry unless and until an appropriate opening order is issued by the Bureau of Land Management authorized officer.

Mario L. Lopez,  
Chief, Branch of Lands and Minerals  
Operations.

[FR Doc. 84-316 Filed 1-5-84; 8:45 am]

BILLING CODE 4210-32-M

#### Surprise Resource Area, Susanville, District Office, California; Completion of Land Use Plan Amendment

The Susanville District, Surprise Resource Area has completed the amendment of the Land Use Plans for 1.5 million acres of public land in the Surprise Resource area. The Surprise Resource Area is located in northeastern California in Lassen and Modoc Counties and in northwestern Nevada in Washoe and Humboldt Counties. The majority of the lands are well blocked and occur primarily around the communities of Cedarville, Eagleville, Lake City, and Fort Bidwell.

Decisions

#### Tuledad/Home Camp MFP

1. Amend the Tuledad/Home Camp MFP III to contain the following:

"Designate 2,059 acres of public land as potentially suitable for disposal and consider an additional 280 acres as potentially suitable for disposal if the public sector indicates that there is an interest for these parcels at fair market value. An additional 530 acres will be deferred from consideration for disposal until monitoring by the Nevada Department of Wildlife determines the value of these lands for migrating antelope. If they do serve migrating antelope they will not be considered potentially suitable for disposal, but if they are not used by antelope they will be designated as potentially suitable for disposal."

2. Continue with present grazing management systems in Selic and Alaska Canyons that are providing protection and improvement to crucial aspen, riparian, and mountain brush fields. (Replaces existing MFP Range Management Decision Number 4.)

#### Cowhead/Massacre MFP

1. Amend the Cowhead/Massacre MFP III to contain the following:

"Designate 2,080 acres of public land in Subunits 3 and 4 as potentially suitable for disposal and consider an additional 960 acres as potentially suitable for disposal if the public sector indicates that there is an interest for these parcels at fair market value."

2. Combine the Little High Rock and Massacre Mountain Allotments into one allotment, hereafter to be referred to as the Grassy Canyon Allotment. (Existing decision being effected Subunit 1, Decision Number 2.)

3. Allocate forage among both consumptive and nonconsumptive resources, as shown in Table A. Forage Allocation for Subunit 1. As additional forage becomes available as determined by monitoring, allocations will be made to livestock, wildlife, and nonconsumptive uses for the area west of High Rock Canyon. Allocations will only be made to wildlife and nonconsumptive uses for the canyon bottoms and east of the canyon. (Existing decisions to be effected Subunit 1, Decision Number 3.)

4. Allow for a change in class of livestock from sheep to cattle in the entire subunit. Allow livestock to graze west of High Rock Canyon and north of Little High Rock Canyon and designate this area for intensive livestock grazing. Allow cattle to graze in the canyon bottoms and east of High Rock Canyon on a prescriptive basis only. (Grazing will be scheduled when it provides a benefit to other resource values. This area will not be grazed on an annual or

regular basis. Existing decision to be effected Subunit 1, Decision Number 4.)

5. Drop decision giving preference to Bunyard's livestock operation over Earp's livestock operation. (Existing decision to be effected, General Decisions, Decision Number 1.)

6. Designate High Rock and Little High Rock Canyon proper as a special management area (ACEC). (New decision.)

7. Modify the Massacre Lakes Wild Horse Herd Management Area to include Sagehen Allotment. Maintain a total population of 10 to 20 horses in the Massacre Lakes HMA. (Decision being effected Subunit 2, Decision Number 15.)

8. Combine Mosquito, Little Valley and Holy Allotments into one allotment hereafter to be called the Mosquito Valley Allotment. Also, include a portion (equal to satisfy Leininger's proportionate share of AUMs) of Horse Lake Allotment to be fenced in and be a park of the Mosquito Valley Allotment. (New decision.)

For further information regarding the decisions, contact: Lee Delaney, Area Manager, Surprise Resource Area, P.O. Box 460, Cedarville, California 96104.

#### Supplementary Information

The amendment process was started with the publication of the Notice of Intent in the January 27, 1983 Federal Register. The Notice of Availability to review planning criteria was published in the April 28, 1983 issue of the Federal Register. A public meeting was held on February 15, 1983 in Cedarville.

The decisions will be implemented 30 days after this date of publication with the exception of the ACEC decision. This decision will be implemented 60 days after this date of publication.

Protests to these plan amendment decisions will be accepted up to 30 days after this date of publication.

All parts of this plan amendment may be protested. Protests should be sent to the Director, Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240, prior to the end of the 30-day protest period, and should include the following information.

—The name, mailing address, telephone number, and interest of the person filing the protest

—A Statement of the issue or issues being protested.

—A Statement of the part or parts being protested.

—A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records

—A short concise statement explaining why the BLM State Director's proposed decision (Preferred Alternative) is wrong.

C. Rex Cleary,  
Susanville District Manager.

(FR Doc. 84-27) Filed 1-5-84; 8:45 am)  
BILLING CODE 4310-C4-11

#### Intent to Prepare an Environmental Impact Statement and Conduct Mail-Out Scoping; Shute Creek Natural Gas Treatment Plant

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Prepare an environmental impact statement (EIS) and conduct mail-out scoping on the construction and operation of a carbon dioxide (CO<sub>2</sub>) pipeline from Exxon's proposed Shute Creek natural gas treatment plant site near Opal, Wyoming, to Chevron's Rangely Unit oil field near Rangely, Colorado. The CO<sub>2</sub> would be used for tertiary oil recovery. Oil recovery is not expected to be part of the action under analysis.

The pipeline and associated ancillary facilities would pass through Sweetwater and Lincoln Counties, Wyoming; Moffat and Rio Blanco Counties, Colorado; and Dagget and Uintah Counties, Utah.

SUMMARY: This notice describes the action to be analyzed in the EIS; the geographic area that would be affected; the preliminary list of issues and concerns; the scoping process to be used; the locations of offices that have information for public review, both during and at the completion of the process; and the BLM contact for further information.

The action to be analyzed in the EIS consists of the construction and operation of a 180-mile-long, 16-inch diameter CO<sub>2</sub> pipeline. The CO<sub>2</sub> would be produced as a by-product in the natural gas treatment plant proposed for construction by Exxon, and would be carried to Chevron's Rangely Unit oil field, where it would be injected into the oil-bearing strata for tertiary oil recovery. Ancillary facilities would include block valves, a metering terminal, four to seven microwave repeater stations for communications, and a booster pump station near Rock Springs and another in the Rangely Unit oil field. Exxon's proposed natural gas treatment plant is the Shute Creek plant site analyzed in the Riley Ridge Natural Gas Project EIS, Draft and Final, 1983.

BLM will be preparing the EIS on the Rangely CO<sub>2</sub> Pipeline Project. Other

agencies have been queried as to their interest in becoming cooperating agencies.

**Geographic Area:** The geographic area to be analyzed for effects is generally in southwest Wyoming, northeast Utah, and northwest Colorado. A CO<sub>2</sub> pipeline would extend 180 miles from the proposed Exxon natural gas treatment plant near Opal, Wyoming, past Rock Springs, to Rangely, Colorado. Alternate routes would be in the same general vicinity. The proposed and alternate routes would be located in Lincoln and Sweetwater Counties in Wyoming, Dagget and Uintah Counties in Utah, and in Moffat and Rio Blanco Counties in Colorado. Regional and cumulative impacts may extend somewhat beyond these geographic areas.

**Issues and Concerns:** The following important issues and concerns have been identified to date:

1. Tight construction areas, including Jesse Ewing Canyon, Red Creek Escarpment, and the head of Rye Grass Draw.

**DATES:** The scoping packets will be available after December 27, 1983. Responses and comments will be accepted through January 18, 1984.

The packet is being mailed to interested persons selected in part, from the mailing lists for the Chevron Phosphate Pipeline and the Riley Ridge Natural Gas Project Draft EISs.

**ADDRESSES:** Information and scoping mail-out packets for the proposed CO<sub>2</sub> pipeline and the EIS can be obtained by writing or visiting the following offices:

BLM, Wyoming State Office, 2515 Warren Avenue, P. O. Box 1828, Cheyenne, Wyoming 82003;

BLM, Rock Springs District Office, P. O. Box 1869 Rock Springs, Wyoming 82301-1869;

BLM, Big Sandy/Salt Wells Resource Areas, P. O. Box 1170, 79 Winston Drive, Gateway Building, Rock Springs, Wyoming 82802-1170;

BLM, Kemmerer Resource Area, P. O. Box 632, Kemmerer, Wyoming 83101;

BLM, Utah State Office, University Club Building, 138 East South Temple, Salt Lake City, Utah 84111;

BLM, Vernal District Office, 170 South 500 East, Vernal, Utah 84078;

2. The sensitivity of the Red Creek Badlands Area of Critical Environmental Concern to potential impact.

3. Three crossings of the Green River.

4. The concept of yet another pipeline in the corridors.

5. The economic and social impact of construction on the communities near the proposed and alternative pipeline

routes and cumulative impacts due to interrelationships with other planned or proposed actions.

6. Potential impacts to wildlife and habitat, to recreation, to visual resources, and to land uses.

7. Potential impacts form unauthorized, unregulated occupancy of public lands outside the community (i.e. unauthorized camping, camping on livestock waters, littering, etc).

8. Historical trail crossings and cultural resource impacts.

9. Potential impacts to Trona mining operations.

10. Potential impacts to livestock trailing and wildlife migration due to pipeline trench openings.

The public is encouraged to present their ideas and views on these and other issues and concerns. All issues and concerns will be considered in preparing the EIS.

The scoping process used to collect issues and concerns on the proposed activities will involve a mail-out packet, which individuals may request, fill out, and return to the BLM Division of EIS Services at the following address: BLM Division of EIS Services, 555 Zang Street, First Floor East, Denver, Colorado 80228. Attention: Janis VanWyhe, Project Leader.

BLM, Colorado State Office, 1037 20th Street, Denver, Colorado 80202;

BLM, Craig District Office, P. O. Box 248, Craig, Colorado 81625; and

BLM, White River Resource Area, P. O. Box 928, Meeker, Colorado 8164.

Scoping comments should be sent to the BLM Division of EIS Services office in Denver.

**FOR FURTHER INFORMATION CONTACT:** Janis VanWyhe, Bureau of Land Management, Division of EIS Services, 555 Zang Street, First Floor East, Denver, Colorado 80228.

If at any time during the EIS process, any person wishing to raise issues for consideration in the EIS he/she should feel free to do so by contacting any of the above BLM offices.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 84-257 Filed 1-5-84; 8:45 am]

BILLING CODE 4310-22-M

[Colorado 35522]

#### Proposed Reinstatement; Colorado

Notice is hereby given that a petition for reinstatement of oil and gas lease C-35522 for lands in Huerfano County, Colorado was timely filed and was accompanied by all the required rentals and royalties accruing from October 1, 1983, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$5.00 and 16% percent, respectively.

The lessee has paid the required \$500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Minerals Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective October 1, 1983, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Barbara Benz of the Colorado State Office at (303) 837-5551. Evelyn W. Axelson, Acting Chief, Mineral Leasing Section.

[FR Doc. 84-298 Filed 1-5-84; 8:45 am]

BILLING CODE 4310-22-M

#### Worland District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 91-463, Pub. L. 94-579, Pub. L. 95-514, and 43 CFR Part 1780, that a meeting of the Worland District Advisory Council will be held on February 15, 1984, at 9:30 a.m. Agenda for the meeting will include the following:

1. Introduction and Opening Comments.
2. Cooperative Management Agreements.
3. Outfitter Permits.
4. Status of the BLM/Minerals Management Merger Service (MMS) merger.
5. North Fork Well EIS and the environmental review of the Dick Creek oil and gas development proposal.
6. Westside Irrigation Project Proposal.
7. Known Geologic Structures Project.
8. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:30 a.m. and 12 noon, or file written statements for the Council's consideration. Anyone wanting to make an oral statement must notify the District Manager by February 10, 1984. Depending on the number of persons wanting to make oral statements, a per-person limit may be established.

**DATE:** February 15, 1984.

**ADDRESS:** Bureau of Land Management Office, Conference Room, 1700 Robertson Avenue, Worland, Wyoming 82401.

**FOR FURTHER INFORMATION CONTACT:** Ed Fisk, Associate District Manager, Bureau of Land Management, 1700 Robertson Avenue, Worland, Wyoming 82401 (307/347-6151).

**SUPPLEMENTARY INFORMATION:** Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Chester E. Conard,  
District Manager.

[FR Doc. 84-252 Filed 1-5-84; 8:45 am]

BILLING CODE 4310-22-M

[W-69372; W-78858]

#### Wyoming; Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, Section 3108-2-1(c), and Pub. L. 97-451, petitions for reinstatement of oil and gas lease W-69372 for lands in Johnson County, Wyoming, and oil and gas lease W-78858 for lands in Johnson County, Wyoming, were timely filed and accompanied by all the required rentals accruing from the dates of termination. The lessees have agreed to new lease terms for rentals and royalties at rates of \$5.00 per acre, and 16% percent, respectively.

The lessees have paid the required \$500.00 administrative fee and will reimburse the Department for the cost of this Federal Register notice. The lessees having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W-69372 effective November 1, 1982, lease W-78858 effective November 1, 1983, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Harold G. Stinchcomb,  
Chief, Branch of Fluid Minerals.

[FR Doc. 84-297 Filed 1-5-84; 8:45 am]

BILLING CODE 4310-22-M

II-19869, I-19870, I-19875]

**Realty Action, Sale of Public Lands in Power County Idaho**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following lands have been examined and, through land use planning which included public input, it has been determined that the sale of these parcels is consistent with section 203(a)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA). None of the parcels are presently available for livestock grazing; therefore, no cancellation of grazing preference is required under the regulations in 43 CFR 4110.4-2(a). The lands will be offered for sale using competitive and modified competitive bidding procedures (43 CFR 2711.3-1,2) for no less than the

appraised fair market value. Any bids for less than such value will be rejected as required by FLPMA. The appraised fair market value will be available upon request from the Burley BLM District Office. Only sealed bids will be accepted. A bid will also constitute an application for conveyance of the mineral rights, except oil and gas. The mineral interests being offered for conveyance have no known monetary value. Each bidder must submit a fifty dollar (\$50) non-returnable filing fee for the mineral conveyance (43 CFR 2720.1-2(c) and one-fifth of the full bid price (43 CFR 2711.3-1(d)), with the bid. Failure to deposit these sums will result in disqualification as the high bidder. The authorized officer shall then determine whether to accept the next highest bid, withdraw the public lands from the market or re-offer them for sale at a later date.

**BOISE MERIDIAN, IDAHO**

Name	Legal description	Acres	Type of Bidding
Parcel I-19869 (Bradley Mountain)	T. 10 S., R. 34 E., Sec. 3, lot 1	29.03	Modified
Parcel I-19870 (Boundary)	T. 7 S., R. 32 E., Sec. 29, lot 4; Sec. 32, lot 1	65.03	Competitive
Parcel I-19875 (G.K.)	T. 8 S., R. 32 E., Sec. 8, NE 1/4 NW 1/4	49.03	Modified

On parcel I-19869 the bidding will be modified to allow only designated bidders the right to bid. This right is offered to prevent inequities to adjoining landowners. The designated bidders for parcel I-19869 are George Bradley of Arbon, Idaho, John McNabb of Pocatello, Idaho, and the Marsh Valley Cattle Corporation of Arimo, Idaho.

On parcel I-19875 the bidding will be modified to allow a designated bidder the right to meet the high bid. This right is offered to protect existing uses and prevent inequities to adjoining landowners. The designated bidder on I-19875 is George Kopp of American Falls, Idaho.

The patents when issued will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed under the act of August 30, 1890 (43 U.S.C. 945).
2. All oil and gas rights (43 U.S.C. 1719).

In addition, the patents will be subject to the following conditions:

1. All valid existing rights and reservations of record.

The patent for parcel I-19870 will also contain the following condition:

2. A 60 foot (30 feet each side of center) road right-of-way to Power County for the road crossing Lot 1 of Section 32, T. 7 S., R. 32 E., B.M. as shown on the 1971 Wheatgrass Bench,

Idaho 7.1 Minute Quadrangle published by the U.S. Geologic Survey.

**DATE:** All sealed bids must be received by 1:30 p.m. on March 21, 1984. At this time all bids will be opened at the Burley District Office.

**ADDRESSES:** Sealed bids will be accepted at the Burley District Office, Rt. 3, Box 1, 200 South Oakley Highway, Burley, Idaho, 83318. Additional information concerning the land, terms and conditions of the sale, and bidding instructions may be obtained from Curt Krambeer, Deep Creek Realty Specialist, at the above address, or by calling (203) 678-5514.

**SUPPLEMENTARY INFORMATION:** For a period of 45 days from the date of this notice, interested parties may submit comments regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sales would not be fully consistent with sec. 203(g) of FLPMA or other applicable laws.

Dated: December 23, 1983.

Ronnie Y. Yokota,  
*Acting District Manager.*  
(FR Doc. 84-319 Filed 1-5-84; 8:45 am)  
CALLING CODE 4310-CC-11

[N-39784, N-39785, N-39786]

**Nevada; Conveyance**

December 27, 1983.

Notice is hereby given that, pursuant to the Act of December 23, 1930 (94 Stat. 3381; 43 U.S.C. 1761), Foothill Investment Company, Las Vegas, Nevada, has purchased, by competitive sale, public lands in Clark County described as:

Mount Diablo Meridian, Nevada  
T. 29 S., R. 69 E.,  
Sec. 27, NE 1/4 SE 1/4 SW 1/4, SW 1/4 NW 1/4 SW 1/4 SE 1/4, NW 1/4 SW 1/4 SW 1/4 SE 1/4.

Containing 7.5 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the issuance of a conveyance document to Foothill Investment Company.

Wm. J. Malencik,  
*Deputy State Director, Operations.*  
(FR Doc. 84-323 Filed 1-5-84; 8:45 am)  
CALLING CODE 4310-RC-11

[A-18932]

**Arizona; Conveyance**

December 30, 1983.

Notice is hereby given that the following described land has been sold pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of 1976 for \$57,050 at public auction held at Prescott, Arizona, on September 29, 1983.

Gila and Salt River Meridian, Arizona

T. 11 N., R. 2 E.,  
Sec. 9, NE 1/4 SE 1/4.

Comprising 40 acres in Yavapai County.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of the land out of Federal ownership.

Mario L. Lopez,  
*Chief, Branch of Lands and Minerals Operations.*  
(FR Doc. 84-322 Filed 1-5-84; 8:45 am)  
CALLING CODE 4210-32-11

**Battle Mountain District Grazing Advisory Board; Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Grazing Advisory Board meeting.

**SUMMARY:** In accordance with Pub. L. 94-579, a meeting of the Battle Mountain District Grazing Advisory Board will be held.

**DATE:** February 15, 1984, begin at 9:00 a.m. in the Battle Mountain District Office conference room at North 2nd and Scott Streets, Battle Mountain, Nevada.

**FOR FURTHER INFORMATION CONTACT:** H. James Fox, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820, or phone (702) 635-5181.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include:

1. Election of grazing advisory board chairperson and vice-chairperson.
2. An update on range improvement projects to be completed in fiscal year 1984.
3. A review of the investment analysis procedures for range improvement projects.
4. An update on the Tonopah Experimental Stewardship program.
5. A review of Shoshone-Eureka Resource Area's emphasis in the monitoring program.
6. A discussion on the effects of adding Esmeralda County to the Tonopah Resource Area, and
7. Recommendations from the grazing advisory board concerning BLM's rangeland management program.

The meeting is open to the public. Interested persons may make oral statements to the board between 3:30 and 4:00 p.m. on February 15, 1984 or file written statements for the Board's consideration. If you wish to make oral comments, please contact H. James Fox by February 8, 1984.

Dated: December 29, 1984.

H. James Fox,  
District Manager, Battle Mountain, Nevada.

[FR Doc. 84-351 Filed 1-5-84; 8:45 am]  
BILLING CODE 4310-84-M

[CA 7004 WR, CA 7006 WR, CA 7019 WR, CA 7020 WR, CA 7061 WR, CA 7072 WR, and CA 7562 WR]

**California; Proposed Continuation of Withdrawals of Land; Opportunity for Public Hearing**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action provides notice and opportunity for public hearing of the proposed continuation of seven withdrawals affecting a total of 4,045.36 acres of public land and 1,276.05 acres

of mineral estate withdrawn for the Friant Unit of the Central Valley Project. The lands remain closed to surface entry and mining, including the mineral estate from operation of the mining laws. The lands, including the mineral estate, have been and will remain open to mineral leasing.

**FOR FURTHER INFORMATION CONTACT:** Dianna Storey, California State Office, (916) 484-4431.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of Section 204(I) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754; 43 U.S.C. 1714, the Bureau of Reclamation, Mid-Pacific Region, proposes to continue seven existing withdrawals of land for a period of 50 years. The withdrawals are described as follows:

**Mount Diablo Meridian**

**CA 7019 WR**

Secretarial Order of July 7, 1936

- T. 10 S., R. 21 E.,  
Sec. 24, lots 3, 4, and W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 25, lot 1 and SW $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 28, SE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
Sec. 35, NE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
T. 10 S., R. 22 E.,  
Sec. 7, SE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 8, lots 10 through 15, inclusive;  
Sec. 9, lots 19, 20, 21, 22, 23, 25, 26, 27, and 30;  
Sec. 17, lots 4, 11, 19, and NE $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 18, E $\frac{1}{2}$ NW $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 19, lot 4 and NE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 30, lots 1, 14, and 15.

The areas described aggregate 1,485.80 acres in Fresno and Madera Counties.

**CA 7562 WR**

Secretarial Order of November 16, 1932

- T. 10 S., R. 22 E.,  
Sec. 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

The area described contains 40 acres in Madera County.

**CA 7072 WR**

Secretarial Order of March 17, 1949

- T. 10 S., R. 22 E.,  
Sec. 3, lot 13, S $\frac{1}{2}$ NE $\frac{1}{4}$ , and N $\frac{1}{2}$ SE $\frac{1}{4}$ .

The area described contains 203.94 acres in Fresno and Madera Counties.

**CA 7020 WR**

Secretarial Order of July 29, 1936

- T. 10 S., R. 22 E.,  
Sec. 7, NE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 9, lot 24.

The area described aggregate 82.23 acres in Madera Counties.

**CA 7006 WR**

Secretarial Order of July 29, 1936

- T. 10 S., R. 22 E.,  
Sec. 7, SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 17, lot 20 and NW $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 19, lots 7, 8, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 30, lots 8, 9, and 10.

The areas described aggregate 362.49 acres in Fresno and Madera Counties.

**CA 7081 WR**

Secretarial Order of June 30, 1920

- T. 10 S., R. 21 E.,  
Sec. 24, NE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 25, lots 5, 8, NW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
Sec. 27, lots 5 and 6;  
Sec. 34, N $\frac{1}{2}$ NE $\frac{1}{4}$ ;  
Sec. 35, NE $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$ .  
T. 10 S., R. 21 E.,  
Sec. 2, lot 5.  
T. 10 S., R. 22 E.,  
Sec. 3, lots 11 and 12;  
Sec. 8, lots 16 through 22, inclusive;  
Sec. 9, lots 28 and 29;  
Sec. 10, S $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
Sec. 17, lots 3, 17, and 18;  
Sec. 18, lots 5 through 11, inclusive, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , and SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 19, NE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 30, lots 3, 4, 7, 13, E $\frac{1}{2}$ NW $\frac{1}{4}$ , and NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

The areas described aggregate 1,870.80 acres in Fresno and Madera Counties.

The following described lands were patented pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat. 862); therefore, the withdrawal pertains only to the mineral estate:

- T. 10 S., R. 21 E.,  
Sec. 14, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 26, lots 1 through 4, inclusive, and E $\frac{1}{2}$ W $\frac{1}{2}$ ;  
Sec. 35, SW $\frac{1}{4}$ NE $\frac{1}{4}$ .

The areas described aggregate 472.88 acres in Fresno and Madera Counties.

**CA 7004 WR**

Secretarial Order of May 19, 1936

The following described lands were patented pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat. 862); therefore, the withdrawal pertains only to the mineral estate:

- T. 10 S., R. 21 E.,  
Sec. 14, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , and NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 26, SE $\frac{1}{4}$ ;  
Sec. 35, N $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$ .  
T. 11 S., R. 21 E.,  
Sec. 2, lots 1, 2, 3, 6, 7, 8, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ .  
T. 10 S., R. 22 E.,  
Sec. 18, lots 3 and 4;  
Sec. 19, lot 1;  
Sec. 30, lots 11 and 12.

The areas described aggregate 803.17 acres in Fresno and Madera Counties.

1. The purpose of the withdrawals is to protect lands around Millerton Lake, Friant Unit of the Central Valley Project. The mineral estates of those lands patented pursuant to the Act of December 29, 1916 (36 Stat. 862), are

segregated from operation of the mining laws. Otherwise, the withdrawals segregate the lands from operation of the public land laws generally, including the mining laws. No change in the segregative effect of the withdrawals or use of the land is proposed.

2. Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuations. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal continuations must submit a written request to the Chief, Branch of Lands and Minerals Operations within 90 days from the date of publication of this notice. If the State Director, Bureau of Land Management, in his discretion, determines that a public hearing is justified, a notice of the time and place will be published in the Federal Register at least 30 days prior to the scheduled date of the meeting.

3. In addition, for a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

4. The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources, and will review the withdrawal rejustification to ensure that, (1) continuation would be consistent with the statutory objectives of the programs for which the lands are dedicated; (2) the areas involved are the minimum essential to meet the desired needs; (3) the maximum concurrent utilization of the lands is provided for; and (4) an agreement is reached on the concurrent management of the lands and their resources.

5. The authorized officer will be also prepare a report for consideration by the Secretary of the Interior, the President, and the Congress who will determine whether or not the withdrawals will be continued, and if so, for how long. The determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

All communications in connection with the proposed withdrawal continuations and opportunity for public hearing 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.

Eleanor Wilkinson,  
*Chief, Lands and Locatable Minerals Section,  
Branch of Lands and Minerals Operations.*  
[FR Doc. 84-311 Filed 1-5-84; 8:45 am]  
BILLING CODE 4310-04-11

[N-30114]

#### Nevada; Conveyance

December 27, 1983.

Notice is hereby given that, pursuant to the Act of December 23, 1980 (94 Stat. 3381; 43 U.S.C. 1701), Robert Gregory Stuart, Las Vegas, Nevada, has purchased, by competitive sale, public lands in Clark County described as:

Mount Diablo Meridian, Nevada  
T. 21 S., R. 60 E.,  
Sec. 9, W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
containing 5 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the issuance of a conveyance document to Robert Gregory Stuart.

Wm. J. Malencik,  
*Deputy State Director, Operations.*

[FR Doc. 84-253 Filed 1-5-84; 8:45 am]  
BILLING CODE 4310-04-11

#### Vale District Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Vale District Grazing Advisory Board will be held January 25, 1984.

The meeting will begin at 9:00 a.m. in the conference room of the Vale district office, 100 East Oregon Street, Vale, Oregon 97918.

The advisory board will discuss the Rangeland Program Summary for the Southern Malheur EIS area and will review proposed allotment boundary adjustments and allotment management plans for the EIS area. The board will also consider a policy regarding livestock shifts in case of wildfire.

The meeting is open to the public. Interested persons may make oral statements to the board or may file written statement for the board's consideration. Anyone wishing to make oral statements may do so at 3:00 p.m. the day of the meeting.

Summary of the board meeting will be maintained in the district office and be available during regular business hours for public inspection, for the cost of

duplication, within 30 days following the meeting.

December 21, 1983.  
David Ledzinski,  
*Associate District Manager.*  
[FR Doc. 84-310 Filed 1-5-84; 8:45 am]  
BILLING CODE 4310-04-11

[INT RMP/FEIS 84-1]

#### Availability of the Proposed Resource Management Plan/Final Environmental Impact Statement for the Wells Resource Area, Nevada

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Proposed Resource Management Plan/Final Environmental Impact Statement for the Wells Resource Area, Elko District, Elko, Nevada.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the BLM, Elko District has prepared a combined Proposed Resource Management Plan/Final Environmental Impact Statement for the Wells Resource Area, Elko District, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The Proposed Wells Resource Management Plan/Final Environmental Impact Statement is a comprehensive land use planning document which establishes management actions and objectives for resource condition and use levels, the standards for monitoring and evaluating the plans' effectiveness, and the need for more detailed management plan(s) and support actions. It also is an environmental impact statement which analyzes the effects of implementing a multiple use resource management plan on 4.1 million acres of public land in the east half of Elko County in northeastern Nevada. Four alternatives were considered along the Proposed Action. They were the No Action, Resource Production, Midrange, and Resource Protection Alternatives.

A protest may be made on this proposed resource management plan within 30 days from release. Any such protest must be in writing to the Director, Bureau of Land Management, 18th and C Streets N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Wells Area Manager, Elko District Office, P.O. Box 831, Elko, Nevada 89301 (702) 738-4071.

Copies of the RMP/FEIS are available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 18th and "C" Streets NW., Washington, D.C. 20240

Bureau of Land Management, Nevada State Office, P.O. Box 12000, 300 Booth Street, Reno, NV 89520

Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, NV 89102, (702) 385-6403

Bureau of Land Management, Winnemucca District Office 705 E. 4th Street, Winnemucca, NV 89445, (702) 623-3676

Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, Nevada 89801

Bureau of Land Management, Ely District Office, Star Route 5, Box 1 Ely, NV 89301 (702) 289-4965

Bureau of Land Management, Carson City District Office 1050 E. Williams Street Carson City, NV 89701 (702) 882-1631

Bureau of Land Management, Battle Mountain District Office North 2nd & Scott Streets Battle Mountain, NV 89820 (702) 635-5181

Also, copies are available for review at the following public libraries:

Elko County Library, 720 Court Street, Elko, NV 89801

Government Publications Dept., University of Nevada, Reno, Library, Reno, NV 89557

Nevada State Library, Library Building, Carson City, NV 89701

University of Nevada, Las Vegas, James R. Dickensen Library, 4505 Maryland Parkway, Las Vegas, NV 89154

Wells Branch Library, Wells, NV 89835

White Pine County Library, Campton Street, Ely, NV 89301

A copy of the RMP/FEIS will be sent to all individuals, agencies, and groups who have expressed interest in the Wells Resource Area planning process, and a limited number of copies are available upon request to the District Manager at the above address.

Dated: December 28, 1983.

[FR Doc. 84-388 Filed 1-5-84; 8:45 am]

BILLING CODE 4310-84-M

[NM 012273]

### New Mexico; Proposed Continuation of Withdrawal; Public Land Order

Date: December 27, 1983.

In accordance with the provisions of section 204 of the Federal Land Policy and Management Act of 1976, the Department of the Army has filed a statement of justification for the continuation of Public Land Order 995 dated August 19, 1954. The Public Land Order withdrew the following lands from all forms of appropriation under

the public land laws, including the mining and mineral leasing laws for use of the Department of the Army in connection with Sandia Base, New Mexico:

#### New Mexico Principal Meridian

T. 8 N., R. 4 E.,

Sec. 1, lots 5 to 12, inclusive;

Sec. 3, lots 5 to 16, inclusive;

Sec. 4, lots 5 to 16, inclusive;

Sec. 5, lots 5 to 16, inclusive;

Sec. 6, lots 6 to 17, inclusive;

T. 9 N., R. 4 E.,

Sec. 33, N $\frac{1}{2}$ N $\frac{1}{2}$ ;

T. 9 N., R. 4 $\frac{1}{2}$  E.,

Secs. 13, 24, 25, and 26;

T. 8 N., R. 5 E.,

Secs. 1 to 5, inclusive, those parts north of

Isleta Pueblo Grant;

Sec. 6, lots 1 to 8, inclusive, and S $\frac{1}{2}$ N $\frac{1}{2}$ ;

T. 9 N., R. 5 E.,

Secs. 13 to 36, inclusive.

The areas described aggregate 21,163.11 acres.

The Bureau of Land Management proposes continuation of the withdrawal in its entirety for 25 years. The purpose of the withdrawal is for research and development projects and testing. No change in the segregative effect or use of the lands would be affected by the continuation.

Notice is hereby given that a public hearing may be afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned within 90 days of the publication of this notice. Upon a determination by the State Director, BLM, that a public hearing should be held, a notice will be published in the Federal Register giving the time and place of such hearing. Public hearings will be scheduled and conducted in accordance with BLM Manual 2351.16B. Additionally, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned authorized officer of the BLM within 90 days of the date of publication of this notice.

The authorized officer of the BLM will undertake such investigations as are necessary and prepare a report for consideration by the Office of the Secretary of the Interior. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

All communications in connection with the proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land

Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Dennis R. Erhart,

Acting Deputy State Director, Operations.

[FR Doc. 84-290 Filed 1-5-84; 8:45 am]

BILLING CODE 4310-FB-LJ

### Minerals Management Service

#### Outer Continental Shelf; Proposed Development and Production Plan; Availability of Draft Environmental Impact Statement and Intent to Hold Public Hearings

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability for Environmental Impact Statement/ Environmental Impact Report; Amendment.

SUMMARY: Joint Federal/State/County public hearings scheduled to receive oral and written testimony regarding the draft environmental impact statement/ environmental impact report being prepared for the Exxon Santa Ynez Unit/Las Flores Canyon Development and Production Plan have been expanded. Public hearings are now scheduled from 9:00 a.m. to 12:00 noon, 1:00 p.m. to 5:00 p.m. and 7:00 p.m. to 10:00 p.m. on January 10, 1984 at the Santa Barbara County Board of Supervisors Hearing Room, Fourth Floor, 101 East Anapamu Street, Santa Barbara, California.

Robert G. Paul,

Acting Regional Manager, Pacific OCS Region.

December 30, 1983.

[FR Doc. 84-320 Filed 1-5-84; 8:45 am]

BILLING CODE 4310-MR-M

### Oil and Gas and Sulphur Operations In the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Texaco U.S.A. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0310, Block 217, South Marsh Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at

the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

**FOR FURTHER INFORMATION CONTACT:** Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

**SUPPLEMENTARY INFORMATION:** Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans 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 a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 30, 1983.

John L. Rankin,

*Regional Manager, Gulf of Mexico Region.*

(FR Doc. 84-350 Filed 1-5-84; 8:45 am)

BILLING CODE 4310-MR-13

#### Bureau of Reclamation

#### Colorado River Water Quality Improvement Program; Dirty Devil River Salinity Control Unit, Utah; Notice of Intent To Prepare a Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement integrated with a planning report for the Dirty Devil River Salinity Control Unit, Utah, of the Colorado River Water Quality Improvement Program. The purpose of the unit is to control salt picked up by surface and ground water within the Dirty Devil River Basin by preventing the salt from entering the Colorado River where it causes economic problems for municipal, industrial, agricultural, and water users downstream. Approximately 140,000 tons of salt annually enter the Colorado River from the Dirty Devil River.

Alternatives being evaluated include: pumping saline water from shallow wells and disposing of it by injection into deeper wells, or by pumping it into evaporation ponds; using saline water for cooling purposes on coal-fired powerplants; processing tar sands with saline water; generating power in a solar gradient pond; and preventing seasonal canal seepage from entering ground water by piping winter canal flows. The

best plan could include a combination of these alternatives.

This investigation has been underway since 1982. During the intervening time, interested agencies and individuals have been informed of the study's progress and have contributed much information. Future scoping activities will include: Distributing newsletters to provide and solicit information from interested individuals and agencies; setting up public displays; use of a telephone line to solicit comment and information; providing newspapers with information; presentations at area meetings (announced in the local media and Bureau of Reclamation newsletters) to obtain comment and information; and interviews with individuals in the unit area.

Interested public entities and individuals may receive information on the unit and provide input to the planning report/draft environmental statement. The draft should be available for review and comment in the spring of 1987.

To obtain information or provide input, please contact Mr. Rege Leach at the Durango Projects Office, Bureau of Reclamation, 835 Second Avenue, Suite 400, Durango, Colorado 81301; or telephone collect (303) 247-0247.

Dated: December 30, 1983.

Darrell D. Mach,

*Acting Commissioner of Reclamation.*

(FR Doc. 84-333 Filed 1-5-84; 8:45 am)

BILLING CODE 4310-03-13

#### INTERSTATE COMMERCE COMMISSION

#### Motor Carriers; Notice of Proposed Exemptions

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notices of proposed exemptions.

**SUMMARY:** The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

**DATES:** Comments must be received within 30 days after the date of publication in the I.C.C. Register.

**FOR FURTHER INFORMATION CONTACT:** Warren C. Wood (202) 275-7977.

**SUPPLEMENTARY INFORMATION:** Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In

the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: December 30, 1983.

By the Commission, Lewis E. Gitomer, Acting Director, Office of Proceedings.  
James H. Bayne,  
*Acting Secretary.*

MC-F-15542, filed December 6, 1983. RED & TAN ENTERPRISES (Red & Tan) (126 North Washington Ave., Bergenfield, NJ 07621)—Continuance in Control—RED & TAN TOURS (R&T) (437 Tonnele Ave., Jersey City, NJ 07306). Representative: Michael J. Marzano, 59 Kinderkamack Rd., Westwood, NJ 07675.

Red & Tan, a non carrier, seeks to continue in control of R&T, upon institution of operations by R&T in interstate or foreign commerce under certificate No. MC-162174 (Sub-No. 2). Ernest Capitani, Ernest A. Capitani, Jr., Amelia Capitani Gerace, Richard A. Capitani, Ronald Gerace, Janis Gerace, Lori Finley, Arleen Schmidt, and Mildred Capitani, who control Red & Tan, seek authority to continue in control of R&T through the transaction.

Through authority granted in previous Commission proceedings, Red & Tan controls Rockland Coaches, Inc., Hudson Bus Transportation Co., Inc., and North Boulevard Transportation Co., all of which are common carriers.

Rockland is a motor common carrier under a certificate in No. MC-29390 and sub numbers thereunder which authorize generally the transportation of passengers and their baggage, and express, and newspapers over regular and irregular routes, between named points in New Jersey and New York.

By certificates issued under Nos. MC-129354 and MC-13492 and subnumbers thereunder, Hudson and North Boulevard, respectively, were granted authority as common carriers to transport (a) passengers and their baggage, over regular routes, between named points in New Jersey and New York, and (b) passengers, in charter and special operations, over irregular routes, between points in the U.S. (except Alaska and Hawaii).

By a decision served October 7, 1983, R&T was granted authority to transport passengers, over regular routes, between named points in New York and New Jersey.

Note.—R&T filed a common carrier application in MC-162174 (Sub-No. 2) which was published in the Federal Register on August 4, 1983. As a condition to a grant of that authority, applicant was required to file

this continuance in control application or submit an affidavit indicating why such approval is unnecessary.

[FR Doc. 84-307 Filed 1-5-84; 8:45 am]  
BILLING CODE 7035-01-11

### 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: NYNEX Corporation, 335 Madison Avenue, New York City, New York 10017 (incp. in DE).
  2. Directly or indirectly owned wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:
    - a. New York Telephone Company, 1095 Avenue of the Americas, New York, New York 10036 (incp. in NY).
    - b. New England Telephone and Telegraph Company, 135 Franklin Street, Boston, Massachusetts 02107 (incp. in NY).
    - c. NYNEX Mobile Communications Company, One Blue Hill Plaza, Pearl River, New York 10965 (incp. in DE).
    - d. NYNEX Mobile Communications Retail Company, One Blue Hill Plaza, Pearl River, New York 10965 (incp. in DE).
    - e. New York CGSA, Inc., One Blue Hill Plaza, Pearl River, New York 10965 (incp. in DE).
    - f. Buffalo CGSA, Inc., One Blue Hill Plaza, Pearl River, New York 10965 (incp. in DE).
    - g. Springwichee CGSA, Inc., One Blue Hill Plaza, Pearl River, New York 10965 (incp. in DE).
    - h. Boston CGSA, Inc., One Blue Hill Plaza, Pearl River, New York 10965 (incp. in DE).
    - i. NYNEX Materiel Enterprises Company, 441 Ninth Avenue, New York, New York 10001 (incp. in DE).
    - j. NYNEX Business Information Systems Company, 400 Westchester Avenue, White Plains, New York 10604 (incp. in DE).
    - k. Empire City Subway Company Limited, 140 West Street, New York, New York 10007 (incp. in NY).
    - l. NYNEX Network Services Company, One Blue Hill Plaza, Pearl River, New York 10965 (incp. in DE).
    - m. NYNEX Information Resources Company, 195 Market Street, Lynn, Massachusetts 01901 (incp. in DE).
1. Parent corporation and address of principal office: UNR Industries, Inc.,

332 S. Michigan Avenue, Chicago, IL 60604.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

- (i) Midwest Corporation, a West Virginia corporation.
  - (ii) Midwest Telecommunications Corp., a Florida corporation.
  - (iii) Midwest Corporation (NC), a North Carolina corporation.
  - (iv) Midwest Texas Corp., a Texas corporation.
  - (v) Buddy's Discount Centers, Inc., a West Virginia corporation.
  - (vi) UNR-Rohn, Inc. (AL), an Alabama corporation.
  - (vii) UNR-Rohn, Inc. (IN), an Indiana corporation.
  - (viii) UNR-Rohn, Inc. (TX), a Texas corporation.
  - (ix) Rack Systems, Inc., an Illinois corporation.
  - (x) SBM Corporation, a Delaware corporation.
  - (xi) UNR International, Inc., a Delaware corporation.
  - (xii) National Plastics, Inc., an Illinois corporation.
  - (xiii) Dart, Inc., an Illinois corporation.
  - (xiv) Leavitt Structural Tubing Co., a Delaware corporation.
  - (xv) Unarco Industries, Inc., a Delaware corporation.  
Unarco Industries, Inc.—  
Transportation Equipment Division  
Unarco Industries, Inc.—Materials  
Storage Division  
Unarco Industries, Inc.—Commercial  
Products Division  
Unarco Industries, Inc.—Food  
Handling Division  
Unarco Industries, Inc.—Rubber  
Products Division
  - (xvi) UNR, Inc., a Delaware Corporation.  
UNR, Inc.—Leavitt Division  
UNR, Inc.—Home Products Division  
UNR, Inc.—Lighting Division  
UNR, Inc.—Rohn Division
  - (xvii) UNR Products, Inc., a Delaware corporation.
  - (xviii) UNR Freight, Inc., an Illinois corporation.
- James H. Bayne,  
*Acting Secretary.*

[FR Doc. 84-305 Filed 1-5-84; 8:45 am]  
BILLING CODE 7035-01-11

[Docket No. AB-6; Sub-173F]

**Railroads; Burlington Northern Railroad Co.; Abandonment in Sherburne and Mille Lacs Counties, MN; Findings**

The Commission has issued a certificate authorizing the Burlington

Northern Railroad Company to abandon a portion of railroad extending from railroad milepost 0.03 near Elk River to milepost 19.80 at the end of the line near Princeton, MN, a total distance of 19.72 miles in Sherburne and Mille Lacs Counties, MN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower lefthand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10305 and 49 CFR 1152.27.

James H. Bayno,  
*Acting Secretary.*

[FR Doc. 84-305 Filed 1-5-84; 8:45 am]  
BILLING CODE 7035-01-11

[Finance Docket No. 30353]

**Railroads; Delaware Otsego Corporation, et al.; Exemption From 49 U.S.C. 11301**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11301 the issuance or issuance and guaranty of notes not exceeding \$7,379,000.

**DATES:** This exemption is effective December 30, 1983. Petitions for reopening must be filed by January 26, 1984.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 30353 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;
- (2) Petitioner's representatives:  
Lawrence C. Malski, One Railroad Avenue, Cooperstown, NY 13326 and  
William P. Quinn, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

**FOR FURTHER INFORMATION CONTACT:**  
Louis E. Gitomer (202) 275-7245.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 30, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett did not participate.

James H. Bayne,  
*Acting Secretary.*

[FR Doc. 84-394 Filed 1-5-84; 8:45 am]  
BILLING CODE 7035-01-11

[Docket No. AB-33 (Sub-23X)]

**Railroads; Union Pacific Railroad Co.; Abandonment; Greeley County, NE; Exemption**

Union Pacific Railroad Company (UP) has filed a notice of exemption for an abandonment under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The line to be abandoned is the Scotia Branch between milepost 44.574 and milepost 45.943, a distance of approximately 1.369 miles in Greeley County, NE.

UP has certified (1) that no local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Nebraska has been notified in writing at least 10 days prior to the filing of this notice. See *Exemption of Out of Service Rail Lines*, 365 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on February 5, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by January 16, 1984, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed January 26, 1984, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Jeanna L. Regier, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if the exemption is conditioned upon environmental or public use conditions.

Decided: January 3, 1984.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne  
*Acting Secretary.*

[FR Doc. 84-393 Filed 1-5-84; 8:45 am]  
BILLING CODE 7035-01-11

**DEPARTMENT OF JUSTICE**

**Lodging of Consent Decree Pursuant to Clean Water Act; American Fabricators, Inc.**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 20, 1983 a proposed consent decree in *United States v. American Metal Fabricators, Inc.*, Civil Action No. 83-603-L was lodged with the United States District Court for the District of New Hampshire. The proposed consent decree requires American Metal Fabricators of Hudson, New Hampshire to comply with final effluent limitations to be established pursuant to a NPDES permit and interim effluent limitations and requires payment of a civil penalty.

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 v. American Metal Fabricators, Inc.*, D.J. Ref. 90-5-1-1-1986.

The proposed consent decree may be examined at the office of the United States Attorney, 55 Pleasant Street, Concord, New Hampshire, at the Region 1 Office of the Environmental Protection Agency, JFK Federal Building, Boston, Massachusetts and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth 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 of the proposed consent decree, refer to the case, proposed consent decree and D.J. reference number.

F. Henry Habicht, II,  
*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 84-393 Filed 1-5-84; 8:45 am]  
BILLING CODE 4410-01-11

**Drug Enforcement Administration**

[Docket No. 83-25]

**Arthur J. Grahl, M.D.; Denial of Application**

On July 14, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Arthur J. Grahl, M.D., 57 West 57th Street, New York, New York 10019 (Respondent). The order sought to deny an application for registration as a practitioner under 21 U.S.C. 824 executed by Respondent on November 29, 1982. The statutory predicate for the order was Respondent's conviction on December 31, 1980, in the United States District Court for the Southern District of New York of one count of dispensing and distributing Tuinal, a Schedule II controlled substance and Valium, a Schedule IV controlled substance, in violation of 21 U.S.C. 841(a)(1). Respondent, through counsel, requested an extension of time in which to reply to the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young, who granted a two-week extension September 19, 1983, under 21 CFR 316.47(b) finding that there was good cause shown for the request.

Respondent did not file a request for a hearing despite the extension of time and, on September 23, 1983, Judge Young terminated the proceedings before him. The Administrator finds that Respondent has waived his opportunity for a hearing by failing to request a hearing within the time ordered by the Administrative Law Judge, and enters this final order based on the investigative file and the record as it now appears.

Having examined the investigative file, the Administrator finds that Respondent worked as a physician at the Unity Health Care Clinic in the Bronx, New York in 1978 and 1979. Unity was a notorious source of prescriptions for controlled substances which

appeared throughout New York City. The type of medical practice at Unity is captured by the discussion of the court in *United States v. Krasanoff*, 480 F. Supp. 723 (S.D. N.Y. 1979), a motion for suppression of evidence. DEA Special Agent Gerald Franciosa was the affiant for a search warrant issued for the premises at Unity. The court rejected the defense argument that the evidence seized should be suppressed since SA Franciosa was not a physician and therefore unable to testify whether practices at Unity were medically proper. The court said: "However upon careful review of Agent Franciosa's affidavit, complaint and accompanying exhibits, it is clear that it was unnecessary for the affiant to be versed in the practice of medicine to have reason to believe that the prescriptions were issued for other than legitimate medical purposes and that the records would reflect criminal activity. There were sufficient indicia of nonmedical criminal activity upon which Agent Franciosa could base his affidavit. For example, Special DEA Agents went to the facility and were given pills 'without the benefit of physical examination, medical history, or any other meaningful inquiry into their reason for requiring these drugs'. In all, 13 agents made at least 45 visits to the clinic and with one exception received the prescriptions within three to five minutes time with no physical examination, no psychiatric treatment and without meaningful inquiry into their need for such medication." *Id.* at 278.

Dr. Grahl was an active participant in the activity at the Unity Health Clinic. On January 29, 1979, Special Agent George Papantoniou and a cooperating individual proceeded to the Clinic where SA Papantoniou used the file of another individual, Ballard Edwards. The receptionist called the name "Ballard Edwards" and SA Papantoniou was directed to a room in which Respondent was seated. The file indicated that Edwards had not been to the clinic since the previous August. Respondent then asked SA Papantoniou why he was at the clinic and SA Papantoniou responded that he was interested in Tuinal. Respondent asked the Agent in a very leading manner if he had any changes recently in his home which could be affecting him. SA Papantoniou shrugged his shoulders and stated, "Well, if you say so I guess so." Respondent then wrote a prescription for 50 Valium and a prescription for 28 Tuinal. There was no physical examination of SA Papantoniou and no psychiatric consultation. The Administrator notes that Dr. Grahl was

hired by Unity as a psychiatrist and that his medical specialty there was supposedly psychiatry.

Respondent also maintained a private medical practice separate from Unity. On February 27, 1980, a DEA informant purchased a prescription for 14 Valium tablets and 28 Tuinal capsules from Respondent at his medical practice at 130 W. 57th Street, New York. The informant was wearing a body recorder at the time and Respondent conducted no physical examination or psychiatric consultation with this individual.

An examination of the records seized at Unity and of records of Respondent's private medical practice shows that these were not isolated incidents. Between December 1978 and February 1979, Respondent saw almost 1,400 patients at Unity. Although he only worked there part time, he saw an average of 24 patients per day in December, 17 per day in January, and 20 per day in February. In late September and early October, 1979, Dr. Grahl saw an average of 17 patients a day, spending roughly 11 minutes with each patient. A comparison of names at Unity and names at Respondent's private medical practice show that at least 44 people who were receiving controlled substances at Unity were also receiving controlled substances from Respondent at his private practice. When Dr. Grahl was arrested, DEA Agents seized from him 66 prescription forms made out alternately for Tuinal and Valium. None of these forms bore the name of a patient. The Agents also seized a second batch of 63 prescription forms made out alternately for 28 Tuinal, Valium and Elavil. Again, none of these prescription forms bore the name of a patient.

Respondent was convicted following a bench trial and sentenced to six months incarceration, two years special parole term under 21 U.S.C. 841 and a \$5,000 fine. In an unreported decision, the United States Court of Appeals for the Second Circuit upheld Respondent's conviction. *United States v. Grahl*, 81-1114 (filed June 16, 1981). The court concluded that Respondent had falsified a medical chart, attempted to adduce responses that would justify prescribing Tuinal and Valium, and despite failing to obtain the appropriate answers, prescribed those drugs nevertheless. The court concluded that such action on the part of a medical practitioner amply supports the trial court's conclusion that Dr. Grahl's conduct "exceeded the bounds of professional practice," citing *United States v. Moore*, 423 U.S. 122, 142 (1975).

On October 5, 1981, subsequent to Respondent's conviction, the

Administrator of the Drug Enforcement Administration directed an Order to Show Cause seeking to revoke DEA Certificate of Registration AG1782069 previously issued to Dr. Grahl. Respondent did not reply to that Order to Show Cause, and his registration certificate was revoked effective November 13, 1981.

With his current application, Respondent submitted a letter of explanation in which he stated that he practiced at Unity for a very brief time, only 10 weeks, and that the only crime of which he was convicted was renewing a prescription for Tuinal and Valium for Agent Papantoniou, whom Respondent believed to be registered in the "detox program." The facts recited above clearly refute Respondent's contention that he was an "ethical and caring physician." Respondent stated that he acted in good faith, trying to help a patient break a bad habit. He goes on to state that the fact that he was deceived by "an overzealous nonpatient pretending to be a real patient is irrelevant. I do not feel I broke any law." Respondent's subjective feelings have no merit in this proceeding when viewed against the facts established by the trial court and cited by the Court of Appeals in affirming Respondent's conviction. It is manifestly clear that Arthur Grahl, M.D. should not possess DEA registration.

The Administrator concludes that there is a lawful basis for the denial of Respondent's application for DEA registration and further concludes that under the facts and circumstances presented, this application should be denied. The Administrator of the Drug Enforcement Administration, under the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b) hereby denies the application for DEA registration executed on November 29, 1982, by Arthur J. Grahl, M.D. and further denies any other pending applications executed by Dr. Grahl.

Dated: December 29, 1983.

Francis M. Mullen, Jr.,  
Administrator.

[FR Doc. 84-343 Filed 1-5-84; 8:45 am]  
BILLING CODE 4410-03-M

[Docket No. 83-1]

Roger Leo Palmer, D.M.D.; Denial of Application

On November 24, 1982, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Roger Lee Palmer, D.M.D. (Respondent), 1871

High Street, Lakeport, California 95453 an Order to Show Cause proposing to deny the Respondent's pending application for registration as a practitioner under 21 U.S.C. 823(f). By letter dated December 15, 1982, the Respondent requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in San Francisco, California on May 10, 1983. Administrative Law Judge Francis L. Young presided. On September 16, 1983, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. Respondent filed exceptions to the Administrative Law Judge's opinion and recommended decision. On October 13, 1983, Judge Young transmitted the record of these proceedings, including Respondent's exceptions to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent is a dentist practicing in sparsely populated Lake County, a resort area in northern California. An investigation of Respondent revealed that he had ordered and obtained 29 ounces of pharmaceutical cocaine from several pharmaceutical suppliers from January 5, 1977 to April 15, 1980. At no time during this period did Respondent have more than 150 active patient files in his office.

The Administrative Law Judge found that from January, 1977 to April, 1980 cocaine was no longer commonly used in the practice of dentistry or dental surgery. However, there were three accepted uses for cocaine in dentistry; one, in attempting to diagnose a specific type of neuralgia; two, inside the nose for biopsy and small lesions within the nose; three, a topical anesthetic agent of gum tissue prior to injection of a local anesthetic. For all of these purposes there are other agents available which are used much more frequently than cocaine and are considerably less expensive than pharmaceutical cocaine.

As a topical anesthetic agent, the normal amount of cocaine used in a single patient application is from five to ten milligrams. From the 29 ounces obtained by Respondent between January, 1977 and April, 1980, there would be 90,000 patient applications. It is not feasible that Respondent, in his dental practice in Lake County, California, could have used pharmaceutical cocaine for legitimate purposes at a rate requiring the purchase of the quantities he obtained.

The Administrative Law Judge also found that Respondent and one Peter J. Cecchin, who lived in Lakeport for about six weeks, abused cocaine together for their personal enjoyment on an almost daily basis. They used Respondent's pharmaceutical cocaine 15 to 20 times during a single day. Mylan Hopkins, M.S., a physician in the Lakeport area, who testified on Respondent's behalf at the hearing, also received or used cocaine from Respondent in Mr. Cecchin's presence.

About the time of Respondent's arrest police found a cocaine snorting tube in Respondent's motorcycle saddlebags during a search of his automobile. The search was ruled illegal. Despite that ruling, the prosecutor at the trial was permitted to confront Respondent with the tube on cross-examination after Respondent had testified that he had used all of the pharmaceutical cocaine he had purchased from pharmaceutical supply houses for legitimate medical purposes. The trial court ruled that it was proper to show the finding of the snorting tube to impeach Respondent's implicit testimony that he had not personally used any of the medical cocaine for his own pleasure, citing *United States v. Havens*, 448 U.S. 620 (1980).

On December 4, 1981, Respondent was convicted in the United States District Court for the Northern District of California of four counts of obtaining pharmaceutical cocaine, a Schedule II controlled substance, by misrepresentation, fraud, deception or subterfuge in violation of 21 U.S.C. 843(a)(3). These are felony offenses related to controlled substances. The sentencing judge ordered the Respondent to enter a drug counseling program.

On appeal, the United States Court of Appeals for the Ninth Circuit affirmed Respondent's conviction and held that the lower court properly admitted the snorting tube to impeach Dr. Palmer's cross-examination testimony. *United States v. Palmer*, 691 F. 2d 921 (9th Cir. 1982). There is a lawful basis for denial of Respondent's application for registration. *Serling Drug Co.*, Docket No. 74-12, 40 FR 11918 (1975); *Raphael C. Cilento, M.D.*, Docket No. 78-2, 44 FR 30466 (1979); and *Aaron A. Moss, D.D.S.*, Docket No. 89-2, 45 FR 72650 (1980).

At the hearing in this matter before Judge Young, the Government sought to use testimony about the snorting tube in a manner similar to the way the prosecutor at the criminal trial introduced it. During cross-examination Respondent denied personally using cocaine. The Administrative Law Judge followed the holding of the Court of

Appeals in the criminal appeal and ruled that the testimony as to the findings of the coke snorting tube in Respondent's saddlebag was admissible to impeach Respondent's denial of personally using cocaine.

The Administrative Law Judge recommended to the Administrator that Respondent's application for registration be denied. Respondent's exceptions to Judge Young's opinion stated that the Administrative Law Judge did not adequately take into account the needs of the small community; that no evidence was given that Respondent diverted cocaine into the illicit market; and that Respondent should at least be granted a registration with some restriction rather than denying Respondent's application completely.

The Administrator concludes that there was sufficient testimony, including expert testimony from a prominent local dentist, to conclude that alternative dental services are available to members of the Lakeport community. The Administrator also finds that there was an overwhelming amount of evidence to support Judge Young's conclusion that Respondent was diverting cocaine into illicit channels. The huge quantity of cocaine involved clearly shows that it was not being used for legitimate medical purposes. Additionally, the testimony of Peter Cecchin illustrated that Respondent not only supplied Mr. Cecchin with cocaine but also abused the cocaine himself. Finally, the Administrator concludes that given the facts in this case, denial of Respondent's application for registration is a reasonable choice of remedy. The Ninth Circuit held in *Berwick v. Drug Enforcement Administration*, No. 78-2176, memorandum (9th Cir. June 16, 1983) that the mere fact of conviction is enough for denial of an application for registration. In this case there is more than the mere fact of conviction. Respondent was ordered to participate in a drug counseling program. Judge Young found and the Administrator agrees that nothing in Respondent's testimony at the hearing indicated that Respondent's meetings with his counsellor constituted a meaningful and effective drug counseling program. Therefore, there is not enough persuasive evidence to justify granting the Respondent a DEA certificate of registration.

Having concluded that there is a lawful basis for the denial of the Respondent's application for registration and having further concluded that under the facts and circumstances presented in his case the application should be

denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application of Roger Lee Palmer, D.M.D., for registration under the Controlled Substances Act, be, and it hereby is, denied.

Dated: December 29, 1983.

Francis M. Mullen, Jr.,  
Administrator.

[FR Doc. 84-341 Filed 1-5-84; 8:45 am]  
BILLING CODE 4410-03-M

### Winfield Pharmacy; Revocation of Registration

On October 26, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Winfield Pharmacy, 1190 Ocean Avenue, Jersey City, New Jersey 07308 seeking to revoke DEA Certificate of Registration AZ8525846 previously issued to Winfield Pharmacy. The statutory predicate for the order under 21 U.S.C. 824(a)(2) was the conviction on April 28, 1983, of Victor Zapico, R.Ph., the owner and managing pharmacist of Winfield Pharmacy, in the Superior Court of New Jersey, Hudson County (Law Division—Criminal) of two counts of unlawful dispensing or distribution of a controlled dangerous substance, to wit, Dilaudid, in violation of a New Jersey Revised Statute 24:2119(a)(1), a felony conviction relating to controlled substances. The Order to Show Cause was sent registered mail, return receipt requested, and according to the reply card Winfield Pharmacy received the Order to Show Cause on November 2, 1983. Thirty days have elapsed and DEA has received no response from the registrant. Therefore, the Administrator finds pursuant to 21 CFR 1301.54 (d) and (e) that the registrant has waived its opportunity for a hearing and enters his final order based on the investigative file and the record of this proceeding as it appears.

Victor Zapico was indicted on July 2, 1982, by the Hudson County Grand Jury on 29 counts of felonies relating to controlled substances. The indictment of Zapico stems from an investigation conducted by the Diversion Group of the DEA Newark Field Division. A controlled substance wholesaler informed the DEA office in Newark that Winfield Pharmacy was purchasing an excessive quantity of Dilaudid tablets. Dilaudid is a heavily abused Schedule II narcotic.

DEA Diversion Investigators conducted an audit of the pharmacy's

records pertaining to Dilaudid. The audit revealed that the pharmacy could not account for 400 Dilaudid 4 mg. tablets and 800 Dilaudid 3 mg. tablets. Zapico told the investigators that the Schedule II prescriptions were not in his possession but were rather at his home. Initially, he told the investigators that he kept the prescriptions at his home because he was "closing out his books for the tax year." He then told the investigators that the prescriptions were at his home because he believed they might be forged and he did not want them in the store where they might be discovered by State of New Jersey Pharmacy Board inspectors. After the investigators informed Zapico of his right against self-incrimination, he told them he filled the prescriptions even though he knew they were forged so that he could obtain money. He told the investigators that he charged \$10 more for Dilaudid prescriptions than he did for his normal prescriptions, and that in November, 1981, he made over \$2,000 on these type of prescriptions.

On December 30, 1981, the day following the DEA audit of Winfield Pharmacy, Zapico appeared at the DEA Newark District Office where he produced 27 prescriptions for Dilaudid 4 mg. (100 tablets each). All of the prescriptions were allegedly written by two physicians in northern New Jersey. A check of the DEA registration numbers on the prescriptions revealed that one was issued to a veterinarian in Bayonne, New Jersey, and the other DEA number was found to be invalid.

DEA Diversion Investigators interviewed the two physicians the following day. One physician told them that some prescription forms had been stolen from his office in Elizabeth, New Jersey in late May, 1981. Shortly thereafter he discontinued his practice of medicine and retired. When shown the prescriptions that Zapico claimed were written by him, the physician stated that he had never written such a strength narcotic in such a large quantity in 50 years of medical practice. He also told the investigators that the prescriptions were not in his writing and these were not his prescriptions. The physician believed that the prescriptions came from the stolen prescription pad. Similarly, on January 5, 1982, the investigators interviewed the other physician, who told them he had not been in practice at the office indicated on the prescriptions since 1971. Both physicians gave statements to the investigators that they did not write the prescriptions in question.

During his jury trial, Zapico retracted his plea of not guilty and entered a guilty plea to two of the counts of the

indictment. The court sentenced him to five years probation and required that he attend a full time drug clinic. The court found that Zapico was dependent on controlled substances and that he took advantage of a position of trust, that of pharmacist, to commit the offense. The court also stated the need to deter Zapico and others from violating the drug laws of New Jersey. The Administrator notes that Zapico has been indicted by a grand jury in Essex County, New Jersey for attempting to distribute Empirin #4 and Doriden.

The registrant has not come forward with any evidence to explain or mitigate the actions of Victor Zapico as owner and manager of Winfield Pharmacy. It is clear to the Administrator that Zapico abused the DEA Certificate of Registration issued to the pharmacy of which he is owner and managing pharmacist to divert substantial quantities of a very heavily abused narcotic into illegitimate channels. The fact that he was addicted to narcotics shows even more clearly that Victor Zapico should not have access to controlled substances. It is clear to the Administrator that the public health and safety would be best served by the revocation of the DEA Certificate of Registration previously issued to Winfield Pharmacy.

The Administrator concludes that there is a lawful basis for the revocation of the registrant's Certificate of Registration. He further concludes that under the facts and circumstances in this case the Certificate of Registration should be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that DEA Certificate of Registration AZ8525846, previously issued to Winfield Pharmacy, be revoked, and any pending applications for registration be denied.

Francis M. Mullen, Jr.,  
Administrator.

Dated: December 29, 1983.  
[FR Doc. 84-342 Filed 1-5-84; 8:45 am]  
BILLING CODE 4410-03-M

### Office of Juvenile Justice and Delinquency Prevention

#### Private Sector Corrections Initiative for the Chronic Serious Juvenile Offender

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

**ACTION:** Notice of issuance of guideline for a new program initiative.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 224(a)(12) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, is sponsoring a private sector correctional initiative for chronic serious juvenile offenders.

Private not-for-profit and for-profit organizations are invited to submit pre-applications which establish the capacity and capability to manage an experimental correctional program for chronic serious juvenile offenders and outline their proposed program approach.

OJJDP will then select 5 to 8 projects and negotiate specific program and research requirements. From this group, approximately 4 projects that best meet program and research objectives will be selected for funding. Applicants representing a variety of program approaches will be selected.

**Guideline—Private Sector Corrections Initiative for Chronic Serious Juvenile Offenders**

#### *I. Problem Addressed*

Juvenile offenders account for about forty percent of the serious and violent crimes in this country. According to several studies, a small percentage, perhaps six to seven percent, of juveniles are responsible for a majority of the serious and violent juvenile crime. When a delinquent has been arrested three or four times, the studies show further, there is as much as an 80% certainty that he will continue committing offenses regularly. These offenders are those who are most often committed to secure public or private institutions.

Unfortunately, very little is known about approaches in either the public or private sector that reduce recidivism. However, several private sector correctional programs with innovative approaches have emerged over the past few years. OJJDP is sponsoring this private sector correctional initiative in an effort to test and document the impact of these programmatic approaches.

Organizations selected for participation in this program should have a track record of at least two years in administering private sector juvenile or adult correctional programs. They must demonstrate an appropriate administrative and fiscal structure that permits effective management. In addition, proposed projects must incorporate certain program elements

which are based on the most strongly supported theories of juvenile involvement in serious crime. (See paragraph III.D. for a description of these generic elements.) Finally, they must be committed to undertaking a research and development effort.

#### *II. Objectives*

A. To document the impact of innovative sector corrections projects vs. more traditional correctional programs.

B. To document current impediments to the utilization of innovative private programs.

C. To identify effective management and/or programming techniques being utilized by private contractors.

#### *III. Program Strategy*

A. Projects funded under this initiative are expected to represent a cross-section of program types, geographic diversity, and different stages of development. In addition, programs will be selected on the basis of their potential to become self-sustaining.

B. The correctional approaches must be designed to deal with and reduce the recidivism of serious and violent juvenile offenders. Consequently, projects should focus on large metropolitan areas or combinations of adjacent jurisdictions where there will be sufficient numbers of adjudicated serious and violent juvenile offenders.

C. Applicants should select and enter into tentative negotiations with jurisdictions (other than those in which they are currently operating) which are aimed at eventually reaching firm agreement with regard to the referral of youth and payment of fees for services.

D. Projects are expected to incorporate the following elements:

1. A diagnostic process to determine each youth's unique medical, emotional and educational needs.

2. A phased program including an individualized plan, with components that provide a mix of program settings, ranging from facilities that are fairly isolated or secure to those enabling reentry back into the original community. All youths need not be exposed to every component; in fact, individualized programming is probably desirable, but the full range of settings should be available.

3. A low ward-to-staff ratio, with limited investment in security hardware.

4. A case management system should be developed which provides for program continuity and a single point of accountability across the project phases.

5. Intensely supervised reentry into the community.

6. Staff members chosen to represent a wide range of social backgrounds and work experience so they can serve as effective role models for the wards.

7. The teaching of work-related habits to juveniles through hands-on experience.

8. During any isolated or secure residential phase of the program, juveniles and staff should live and work together as an integrated community.

9. Efforts should be made to work with each juvenile's family as part of the program.

10. Goal-oriented interventions with specific rewards and sanctions.

11. Education services including remedial or special educations.

E. Evaluation Requirements. The major purpose of this initiative is to test the capability of private organizations to operate effective correctional programs for chronic serious juvenile offenders. Therefore, the implementing organization must be prepared to:

1. Assist the evaluator in implementing an experimental evaluation design which will probably require random assignment of experimental and control youth.

2. Assist the evaluator by maintaining required information on program activities. (This includes data on the operations of the program and on the experiences of youth both during and after program participation.)

3. Assist the evaluator in obtaining data on a comparison group of youth (who receive the disposition they would have received in the absence of the experimental program).

#### *IV. Eligibility*

Applications are invited from private for-profit and not-for-profit agencies/organizations. They should have at least a two-year history of implementing a juvenile or adult correctional program.

#### *V. Application Requirements*

All applications must include the following information in Part IV of the application (Standard Form 424):

A. A complete but concise description of the current program of the agency, including a history of the agency's experience in administering such programs.

B. A description of the funding resources that support the agency.

C. A review of administrative and staff capabilities (including resumes). This should include capability to participate in a program evaluation.

D. Letters of reference from state or local authorities where projects have been administered.

E. A concise concept paper which describes the proposed project and includes the following:

1. Each program element should be identified and briefly described. (Concept papers should be no more than 15 pages.) The program description should include an explanation of the features of a research and development program as distinct from a demonstration or service program.

2. The jurisdiction in which the new project will be implemented must be described, in terms of:

a. A profile of the juvenile crime problem, including arrests, petitions, adjudications and/or dispositions, which focus on commitments. This should be supported by charts in an appendix.

b. A brief description of the juvenile court(s) and their jurisdiction and dispositional procedures, including a brief description of the laws that govern both, e.g., waiver, determinant sentencing.

c. A brief description of the current juvenile correctional system which should include data relating to its capacity, the level of its current population, and the record-keeping system (what type of data is maintained and by whom).

d. Letters of intent from the Chief Juvenile Court Judge indicating that the court will, if the law permits, commit youth to the project. If the law only permits commitment to a juvenile authority but does not permit designation of program or facility, a letter of intent to refer committed youth to the project will be required from the appropriate correctional authority. During the final negotiations, firm memoranda of understanding will have to be negotiated with the juvenile court and/or correctional authority.

e. Financial management capability must also be demonstrated by briefly describing the accounting system and methodology used and providing copies of an audit conducted in the last two years.

#### VI. Target population

The target population will be chronic serious juvenile offenders who receive a commitment to the state youth authority or institution. Serious violent crimes are:

\*\*\* criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery, larceny or theft punishable as a felony, motor vehicle theft, burglary or breaking and entering, extortion accompanied by threats of violence, and arson punishable as a felony. Sec. 103, (14) Juvenile Justice and Delinquency Prevention Act of 1974 as amended, (42 U.S.C. 5603).

Each project must develop a specific target population definition and must seek the most chronic serious juvenile offenders within that jurisdiction as the target population. This can be documented by profiling the adjudicated juvenile offenders who have committed the serious crimes listed in the previous paragraph.

#### VII. Criteria for Selection

A. Capability to manage a correctional project for chronic serious juvenile offenders.

B. The extent to which the applicant has an operational program for dealing with chronic serious and violent juvenile offenders.

C. Willingness of project and jurisdiction to cooperate with the evaluator and implement an experimental evaluation design.

D. The extent to which there is a serious and violent juvenile crime problem in the jurisdiction selected for the program and evidence that there are sufficient numbers of the proposed target population to warrant the project.

E. Documented intent to cooperate and refer youth from juvenile courts and/or juvenile correctional authorities.

F. The extent to which there is strong staff capability to manage the project programmatically and fiscally.

G. Extent to which the jurisdiction is willing to commit resources to the placement of youth in the program.

#### VIII. Dollar Range and Duration

A. The award of up to 4 cooperative agreements is anticipated.

B. The project period for this program is three years. The initial award will be for eighteen months. Projects may receive a continuation grant award if performance during the first eighteen months is determined to be successful.

C. Cooperative Agreements (grants) to for-profit or not-for-profit organizations will be in the range of \$500,000 for the initial eighteen-month period. It is expected that each project will serve a total of seventy-five youth during each eighteen-month budget period. In accordance with OMB Circulars, for-profit firms must waive any profit or management fee under a cooperative agreement.

#### IX. Deadline for Submission of Application

A. One original and two copies of the application must be delivered to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Room 786, 633 Indiana Avenue, N.W., Washington, D.C. 20531, by 5:30 pm on February 17, 1984, or applications may be mailed to the above address by either

certified or registered mail, return receipt, by February 10, 1984. Date of receipt is evidenced by the U.S. Postal Service postmark. The necessary forms for applications may be secured by writing to OJJDP.

B. Intergovernmental Review of Federal Programs: On July 14, 1982, the President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," to provide State and local governments increased and more effective opportunities to influence Federal actions affecting their jurisdictions. Final regulations (28 CFR Part 30) implementing the Order for the Department of Justice were published in the Federal Register on June 24, 1983 (48 FR 29238). The Order and the regulations, which became effective September 30, 1983, permit States to establish a state process for the review of Federal programs and activities, to select which programs (from a previously published list) they wish to review and to make their views known to the Department through a State "Single Point of Contact" (SPOC). The Order and the implementing regulations revoke the former A-95 clearance process.

Applicants for this program must submit a copy of their application to the State "Single Point of Contact," if one has been established and if the State has selected this program to be covered in its review process. Applications must be submitted to the SPOC for review and comment at the same time they are submitted to OJJDP. Under the regulations, the State agency has up to sixty (60) days to review and comment. The review period shall begin on the date the application is due to OJJDP.

The identification of the State Single Point of Contact for your State may be obtained by writing Douglas C. Dodge, OJJDP, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

#### X. Civil Rights Compliance

A. All recipients of LEAA assistance must comply with:

1. Section 815(c) of the Justice System Improvements Act (JSIA) and its implementing regulations, found at 28 CFR 42.201, et seq.;

2. Title VI of the Civil Rights Act of 1964, and its implementing regulation, found at 28 CFR 42.101, et seq.;

3. Section 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulations;

4. The Age of Discrimination Act of 1975, as amended, and its implementing regulations; and

5. Executive Order 12136, 44 FR 29837 (May 22, 1979), requiring recipients of

Federal financial assistance to take appropriate affirmative action in support of women's business enterprise.

B. Each recipient of LEAA assistance within the criminal justice system that has 50 or more employees and that has received grants or subgrants totaling \$25,000 or more since the enactment of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and that has a service population with a minority representation of 3% or more is required to formulate, implement and maintain an Equal Employment Opportunity Program (EEOP). Where a recipient has 50 or more employees, and has received grants or subgrants of \$25,000 or more, and has a service population with a minority representation of less than 3%, such recipient is required to formulate, implement and maintain an EEOP relating to employment practices affecting women. This requirement shall be satisfied prior to the award. An applicant for LEAA assistance of \$500,000 or more must submit its EEOP with the application. The EEOP must be approved by OJARS' Office of Civil Rights Compliance prior to award. Failure to address this requirement will result in rejection of the proposal.

C. Applicants that do not meet any of the criteria in (2) above, educational institutions and private not-for-profit organizations shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from

obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Alfred S. Regnery,  
Administrator, Office of Juvenile Justice and  
Delinquency Prevention.

[FR Doc. 04-834 Filed 1-5-84; 8:45 am]  
BILLING CODE 4410-10-M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Summary of Decisions Granting In Whole or In Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under Section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4615 Wilson Boulevard, Arlington, Virginia 22203.

Dated: December 23, 1983.

Patricia W. Silvey,  
Director, Office of Standards, Regulations  
and Variances.

#### AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FEDERAL REGISTER notice	Petitioner	Regulations affected	Summary of findings
M-80-54-M	45 FR 45733	Flintkote Co	30 CFR 59.13-20	Use of compressed air below 10 p.s.i. with specific safety precautions considered acceptable alternate method. Granted with conditions.
M-82-75-C	47 FR 44697	Emerald Mines Corp	30 CFR 75.326	Petitioner's proposal to use the air in the belt entry to ventilate other working places with specified safeguards considered acceptable alternate method of compliance. Granted with conditions.
M-82-78-C	47 FR 55541	TAS Coal Corp	30 CFR 75.1710	Use of cables or examples on specific electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part with conditions.
M-82-97-C	47 FR 59071	Glory Coal Co	30 CFR 75.305	Due to numerous roof falls, petitioner's proposal to establish and maintain air measurement stations considered acceptable alternate method of compliance. Granted with conditions.
M-82-105-C	48 FR 892	Cannelton Industries, Inc	30 CFR 75.205	Petitioner's proposal to establish and maintain air monitoring stations at specified locations along the airway considered acceptable alternate method. Granted with conditions.
M-82-108-C	48 FR 893	Jewell Ridge Coal Corporation	30 CFR 75.1710	Use of cables or examples in specified low mining heights on the mine's electric face equipment would result in a diminution of safety. Granted with conditions.
M-82-116-C	47 FR 55542	Westmoreland Coal Co	30 CFR 75.1105	Installation of dry chemical fire suppression devices on each pump installation with specified safeguards considered acceptable alternate method of compliance. Granted with conditions.
M-82-122-C	48 FR 11535	Three L Coal Co	30 CFR 75.201	Proposed airflow reduction which would maintain a safe and healthful atmosphere considered acceptable alternate method. Granted with conditions.
M-82-125-C	48 FR 4575	Morgan Mining Co., Inc	30 CFR 75.1710	Use of cables or examples on specific electric face equipment in specified low mining heights would result in a diminution of safety. Granted in part with conditions.
M-82-126-C	48 FR 5384	Snowmass Coal Co	30 CFR 75.1160-2(b)	Petitioner's proposal to store at least 500 feet of trachea and to install a point-type heat sensor and fire detection system with specified safeguards at strategic locations considered acceptable alternate method. Granted with conditions.

## AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FEDERAL REGISTER notice	Petitioner	Regulations affected	Summary of findings
M-82-129-C	48 FR 16781	Amox Coal Co	30 CFR 77.216-5	Petitioner's proposal that the water impoundment continue to impound water after abandonment with specified safeguards and provisions considered acceptable alternate method of compliance. Granted.
M-82-132-C	48 FR 1847	Rapoca Energy Co	30 CFR 77.214(a)	Petitioner's proposal to cover existing abandoned mine openings with refuse material considered acceptable alternate method. Granted.
M-82-136-C	48 FR 9399	Neece Creek Coal Co., Inc.	30 CFR 75.305	Petitioner's proposal to establish and maintain specified checkpoint monitoring stations to ensure adequate ventilation considered acceptable alternate method of compliance. Granted with conditions.
M-82-137-C	48 FR 9399	Peabody Coal Co	30 CFR 75.503	Spring-loaded, self-locking metal swivel snaps considered acceptable alternate to padlocks for the purpose of locking battery plugs to machine-mounted battery receptacles on permissible mobile battery-powered machines. Granted with conditions.
M-83-4-C	48 FR 9399	Laurel Run Mining Co	30 CFR 77.1605(k)	Installation of berms or guards at least axle high to the largest piece of equipment using the roadway, with openings at intervals to permit snow removal, considered acceptable alternate method. Granted with conditions.
M-83-8-C	48 FR 16782	Peabody Coal Co	30 CFR 75.503	Spring-loaded, self-locking metal swivel snap or a spring-loaded self-locking metal hair pin considered acceptable alternate to padlocks for the purpose of locking battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines. Granted with conditions.
M-83-9-C	48 FR 16782	Lick Fork Elkhorn Coal Co	30 CFR 75.1710	Use of cabs or canopies in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-83-12-C	48 FR 52788	Rob-Rob Mining Co., Inc.	30 CFR 77.214(a)	Placing coal process waste over three known abandoned mine entries of the completely removed coal seam with specified safeguards considered acceptable alternate method. Granted with conditions.
M-83-15-C	48 FR 16782	G.M.&W. Coal Co., Inc.	30 CFR 75.1100-2(e)(2)	Petitioner's proposal to provide two 2A10 BC or higher rating fire extinguishers or one with twice the minimum rating required at each temporary electrical installation considered acceptable alternate method. Granted.
M-83-16-C	48 FR 15753	Consolidation Coal Co.	30 CFR 75.305	Petitioner's proposal to establish and maintain specific checkpoints to measure pressure differential and take air and methane readings on a daily basis considered acceptable alternate method. Granted with conditions.
M-83-17-C	48 FR 16781	Consolidation Coal Co.	30 CFR 75.1105	Enclosing pumps in fireproof housings with fireproof doors and the installation of an automatic fire suppression device in the pump house activated by heat sensors considered acceptable alternate method of compliance. Granted with conditions.
M-83-18-C	48 FR 15349	Eastern Associated Coal Corporation.	30 CFR 75.1105	Petitioner's proposal to use a positive pressure (blowing) system considered acceptable alternate method. Granted with conditions.
M-83-26-C	48 FR 16781	Consolidation Coal Co.	30 CFR 75.305	Petitioner's proposal to establish and maintain air monitoring stations at specified locations in the returns and on the surface considered acceptable alternate method of compliance. Granted with conditions.
M-83-27-C	48 FR 28363	Donaldson Creek Mining Co., Inc.	30 CFR 75.1710	Use of cabs or canopies in specified low mining heights would result in a diminution of safety for the miners affected. Granted with conditions.
M-83-28-C	48 FR 22827	Saginaw Mining Co.	30 CFR 75.1100-2(e)(2)	Petitioner's proposal to provide two portable fire extinguishers or one extinguisher having at least twice the minimum capacity required at each temporary electrical installation considered acceptable alternate method. Granted with conditions.
M-83-60-C	48 FR 32412	Inland Steel Coal Co	30 CFR 75.1100-2(e)(2)	Petitioner's proposal to provide two portable extinguishers or one extinguisher having at least twice the minimum capacity in lieu of providing one portable fire extinguisher and 240 pounds of rock dust considered acceptable alternate method. Granted.
M-83-62-C	48 FR 32412	Southmountain Coal Co., Inc.	30 CFR 75.1710	Use of cabs or canopies in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-83-65-C	48 FR 31926	Action Energies, Inc.	30 CFR 75.1710	Use of cabs or canopies on specified equipment in specified low mining heights would result in a diminution of safety for the miners affected. Granted with conditions.

[FR Doc. 84-216 Filed 1-5-84; 8:45 am]

BILLING CODE 4510-43-M

**Occupational Safety and Health Administration****Federal Advisory Council on Occupational Safety and Health; Postponement of Meeting**

Notice is hereby given that the meeting of the Federal Advisory Council on Occupational Safety and Health, scheduled for January 11, 1984, (December 23, 1983; 48 FR 56870), is postponed until a later date.

All communications regarding this Advisory Council should be addressed to Mr. 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 3rd day of January, 1984.

Thorne G. Aucter,  
Assistant Secretary.

[FR Doc. 84-365 Filed 1-5-84; 8:45 am]

BILLING CODE 4510-26-11

**Office of Pension and Welfare Benefit Programs**

[Application No. D-2368]

**Alaska Electrical Pension Plan (the Plan) Located in Anchorage, Alaska; Proposed Exemption**

**AGENCY:** Department of Labor, Office of Pension and Welfare Benefit Programs.

**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 exemption, 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 Number 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.

#### The Alaska Electrical Pension Plan (the Plan) Located in Anchorage, Alaska

[Application No. D-2388]

##### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted, 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 Carr-Gottstein Properties, Inc. (CGP), by reason of the Plan's participation in a mortgage loan made by Washington Mortgage Company (WMC) to CGP on August 16, 1976.

**Effective Date:** If the proposed exemption is granted, it will be effective August 16, 1976.

**Limited Scope of Exemption:** Based upon the record submitted, the Department is proposing an exemption from 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, with respect to CGP. Thus, CGP would be relieved of its excise tax liability arising as a result of this transaction. The Department is not proposing exemptive relief for any other aspect of the transaction, or for any other parties to the extent such parties may have engaged in prohibited transactions. In this connection, the Department is not providing exemptive relief from the restrictions of Title I of the Act to any fiduciary who caused the Plan to enter the transaction, nor is the Department herein providing any exemptive relief from Title I or Title II of the Act for any financial institution which may have sold the participation in the mortgage loan to the Plan.

##### Summary of Facts and Representations

1. The Plan was founded in 1933 to provide pension and retirement benefits for members of the International Brotherhood of Electrical Workers Local Union No. 1547. The Plan has engaged an independent investment counseling firm, Kennedy Associates, Inc. (KA), to manage and supervise investment of the Plan's assets.

2. In 1976, CGP applied to WMC for a loan to finance improvements on existing buildings. The improvements were to add a total of six bays, containing approximately 3,000 square feet each and including 450 square feet of office space. The buildings, located at Old Seward Highway and Huffman Road in Anchorage, are used for commercial purposes and have gross rentable space of 17,508 square feet on a 66,650 square foot site. The buildings had an appraised value of \$789,224 as of May 11, 1976.

3. The loan closed on August 16, 1976. The Plan's participation in the mortgage is \$350,000, which is 65% of the amount loaned to CGP. KA approved the investment on behalf of the Plan. The interest rate to the Plan is 10% net of a .125% servicing fee to WMC. All loan payments have been made on schedule.

4. Alaska Catering Company (ACC) was a contributing employer to the Plan from 1975 until 1980. ACC is 100%

owned by Production Services, Inc., which is 50% owned by Rim, Inc. Rim, Inc. is 50% owned by CGP, the borrower in this transaction. CGP and its principals have never been trustees of the Plan, nor have they occupied any other fiduciary relationship to the Plan.

5. In summary, the applicant represents that the subject transaction meets the criteria of section 4975(c)(2) of the Code because: (1) all loan payments have been made in full and on schedule; and (2) CGP had no influence or control over the investment by the Plan in the mortgage loan which CGP sought and obtained from WMC.

**Notice to Interested Persons:** Within 30 days of the publication of this proposed exemption in the Federal Register, notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department. Comments are due within 60 days of the date of publication.

**For Further Information Contact:** Gary H. Lefkowitz of the Department of Labor, telephone (202) 523-8831. (This is not a toll-free number.)

The Alaska Laborers Employer Pension Trust (the Plan) Located in Anchorage, Alaska

[Application No. D-3303]

##### Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted 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 Ray W. Strand and Strand, Inc. by reason of the Plan's participation in a mortgage loan originated by the National Bank of Alaska (the Bank) to a partnership (the Partnership) composed of Strand, Inc. and G&A Associates, for the period beginning April 5, 1976 through December 30, 1980.

**Effective Date:** If the proposed exemption is granted, it will be effective from April 5, 1976 through December 30, 1980.

**Limited Scope of Exemption:** Based upon the record submitted, the Department is proposing an exemption from 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, with respect to Ray W. Strand and Strand, Inc. Thus, Ray W. Strand and Strand, Inc. would be relieved of their excise tax liability

arising as a result of this transaction. The Department is not proposing exemptive relief for any other aspect of the transaction, or for any other parties to the extent such parties may have engaged in prohibited transactions. In this connection, the Department is not providing exemptive relief from the restrictions of Title I of the Act to any fiduciary who caused the Plan to enter into the transaction, nor is the Department herein providing any exemptive relief from Title I or Title II of the Act for any financial institution which may have sold the participation in the mortgage loan to the Plan.

#### Summary of Facts and Representations

1. The Partnership was formed on March 31, 1975 for the purpose of purchasing, developing, constructing and managing a 24 unit apartment complex in Fairbanks, Alaska known as Hamilton Acres. Strand, Inc. had a 25 percent interest in the profits and losses of the Partnership. The interim financing necessary to complete the acquisition of the property and the construction of the apartment complex thereon was obtained by the Partnership from Washington Mortgage Co., Inc. of Seattle, Washington. The principal amount of the construction financing was \$667,500.

2. The Partnership obtained permanent financing from the Bank. The loan was for \$655,000, and was closed on April 5, 1976. The loan provided for interest at a rate of 10½ percent per annum, to be amortized in equal monthly installments over a 25 year period with a call provision at the end of 15 years. All loan payments have been made in full throughout the history of the loan. The note executed with the loan was signed by the Partners as well as by Ray Strand in his individual capacity. Mr. Strand is the owner of Strand, Inc.

3. Prior to the closing of the permanent financing, the Partnership submitted certain information to the Bank in order to document the adequacy of the proposed security for the repayment of the loan, including an appraisal of the Hamilton Acres Project as prepared by Keith M. Riely, M.A.L., an independent appraiser. The appraisal indicated a fair market value for the property of \$935,000.

4. Strand, Inc. was a contributing employer to the Plan at the time the loan was closed. The Plan acquired a 40% undivided interest in the loan, amounting to \$262,000.

5. All negotiations and other matters in connection with the processing and closing of the loan were conducted between the partnership and the Bank.

At no time prior to the closing of the loan did the Bank indicate that the Plan would be acquiring any interest in the loan. Mr. Strand is not and has never been a trustee of the Plan, nor has he ever occupied any other fiduciary relationship with respect to the Plan. Mr. Strand represents that he has been unable to ascertain who caused the Plan to make its investment in the subject loan.

6. On December 30, 1980, the Bank repurchased the loan from the Plan as a part of a Settlement Order between the Bank and the Department.

7. In summary, the applicants represent that the subject transaction meets the criteria of section 4975(c)(2) of the Code because: (1) all loan payments have been made in full; (2) the applicants had no influence or control over the Plan's involvement in the transaction; and (3) the applicants were unaware at the time of the making of the loan of the possible prohibited nature of the transaction.

*Notice to Interested Persons:* Within 30 days of the publication of this proposed exemption in the Federal Register, notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicants and the Department. Comments are due within 60 days of the date of publication.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Alaska Teamsters Employer Pension Trust (the Plan) Located in Anchorage, Alaska

[Application No. D-3328]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted 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 Central Office Building, Ltd. (COB) and Thomas J. and Helen B. Miklautsch by reason of the Plan's participation in a mortgage loan originated on September 8, 1976, by Washington Mortgage Co., Inc. (WMC) to COB, and by reason of the assignment to the Plan of certain leases with Thomas Miklautsch and related parties as security for the loan.

Effective Date: If the proposed exemption is granted, it will be effective September 8, 1976.

**Limited Scope of Exemption:** Based on the record submitted, the Department is proposing an exemption from 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, with respect to COB and Thomas and Helen B. Miklautsch. Thus, these parties would be relieved of their excise tax liability arising as a result of this transaction. The Department is not proposing exemptive relief for any other aspect of the transaction, or for any other parties to the extent such parties may have engaged in prohibited transactions. In this connection, the Department is not providing exemptive relief from the restrictions of Title I of the Act to any fiduciary who caused the Plan to enter the transaction, nor is the Department herein providing any exemptive relief from Title I or Title II of the Act for any financial institution which may have sold the participation in the mortgage loan to the Plan.

#### Summary of Facts and Representations

1. Thomas J. Miklautsch (Miklautsch) is an individual who has owned directly and indirectly between 75% and 90% of COB from its inception to date. COB is an Alaska limited partnership which owns and leases the building located at 1001 Noble Street, Fairbanks, Alaska (the Building). The Building was built between September 1976 and May 1977.

2. COB obtained a \$5,000,000 construction loan in September, 1976 from WMC, an unrelated mortgage company. WMC's commitment for the construction loan was based in part on a September 8, 1976 commitment to WMC from the Plan for 75% of the permanent financing. The balance of the permanent financing was provided by the National Bank of Alaska for itself and other participants. The note was signed by COB, Miklautsch and his wife Helen.

3. Modern Construction, Inc. (MCI) is a corporation which was the general contractor for the construction of the Building. From 1975 through the present, Miklautsch has owned 41.67% of MCI in 1976 and 1977, MCI was a contributing employer to the Plan.

4. Miklautsch and related entities initially leased a portion of the Building as a requirement of the lender, WMC. They continue to lease approximately 6% of the net rentable space in the Building. The leases for the Building were assigned to WMC as security for the loan. WMC's interest in such leases may have been assigned, in part, to the Plan. The loan is also secured by a deed of trust on the Building.

5. The permanent loan is for a stated term of 25 years, at 10½% interest per

annum, with a 15 year call requirement. All loan payments have been current throughout the history of the loan. At the time of the loan, Mikdautsch was not aware that MCI employed 3 participants in the Plan out of its approximately 200 employees, nor was he aware that MCI had made contributions to the Plan. Mikdautsch is not and has never been a trustee of the Plan, nor has he occupied any other fiduciary relationship with respect to the Plan. The applicants represent that they have no information regarding who made the decision on behalf of the Plan to participate in the subject loan.

6. In summary, the applicants represent that the subject transaction meets the criteria of section 4975(c)(2) of the Code because: (1) All loan payments have been made in full and on schedule; (2) the applicants had no influence or control over the Plan's involvement in the transaction; and (3) the applicants were unaware of the possible prohibited nature of the transaction.

For Further Information Contact Gary H. Lefkowitz of the Department, telephone (202) 523-8331. (This is not a toll-free number.)

**Alaska Electrical Pension Trust (the Plan) Located in Anchorage, Alaska**

[Application No. D-3380]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted 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 Skoglund Company, Inc. (SCI) and Mr. and Mrs. Paul K. Skoglund (the Skoglunds) by reason of the Plan's participation in a mortgage loan originated by Alaska Pacific Bank (the Bank) to the Skoglunds for the period beginning March 17, 1977 through September 27, 1979.

**Effective Date:** If the proposed exemption is granted, it will be effective from March 17, 1977 through September 27, 1979.

**Limited Scope of Exemption:** Based upon the record submitted, the Department is proposing an exemption from 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, with respect to SCI and the Skoglunds. Thus, these parties would be relieved of their excise tax liability arising as a result of this transaction. The Department is not

proposing exemptive relief for any other aspect of the transaction, or for any other parties to the extent such parties may have engaged in prohibited transactions. In this connection, the Department is not providing exemptive relief from the restrictions of Title I of the Act to any fiduciary who caused the Plan to enter the transaction, nor is the Department herein providing any exemptive relief from Title I or Title II of the Act for any financial institution which may have sold the participation in the mortgage loan to the Plan.

#### **Summary of Facts and Representations**

1. SCI is a mechanical subcontractor specializing in the installation and maintenance of heating, ventilating and air conditioning systems. SCI was incorporated on May 2, 1974. Paul K. Skoglund (Skoglund) owns outright or is deemed to own 100% of the issued and outstanding shares of SCI, and he is also the President of SCI.

2. In 1977, SCI constructed a new shop and office building to house its own operations. Skoglund and his wife applied for interim and permanent financing at the Bank. On March 17, 1977, the Bank loaned \$577,000 to the Skoglunds. The loan provided for interest at the annual rate of 10.5%. All loan payments have been current throughout the history of the loan.

3. The Bank performed the underwriting function for the loan at arm's-length. The Bank sought investors for the loan and selected the Plan as the primary lender. The Plan was one of several participants in the loan to the Skoglunds. The value of the participating interest by the Plan was \$519,300, or 90% of the loan. Skoglund was not consulted on this decision, nor was he aware of the existence or identity of the Plan as a participant until the loan closed. At this time, however, there were no electrical workers on SCI's payroll, and SCI was not a contributing employer to the Plan.

4. During the summer of 1977, SCI was hired to perform a substantial amount of work with electrical, low voltage thermostats on an unrelated project. SCI employed one union electrician on its service crew for the period from June 2, 1977 to October 21, 1977. During this period, SCI contributed to the Plan on behalf of this one employee.

5. At the time of the closing of the loan, Skoglund did not anticipate that SCI would ever make contributions to the Plan. Skoglund is not and has never been a trustee of the Plan, nor has he ever occupied any other fiduciary relationship with respect to the Plan. Skoglund represents that he has no way of determining who was the Plan

fiduciary that caused the Plan to enter the subject transaction.

6. On September 27, 1979, the entire loan of \$577,000 (with the Plan's investment of \$519,300) was transferred to the International Brotherhood of Painters and Allied Trades, thus terminating the subject transaction.

7. The applicants represent that the subject transaction meets the criteria of section 4975(c)(2) of the Code because: (1) all loan payments have been made in full and on schedule; (2) the applicants had no influence or control over the Plan's involvement in the transaction; and (3) the applicants were unaware of the possible prohibited nature of the transaction.

For Further Information Contact Gary H. Lefkowitz of the Department, telephone (202) 523-8331. (This is not a toll-free number.)

**Wooley Tool and Manufacturing Division, Employees' Profit Sharing Plan and Trust (the Plan) Located in Odessa, Texas**

[Application No. D-4400]

#### *Proposed Exemption*

The Department is considering granting an 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). If the exemption is granted the restrictions of section 405(a) and 403(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 by the Plan of a certain parcel of improved real property to Wooley Tool and Manufacturing Division (the Employer) for \$175,000, provided that the terms and conditions of sale are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

#### **Summary of Facts and Representations**

1. The Plan is a profit sharing plan with 220 participants and total assets of \$3,204,000.00 as of December 31, 1982. Interfirst Bank Odessa, N.A. is the Plan's trustee.

2. On October 23, 1975, the Plan purchased a parcel of unimproved real property (the Property) for \$30,000 from CPI, Inc., an unrelated party. The Property is located at 5457 Andrews Highway, Odessa, Texas. The Plan

leased the Property to the Employer effective January 1, 1976.<sup>1</sup>

3. The Plan proposes to sell the Property to the Employer for \$175,000 in cash. The Plan will pay no real estate commissions or fees in connection with the proposed sale. The applicant represents that the cost basis of the Property is \$98,730.

4. Several appraisals have been performed on the Property, with the most recent appraisal being performed on May 1, 1983 by Mr. Milton D. Shirley, Jr., M.A.I. (Mr. Shirley), of M.D. Shirley Associates Inc., Mr. Shirley valued the Property at \$150,960. The Plan trustee after reviewing the current and prior appraisals and the condition of the Property, represents that based on its knowledge of the area and its expertise in appraising, that the Plan should receive \$175,000 for the Property because of its unique value to the Employer.

5. The Plan trustee represents that the proposed sale of the Property is in the best interest of the Plan because the buildings located on the Property are old and in poor condition. Furthermore, the economic conditions in Odessa, Texas are bad with a 30% vacancy rate in commercial buildings.

6. The applicant recognizes that the leases with the Employer constitute prohibited transactions under the Act and Code. Accordingly, the Employer represents that it will pay within 60 days of the final grant of the exemption any excise tax penalties owing due to the prior lease transactions.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) the Plan trustee represents that the sale of the Property would be in the Plan's best interest;

(b) it will be a one time transaction for cash;

(c) the Plan will not pay any real estate commissions or fees in connection with the proposed sale;

(d) with respect to the prohibited leases with the Employer, any excise taxes due will be paid within 60 days of the granting of an exemption; and

(e) the price to be paid to the Plan was decided by the Plan trustee based upon its expertise after considering all prior appraisals and the unique value of the Property to the Employer.

For Further Information Contact: Alan H. Levitas of the Department, telephone

(202) 523-8971. (This is not a toll-free number.)

**East Side Electric Supply, Inc. Pension Plan and Retirement Trust (the Plan)  
Located in Phoenix, Arizona**

[Application No. D-4230]

#### *Proposed Exemption*

The Department is considering granting an 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). If the exemption is granted the restrictions of section 408(a), 408(b)(1) and 408(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 (1) the proposed purchase by the Plan of certain unimproved real property (the Land) from Strupp Brothers Investments (the Partnership), a party in interest with respect to the Plan, provided that the purchase price of the Land is not more than its fair market value on the date of transfer; (2) the proposed ground lease (the Ground Lease) of the Land by the Plan to the Partnership; (3) the subsequent sublease of the Land by the Partnership to East Side Electric Supply, Inc. (the Employer), the sponsor of the Plan; (4) the possible resale of the Land by the Plan to the Partnership pursuant to a put option in the Ground Lease exercisable solely by the Plan; and (5) the personal guarantees by the partners in the Partnership of the rental payments due the Plan under the Ground Lease as well as any payments that may be due the Plan under the Plan's right to exercise the put option in the Ground Lease; provided that the terms and conditions of such transactions are at least as favorable to the Plan as those obtainable by the Plan in arm's-length transactions with unrelated parties.

#### **Summary of Facts and Representations**

1. The Plan is a money purchase pension plan which had seven participants and net assets of approximately \$743,903 on March 31, 1983. Messrs. Robert A. Strupp and Peter A. Strupp (collectively, the Strupps) are the trustees of the Plan. The Strupps are also the two principal officers and sole shareholders of the Employer, and the only partners in the Partnership, a general partnership organized under Arizona law.

2. The Plan proposes to purchase the Land from the Partnership. The Land, which is located at the northeast corner of Thirty-fifth and West Virginia

Avenues in Phoenix, Arizona, was purchased by the Partnership from unrelated parties on May 5, 1983 with the intent that it would be sold to the Plan, but was held by the Partnership pending the outcome of a zoning hearing which was resolved in favor of the applicants. The Plan will purchase the Land for cash in the amount of \$152,000, which is the amount paid for the Land by the Partnership. This amount represents approximately 20.4% of the Plan's current assets. Mr. Veldon Naylor (Mr. Naylor), an independent M.A.I. appraiser located in Mesa, Arizona, appraised the Land on August 16, 1983 and determined its fair market value on that date to be \$162,000.

3. Following the purchase of the Land, the Plan will enter into the Ground Lease with the Partnership. The Ground Lease, which is triple net, will extend for a term of fifty-five years and will grant the Partnership five successive options to extend the Ground Lease for five consecutive ten year periods, for a total of one hundred and five years, the exercise of such renewal options being subject to the approval of an independent fiduciary acting on behalf of the Plan. The Ground Lease will provide initially for a monthly rental payment of \$1,620, which is 1% of the appraised fair market value of the Land, and will be readjusted every five years to a monthly rental which is 1% of the then-current fair market value of the Land as determined by an independent, M.A.I. appraiser satisfactory to the independent fiduciary for the Plan. In no event will the rental rate for the Land be less than \$1,620 per month, regardless of any future decreases in the appraised value of the Land. Mr. Naylor has reviewed the proposed initial rental rate and the formula for determining future rental rates and states that these amounts accurately represent the fair market rental values based on those charged for similar commercial properties in the Phoenix, Arizona metropolitan area. The Plan will have the right to assign its interest in the Ground Lease should the Plan decide to sell its interest in the Land to a party other than the Partnership. In addition, the Ground Lease will provide the Plan with a put option permitting the Plan to sell the Land to the Partnership for its then current appraised fair market value upon one year's notice to the Partnership. Any costs incurred by the Plan as a result of its exercise of the put option will be paid by the Partnership. The put option will be exercisable solely by the independent fiduciary for the Plan and will provide the Plan with the means to dispose of the Land if it is

<sup>1</sup> Between June 1, 1977 and March 1982 three other companies (all unrelated) leased office space on the Property from the Plan. As of this date, the Employer is the sole tenant on the Property.

expedient for the Plan to do so. The rental payments due under the Ground Lease, as well as any payments that may become due under the Plan's right to exercise the put option, will be personally guaranteed by the partners of the Partnership. Mr. Peter A. Strupp represents that he has a net worth in excess of \$1.5 million and Mr. Robert A. Strupp represents that his net worth exceeds \$800,000.

4. Upon execution of the Ground Lease, the Partnership will construct a building (the Building) which is expected to cost between \$350,000 and \$400,000. The costs of construction will be financed by a construction or permanent lender through a loan to the Partnership which will be secured by a security interest on the improvements only. The Plan's interest in the Ground Lease will not be subordinated to the interest of the construction or permanent lender. Following construction of the Building, the Land will be subleased (the Sublease) and the Building will be leased by the Partnership to the Employer. The applicants represent that the rental paid for the Land by the Employer to the Partnership under the Sublease will not at any time exceed the rental paid by the Partnership to the Plan under the Ground Lease.

5. First Interstate Bank of Arizona, N.A. (the Bank) will act as the independent fiduciary for the Plan with respect to the subject transactions. The Bank represents that it has had substantial experience in dealing with employee benefit plans and that it has heretofore maintained no relationship of any kind with the Employer or with its shareholders or officers. The Bank has reviewed the investment portfolio of the Plan as well as the terms and conditions of the subject transactions and has determined that the transactions are prudent, consistent with the Plan's overall investment policy and in the best interest of the Plan's participants and beneficiaries. Specifically, the Bank states that the Partnership will not realize any gain on the sale of the Land to the Plan; the rental value over the term of the Ground Lease will be the fair market rental value of the Land and will be readjusted every five years in accordance with reappraisals by an independent M.A.I. appraiser; the put option in the Ground Lease will provide a means for the Plan to dispose of the Land in the event that the investment needs of the Plan change over a period of time or if Plan assets could be used in a more productive manner; and the personal guarantees by the partners of

the Partnership of the rental payments as well as any payments that may be due the Plan under the Plan's right to exercise its put option, backed by substantial assets, will make these transactions a secure investment for the Plan. The Bank will monitor the rental amounts due under the Ground Lease and the rental payments, determine whether the renewal options may be exercised and will periodically review the status of the Ground Lease to determine whether the Plan should sell its interest in the Land and/or exercise its put option. Additionally, the Bank will take any steps necessary to protect and enforce the rights of the Plan with respect to the subject transactions.

6. In summary, the applicants represent that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because: (1) the purchase price of the Land to be paid by the Plan is less than the fair market value of the Land as stated by an independent, M.A.I. appraiser; (2) the rental to be paid to the Plan under the Ground Lease has been determined to be the fair market rental value by an independent, M.A.I. appraiser and will be readjusted every five years to reflect the then-current fair market rental value; (3) any renewals of the Ground Lease must be approved by the independent fiduciary for the Plan; (4) the assignability of the Plan's interest in the Ground Lease and the Plan's put option will permit the Plan to dispose of the Land if it appears to be in the best interest of the Plan to do so as determined by the independent fiduciary; (5) the rental payments under the Ground Lease as well as any payments that may be due the Plan under its right to exercise the put option have been personally guaranteed by the partners of the Partnership; (6) the rental paid by the Employer to the Partnership under the Sublease will not at any time exceed the rental paid by the Partnership to the Plan under the Ground Lease; and (7) the Bank, as the independent fiduciary for the Plan, has represented that the proposed transactions are in the best interest of the Plan and its participants, and that it will monitor the subject transactions and take any steps necessary to protect and enforce the rights of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8372. (This is not a toll-free number.)

**United Precision Machine & Engineering Company Profit Sharing Plan (the Plan) Located in Salt Lake City, Utah [Application No. D-4227] Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4075(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (49 FR 18471, April 26, 1975). If the exemption is granted the restrictions of section 408(a), 408(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 loan by the Plan of \$200,000 (the Loan) to United Precision Machine & Engineering Company (the Employer), the sponsor of the Plan, provided that the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in a similar transaction with an unrelated party.

**Summary of Facts and Representations**

1. The Plan is a defined contribution plan with 26 participants. As of September 30, 1982, the Plan had assets of \$1,931,617. Messrs. Jay Rydalch, Floyd M. Childs, John Nieuwland, Louis Timm, and Sam Dalton serve as the trustees (the Trustees) of the Plan, and, except for Mr. Dalton, serve as officers, directors, shareholders and/or employees of the Employer. The Trustees constitute the Plan's investment and administrative committee which is responsible for making decisions regarding Plan investments.

2. The Employer is a corporation engaged in the machinery and machine tool business. As of February 28, 1983, the Employer had a total net worth of \$1,474,725.

3. The applicant is requesting an exemption for the Plan to engage in the Loan with the Employer. Pursuant to a prior administrative exemption granted by the Department (PTE 79-80, 44 FR 76877, December 30, 1979) the Plan loaned \$120,000 to the Employer collateralized with a perfected first security interest in heavy equipment owned by the Employer. This loan currently has a balance of \$30,951, and the Employer is current on all payments due under the loan.

4. The proposed Loan will be represented by a promissory note payable in 48 equal monthly consecutive installments of \$5,415 each with interest on the unpaid principal balance at 13.5% per annum. The Loan will be secured by

a perfected first security interest in heavy equipment (the Collateral) (a lathe and a machining center) recently purchased by the Employer. The New West Machine Tool Corporation (New West), located in Salt Lake City, Utah, conducted an appraisal of the Collateral and determined, as of July 14, 1983, that the Collateral had a total fair market value of \$323,000. New West analyzed the marketability of the Collateral and determined that present marketability is fair to good. New West represents that because of the origin, manufacturer, and design of the Collateral the marketability for it in four years will be good to excellent. New West estimates that the predicted value of the Collateral in July, 1987, will be \$172,000. New West is a corporation which has been engaged in selling and servicing machine tools for 13-15 years. New West represents that it has been familiar with the particular manufacturer of the Collateral (Mori Seki) for 20 years.

5. The Loan will represent approximately 10.2% of the assets of the Plan. When aggregated with other outstanding extensions of credit by the Plan to the Employer, the PTE 79-80 loan, and a loan entered into by the Plan to the Employer in June, 1974, with a current outstanding balance of \$10,252,<sup>1</sup> the total outstanding indebtedness owed to the Plan will be less than 12.5% of the Plan's assets.

6. The Valley Bank and Trust Company (the Bank) located in Salt Lake City, Utah, has been appointed to serve as the independent fiduciary with respect to the Loan. The Bank maintains no commercial or business relationship with the Employer. The Bank has examined the terms and conditions of the Loan and has initially determined that the Loan is appropriate and suitable for the Plan and its participants and beneficiaries. The Bank considered the overall investment portfolio of the Plan and the diversification of its asset in rendering this determination. This same determination will be made immediately prior to, and as a condition of, the consummation of the Loan.

7. In rendering its determination the Bank reviewed the appraisal (and prior appraisals done in November-December 1982) and has determined that the Collateral has a fair market value in excess of 150% of the Loan. The Bank has determined that because the proposed Loan will be repaid over a short period of time, the Collateral will

remain at least equal to 150% of the outstanding Loan balance throughout the Loan's term despite the possibility of depreciation of the Collateral. In the event that the value of the Collateral drops below 150% of the Loan's balance, the Bank will require the Employer to add additional collateral to insure that its value is at least 150% of the outstanding balance of the Loan, or alternatively, will require the Employer to accelerate its payments on the Loan. The Employer will insure the Collateral against fire or other loss, and the Plan will be the named insured under such insurance policy.

8. With respect to the Loan's terms, the Bank represents that the interest rate is 3% higher than the current prime loan rate, 2% higher than the current yield on treasury notes, and at least 1% higher than corporate bonds of similar maturity. The Bank believes that the Plan will be receiving a higher than market yield from the Loan, and thus it is an appropriate and profitable investment for the Plan. The First Security Bank of Utah, located in Salt Lake City, Utah, stated in a letter dated April 19, 1983, that, secured by the Collateral, it would lend \$200,000 to the Employer secured by a note bearing interest at 13½% for four years.

9. The Bank will completely monitor the terms and conditions of the Loan and will be empowered to enforce the terms of the Loan, including making demand for timely payment, bringing suit, or other appropriate process against the Employer in the event of default.

10. In summary, the applicant represents that the proposed Loan will satisfy the statutory criteria of section 408(a) of the Act because (a) the Loan will be secured by a perfected first security interest in insured collateral which will at all times throughout the term of the Loan have a value not less than 150% of the Loan's outstanding balance; (b) the Bank, an independent, qualified party, will serve as the fiduciary of the Plan with regard to the Loan, and has determined that the Loan is an appropriate and suitable investment for the Plan; and (c) the Bank will completely monitor the Loan and enforce the performance of the Employer's obligations under the applicable Loan documents.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

### Tri-State Optical, Inc. Profit Sharing Plan (the Plan) Located in Fort Wayne, Indiana

[Application No. D-4531]

#### Proposed Exemption

The Department is considering granting an 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). If the exemption is granted the restrictions of section 406(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: (1) the proposed purchase (the Purchase) of a building (the Building) by the Plan from Fort Wayne National Bank as Trustee of the Betty Pollak Trust (the Seller), a party unrelated to the Plan, provided that the purchase price is not more than the fair market value of the Building on the date of sale; and (2) the proposed lease (the Lease) of the Building to Tri-State Optical, Inc., (the Employer), a party-interest with respect to the Plan, provided that the terms and conditions of the Lease are at least as favorable to the Plan as those obtainable from an unrelated party.

#### Summary of Facts and Representations

1. The Plan is a defined contribution plan with approximately 47 participants. As of June 1, 1983, the Plan's assets were valued at \$983,188. There are no Plan assets currently invested in real estate. Lincoln National Bank (the Bank) serves as trustee of the Plan. The Bank has sole discretion with respect to all investments made by the Plan. The Bank represents that it is an independent trustee for the Plan, having no banking relationship with the Employer and only a de minimus banking relationship with the principals of the Employer, consisting of a passbook account and a mortgage which represent substantially less than one percent of the total assets of the Bank. The Bank further represents that neither the Employer nor the principals of the Employer has an equity interest in the Bank.

2. On April 13, 1983, the Plan entered into a purchase agreement with the Seller to purchase the Building. The purchase agreement was made contingent to a grant of an exemption from the prohibited transaction rules of the Act by the Department, for the Purchase of the Building by the Plan and for the subsequent Lease to the Employer. Portions of the Building are currently leased by the Seller to the

<sup>1</sup> The Department expresses no opinion as to whether this loan is covered under any statutory exemption or transitional rule as contained in the Act.

Employer. Those portions serve as the principal headquarters and none of three retail outlets of the Employer.

3. The applicant requests an exemption to permit the Purchase of the Building by the Plan from the Seller and to permit the Lease of the Building, in its entirety, to the Employer. The purchase price agreed to between the Plan and the Seller is \$160,000. Mr. Lowell K. Griffin, MAI, an independent appraiser, valued the building at \$178,000 as of May 12, 1983. Mr. Griffin represents that the fair market rental rate for the entire Building on a "triple net" basis is \$21,360 per annum or \$1,780 per month.

4. The applicant represents that immediately upon completion of the Purchase, the current lease of the Employer will be terminated and replaced by the new Lease. The Lease will be a "triple net" lease for an initial five year term with an option to extend the Lease for another five years, which option can be exercised only by the Plan. The initial rent will be \$21,360 per annum, payable in equal monthly installments and will be fixed for an initial three year term. Each three years the Bank will have the Building reappraised by an independent, MAI certified appraiser. The rent will be adjusted upon the reappraisal to reflect the fair market rental. The rent will never be reduced by reason of the reappraisal to a rate below the original rental amount. The Bank will approve the purchase of the Building prior to its execution and will continually monitor the Lease and enforce the rights of the Plan under the terms and conditions of the Lease.

5. The Bank, which is the independent trustee of the Plan, represents that the Purchase from the Seller and the subsequent Lease to the Employer are in the best interests of the Plan, its participants and beneficiaries because (a) the purchase price is below the appraised value; (b) the terms and conditions of the Lease were negotiated solely by the Bank on behalf of the Plan; (c) the Building is a multi-use structure and could be redesigned to accommodate different types of tenants with only a minimum expenditures; (d) the proposed investment is reasonable and prudent and allows for a diversification of Plan assets; (e) the Plan will not sell any of the existing assets earning more than the projected return on the Building in order to fund the Purchase; and (f) the Bank will approve the Purchase prior to its execution, will receive the monthly Lease payments on behalf of the Plan and will continually monitor the Lease.

6. In summary, the applicant represents that the proposed

transactions meet the statutory criteria of section 408(a) of the Act because (a) the Bank, an independent party, has reviewed the Purchase and negotiated the terms and conditions of the Lease and has determined that the proposed transactions are in the best interest of the Plan; (b) the purchase price is below the appraised value as determined by a qualified, independent appraiser; (c) the Bank will approve the Purchase and monitor the terms of the Lease; (d) rentals will be adjusted every three years after an appraisal of the Building by a qualified, independent appraiser; and (e) at the termination of the initial five year Lease, the Plan has an option to renew the Lease for another five years.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-2671. (This is not a toll-free number.)

Omar Associates, Inc. Defined Benefit Pension Plan (the Plan) Located in Livonia, Michigan

[Application No. D-4543]

#### *Proposed Exemption*

The Department is considering granting an 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). If the exemption is granted the restrictions of section 408(a), 408 (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 December 31, 1983 contribution of a parcel of real property located at Lot 128 in the Southbay Yacht and Racquet Club, Sarasota, Florida (the Property) by Omar Associates, Inc. (the Employer) to the Plan, provided that: (1) The Employer's federal tax deduction for the contribution of the Property to the Plan is not greater than the Employer's equity in the Property on the date of contribution; and (2) the contribution is valued at its fair market value by the Plan on the date of contribution.

Effective Date: If the proposed exemption is granted, it will be effective December 31, 1983.

#### *Summary of Facts and Representations*

1. The Plan is a defined benefit plan with two participants, Mr. Omar Mette and his son Edward. As of June 30, 1983, the Plan had total assets of approximately \$334,000. Omar Mette is the sole shareholder of the Employer.

2. In April of 1980, the Employer purchased two parcels of real property

in Sarasota, Florida for investment purposes. The Employer purchased Lot 77 in the Southbay Yacht and Racquet Club (Lot 77) for \$33,155. The Employer paid \$11,000 down, and a mortgage of \$32,155 was taken on Lot 77. The Employer also purchased the Property, which was Lot 128 in the same development, for a purchase price of \$31,355. The Employer paid \$11,000 down, and a mortgage of \$30,355 was taken against the Property.

3. The Employer is a manufacturer's representative. In 1980, the Employer was informed by a principal manufacturing concern that its principal purchaser required its sales operation to become an in-house account. This represented a loss of approximately \$100,000 in receipts for the Employer, and created a severe economic hardship. The Employer has filed with the Internal Revenue Service a request for a waiver of its minimum funding requirements under the Plan for its Plan years ending December 31, 1981 and December 31, 1982. That request is still pending.

4. Because the Employer was also required to meet a funding deficiency for the year 1980 and it did not have adequate cash, the Employer contributed Lot 77 to the Plan on September 15, 1982. The Employer recognizes that the contribution of Lot 77 to the Plan constitutes a prohibited transaction, and has represented that it will pay all excise taxes due as a result of that prohibited transaction under section 4975 of the Code within 60 days of the granting of the exemption proposed herein. On November 8, 1983, the Plan sold Lot 77 to an unrelated third party for \$62,000. Lot 77 had been appraised for purposes of the contribution at \$30,700. The purchaser will assume the existing mortgage and pay the balance in cash.

5. Because the Employer cannot meet its funding requirements for the Plan for the year 1983, it now wishes to contribute the Property to the Plan. The Property was appraised on September 10, 1982 by Mr. Thomas H. Chapman, an independent appraiser in Sarasota, Florida, as having a value of \$71,700. As such, the Property would constitute approximately 17.8% of Plan assets.

6. On May 18, 1983, Comerica Bank-Detroit (the Bank) agreed to become the independent trustee for the Plan. The Bank currently manages approximately \$1.7 billion in employee benefit trust assets for some 800 corporate plans. The Bank has reviewed the proposed contribution of the Property to the Plan and has determined that the proposed transaction is appropriate for the Plan

and in the best interests of its participants and beneficiaries. The Bank has reviewed the Plan's investment portfolio and believes that the presence of real estate in the portfolio is appropriate given the overall objectives of the Plan. In addition, the Bank represents that the acceptance of the contribution of the Property is in the Plan's best interests due to the fact that the Employer has experienced financial difficulties and is unable to make a cash contribution.

7. In summary, the applicants represent that the proposed transaction meets the criteria of section 408(a) of the Act because: (1) the Property represents only about 17.8% of Plan assets; and (2) the Plan's independent fiduciary has determined that the proposed transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (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 describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 3rd day of January, 1984.

Alan D. Lebowitz,  
*Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

[FR Doc. 84-372 Filed 1-5-84; 8:45 am]

BILLING CODE 4510-29-14

#### C. W. Alban & Co., Inc., et al.; Grant of Individual Exemptions

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.

C. W. Alban & Co., Inc. Employees Profit Sharing Trust Fund (the Plan) Located in St. Louis, Missouri

[Exemption Application No. D-2882; Prohibited Transaction Exemption 84-1]

#### Exemption

The restrictions of section 406(a), 406(b)(1) and 406(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: (1) the past lease (the 1974 Lease) of a parcel of real property by the Plan to C. W. Alban & Co., Inc. (the Employer), the Plan sponsor. The 1974 Lease was entered into before the effective date of the Act but after July 1, 1974, the date specified in the transition rules contained in sections 414 and 2003 of the Act; (2) the proposed lease (the Lease) of three contiguous parcels of real property (the Properties) by the Plan to the Employer; (3) the possible purchase of the Properties from the Plan by the Employer pursuant to a right of first refusal given the Employer by the Plan; and (4) the Employer's agreement to reimburse the Plan for any loss suffered upon sale of any of the Properties.

Effective Dates: The effective date for transaction number (1) above is January 1, 1975. The effective date for transaction numbers (2) and (3) above is the date of grant.

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 October 14, 1983 at 48 FR 46877.

For Further Information Contact: Richard Small of the Department,

telephone (202) 523-7222. (This is not a toll-free number.)

**International Medical Prosthetics Research Associates Profit Sharing and Pension Plans (the Plans) Located in Phoenix, Arizona**

[Exemption Application No. D-4314;  
Prohibited Transaction Exemption 84-2]

#### *Exemption*

The restrictions of section 406(a), 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 loan of \$50,000 by the Plans to the International Prosthetics Research Associates, Inc. for a one-year period, renewable for up to four additional one-year periods, provided the terms of the loan are at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party.

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 October 14, 1983 at 48 FR 46890.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Chemical New York Corporation (Chemical) Located in New York, New York**

[Exemption Application No. D-4725;  
Prohibited Transaction Exemption 84-3]

#### *Exemption*

The restrictions of section 406 (a) and (b) 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) of the Code, shall not apply, effective October 1, 1983, to the reinsurance of risks and the receipt of premiums therefrom by Sun States Life Insurance Company from the insurance contracts sold by Metropolitan Life Insurance Company to Chemical's Group Life Insurance Plan and from the annuity contracts sold by Credit Life Insurance Company (Credit Life) to the Sunamerica Corporation Retirement Plan (the Retirement Plan), provided the conditions set forth in the notice of proposed exemption are satisfied.

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 November 1, 1983 at 48 FR 50425.

**Effective Date:** This exemption is effective October 1, 1983.

**Written Comments and Hearing Requests:** The only comment received by the Department was submitted by the applicants, who were seeking to correct errors of fact contained in their original application. The application states that the benefits under the Retirement Plan are currently funded by Credit Life. The applicants have corrected this to state that retired participants of the Retirement Plan are presently receiving their benefits directly from the trustee, The National City Bank of Cleveland, Ohio. Up to this time, no insurance policies have been purchased by the Retirement Plan to provide these benefits. It is the applicants' intention to direct the trustee to purchase annuities from Credit Life to provide benefits to retired participants upon the granting of this exemption. The applicants have selected Credit Life based upon their favorable experience in approximately 30 years of doing business with Credit Life, and their evaluation of the competitiveness of Credit Life's rates. The original application also stated that Credit Life currently has no reinsurance agreements in existence. The applicants corrected this to state that Credit Life currently has no reinsurance agreements in existence with respect to any retirement plan sponsored by Chemical or any of its affiliates. In addition, the applicants originally represented that the Retirement Plan was not subject to section 401(a) of the Code and to Title IV of the Act. The applicants corrected this to state that the Retirement Plan is subject to Title IV of the Act and is tax qualified under section 401(a) of the Code.

No hearing requests were received by the Department. Based upon the entire record, the Department has determined to grant the exemption as it was proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (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 403(a)(1)(B) of the Act; nor does in 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.

(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 transaction which is the subject of the exemption.

Signed at Washington, D.C., this 3rd day of January, 1984.

Alan D. Lebowitz,

*Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.*

[FR Doc. 84-371 Filed 1-5-84; 8:45 am]

CALLING CODE 4510-23-M

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## **NATIONAL SCIENCE FOUNDATION**

### **Committee Management; Advisory Committee for Advanced Scientific Computing; Establishment**

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Advisory Committee for Advanced Scientific Computing is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, pursuant to Section 9(a) of the Federal Advisory Committee Act and other applicable issuances.

Name of committee: Advisory Committee for Advanced Scientific Computing.

Purpose: To provide advice, recommendations, and oversight concerning the directions for and impacts of the

Foundation's initiative to enhance the advanced scientific computing resources available to university based scientists and engineers in the United States.

**Effective date of establishment and duration:** This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The Committee will operate for an initial period of two years.

**Membership:** The membership of this Committee shall be fairly balanced in terms of the points of view represented and the Committee's function. Members will be chosen so as to be reasonably representative of the scientific and engineering communities supported by the research directorates of the Foundation. Due consideration will be given to achieving representation from women and minority scholars, the handicapped, and different geographical regions of the country.

**Operation:** The Committee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-436), Foundation policy and procedures, GSA Interim Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

Edward A. Knapp,  
Director.

[FR Doc. 84-323 Filed 1-5-84; 8:45 am]  
BILLING CODE 7555-01-11

### Behavioral and Neural Sciences Advisory Panel; Subpanel on Neurobiology Group "B"; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

**Name:** Subpanel on Neurobiology of the Advisory Panel for Behavioral and Neural Sciences.

**Date and time:** January 23, 1984: 9:00 a.m. to 5:00 p.m.

**Place:** The Board Room, Village Sheraton Hotel, Steamboat Springs, Colorado.

**Type of meeting:** Closed.

**Contact person:** Dr. Nathaniel C. Pitts, Associate Program Director, Neurobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/357-7471.

**Purpose of panel:** To provide advice and recommendations concerning support for research in neurobiology.

**Agenda:** To review and evaluate research proposals as part of the selection process for awards.

**Reason for closing:** The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (b) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

**Authority to close meeting:** This determination was made by the Committee

Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: January 3, 1984.

M. Rebecca Winkler,  
Committee Management Coordinator.

[FR Doc. 84-324 Filed 1-5-84; 8:45 am]  
BILLING CODE 7555-01-11

### PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

#### Fish Propagation Panel; Meeting

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council)

**ACTION:** Notice of meeting of the Fish Propagation Panel to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Approval of minutes
- Staff update
- Scheduling of panel activities
- Prioritization
- Willamette Basin study plan
- Other
- Public comment

Status: Open.

**SUMMARY:** The Northwest Power Planning Council hereby announces a forthcoming meeting of its Fish Propagation Panel.

**DATE:** January 10, 1984. 9:00 a.m.

**ADDRESS:** The meeting will be held in Conference Room A of the Hyatt SeaTac, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mark Schneider, 503-222-5161.

Edward Sheets,  
Executive Director.

[FR Doc. 84-472 Filed 1-5-84; 8:45 am]  
BILLING CODE 0300-00-11

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 20519; File No. SR-DTC-76-8 (Amdt. No. 2), et. al.]

#### Depository Trust Co., et al.; Order Approving Proposed Rule Changes

December 30, 1983.

In the matter of Depository Trust Company (File No. SR-DTC-76-8 (Amendment No. 2)); Midwest Securities Trust Company (File No. SR-MSTC-77-9); Midwest Clearing Corporation (File No. SR-MCC-77-4); and Philadelphia

Depository Trust Company (File No. SR-Philadep-83-3).

#### I. Introduction

This order concerns several similar proposed rule changes that establish electronic clearing agency communication systems. These systems generally permit direct communication between participants and their clearing agencies, enabling participants to effect book-entry movements and other account-related activity via a remote terminal. The proposed rule changes were filed at various times from 1976-1983;<sup>1</sup> each clearing agency, subsequent to filing, offered participants communication system facilities and services on a pilot basis.

Comment respecting these rule changes generally supported the proposed systems. In light of this support and the record of safety and efficiency resulting from use of these systems, the Commission has determined to approve the proposed rule changes.<sup>2</sup>

#### II. Description

Each proposed rule change establishes an electronic communication system linking the particular clearing agency to its members. Under these systems each participant has a display station—usually a cathode ray terminal with an attached printer for paper copies (or "hard copies")—that is linked with the participant's clearing agency. Participants, under each terminal system, must either purchase or lease a terminal and an attached printer.

Through its office terminal, a participant may accomplish three types of activities. First, a participant may inquire about its securities positions, its settling securities obligations, and its projected money payment obligations. Second, a participant can input instructions to deliver securities from its account to another participant's account via book-entry (Miscellaneous Delivery Orders ("MDO")); withdraw securities certificates from its account and arrange to pick up those certificates at the clearing agency (Certificate on Demand ("COD")); pledge securities to

<sup>1</sup> See, Securities Exchange Act Release No. 10911 (June 23, 1983), 48 FR 30598 (July 1, 1983) (Philadep); Securities Exchange Act Release No. 13879 (August 19, 1977), 42 FR 45400 (September 9, 1977) (MCC); Securities Exchange Act Release No. 13741 (July 12, 1977), 42 FR 37082 (July 19, 1977) (MSTC); Securities Exchange Act Release No. 13708 (June 30, 1977), 42 FR 35715 (July 11, 1977) (DTC).

<sup>2</sup> The system operated by MSTC and DTC are being finally approved. Philadep's electronic communication system, however, was filed as a pilot program and is being approved as such. See discussion, *infra*.

participating lenders; and, as part of the National Institutional Delivery System ("NIDS"), transmit confirmations of trades to their institutional customers, receive affirmations of those trades and effect securities-side settlement of those trades by book-entry.<sup>3</sup> A hard copy of each instruction is generated by the printer attached to the terminal. Finally, a participant may use the system to send to and receive information from the clearing agency and other clearing agency participants.<sup>4</sup> Thus, participants can receive hard copy reports of all transactions affecting their accounts as well as certain trade-comparison and NIDS trade-settlement reports. DTC and MSTC/MCC participants that have full access (i.e., capability to perform all of the three basic activities) must have a direct link, via a dedicated telephone line,<sup>5</sup> from the participant terminal to the clearing agency.<sup>6</sup> In contrast, Philadep's pilot program allows participants to perform all three basic activities either via a dedicated telephone line or by dialing up Philadep.

All of the clearing agencies employ multiple layers of safeguards to protect the integrity of the system. Each system routinely monitors and polls terminals that are in use to insure that access originates from the member's authorized terminal. The systems also monitor participant terminals to ensure that only functions authorized by the participant for the particular terminal are performed on that terminal. Each clearing agency further assigns confidential and unique passwords to each authorized participant-user of its communication system. A hard copy of every terminal transaction is produced at both the participant terminal station and at the clearing agency to insure accurate and

complete records for audit purposes. If the terminal at the participant's office is unavailable for printing, the system stores the documents and transmits them when the printer is available. If the terminal is unavailable for an extended period of time, the participant receives a copy of the transaction directly from the clearing agency.

### III. Discussion

DTC, MSTC, MCC and Philadep believe their terminal systems are consistent with the requirements and purposes of the Act because, among other things, routine use of these systems dramatically increases industry automation, enhances processing safety and improves participants' ability to manage funds and securities efficiently. Because the terminal systems permit direct communications with the dispository from the participant's office, costs related to preparing and delivering routine settlement instructions, trade confirmations and other documents are substantially reduced. Since notice of deliveries reach a participant's office through its terminal instead of its message box at the depository, participants have more time to coordinate turnaround of securities.

DTC and MSTC/MCC believe that there are sufficient safeguards in the various communications systems to assure the safeguarding of securities and funds. System safeguards include use of multiple passwords; limited access to particular functions; system identification of each terminal before data is accepted; and use of dedicated lines, rather than open telephone lines, to connect participants' terminals to each clearing agency. Each system contains a number of internal accounting controls that are designed to prevent misuse of the system, and each system is subject to internal and external audits and control studies that are designed to assure that any material misuse or irregularity will be timely detected and corrected.

The Commission has carefully reviewed the program of safeguards of each clearing agency terminal system and the Commission believes that these systems have sufficient safeguards to satisfy the requirements of the Act. An important consideration in reaching this conclusion is the operational and safety record of these systems during the last six years.<sup>7</sup>

As noted above, two commenters questioned the use of dedicated lines to

link participant terminals to clearing agencies. These commenters asserted that a participant in more than one clearing agency should be able to assess all of its clearing agencies through one terminal because the cost of duplicate facilities may discourage multiple clearing agency participation. These commenters, however, did not suggest that alternative, effectively-interfaced, communication systems could be developed to provide multiple clearing agency access at the same price and level of security. Neither did the commenters suggest that any participant had decided against multiple clearing agency participation just because they needed to use multiple terminals.

The Commission believes that use of dedicated lines reflects an appropriate balance at this stage of terminal system development between, on the one hand, safeguarding participant funds and securities and, on the other hand, creating cost economies for dual clearing agency participants.<sup>8</sup> The Commission believes that DTC and MSTC/MCC have appropriately focussed on system security in designing their systems. In view of increasing public familiarity with computer systems, the Commission does not believe that the fixed and variable costs of duplicate terminal equipment, even at \$750 per month, reflect an unnecessary cost burden for the small percentage of dual clearing agency participants. Terminal equipment expenses, moreover, are not the only expenses dual participants must pay. Measured against those other expenses, such as clearing fund contributions and account maintenance fees, terminal equipment expenses, at least at their current levels, are a relatively insignificant factor affecting participation decisions.

This conclusion with respect to DTC and MSTC/MCC, however, does not mean that all clearing agency terminal systems must use dedicated lines. Indeed, as indicated above, Philadep's electronic communication system does not require use of dedicated lines. Despite that feature, the Commission is approving Philadep's proposed rule change because that rule change seeks to establish a limited pilot program rather than permanent implementation of the system for all Philadep participants. The Commission recognizes that Philadep's system

<sup>3</sup> For example, a participant issuing a MDO instruction causes the delivery of securities from its account to another participant's account via book-entry. Provided the delivering participant has sufficient securities on deposit, the securities depository reduces the delivering participant's security account, increases the receiving participant's account as directed, and debits or credits the participants' money accounts for settlement purposes as appropriate. Following the delivery, a delivery confirmation is printed at the delivering and receiving participant's terminal.

<sup>4</sup> While the Philadep pilot program presently only provides its participants the capacity to inquire and input data, Philadep hopes to expand its electronic communication system to include the information-broadcast function over the next several months.

<sup>5</sup> A dedicated line is a telephone line connecting the participant's terminal directly to the clearing agency on a continuous basis. It allows participants, through their terminals, to easily access information from or send information to the clearing agency without having to dial-up the clearing agency to establish the telephone connection.

<sup>6</sup> While DTC allows dial-up communication linkage, DTC limits use of such links to the inquiry function. DTC's PTS will not accept any instruction or input data except through a dedicated line.

<sup>7</sup> The Commission is unaware of any reported clearing agency or participant financial loss resulting from unauthorized use of DTC's or MSTC/MCC's systems.

<sup>8</sup> The dedicated line is an added safeguard in that it links directly a participant's terminal to the clearing agency and, thereby, prevents access to the system from locations other than the participant's office. A dial-up communication linkage allows a participant, over any telephone line, to connect to the system.

employs many other safeguards, that Philadep only recently began offering system services to a limited number of participants, and that Philadep plans to reconsider all aspects of its communication system in light of Philadep's and Philadep's participants' experience with the system. Accordingly, the Commission expects that Philadep's management will assess the risk of unauthorized access and will consider the need for mandatory use of dedicated lines as a precondition to, for instance, participant instruction input activity.

The Commission plans to monitor Philadep's limited pilot program and, if the findings support the proposition that a dial-up linkage with appropriate safeguards is safe and efficient, the Commission may then review DTC's and MSTC/MCC's policy of mandatory dedicated lines. The Commission expects DTC, MSTC/MCC and Philadep to continue to adapt their systems to meet participant demand for additional uses, including interfaced clearing agency services. In addition, the Commission expects these clearing agencies, consistent with their registration orders, to continue to review and revise their system safeguards as necessary to protect against unauthorized access to participant funds, securities and commercial data.

#### IV. Conclusion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act. The Commission also finds that the proposed rule changes will not impose a burden on competition among clearing agencies that is either unnecessary or inappropriate under the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 84-318 Filed 1-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20521; File No. SR-OCC-83-20]

### Order Approving Proposed Rule Change of the Options Clearing Corporation

December 30, 1983.

On August 26, 1983, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15

U.S.C. 78s(b)(1), the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change discussed below. The proposal changes OCC's By-laws and Rules by adding or amending several provisions regarding the rights and obligations of OCC; its clearing members, and third parties under OCC's By-laws and Rules and the Uniform Commercial Code. The Commission published notice of the proposed rule change in Securities Exchange Act Release No. 20251 (October 3, 1983), 48 FR 46123 (October 11, 1983). The Commission did not receive any comments on the proposal.

#### Background

In 1977, the National Conference of Commissioners on Uniform State Laws (the "Conference") substantially revised Article 8 of the Uniform Commercial Code ("UCC" or "Code") relating to investment securities ("1977 Amendments") and made conforming changes to other UCC Articles. Prompted by the "Paperwork Crisis" of the 1960's and enactment of Section 17A of the Act, the Conference and other responsible organizations took the initiative to reduce the prevalence of securities certificates.<sup>1</sup> Consequently, the primary purpose of the 1977 Amendments was to provide an integrated body of law governing the issuance, registration, transfer and pledge of uncertificated securities.<sup>2</sup>

On January 1, 1984, OCC will be affected by the 1977 Amendments because on that day, they will become effective in Delaware, OCC's state of organization.<sup>3</sup> While the drafters seem not to have designed provisions for standardized options, it appears that options are included in UCC's definition of "uncertificated security."<sup>4</sup>

<sup>1</sup> The 1977 Amendments are an outgrowth of the work of the Committee on Stock Certificates of the Section of Corporation Banking and Business Law of the American Bar Association.

<sup>2</sup> The Reporter of the 1977 Amendments commented that the revisions' purpose is "to set forth a coherent group of rules for the issuers, buyers, sellers and other persons dealing with uncertificated securities, to the same extent that present Article 8 deals with these matters with respect to certificated securities." Appendix I: 1977 Official Text Showing Changes Made in Former Text of Article 8, Investment Securities and of Related Sections and Reasons for Change: Reporter's Introductory Comments ("Reporter's Comments").

<sup>3</sup> Delaware is only the sixth state to adopt the 1977 Amendments. The other states are: Colorado, Connecticut, Minnesota, New York, and West Virginia.

<sup>4</sup> UCC section 8-102(1):

(b) An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is—

The 1977 Amendments and the related drafters' comments do not refer to standardized options contracts, expressly address the unique features of options issuance, trading, clearance and settlement,<sup>5</sup> or include a transition provision for existing securities. Standardized options are unique among securities in general respects: (1) a single national issuer (OCC) also functioning as a guarantor clearing corporation<sup>6</sup> and "financial intermediary"<sup>7</sup>; (2) several registered options exchanges trading those options; (3) nationwide participation of broker-dealers and investors in those markets; and (4) attempted perfection of security interests in pledged uncertificated options contracts by banks and other financial institutions from many jurisdictions. Furthermore, the absence of transitional provisions<sup>8</sup> makes it clear that inadequate focus was given to the effect of the 1977 amendments on existing securities such as standardized options.

Although the Commission believes that application of the 1977 Amendments in Delaware will benefit OCC and the national clearance and settlement system, the omission of special provisions for options or for transitional provisions in OCC's view requires OCC to develop special modifications to the 1977 Amendments. Such modification is expressly authorized, within certain specified limits, by the Code<sup>9</sup> and the official comments to revised Article 8.<sup>10</sup>

(i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) of a type commonly dealt in on securities exchanges or markets; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

<sup>5</sup> In discussing the focus of the Article 8 revisions, the Reporter's comments stated that "[a]lthough the primary focus of the inquiry regarding the possible elimination of certificates has been on corporate stock, the revision is broad enough to cover uncertificated debt securities, should such be issued in the future."

<sup>6</sup> See UCC section 8-102(3).

<sup>7</sup> See UCC section 8-313(4) and note *infra*.

<sup>8</sup> Compare Articles 10 and 11 of the Code, proposed in connection with the 1962 and the 1972 amendments, respectively. At the suggestion of OCC, transitional provisions were included in the Delaware Act adopting the 1977 Amendments.

<sup>9</sup> See UCC section 1-103(3).

<sup>10</sup> "As is true with respect to all other Articles of the Code, parties may by agreement create rights and duties between themselves that vary from those set forth in the Article. Section 1-102(3). But prejudice to the rights of those not party to the agreement is limited by Code provisions (e.g., Sections 8-313 and 9-321) as well as by general legal principles that supplement the Code." See, UCC section 1-103 and Comment 2 to section 1-102. OCC's proposed rule change is intended to modify Article 8's effects on options to the extent lawful.

### Description and OCC's Rationale

OCC's proposed rule change provides that, subject to OCC's By-laws and Rules, the rights and obligations of OCC and its clearing members will be governed by the revised Articles 8 and 9 of the UCC of Delaware (as effective January 1, 1984), including its conflict of laws rules. In its proposal, OCC states its intention to make the appropriate provisions of Articles 8 and 9 of the revised Delaware UCC govern the rights and obligations of OCC and its clearing members, to the greatest extent possible, unless the matter is specifically covered by OCC's By-laws and Rules. Because OCC is organized in Delaware, this provision is consistent with the conflict of laws provisions of the 1977 Amendments.<sup>11</sup>

OCC's proposed rule change also specifies that pursuant to Delaware's revised Articles 8 and 9, Delaware's conflict of laws rules would apply to the full extent lawful. OCC believes that this change is needed to address a *renvoi* problem caused by the omission of transitional provisions in the 1977 Amendments. Under UCC section 9-103(b) of Delaware's Code, the law of the issuer's jurisdiction of organization governs the perfection of security interests in uncertificated securities. On the other hand, OCC believes that options may well be "general intangibles" under UCC section 9-103(3)(b) of the pre-1977 Code. Consequently, the law of the jurisdiction in which the debtor is located, including that jurisdiction's conflict of laws rules, would apply to the perfection of security interests. UCC section 1-105(2) frustrates resolution of this conflict by declaring ineffective provisions in private contracts that designate the law to govern perfection of security interests, unless permitted by applicable choice of law rules. Consequently, the law of the issuer's jurisdiction of organization governs perfection of security interests in uncertificated securities in states that adopt the 1977 Amendments and the law of the debtor's location controls in other jurisdictions.<sup>12</sup>

<sup>11</sup> See UCC sections 8-108 and 9-103(b).

<sup>12</sup> To illustrate the problem, assume that a creditor wants to perfect its security interest in an option issued by OCC and held by a clearing member that has its chief executive office in Illinois (which has not yet adopted the 1977 Amendments). Under Illinois law, the creditor would be required to file a financing statement. But if the debtor's chief executive office were instead located in New York, the New York choice of law provision in § 9-103(e) would apply Delaware law; the filing of a financing statement would be unnecessary (as well as ineffective); and the creditor would instead be required to comply with amended Article 8 (cf. sections 8-321 and 8-332 (1977)).

OCC's provision in its proposed rule change designating Delaware law (including its conflict of laws rules) reflects OCC's intent to have Delaware law applied to the full extent possible.

In response to this *renvoi* problem, OCC has added a cautionary provision, Interpretation and Policy .01 to Article VI, § 9(c) of OCC's By-laws, for the benefit of clearing members and other interested persons. That Interpretation warns clearing members that, notwithstanding OCC's statement in Article VI, Section 9(c) that Delaware law is to apply, the pre-1977 Code may control in states that have not adopted the 1977 Amendments. The Interpretation further cautions persons desiring to perfect security interests in options to obtain advice of counsel on the matter. OCC believes that such explicit warning should help alert clearing members and others interested persons that in some states the pre-1977 version of the UCC and related case law may apply despite OCC's desire to minimize potential conflict of laws problems and to establish uniform procedures for perfecting security interests in options pursuant to the revised Delaware UCC.

OCC's proposed rule change contains a number of technical amendments either to change rights and liabilities under the Code or to conform certain OCC By-laws and Rules to the 1977 Amendments. For example, the proposed rule change would clarify that only an OCC clearing member could be a "registered owner" of an option, within the meaning of Article 8 of the Code. OCC does not know the identities of its clearing members' customers and has no direct contractual or settlement relationship with those customers. Accordingly, by this provision, OCC seeks to avoid creating new obligations to persons other than clearing members. OCC believes that this provision will ensure that existing relationships among OCC, its clearing members, and the public will be maintained after the 1977 Amendments become effective.

Finally, proposed Article VI, Section 9(c) would provide that options may be transferred or pledged only pursuant to OCC's pledge program under OCC Rule 614.<sup>13</sup> OCC's pledge program includes special procedures that are tailored to accommodate the unique characteristics of standardized options and the respective interests of pledgor clearing members, and participating pledgee banks and clearing members, as well as

<sup>13</sup> The Commission approved OCC's pledge program in Securities Exchange Act Release No. 19958 (July 19, 1983), 48 FR 35320 (July 20, 1983).

OCC's interests as issuer and creditor clearing agency.

Proposed Article VI, Section 10(a) expressly declares that the provisions of OCC's By-laws and Rules, including OCC's liens and liquidation rights, are incorporated into the terms of each OCC option contract. OCC believes that this incorporation which is currently implicit in OCC's By-laws,<sup>14</sup> is essential under the revised Delaware UCC for OCC legally to prescribe by contract the rights and responsibilities of parties to OCC's options contracts.

OCC's proposal also amends OCC Rule 614(m) to reflect that the pledge of an option would not be a "registered pledge" under Article 8 of the Revised Code, and that OCC, pledgors and pledgees would be subject solely to obligations under OCC's By-laws and Rules. OCC is amending this provision to retain the current rights and obligations of parties to option pledges pursuant to Rule 614. In addition, Rule 614(m) would be changed to state explicitly that pledgees under OCC's Option Pledge Program do not have the different rights provided "registered pledgees" under Article 8.

The proposed rule change also specifically identifies OCC as a "financial intermediary" under new UCC 8-313(4). OCC believes that by ensuring that OCC is a "financial intermediary" under the UCC, OCC's role in facilitating pledges under Rule 614 will be clarified. By being a financial intermediary, OCC can transfer security interests by book-entry under Section 8-313 of the revised UCC. That section deems the transfer of a pledgee's security interest to occur when the issuer receives notice of the transfer from the appropriate party. No financing statements need be filed to perfect that interest.

In sum, OCC believes that the proposed rule change is required (1) to conform OCC's By-laws and Rules to the new Delaware law; (2) to apply the 1977 Amendments to standardized options contracts issued by OCC; and (3) to clarify the nature of conflicts between OCC's By-laws and Rules, the 1977 Amendments as adopted by Delaware, and the pre-1977 version of the UCC applied by other states.

OCC states that the proposed rule change is consistent with the requirements of the Act in that it would protect investors and the public interest by clarifying the application of the 1977 Amendments to the unique aspects of standardized options. In addition, to the extent that the proposed rule change

<sup>14</sup> See Article V, § 3 of OCC's By-laws.

would make the mechanism, rules, and procedures for creating and perfecting security interests options uniform in all states, it would remove impediments to the establishment of a national system for the clearance and settlement of options transactions. OCC also states in its filing that the proposed rule change will not affect adversely OCC's system of financial and operational safeguards.

#### Discussion

The Commission is approving OCC's proposal for the reasons discussed below. First, the proposed rule change will tailor the 1977 Amendments to OCC's unique needs as an issuer of options and as a registered clearing agency. While the Commission believes that the 1977 Amendments in many respects facilitate the potential for uniformity in regulation of uncertificated securities,<sup>15</sup> those amendments were not tailored to the unique aspects of the clearance and settlement of options. The Commission agrees with OCC that it must tailor Articles 8 and 9 of the revised Delaware UCC to OCC's systems and procedures. To do so, among other things, OCC must provide that its By-laws and Rules are part of every options contract.

Second, the Commission believes that it is appropriate and necessary for OCC to do what it can to remedy the *renvoi* problem caused by the interaction of UCC section 1-105 with section 8-106 (1977 version) and section 9-103 (pre-1977 version). The Commission hopes that the proposal will reduce the confusion caused by the conflicting provisions and result in uniform interpretation and effect in as many cases as possible. OCC's statement in its proposed rule change that Delaware law would apply (1) reflects the intent of OCC and (2) shows the law that the contracting parties would have chosen if permitted by UCC 1-105 to stipulate their choice of law. The Commission hopes that OCC's intention will be given due regard by courts deciding choice of law issues in states that have not adopted the 1977 Amendments. The Commission also hopes that those courts would look to the beneficial effects of the 1977 Amendments on the national options markets and the national

<sup>15</sup> The 1977 Amendments were drafted in response to the Paperwork Crisis and Congress's enactment of Section 17A of the Act. The 1977 Amendments' scheme for the mechanism for issuance, registration, transfer and pledge of uncertificated securities is consistent with the Commission's securities processing goals of reducing paperwork and facilitating the acceptance of uncertificated securities under the Act.

clearance and settlement system. Moreover, we believe that OCC's new Interpretation .01 to Article VI, section 9(c) of OCC's By-laws will help to ensure that OCC's clearing members and other interested persons understand that OCC's By-law applying Delaware law to their relationships with OCC may not be effective in states that have not adopted the 1977 Amendments.

#### Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies and in particular, the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 84-317 Filed 1-5-84; 8:45 am]  
BILLING CODE 2010-01-41

[Release No. 20520; File No. SR-Phlx-83-25]

#### Filing and Immediate Effectiveness of Proposed Rule Change by Philadelphia Stock Exchange, Inc.

December 30, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1983, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would set a new charge for services performed by the Phlx on behalf of subscribing member organizations. The Exchange currently offers without charge a special service to requesting member organizations which provides them with mailgram notification of Phlx option class and series changes. Pursuant to Phlx by-law 4-4, the Exchange is proposing to charge subscribing member organizations, beginning on January 2, 1984, a monthly service charge for the mailgram on a pro rata basis in order to recover the costs of providing the

service. The Exchange notes in its filing that non-subscribing member organizations will continue to receive notification of options class and series changes through Phlx information circulars which are distributed directly on the options trading floor and by regular mail to all member organizations. The Phlx states in its filing that the basis for the proposed rule change is Section 6(b)(4) of the Act which requires that reasonable fees be equitably allocated.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-83-25.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 84-319 Filed 1-5-84; 8:45 am]  
BILLING CODE 2010-01-41

**SMALL BUSINESS ADMINISTRATION**

[License No. 02/02-0350]

**Quidnet Capital Corp.; License Surrender**

Notice is hereby given that Quidnet Capital Corporation, 909 State Street, Princeton, New Jersey 08540 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Quidnet Capital Corporation was licensed by the Small Business Administration on June 30, 1978.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 20, 1983, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: December 27, 1983.

Robert G. Lineberry,  
*Deputy Associate Administrator for Investment.*

[FR Doc. 84-365 Filed 1-5-84; 8:45 am]  
BILLING CODE 0025-01-11

**Reporting and Recordkeeping Requirement Under OMB Review**

**AGENCY:** Small Business Administration.  
**ACTION:** Notice of Reporting Requirements Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

**DATE:** Comments must be received on or before February 13, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the agency clearance officer of your intent as early as possible.

**Copies:** Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letter, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency

Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., N.W., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538

OMB Reviewer: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-4814.

**Forms Submitted for Review**

Title: Stockholder Confirmation  
Frequency: On occasion  
Description of Respondents: New licensees

Annual Response: 160  
Annual Burden Hours: 27  
Type of Request: New  
Title: Statement of Personal History Form No. 912

Frequency: On occasion  
Description of Respondents: Disaster applicants and employees  
Annual Responses: 87,100  
Annual Burden Hours: 7,258  
Type of Request: Revision

Dated: December 30, 1983.

Richard Vizachero,  
*Acting Chief, Paperwork Management Branch, Small Business Administration.*

[FR Doc. 84-363 Filed 1-5-84; 8:45 am]  
BILLING CODE 0025-01-11

**Threshold Ventures, Inc.; Application for a License as a Small Business Investment Company**

[Application No. 05/05-0103]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1983)) by Threshold Ventures, Inc., 430 Oak Grove Street, Suite #303, Minneapolis, Minnesota 55402, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and sole shareholder are:

Names and Addresses	Title	Percent of Ownership
Thomas Denny Sanford, 201 Old Mill Pond Road, Palm Harbor, Florida 32563.	Chairman/Director	100

Names and Addresses	Title	Percent of Ownership
Michael J. Mayor, 4015 Garfield Avenue South, Minneapolis, Minnesota 55419.	President/Treasurer & Director	
Steven L. Ross, 6977 Valley View Road, Suite 250, Eden Prairie, Minnesota 55344.	Secretary/Director	

The Applicant will begin operations with a capitalization of \$349,000 and will be a source of equity and long term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Minneapolis, Minnesota.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 27, 1983.

Robert G. Lineberry,  
*Deputy Associate Administrator for Investment.*

[FR Doc. 84-367 Filed 1-5-84; 8:45 am]  
BILLING CODE 0025-01-11

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**Environmental Impact Statement; Jefferson County, Alabama**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Withdrawal of notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that it has been determined that this project was improperly classified and will now be processed as an Environmental Assessment. This proposed project, APD-471(7), is to build a four-lane highway from near Snowtown, west of U.S. Highway 78 in the vicinity of the

Walker-Jefferson County line to U.S. Highway 31 in the Metropolitan area of Birmingham. The notice of intent was published December 19, 1983 (48 FR 56132).

**FOR FURTHER INFORMATION CONTACT:**

Mr. R. W. Evers, District Engineer, Federal Highway Administration, 441 High Street, Montgomery, Alabama 36104-4684, Telephone: (205) 832-7379.  
Mr. Ray D. Bass, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone: (205) 261-6311.

Issued: December 28, 1983.

Bill H. Boydston,

Assistant Division Administrator.

[FR Doc. 84-238 Filed 1-5-84; 8:45 am]

BILLING CODE 4910-22-13

**Maritime Administration**

**Change of Status and Name of Approved Trustee; AmeriTrust Co.**

Notice is hereby given that effective December 13, 1983, AmeriTrust Company, Cleveland, Ohio, converted from a state into a national banking association and changed its name to AmeriTrust Company National Association.

Dated: December 29, 1983.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 84-315 Filed 1-5-84; 8:45 am]

BILLING CODE 4910-81-14

**DEPARTMENT OF THE TREASURY**

**Office of the Secretary**

**Public Information Collection Requirements Submitted to OMB for Review**

On December 28, 1983 the Department of Treasury 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 from the Treasury Department Clearance Officer, by calling (202) 535-6020. 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 7227, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

**Internal Revenue Service**

OMB Number: 1545-

Form Number: None

Type of Review: Existing Collection

Title: Consent to Disclosure of Return and Return Information to Designee (Preparer) of Taxpayer 26 CFR 301.7216-3 (b) & (c)

OMB Number: 1545-

Form Number: None

Type of Review: Existing Collection

Title: Public Inspection of Information Required of Exempt Organization and Trusts 26 CFR 301.6104

OMB Number: 1545-

Form Number: None

Type of Review: Existing Collection

Title: Instructions for Requesting Rulings and Determination Letters 26 CFR 601.201

OMB Number: 1545-

Form Number: None

Type of Review: Existing Collection

Title: Place for Filing Returns 1.6091-1 (a) & (b), 1.6091-4 (a) & (b) and 31.6091-1 (a) & (b)

OMB Number: 1545-0190

Form Number: Form 4876

Type of Review: Revision

Title: Election to be Treated as a DISC

OMB Number: 1545-0710

Form Number: Forms 5500, 5500-C,

5500-K, and 5500-R

Type of Review: Existing Regulation

Title: Employee Benefits Plan

OMB Number: 1545-

Form Number: None

Type of Review: New

Title: Taxpayer Diary Study

OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

**U.S. Customs Service**

OMB Number: 1515-

Form Number: None

Type of Review: Existing Collection

Title: Certificate of Payment of Tonnage Tax

OMB Reviewer: Judy McIntosh (202)

395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: December 28, 1983.

James V. Nascho, Jr.,

Departmental Reports, Management Office.

[FR Doc. 84-279 Filed 1-5-84; 8:45 am]

BILLING CODE 4910-25-11

**GENERAL SERVICES ADMINISTRATION**

**Office of the Administrator**

**Advisory Board; Meeting**

Notice is hereby given that the GSA Advisory Board will meet on January 17, 1984 from 10:00 a.m. to 4:30 p.m. in room 6120, GSA Central Office, 18th and F Streets, NW., Washington, D.C. This meeting will be devoted to discussions relating the Board's subcommittee activities, the agency's management priorities during 1984, progress with regard to various presidential initiatives, including the government-wide space management program, and the use of "creative financing" techniques with regard to real property sales. This meeting will be open to the public.

Less than fifteen days notice of this meeting is being provided due to scheduling difficulties.

Dated: January 4, 1984.

Roger C. Dierman,

Deputy Associate Administrator.

[FR Doc. 84-533 Filed 1-5-84; 12:31 pm]

BILLING CODE 6920-26-61

# Sunshine Act Meetings

Federal Register

Vol. 49, No. 4

Friday, January 6, 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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### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DATE AND TIME:** Tuesday, January 10, 1984, 9:30 a.m. (Eastern Time).

**PLACE:** Commission Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

**STATUS:** Part will be open to the public and part will be closed to the public.

#### MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes.
2. A Report on Commission Operations (optional).
3. Freedom of Information Act Appeal Request No. 83-02-FOIA-183-CH, concerning a request for materials in an age discrimination charge file.
4. Freedom of Information Act Appeal Request No. 83-10-FOIA-274-CH, concerning whether the charging party should be granted access to a particular document in a charge file.
5. Briefing on EEOC Training Plan for 1984.

#### Closed

1. Discussion of an ORA Decision.
2. Litigation Authorizing; General Counsel Recommendations.

**Note.**—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

**CONTACT PERSON FOR MORE INFORMATION:** Treva McCall, Executive

Secretary to the Commission at (202) 634-6748.

This Notice Issued January 3, 1984.  
 Andrelia C. James,  
*Acting Executive Secretary to the Commission.*

January 4, 1984.  
 [5-C4-411 Filed 1-4-84; 11:51 am]  
 BILLING CODE 6750-05-13

### FEDERAL DEPOSIT INSURANCE CORPORATION

#### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:30 a.m. on Friday, December 30, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider 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. 45,833-L—Pan American National Bank, Union City, New Jersey

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsection (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B)).

Dated: January 4, 1984.  
 Federal Deposit Insurance Corporation,  
 Hoyle L. Robinson,  
*Executive Secretary.*  
 [5-C4-429 Filed 1-4-84; 3:07 pm]  
 BILLING CODE 6714-01-13

3

### FEDERAL RESERVE SYSTEM

**TIME AND DATE:** Approximately 11:00

a.m., Wednesday, January 11, 1984, following a recess at the conclusion of the open meeting.

**PLACE:** 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 3, 1984.

James McAfee,  
*Associate Secretary of the Board.*  
 [5-C4-573 Filed 1-4-84; 12:03 am]  
 BILLING CODE 6210-01-13

4

### FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 10:00 a.m., Wednesday, January 11, 1984.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st streets, NW., Washington, D.C. 20551.

**STATUS:** Open.

#### MATTERS TO BE CONSIDERED:

##### Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendment to Regulation T (Credit by Brokers and Dealers) to expand permissible deposits at options clearing agencies.
2. Proposed amendment to the Board's Rules Regarding Delegation of Authority concerning preemption determinations under Regulation B (Equal Credit Opportunity) and Regulation C (Home Mortgage Disclosure).

##### Discussion Agenda

3. Publication for comment of proposed amendments to Regulation E (Electronic Fund Transfers) to cover certain fund transfers resulting from point-of-sale transactions.
4. Publication for comment of a proposed amendment to Regulation Z (Truth in Lending) regarding the regulation's coverage

of credit cards used for certain exempt transactions.

5. Publication for comment of fees for Federal Reserve electronic payments services, and implementation of off-line surcharges for wire transfers and net settlement services.

**Note.**—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 3, 1984.  
James McAfee,  
Associate Secretary of the Board.  
[S-84-374 Filed 1-4-84; 10:34 am]  
BILLING CODE 6210-01-M

5  
**FOREIGN CLAIMS SETTLEMENT COMMISSION**

[F.C.S.C. Meeting Notice No. 10-83]

Announcement in Regard to Commission Meetings and Hearings; Notice of Meetings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

*Date, Time, and Subject Matter*

Monday, January 23, 1984 at 10 a.m.

Consideration of Proposed Decisions in the Second Czechoslovakian Claims Program and Final Decisions on hearings on the record.

Oral Hearings on objections to decisions issued under the second Czechoslovakian Claims Program:

Monday, January 23, 1984 at 10 a.m.

CZ-2-1463—Margarete Cuzick

CZ-2-0563—Vera Travlejev

CZ-2-1540—George Imrij

CZ-2-0363—Henry J. Roubicek

Monday, January 23, 1984 at 2 p.m.

CZ-2-1180—Bela J. Blumenfeld; Atty

Borchardt

CZ-2-1181—David Blumenfeld

CZ-2-1071—Eugene Ickovic

CZ-2-0689—Deena Viboch

CZ-2-1227—Stephen Cseplo

CZ-2-0308—Gabriel Sarkanich, et al.

CZ-2-0576—Matthew A. Zubak & Albert P.

Zubak

Tuesday, January 24, 1984 at 9 a.m.

CZ-2-0347, CZ-2-0348—Alena Polak

CZ-2-0264—Charles Janik, et al.

CZ-2-0870—Agnes S. Vojtko

CZ-2-0059—Marie Schultheis

CZ-2-0913—Olga Radkovsky

CZ-2-0677, CZ-2-0678—Ann Klimko

Tuesday, January 24, 1984 at 2 p.m.

CZ-2-0742—Libby J. Wilson

CZ-2-0430—Herbert B. Handelsman

CZ-2-0097—Paul Hirsch; Atty Ganzglass

CZ-2-1141—Paul Webster

CZ-2-0565—Peter O. Cervenka

CZ-2-1400—Bernard Klein, et al.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC on January 3, 1984

Judith H. Lock,  
Administrative Officer.

[S-84-452 Filed 1-4-84; 3:12 pm]

BILLING CODE 4410-01-M

6

**MOTOR CARRIER RATEMAKING STUDY COMMISSION**

Notice of Public Meeting

**DATE:** Wednesday, January 18, 1984.

**PLACE:** Russell Senate Office Building, Room SR253 (old 235), Constitution Avenue and First Street, NE., Washington, D.C. 20510.

**TIME:** 9:00 a.m.

**PURPOSE:** To provide the opportunity for the Study Commission to discuss and consider the draft report, findings, and recommendations; to direct issuance of the final document with its findings and recommendations to the Congress and President; and to consider other business as appropriate.

The Study Commission is giving notice of 15 calendar days, rather than the customary 15 working days, because of its tight schedule. This will not prejudice anyone's interests, as interested parties have previously been informed of the meeting date, and public input is not being solicited for this meeting.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Dunbar, Executive Director, Motor Carrier Ratemaking Study Commission, 100 Indiana Avenue, NW.,

Washington, D.C. 20001, Phone No.: (202) 724-9600.

Submitted this, the 3rd day of January, 1984.

Gary D. Dunbar,  
Executive Director.

[S-84-363 Filed 1-3-84; 4:33 pm]

BILLING CODE 6820-ED-M

7

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Week of January 9, 1984.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

**STATUS:** Open and Closed.

**MATTERS TO BE DISCUSSED:**

*Tuesday, January 10*

10:00 a.m.

Investigations and Enforcement Matters Involving TMI Units 1 and 2 and Their Impact on TMI-1 Restart (Closed—Ex. 5, 7, and 10)

2:00 p.m.

Discussion/Possible Vote on TMI Steam Generators (Public Meeting)

*Wednesday, January 11*

9:30 a.m.

Oral Presentations on NRC Concurrence/ Non-Concurrence in DOE Waste Repository Siting Guidelines (Public Meeting)

1:30 p.m.

Oral Presentations on NRC Concurrence/ Non-Concurrence in DOE Waste Repository Siting Guidelines (Continued) (Public Meeting)

*Thursday, January 12*

10:00 a.m.

Briefing on BWR Pipe Crack Issues (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. NRC Response to Court Decision Vacating Interim Rule on Environmental Qualification Deadlines (Tentative)

b. 10 CFR Part 1 Statement on Functions of Office of Investigations (Tentative)

c. Diablo Canyon Stay Request (Tentative)

*Friday, January 13*

10:00 a.m.

Briefing on Steam Generator Generic Requirements (Public Meeting)

**TO VERIFY THE STATUS OF MEETINGS**

**CALL:** (Recording)—(202) 634-1498.

**CONTACT PERSON FOR MORE INFORMATION:** Walter Magee (202) 634-1410

Walter Magee,  
Office of the Secretary.

[S-84-362 Filed 1-3-84; 4:30 pm]

BILLING CODE 7530-01-M

8

**LEGAL SERVICES CORPORATION**

Board of Directors Meeting

**PREVIOUSLY ISSUED:** December 22, 1983  
(Published December 27, 1983).

**PREVIOUSLY ANNOUNCED TIME AND DATE:**  
It will commence at 1 p.m. and continue  
until all official business is completed;  
Friday, January 6, 1984.

**CHANGE IN NOTICE:** Additions under  
**MATTERS TO BE CONSIDERED:**

7. Report from the Office of Field Services
  - Establishment of Native American Desk
  - Board Resolution on Native American Programs
8. Board Resolution Reaffirming Staff Authority

**CONTACT PERSON FOR MORE INFORMATION:** Lea Anne Bernstein,  
Office of the President, (202) 272-4040.

Dated: January 4, 1984.

Donald P. Bogard,  
*President.*

[S-84-476 Filed 1-4-84; 5:14 pm]

BILLING CODE 6820-35-11





## NUCLEAR REGULATORY COMMISSION

### State of Utah; Staff Assessment of Proposed Agreement Between the NRC and the State of Utah

Note.—This document was originally published on Friday, December 30, 1983 at 48 FR 57674. It is reprinted at the request of the Nuclear Regulatory Commission.

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Proposed Agreement with State of Utah.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission is publishing for public comment the NRC staff assessment of a proposed agreement received from the Governor of the State of Utah for the assumption of certain of the Commission's regulatory authority pursuant to Section 274 of the Atomic Energy Act of 1954, as amended.

A staff assessment of the State's proposed program for control over sources of radiation is set forth below as supplementary information to this notice. A copy of the program narrative, including the referenced appendices, appropriate State legislation and Utah regulations, is available for public inspection in the Commission's public document room at 1717 H Street, NW., Washington, D.C. Exemptions from the Commission's regulatory authority, which would implement this proposed agreement, have been published in the Federal Register and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

**DATE:** Comments must be received on or before January 30, 1984.

**ADDRESSES:** All interested persons desiring to submit comments and suggestions for consideration by the Commission in connection with the proposed agreement should send them to the Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

**FOR FURTHER INFORMATION CONTACT:** John R. McGrath, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: 301-492-9889, or Robert J. Doda, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas, 76011, telephone 817-860-8139.

**SUPPLEMENTARY INFORMATION:** Assessment of Proposed Utah Program to Regulate Certain Radioactive Materials Pursuant to Section 274 of the Atomic Energy Act of 1954, as amended.

The Commission has received a proposal from the Governor of Utah for the State to enter into an agreement with the NRC whereby the NRC would relinquish and the State would assume certain regulatory authority pursuant to Section 274 of the Atomic Energy Act of 1954, as amended.

Section 274e of the Atomic Energy Act of 1954, as amended, requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the Federal Register.

#### I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended, provides a mechanism whereby the NRC may transfer to the States certain regulator authority over agreement materials<sup>1</sup> when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, Section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. In a letter dated November 14, 1983, Governor Scott M. Matheson of the State of Utah requested that the Commission enter into an agreement with the State pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, and proposed that the agreement become effective on April 1, 1984. The Governor certified that the State of Utah has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State of Utah desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A and the narrative portion

of the program description is shown in Appendix B.

The specific authority requested is for (1) byproduct material as defined in Section 11e(1) of the Act, (2) source material and (3) special nuclear material in quantities not sufficient to form a critical mass. The State does not wish to assume authority over uranium milling activities nor the commercial disposal of low-level radioactive waste. The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in these areas. The nine articles of the proposed agreement cover the following areas:

- I. Lists the materials covered by the agreement.
- II. Lists the Commission's continue authority and responsibility for certain activities.
- III. Allows for future amendment of the agreement.
- IV. Allows for certain regulatory changes by the Commission.
- V. References the continued authority of the Commission for common defense and security for safeguards purposes.
- VI. Pledges the best efforts of the Commission and the State to achieve coordinated and compatible programs.
- VII. Recognizes reciprocity of licenses issued by the respective agencies.
- VIII. Sets forth criteria for termination or suspension of the agreement.
- IX. Specifies the effective date of the agreement.

C. Utah Code Annotated 26-1-27 through 26-1-29 authorizes the State Department of Health to issue licenses to, and perform inspections of, users of radioactive materials under the proposed agreement and otherwise carry out a total radiation control program. Utah Radiation Control Regulations URC-10 through URC-80 adopted November 8, 1982 under authority of 26-1-27 through 26-1-29 Utah Code annotated 1953, as amended, provides standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. Pursuant to URC-12-165, the regulations are not applicable to agreement materials until the effective date of the agreement. Since January 1, 1983, the State has been licensing and inspecting users of naturally occurring and accelerator produced radioactive materials.

D. The environmental radiation issues with which the Department has been involved include: monitoring assessment of the impact of radioactive fallout from nuclear weapons testing at the Nevada Test Site; monitoring uranium mill tailings, particularly at the Vitro uranium mill; and monitoring indoor radon in Salt Lake County.

<sup>1</sup> A. Byproduct materials as defined in 11e(1);

B. Byproduct materials as defined in 11e(2);

C. Source materials; and

D. Special nuclear materials in quantities not sufficient to form a critical mass.

The Department has also been involved in inspections of x-ray users since 1961 including involvement in the U.S. FDA studies Nationwide Evaluation of X-Ray Trends (NEXT) and Dental Exposure Normalization Technique (DENT).

## II. NRC Staff Assessment of Proposed Utah Program for Control of Agreement Materials

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.<sup>2</sup>

### Objectives

1. *Protection.* A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Based upon the analysis of the State's proposed regulatory program the staff believes the Utah proposed regulatory program for agreement materials is adequately designed to protect the health and safety of the public against radiation hazards.

### Radiation Protection Standards

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

Statutory authority to formulate and promulgate rules for controlling exposure to sources of radiation is contained in Utah Code Annotated 26-1-5 and 26-1-27. In accordance with that authority, the State has adopted Radiation Control Regulations on November 8, 1982 which include radiation protection standards which would apply to by product, source and special nuclear materials in quantities not sufficient to form a critical mass upon the effective date of an agreement pursuant to Section 274b of the Atomic Energy Act of 1954 as amended.

Reference: Utah Radiation Control Regulations URC-10 through 80.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and level of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on

<sup>2</sup>NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540-7548), and revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33378).

officially approved radiation protection guides.

Technical definitions and terminology contained in the Utah Radiation Control Regulations including those related to units of measurement and radiation doses are uniform with those contained in 10 CFR Part 20, except that the definition of byproduct material conforms to that contained in the Atomic Energy Act prior to enactment by Congress of Pub. L. 95-604, 92-Stat. 3021 et seq., November 8, 1978, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). In view of the fact that the State does not wish to assume authority over uranium milling activities pursuant to UMTRCA the absence of a definition of byproduct material conforming to that contained in Section 11e(2) of the Atomic Energy Act of 1954, as amended, is not viewed as a significant departure and should not be considered an impediment towards signing of a Section 274b agreement for the materials requested.

Reference: URC-12, 24.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

The Utah regulations cover all sources of radiation within the State's jurisdiction and provide for consideration of the total radiation exposure of individuals from all sources of radiation in the possession of a licensee or registrant.

Reference: URC-24-010,020.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

The Utah requirements for surveys to evaluate potential exposure from sources of radiation and the personnel monitoring requirements are uniform with those contained in 10 CFR Part 20.

References: URC-12-050 (39) and (62), URC-12-100, URC-24-070, and URC-24-035.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs, and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

The prescribed radiation labels, signs, and symbols are uniform with those contained in 10 CFR Parts 20, 30 thru 32

and 34. The Utah posting requirements are also uniform with those of Part 20.

References: URC-22-110, URC-24-030, URC-24-035, and URC-49-020.

7. *Instruction.* Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, Section 19.16 and to be represented during inspections as specified in Section 19.14 of 10 CFR 19.

The Utah regulations contain requirements for instructions and notices to workers that are uniform with those of 10 CFR Part 19.

Reference: URC-48.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

The Utah regulations contain a requirement for security of stored radioactive material.

Reference: URC-24-120.

9. *Radioactive Waste Disposal.* (a) Waste disposal by material users. The standards for the disposal of radioactive material into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.

(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and

stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (Section 151(a)(2), Pub. L. 97-425).

Utah Radiation Control Regulations contain provisions relating to the disposal of radioactive materials into the air, water and sewer and burial in soil which are uniform with those of 10 CFR Part 20. The current Utah regulations were adopted prior to the publication of 10 CFR Part 61 and the corresponding changes to § 20.311 of Part 20. The Utah regulations, therefore, have no equivalent to § 20.311 or the waste classification system included in Part 61. Governor Matheson's letter of November 14, 1983 indicated that the State's radiation control regulations will be revised through standard rulemaking procedures to conform to the Federal standard regarding the radioactive waste manifest system and the waste classification system.

Since the waste manifest system does not become effective until December 27, 1983 and Agreement States are normally given three years to formally adopt significant changes to NRC regulations, the absence of these provisions in Utah regulations is not viewed as a significant deficiency at this time and should not be considered an impediment to the proposed agreement. The waste manifest system will be implemented by amendments to the site operator licenses. Utah, as well as other Agreement State, licensees will be required to meet the provisions of the site operator's license if they wish to use the site after December 27, 1983.

References: URC-24-130, 135, 140, 145, 150 and 160.

**10. Regulation Governing Shipment of Radioactive Materials.** The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

The Utah regulations conform to those contained in NRC regulations prior to the recent (August 5, 1983) publication of a final rule amending Part 71 to achieve compatibility with the transport regulations of the International Atomic Energy Agency (IAEA). The Agreement

States have been notified that these changes are considered matters of compatibility. Utah, as well as the other Agreement States, will need to make corresponding changes to their regulations. The lack of these provisions in the current Utah regulations is not viewed as a significant departure at this time since Agreement States are normally given three years to adopt important NRC rule changes, and should not be considered an impediment to the proposed agreement.

References: URC-12-Appendix A and Appendix B; URC-19-400, 500 and 510.

**11. Records and Reports.** The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The Utah regulations require the following records and reports by licensees and registrants:

(a) Records covering personnel radiation exposures, radiation surveys, and disposals of materials.

Reference: URC-24-170.

(b) Records of receipt and transfer of materials.

Reference: URC-12-080.

(c) Reports concerning incidents involving radioactive materials.

Reference: URC-24-180, 190, 200, and 205.

(d) Reports to former employees of their radiation exposure.

Reference: URC-48-040(3).

(e) Reports to employees of their annual radiation exposure.

Reference: URC-48-040(2).

(f) Reports to employees of radiation exposure in excess of prescribed limits.

Reference: URC-48-040(4).

**12. Additional Requirements and Exemptions.** Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and

safety, or to grant necessary exemptions which will not jeopardize health and safety.

The Utah Bureau of Radiation Control is authorized to impose upon any licensee or registrant, by rule, regulation, or order such requirements in addition to those established in the regulations as it deems appropriate or necessary to minimize danger to public health and safety or property.

Reference: URC-12-100(2).

The Bureau may also grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

Reference: URC-12-125(1).

#### *Prior Evaluation of Uses of Radioactive Materials*

**13. Prior Evaluation of Hazards and Uses, Exceptions.** In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the use of radioactive materials, the Utah Bureau of Radiation Control will require the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: URC-19-220 and URC-22-020. Utah Program Description Section III.F.

Provision is made for the issuance of general licenses for byproduct, source and special nuclear materials in situations where prior evaluation of the licensee's qualifications, facilities, equipment and procedures is not required. The regulations grant general licenses under the same circumstances as those under which general licenses are granted in the Commission's regulations.

References: URC-19-220 and URC-21.

**14. Evaluation Criteria.** In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal to use agreement materials, the Utah Bureau of Radiation Control will determine that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the regulations in such a manner as to minimize danger to public health and safety or property;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; and

(3) The issuance of the license will not be inimical to the health and safety of the public.

Other special requirements for the issuance of specific licenses are contained in the regulations.

References: URC-22-040, 070, 090, and 110.

**15. Human Use.** The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

The Utah regulations require that the use of radioactive material (including sealed sources) on or in humans shall be by a physician having substantial experience in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

Reference: URC-22-070

### Inspection

**16. Purpose, Frequency.** The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Utah materials licensees will be subject to inspection by the Bureau of Radiation Control. Upon instruction from the Bureau, licensees shall perform or permit the Bureau to perform such reasonable tests and surveys as the Bureau deems appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent, and in most cases more frequent, as inspections of similar licenses by NRC.

References: URC-12-030 and 100; URC-49-050-059-070 and 080; Utah Program Description Section III.G

**17. Inspections Compulsory.** Licensees shall be under obligation by law to provide access to inspectors. Folios 807-809 ¶118.0

Utah regulations state that licensees shall afford the Bureau at all reasonable times opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

Reference: URC-12-090.

**18. Notification of Results of Inspection.** Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Following Bureau inspections, each licensee will be notified by letter of the results of the inspection. The letters indicate if the licensee is in compliance and if not, list the areas of noncompliance.

Reference: Utah Program Description Section III.H.

### Enforcement

**19. Enforcement.** Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or

suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

The Bureau of Radiation Control is equipped with the necessary powers for prompt enforcement of the regulations. Where conditions exist that create a clear presence of a hazard to the public health that requires immediate action to protect human health and safety, the Bureau may issue orders to reduce, discontinue or eliminate such conditions. Such orders may be a written directive to modify, suspend or revoke a license, to cease and desist from a given practice or activity, or to take such other action as may be appropriate. License modification orders will be issued when some change in licensee equipment, procedures, or management controls is necessary. Suspension orders will be used to remove an immediate threat to the public health or when a licensee has not responded adequately to other enforcement action. Revocation orders will be used when a licensee is unable or unwilling to comply with Bureau requirements. Cease and desist orders will be used to stop an unauthorized activity that has continued despite notification by the Bureau that such activity is unauthorized. In addition, the State will request from the legislature authority to impose civil penalties for violation of the Utah Radiation Control Regulations.

References: URC-12-139 and 140, Utah Program Description Section III.H., and Governor Matheson's letter dated November 14, 1933.

### Personnel

**20. Qualifications of Regulatory and Inspection Personnel.** The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. The person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear

material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

a. *Number of Personnel.* There are approximately 150 NRC specific licenses

in the State of Utah. Under the proposed agreement, the State would assume responsibility for about 135 of these licenses. The Bureau of Radiation Control is currently staffed with five professional persons. In addition, there is currently one vacancy in the program. Two individuals will be assigned full time to the materials program. Three others will be trained to provide backup. We estimate the State will need to apply a minimum of 1.4 to 2.0 staff-years of effort to the program. The present personnel together with their assigned responsibilities are as follows:

*Larry F. Anderson:* Director, Bureau of Radiation Control. Responsible for administration of Bureau programs. Estimated 0.2 staff-year in materials program.

*Blaine Howard:* Health Physicist. Responsible for licensing and inspection in materials program. Estimated 1.0 staff-year in materials program.

*Arnold J. Peart:* Radiation Specialist 23. Responsible for licensing and inspection in materials program. Estimated 1.0 staff-year in materials program.

*Donald G. Mitchell:* Health Physicist. Responsibilities primarily in x-ray program. Will receive training in licensing and inspection in materials program. Estimated 0.1 staff-year in materials program.

*Gerald R. Ripley:* Health Physicist. Responsibilities primarily in x-ray program. Will receive training in licensing and inspection in materials program. Estimated 0.1 staff-year in materials program.

b. *Training.* The academic and specialized short course training for those persons involved in the administration, licensing and inspection of radioactive materials is shown below.

*Larry F. Anderson—*B.S. Chemistry, MPA (Health), Brigham Young University.

NIOSH Course 549, *Recognition, Evaluation, and Control of Occupational Hazards*, October, 1972.

NIOSH Course 582, *Sampling and Evaluating Airborne Asbestos Dust*, April 10-12, 1973.

Utah State Division of Health, *Visible Emissions Evaluation Course*, June 19, 1973.

American Industrial Hygiene Association, *Industrial Toxicology Seminar*. A 24-hour course ending April 30, 1975.

OSHA, *Fundamentals of Occupational Injury Investigation*. Short course ending April 1, 1977.

United States Nuclear Regulatory Commission, *Radiological Emergency Response Operations Training Course*. A 64-hour course ending January 27, 1978.

U.S. Environmental Protection Agency, *Grants Administration Seminar*. A 16-hour course ending May 16, 1979.

Safety International Training Center, *Hydrogen Sulfide and Equipment for Instructors*. A 12-hour course ending June 19, 1979.

Rocky Mountain Center for Occupational and Environmental Health, University of Utah, *Health and Exposures in the Smelter*

*Environment*. A 20-hour course ending March 29, 1980.

*Blaine Howard—*B.S. Math and Physics, Ricks College. M.S. Radiological Health, New York University. M.S. Physics and Math, Brigham Young University.

Medical X-Ray Protection—BRH Rockville, MD.—October 30–Nov. 10, 1972.

Radiological Emergency Response Operations (REPR), Las Vegas and Nevada Test Site, 1973.

"States Role in Radioactive Material Management." The National Legislative Conference, Las Vegas, Dec. 9–11, 1974.

Drinking Water Regulations and Radioanalytical workshop EPA, Denver, Jan. 10–12, 1978.

X-Ray Workshop, Richfield, Utah, Mar. 14–15, 1970.

Actinides in Man and Animals—Workshop, Snowbird, UT., Oct. 15–17, 1979.

Nuclear Medicine—NRC New York City, Sept. 8–12, 1980.

NWTS Annual Information Meeting—Columbus, Ohio, Dec. 8–10, 1980.

Waste Management 1981—American Nuclear Society, Tucson, AR, Feb. 23–27, 1981.

Orientation Course in "Licensing Practices and Procedures"—NRC, Silver Spring, MD., Sept. 14–25, 1981.

Inspection Procedures Course—NRC, Atlanta, GA, July 28–30, 1982.

*Arnold J. Peart—*B.S. Education, Utah State University (minor—chemistry and math).

Nuclear Regulatory Commission—Orientation Course in licensing practices and procedures, 1982.

Nuclear Regulatory Commission—Medical Use of Radionuclides, 1982.

Federal Emergency Management Agency—Radiological Emergency Response Course, 1982.

Nuclear Regulatory Commission—Radiochemistry for State Regulatory Personnel, 1983.

Dept. of Health and Human Services—Basic Course for Investigators, Diagnostic X-Ray Survey, 1983.

Nuclear Regulatory Commission—Safety Aspects of Industrial Radiography, 1983.

*Donald G. Mitchell—*B.A. Chemistry and Physics, Brigham Young University. M.S. Physics and Math, University of Wisconsin.

Oak Ridge Assoc. Univ.—Health Physics (10 weeks) 1976.

Reynolds Electrical and Engineering—Rad. Emergency Response, 1978.

Food and Drug Administration—Diagnostic X-Ray Survey, 1979.

U.S. Nuclear Regulatory Commission—Industrial Radiography, 1982.

Eastman Kodak Company—Radiological Imaging, 1982.

*Gerald R. Ripley—*B.S. Biology, University of Utah. B.S. Pharmacy, University of Utah.

c. *Experience.* Mr. Anderson has been with the Bureau since 1972 and has had supervisory and administration responsibilities since 1978. Mr. Howard has been a health physicist with the State since 1972 and has had experience in health physics since 1954. Mr. Howard was certified by the American

Board of Health Physics in 1978. Mr. Peart has been employed by the State since 1975, from 1975 to 1982 as an industrial hygienist and from 1982 as a radiation specialist. Messrs. Howard and Peart have accompanied NRC inspectors on materials inspections in the State of Utah. Mr. Mitchell has been a health physicist with the State since 1975. Prior to 1975 Mr. Mitchell had experience as a radiochemist and a teacher of chemistry and physics. Mr. Ripley has been a health physicist and industrial hygienist with the State since 1979. Mr. Ripley has prior experience as a radiochemist and pharmacist.

Reference: Utah Program Description Section IV and Appendix B.

**21. Conditions Applicable to Special Nuclear Materials, Source Material and Tritium.** Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material and tritium and (2) periodic inventory data.

The State's regulations do not prohibit or interfere with the duties imposed by the NRC on holders of special nuclear material owned by the U.S. Department of Energy or licensed by NRC, such as the responsibility of licensees to supply to the NRC reports of transfer and inventory.

Reference: URC-12-040 and 125.

**22. Special Nuclear Material Defined.** The definition of special nuclear material in quantities not sufficient to form a critical mass, as contained in the Utah Radiation Control Regulations, is uniform with the definition in 10 CFR Part 150.

Reference URC-12-050, Definition (60).

#### Administration

**23. Fair and Impartial Administration.** The Utah Health Code provides for administrative and judicial review of actions taken by the Department of Health. Any person may, upon written request, be given an opportunity for an informal hearing before the Department. If the matter cannot be resolved at the informal hearing, the person may then request a hearing before an impartial hearing officer. The person may then file in the district court for judicial review of a final determination of the executive director of the Department.

Reference: Utah Health Code Section 26-23-2.

**24. State Agency Designation.** The Utah Department of Health has been designated as the State's radiation control agency.

Reference: Utah Health Code 26-1-2b. Governor's Matheson's letter dated November 14, 1983.

**25. Existing NRC Licenses and Pending Applications.** The Bureau has made provision to continue NRC licenses in effect temporarily after the transfer of jurisdiction. Such licenses will expire either 90 days after receipt from the Bureau of a notice of expiration or on the date of expiration specified in the federal license, whichever is earlier.

Reference: URC-12-165.

**26. Relations With Federal Government and Other States.** There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

The proposed agreement declares that the State will use its best efforts to cooperate with the NRC and other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of like materials.

Reference: Governor Matheson's letter dated November 14, 1983, Proposed Agreement Between the State of Utah and the Nuclear Regulatory Commission, Article VI.

**27. Coverage, Amendments, Reciprocity.** The proposed Utah agreement provides for the assumption of regulatory authority under the following categories of materials within the State:

(a) Byproduct materials, as defined by Section 11e(1) of the Atomic Energy Act, as amended.

(b) Source materials.

(c) Special nuclear materials in quantities not sufficient to form a critical mass.

Reference: Proposed Agreement, Article I.

Provision has been made by Utah for the reciprocal recognition of licenses to permit activities within Utah of persons licensed by other jurisdictions. This reciprocity is like that granted under 10 CFR Part 150.

Reference: URC-19-250.

**28. NRC and Department of Energy Contractors.** The State's regulations provide that certain NRC and DOE contractors or subcontractors are exempt from the State's requirements for licensing and registration of sources of radiation which such persons receive, possess, use, transfer, or acquire.

Reference: URC-12-125(2).

#### III. Staff Conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states: The Commission shall enter into an

agreement under subsection b of this section with any State if:

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) The Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed amendment.

The staff has concluded that the State of Utah meets the requirements of Section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. Since the State is not seeking authority over uranium milling activities subsection o. is not applicable to the proposed Utah agreement.

Dated at Bethesda, Maryland, this 20th day of December 1983.

For the U.S. Nuclear Regulatory Commission.

G. Wayne Kerr,  
Director, Office of State Programs.

Appendix A—Proposed Agreement Between the United States Nuclear Regulatory Commission and the State of Utah for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to by-product materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, The Governor of the State of Utah is authorized under Utah Code Annotated 26-1-29 to enter into this Agreement with the Commission; and

Whereas, The Governor of the State of Utah certified on November 14, 1983 that the State of Utah (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the

materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The Commission found on \_\_\_\_\_, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

#### Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

- A. Byproduct materials as defined in section 11e.(1) of the Act;
- B. Source materials; and
- C. Special nuclear materials in quantities not sufficient to form a critical mass.

#### Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

- A. The construction and operation of any production or utilization facility;
- B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
- C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;
- D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission;

E. The land disposal of source, byproduct and special nuclear material received from other persons; and

F. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

#### Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E or F, whereby the State can exert regulatory control over the materials stated therein.

#### Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

#### Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

#### Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

#### Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

#### Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or

suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j. of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

#### Article IX

This Agreement shall become effective on \_\_\_\_\_, 1984, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Salt Lake City, Utah, in triplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 1984.

For the United States Nuclear Regulatory Commission.

Nunzio J. Palladino,  
Chairman.

For the State of Utah.

Scott M. Matheson,  
Governor.

#### Appendix B—Narrative Portion of Program Description

##### State of Utah Bureau of Radiation Control Radiation Regulatory Program

#### I. Foreword

The 1967 Utah Legislature passed the "Radiation Protection Act" which authorized the State Board of Health to require the registration of ionizing radiation sources and to adopt the necessary rules and regulations for controlling exposure to harmful ionizing radiation (26-1-27). The State Department of Health was designated to establish, carry out and enforce a radiation control program. (26-1-28). The governor was authorized to enter into agreements with the federal government to assume certain responsibilities with respect to sources of ionizing radiation. (26-1-29).

Upon a decision by the Utah Attorney General's office that the 1967 legislation was not sufficient to carry out these functions, the 1981 legislature passed a revised version which overcame the deficiencies by adding authority to license.

Copies of this legislation are enclosed as Appendix A. The Bureau of Radiation Control is now aggressively pursuing Agreement status.

#### II. History

Previous to 1981, radiation problems received limited attention. During this time attention was called to a proposal to use radioactive tailings from the Vitro uranium mill as fill material in the construction of an interstate highway. The Department of Health maintained its position which had been established earlier in refusing permission to move any of the material for any purpose. This position has continued as Utah sought help from federal agencies to

define the problems associated with uranium mill tailings.

In 1961, a chemist was added and assigned to work 1/4 time in radiation related matters. He received training in x-ray from the U.S. Public Health Service and attended a 10 week course in Health Physics at Oak Ridge, Tennessee. He accompanied AEC inspectors as they visited licensees in Utah and inspected x-ray facilities upon request. In 1962 the U.S. Public Health Service assigned one of their staff to survey the x-ray facilities in Utah. He spent just over a year and surveyed all the x-ray facilities in Utah.

In 1962 high levels of radioactive contamination from the Sedan Atomic test at the Nevada Test Site were found in Utah milk. The Health Department diverted the most highly contaminated milk from human use until the Iodine-131 could decay. This called attention to the need for a radiological laboratory in Utah. With the assistance of the U.S. Public Health Service a laboratory was established in 1964 with both wet chemistry and instrumental analysis. The laboratory has been continually upgraded. A lithium drifted germanium detector with computer electronics was added and, at present, the laboratory has provisional interim certification for drinking water analysis for gross alpha, gross beta, radium-226, radium-228 and tritium.

As a result of the Sedan contamination problem, a milk sampling network was established and weekly samples were analyzed for contamination until well after atmospheric testing was discontinued at the Nevada Test Site. Until 1972 medical and dental x-ray facilities were surveyed upon request and some industrial x-ray facilities were looked at.

In 1972, the Radiation and Occupational Health Section of the Division of Environmental Health was expanded by addition of three more professionals, one a full-time health physicist. Efforts were made to establish radiation control regulations but opposition was encountered and these efforts were unsuccessful. Inspections of x-ray facilities were performed using NCRP Recommendations as a standard. Letters were sent to the facilities specifying items of deficiency. The majority of the installations complied voluntarily with the recommendations. Bureau staff members have accompanied AEC (NRC) inspectors on numerous inspections of Utah licensees, contributing to the inspection report by invitation.

In 1972, Bureau staff assisted the Environmental Protection Agency in sampling for radon and radon daughters on and near the Vitro uranium mill site. A network of samplers was set up and serviced by Radiation and Occupational Health personnel. In 1973, Utah cooperated with the Bureau of Radiological Health in its Nationwide Evaluations of X-ray Trends (NEXT) to gather statistical data about x-ray exposure to the public. This study (NEXT) was continued for a number of years.

In 1975, a second professional health physicist was employed full time in radiological health. With this additional help a dental x-ray program, Dental Exposure Normalization Technique (DENT) was

carried out to reduce exposure to patients from dental x-rays. The new techniques which were selected by the dentists reflect a 49% reduction in dental x-ray exposure. Programs were conducted with practitioners of various disciplines to improve radiographic quality while reducing patient exposure. In 1976, radon daughter concentrations were measured in some Salt Lake County businesses which were more than 5 times the maximum continuous levels allowed in uranium mines. This gave additional impetus to bills being introduced into Congress by the Utah delegates which asked for federal assistance for the clean up of uranium mill tailings. These efforts and the efforts of other states culminated in the passage of Pub. L. 95-604 "The Uranium Mill Tailings Radiation Control Act of 1978".

In 1972, an E.P.A. study identified many locations throughout much of Utah where the use of uranium mill tailings as fill material was indicated. Beginning in 1978, indoor radon measurements were made by the Bureau of Radiation Control at those locations in Salt Lake County where uranium mill tailings were used near or under habitable buildings. Through the cooperation of the U.S. Department of Energy, aerial surveys were made to complete the identification of sites where tailings were used in a large part of Salt Lake County and other Utah communities. Some additional businesses were found with high radon concentrations.

In 1979, a third full time health physicist was added to the staff to work with uranium mill tailings remedial action and assist with a new contract with the Bureau of Radiological Health to make compliance surveys of new diagnostic x-ray machines.

In 1980, a fourth full time health physicist was added to the staff to provide technical support for the governor's "High Level Nuclear Waste Task Force". This task force was appointed on June 2, 1980 to oversee the U.S. DOE's field operations in Utah, make recommendations to the governor and communicate information to the people of Utah.

In 1981, a contract was signed with Mound Laboratory for the State to monitor properties near the Vitro Uranium mill. A health physics technician was added to the staff to fill the Mound contract requirements.

In July 1981, the occupational health functions were transferred to the Industrial Commission and the Bureau was renamed the Bureau of Radiation.

In January 1982, the Bureau of Radiation was divided to form the Bureau of Uranium Mill Tailings Management and the Bureau of Radiation Control. The Bureau of Radiation Control under a new director was given the task of preparing a complete radiation control program in preparation for entering an agreement with the U.S. Nuclear Regulatory Commission.

In December 1982, the Bureau of Uranium Mill Tailings Management was combined with the Bureau of Radiation Control with the new organization as indicated on the Function Chart in Appendix B.

The Utah Radiation Control Regulations were formally adopted and became effective on January 1, 1983. Since that date, the

Bureau has been licensing and inspecting users of naturally occurring and accelerator produced radioactive materials (NAPM). The regulations provide for a "Radiation Technical Advisory Committee" of eight (8) members to advise, comment and provide technical assistance to the Bureau Director.

### III. Administrative Policy and Procedures

**A. Introduction and Purpose.** The following procedures are to assure uniformity, continuity and appropriate treatment in all licensing, registration and regulatory practices and to maintain radiation exposures to all persons in the State as low as is reasonably possible.

Procedures are also to assure that emergency response to radiological incidents is correlated with the appropriate government agencies and that the proper information is provided to the public.

Procedures shall also provide for feedback to the Bureau director from the staff on the status of activities in regard to regulatory actions, problem cases, inquiries and need for regulation revisions.

**B. Priority of Responsibilities.** The responsibilities for Radiation Control, after the program is established, shall be given priority in the following order:

1. Emergency response to radiological incidents.
2. Respond to request by workers for inspection.
3. Routine inspection of radiation sources.
4. Reinspection of non-compliant facility and enforcement procedures.
5. Registration or licensing of radiation sources.
6. Review plans as submitted under URC-28-032.
7. Assist licensee in developing program under URC-24-015.

**C. Emergency Response Procedures.** Emergency response to radiological incidents will take precedence over other duties and will require immediate response by one or more technical staff.

1. Names of emergency response team members will be left with the department operator during off duty hours.
2. Emergency response kits will be kept in the office ready for immediate response.
3. When an emergency situation is reported the following information will be obtained.
  - a. Name and telephone number of caller.
  - b. Alternate contact and telephone number.
  - c. Company or agency of caller.
  - d. Location of incident.
  - e. Type and amount of radioactive material.
  - f. Detailed account of the problem.
  - g. Shipper address and telephone number.
  - h. Consignee address and telephone number.

1. Who has been called in.

4. The leader of the emergency response team will have successfully completed the NRC Radiological emergency response training course.

5. All questions by the news media will be referred to the Bureau Director.

**D. Procedure for Response to Workers Request for Inspection.** 1. The request for inspection shall be in writing and outline the alleged violations.

2. The request shall be reviewed by bureau personnel and compared to past inspection reports.

3. A copy of the alleged violations will be delivered to the licensee at the time of the inspection.

4. Response to the request by workers that an inspection be performed under URC-48-070 shall be made as soon as practicable, preferably no later than 7 working days from receipt of written request.

5. Following the inspection a written report will be furnished to the complainant of any violations of the Bureau of Radiation Control Regulations.

6. The identity of the individuals requesting the inspection shall be protected as provided for in URC-48-070.

**E. Procedure for Registration of Ionizing Radiation Machines.** The following outline describes the procedures for keeping track of the registration and survey program. In all cases, the registrant should submit a completed BRC Form 10 along with the registrant's signature. Once the secretary has received this application, a registration certificate will be typed on BRC Form 11 and issued to the applicant.

**1. Registration.**

a. On receipt of an application:

(1) Check to assure that applicant has not previously been registered.

(2) If not registered, obtain new registration number, county-discipline-sequential.

(3) Note if the appropriate fee is enclosed. If any discrepancies are noted, registration and fee is returned for corrective actions by registrant.

b. Initiate folder.

(1) Place application form and a copy of the registration certificate in the folder. Add any other correspondence concerning this registration.

(2) Original copy of registration certificate is sent to the registrant for his files.

c. Registrant's name, address, registration number, inspection due date, and inspection information will be entered on to the word processor.

d. Mail the original certificate to the registrant. If a new registrant, the following will be included with this certificate:

(1) Notice to Employee, BRC Form 4.

(2) Copy of those sections of the Bureau of Radiation Control Regulations that apply.

**2. Change in Registration.**

a. Address Change.

Change all registration sheets and update word processor and indicate date.

b. Equipment Change.

Change all registration sheets and update word processor and indicate date.

c. Deaths.

(1) Mark all registration sheets accordingly.

(2) Mark manila folder "inactive", only if (4) is completed.

(3) Do not re-issue number.

(4) Locate and maintain surveillance on equipment until it is properly disposed of.

d. Retirements.

(1) Mark all registration sheets accordingly.

(2) Mark manila folder "inactive", if (4) is completed.

(3) Do not re-issue number.

4. Make sure machine is properly disposed of.

**3. Procedures for Handling Completed Survey Reports:**

After an x-ray unit has been registered, staff members will perform a radiation survey to determine if the registrant meets the Bureau of Radiation Control regulations. During this survey, the staff member(s) will place data on "survey reports". All reporting documents will be held in registrant's file. A letter to the registrant will be issued from the Bureau informing him if he is in compliance or explain items of non-compliance.

a. File result sheet in manila folder. The letter indicating compliance or listing items of non-compliance will be issued within 15 days after completion of inspections. A copy of this will be filed with the survey result sheet in the manila folder.

b. Non-Compliance Survey Reports.

The non-compliance survey reports will be filed on the word processor, 30-day action is required.

**4. Follow-up Procedure.**

a. Pull non-compliant registrants from word processor on a monthly basis for follow-up. If installation becomes "in compliance" the data on the word processor will be corrected, if non-compliance continues further action will be taken.

b. Send follow-up letters to all appropriate registrants with non-compliances, note issuance of follow-up letter on word processor.

c. If answer is not received during second 30-day period, an additional 15-day notice will be written.

d. If answer is not received during 15-day period, file will be referred to the Attorney General's office for appropriate action.

**5. Procedures When "Non-Compliance" Items are corrected.**

a. We will accept a written notice with signature that items of non-compliance have been corrected.

b. Upon receiving such information the following will be done:

(1) The compliance action notice from the responsible person will be placed in the manila folder for future inspection and a corrective action letter will be issued by the Bureau.

(2) Result sheet will be marked compliance by indicating date information was received and by what route. The information will be left in the manila folder.

**F. Procedures for Licensing Radioactive Material:** The specific material to be licensed by the State will be: (a) By-product material (as defined under 11(a) of the Atomic Energy Act of 1954 as amended), (b) Source Material, (c) Special nuclear material in quantities not sufficient to form a critical mass. The United States Nuclear Regulatory Commission Guides will be used for evaluation of all radioactive material applications.

1. All applicants must submit a completed state form (e.g., BRC-01 or BRC-02) along with the application fee. Once the application is received, a file folder will be created and a sequence number given.

2. Applications will be reviewed in sequence by assigned staff. Staff reviewing license applications will have completed the

NRC course on licensing practices and procedures.

3. Reviewing staff will determine if application is for a new license, renewal or an amended license. Renewal and amended license applications will be referred to the original file.

4. The reviewer shall determine if all requested material has been submitted and fees paid. If material is not complete or if fees have not been paid, the applicant will be notified that no processing of the application will take place until those items are rectified.

5. If the application is in order and fees paid, it will be reviewed using the following guide lines:

a. Does the application meet the requirements of the BRC regulations?

b. Is the applicant qualified by reasons of training and experience?

c. Are the facilities adequate to carry out the proposed activity? (This may include onsite inspections.)

6. If the application meets all the requirements a license will be issued using form BRC-03 and listing any special conditions or limitations which are applicable.

a. Included with the license mailed to the licensee will be a copy of "Notice to Employees" BRC Form-04 and a copy of Bureau of Radiation Control regulations that apply.

b. A copy of the license and the application will be placed in the applicants permanent file.

c. One file on the word processor will be completed for each license, including the name and address of applicant, the license number, the inspection due date, completed inspection date and remarks.

7. If the application does not meet the requirements, the applicant will be notified by letter of any deficiencies, or any additional information and changes which may be necessary.

**G. Inspection priority.**

Priority	Type of license or facility	Inspection frequency	
		Initial (months)	Routine (months)
I.....	Received.....		
II.....	Radiography (field), Medical-Broad, Academic Type A, Uranium-By-product.....	6	10
III.....	Hospital x-ray, Orthopedic x-ray Clinics, Radiology x-ray Clinics, Therapeutic x-ray, Accelerators, Radiography (in-house).....	6	12
IV.....	Waste collection, (prepackaged waste only) Industrial, Industrial type B Broad.....	6	15
V.....	Industrial Limited, Academic, Civil Defense, Soil Moisture and Density Gauges, Chiropractic x-ray, other medical x-ray.....	6	18-24
VI.....	Medical limited, Eye Applicator, Gauge Repair, Gauge Use, Chromatography, Light Sources, Leak Test Services, Calibration Sources, Dental X-Ray.....	6	12-30
VII.....	Veterinary x-ray.....	12	48
VIII.....	Teletherapy.....	6	24
IX.....	Walk-In Type Irradiator.....	6	12

\*Note.—See Definition URC-12-050(43) in Utah Radiation Control Regulations.

\*Note.—Other medical x-ray includes all diagnostic x-ray except hospitals, radiology clinics, orthopedic clinics, dental and veterinary x-ray.

**H. Enforcement Procedures.** The United States Nuclear Regulatory Commission Inspection Guides will be used to establish format for inspection procedures.

1. Following an inspection, the licensee will be notified by letter of (a) compliance including the results of the inspection, or (b) the areas of non-compliance and requesting written notification within 30-days describing:

a. Corrective steps which have been taken by the licensee and the results achieved.

b. Corrective steps which will be taken to prevent recurrence; and

c. The date when full compliance will be achieved.

2. If response is not received in 30 days, a second letter will be sent requiring response within 15 days to avoid issuance of an order or other legal proceedings.

3. An order is a written directive to modify, suspend or revoke a license; to cease and desist from a given practice or activity, or to take such other action as may be appropriate.

a. License modification order will be issued when some change in licensee equipment, procedures, or management controls is necessary.

b. Suspension Orders will be used:

(1) To remove a threat to the public health.

(2) When licensee has not responded adequately to other enforcement action.

(3) When the licensee interferes with the conduct of an inspection; or

(4) For any reason not mentioned above for which license revocation is legally authorized.

c. Revocation Orders will be used:

(1) When a licensee is unable or unwilling to comply with bureau requirements;

(2) When a licensee has refused to correct a violation;

(3) When a licensee does not pay a fee required by the bureau.

d. Cease and desist orders are used to stop an unauthorized activity that has continued despite notification by the Bureau that such activity is unauthorized.

e. Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the modification is afforded.

4. If repetitive serious violations occur, BRC will consider issuing orders in conjunction with other enforcement actions to achieve immediate corrective actions and to deter further recurrence of serious violations.

5. Related administrative actions.

a. In addition to the formal enforcement mechanisms of notice of violation and orders, BRC will also use conferences, bulletins, circulars, information notices, notices of deviation, confirmatory action letters, defined as follows:

(1) Enforcement conferences are meetings held with licensee management to discuss safety, health and compliance with regulatory requirements.

(2) Bulletins, circulars and information notices are written notices to groups of licensees identifying specific problems and calling for or recommending specific actions on their part.

(3) Notice of Deviation are written notices describing a licensee's failure to satisfy a commitment.

(4) Confirmatory action letters are letters confirming a licensee's agreement to take certain actions.

**I. Policy For Review of Plans Submitted Under URC-28-032 (Preconstruction Review of Shielding Plans).** 1. Plans should be submitted a minimum of 30 days before anticipated construction.

2. If it appears that additional shielding would be advisable, this recommendation would be made in writing to those submitting the plans within 30 days of receiving the plans for review.

**J. Policy for Staff Assistance in Developing ALARA Programs in Accordance with URC-24-015 (This Section Requires Implementation of ALARA Programs and Offers Assistance by the Bureau When Requested).** 1. ALARA programs submitted to the Bureau shall be reviewed by the Staff. If the program is deficient, recommendations will be made to upgrade the program.

2. During each inspection, the ALARA program will be reviewed with the registrant or licensee.

3. A list of successful methods will be made and given to those requesting assistance.

**K. Staff Training Policy.** 1. Update training will be conducted on a regular basis to enhance technical proficiency. The goal of in-house training will be to maintain a basic understanding of the following topics:

a. Atomic structure and natural radioactivity.

b. Properties of Alpha and Beta Particles, Gamma Rays, X-Ray and Neutrons.

c. Radiation units and external dose determinations.

d. Biological effects of radiation.

e. Shielding.

f. Operation and calibrations of instruments for measurements of ionizing radiation.

g. Inspection procedures.

h. Special topics as needed.

2. The staff will be sent to national courses in all aspects of Radiation Control as federal or state funds are available.

3. Each staff member will be encouraged to devote some time to personal study and be working toward certification as a health physicist.

**L. Media Relations.** Media relations and the Bureau of Radiation Control can be divided into two general categories: the regular release of information and the information release following an incident involving radioactive material.

**Regular Information Release.** All information released to the media is to go through the Department of Health's public information officer. The policy for the Division of Environmental Health has been to have the draft press release prepared by the bureau and then approved by the divisions director. This is then sent to the public information officer for release.

Telephone press inquiries are generally handled by the bureau director who then

briefs the public information officer on the interview. Requests for television interviews are relayed to the public information officer with background as to the reason for the request.

The bureau director is to keep the public information officer current on any aspects of his programs which may attract media attention. This includes briefings on *potentially significant new stories*. The bureau director will also work with the public information officer on specific issues which could or should be brought up in the press. Such briefings are important to keep the public information officer current on concerns and programs of the bureau to give him the necessary background on the bureau's activities. The public information officer will make such arrangements as feature stories, interviews, press conference or other means best suited to the material to be disseminated. The spokesman for the Bureau of Radiation Control is the bureau director or the public information officer.

It is imperative in such situations that timely, accurate and current notices to the public through the press be maintained. Special attention is to be paid to stopping rumors, correcting misinformation and presenting an accurate assessment of the situation which the public can understand. Ignorance and fear can lead to panic. The press can be of great help in preventing panic and in helping make people aware of the real dangers involved, need to evacuate, etc.

A single spokesman for the Department of Health is to be established. Unless otherwise indicated by the Executive Director, Utah Department of Health, this spokesman is the public information officer. He will work closely with the bureau director and division director in his dealings with the press. There should be no unauthorized interviews by staff or others speaking for the Department of Health. Requests for statements or interviews should be directed to the public information officer, division director or bureau director.

**The Media and "Incident" Coverage.** The public information officer for the Department of Health should be notified immediately of any incident related to radioactivity which is a threat to the public health. Depending on the nature and extent of the incident, his activities will be coordinated with the Division of Comprehensive Emergency Management.

It is advantageous to establish a central press room if the scene of the incident is not accessible. This will make it possible for regular and timely updates.

Statements made on the scene of the incident should be limited to the known facts and not conjecture or possibilities. The press should be referred to the public information officer or bureau director by staff when they are approached by the press for interviews or comments.

#### IV. Organization, Staff and Equipment

The "Utah Health Code" adopted by the 1951 Utah Legislature created a "Department of Health" from the "Division of Health" of the Department of Social Services. The code gave unto the Department of Health authority to require the registration and licensing of hazardous sources of radiation and to adopt

necessary rules for controlling radiation exposure to such sources. The code also directed the Department of Health to establish, carry out, and enforce a radiation control program pursuant to the adopted rules and any federal-state agreement (The 1981 "Utah Health Code" is contained in Appendix A with pertinent statutes).

The Department of Health is divided into four Divisions. (1) The Division of Health Planning and Facilities; (2) The Division of Environmental Health; (3) The Division of Community Health Services; and (4) The Division of Family Health Services. The Division of Environmental Health is divided into six (6) Bureaus including the Bureau of Radiation Control which includes the functions of the Bureau of Uranium Mill Tailings Management. The Bureau is only concerned with title I UMTRPA activities. A chart showing the organization of the Department of Health and a function chart of the Bureau of Radiation Control are contained in Appendix B. Since this chart was drawn, a recombination of the Bureau of Radiation Control and the Bureau of Uranium Mill Tailings Management was effected with the structure as indicated in the function chart also included in Appendix B. The

current staff includes one (1) health physicist certified by the American Board of Health Physics, two (2) health physicists one with extensive experience, and one (1) other staff member undergoing in-house training and attending NRC training courses.

Personnel working in Radioactive Materials Program:

Name	Time (per-cent)	Responsibilities
Lary F. Anderson.....	20	Administrative.
Blaine Howard.....	100	Licensing and Inspections.
Arnold J. Peart.....	100	Licensing and Inspections.
Donald G. Mitchell.....	10	Training in Licensing and In-spection.
Gerald R. Ripley.....	10	Training in Licensing and In-spection.
New Hire.....	10	Training in Licensing and In-spection.

Resume's of the current staff are included in Appendix B. The five categories of job descriptions included in the appendix will all be necessary to allow for promotion incentives for the in-house training program. This will allow hiring of individuals with limited experience and involving them in our training program with advancement available

when training and experience requirements are reached.

Standard letters, standard forms, and license conditions have been prepared. Copies of the most recent versions of these materials have been included in Appendix C.

The Bureau has on hand sufficient equipment and instrumentation for the adequate conduct of the present Radiation Control Program. An inventory of this equipment is included in Appendix D.

The Utah Legislature has authorized appropriations to carry out the regulatory functions of the Bureau.

#### V. Emergency Response

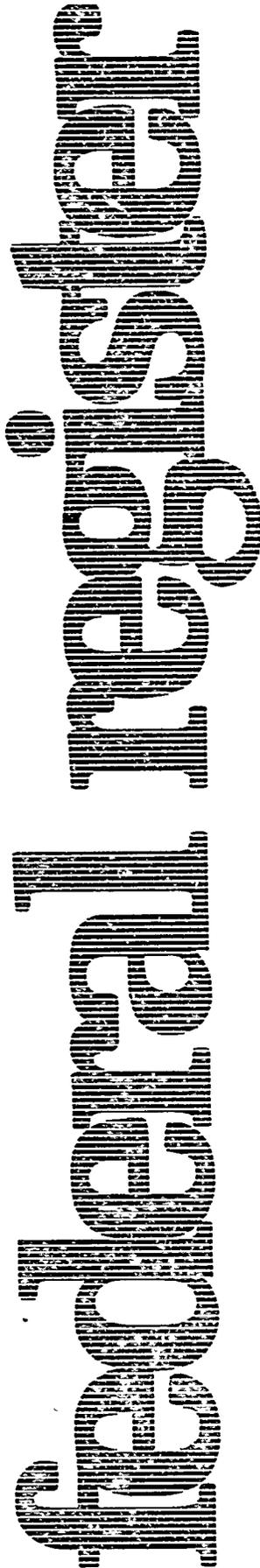
All of the current technical staff have attended the training course in Radiological Emergency Response Operations for Radiological Emergency Response Teams of State and local governments formally sponsored by the Office of State Programs, U.S. Nuclear Regulatory Commission. The Bureau has developed a radiological comprehensive emergency management section with the Utah Highway Patrol.

[FR Doc. 83-34511 Filed 12-29-83; 8:45 am]

BILLING CODE 6500-50-M

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Friday  
January 6, 1984



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**Part III**

**Department of Labor**

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**Employment Standards Administration,  
Wage and Hour Division**

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**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 1.1 (including the statutes listed at 36 FR 308 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 (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). 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 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 Supersedes Decisions to General Wage Determination Decisions**

Modifications and supersedes 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 supersedes 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 1.1 (including the statutes listed at 36 FR 308 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 (37 FR 21138) and of Secretary of Labor's orders 13-71 and 15-71 (36 FR 8755, 8756). 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 supersedes 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 Government Contract Wage Standards, Division of Government Contract 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.

**Modification 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.

Kentucky:	
KY83-1082 .....	Sept. 16, 1983.
KY83-1081 .....	Sept. 16, 1983.
Ohio: OH83-5122 .....	Nov. 25, 1983.
Pennsylvania: PA83-3002 .....	Sept. 9, 1983.

**Supersedes 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. Supersedes decision numbers are in parentheses following the numbers of the decisions being superseded.

Missouri: MO82-4047 (MO83-4088) .....	Oct. 1, 1982.
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Signed at Washington, D.C. this 30th day of December 1983.

James L. Valin,  
Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS

DECISION NUMBER OMB3-5122 - Mod. #1 (48 FR 53254 - November 25, 1983) Statewide, Ohio	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
Changes: Line Construction Area 13; Operators, Class 1	\$15.78	85%+ 0-1/2%	\$15.78	85%+ 0-1/2%
Operators, Class 2	13.98	85%+ 0-1/2%	13.98	85%+ 0-1/2%
Groundman	11.98	85%+ 0-1/2%	11.98	85%+ 0-1/2%
Units: Power Equipment Operators Zones 2 & 3 Classifications			16.14	26%
Add: Carpenters Area 9; Pile/Driverman Power Equipment Operators Zones 2 & 3 Classifications				

CLASS A - Air compressor on Steel Erection; Boiler Operator on Compressor or Generator when mounted on a rig; Cables; Combination Concrete Mixer & Tower; Concrete Plants (over 4 yd. capacity); Concrete Pumps; Cranes, including Boom Trucks, Cherry Pickers; Derrick; Draglines; Dredges (dipper, clam or suction); Elevating Grader or Euclid Loader; Floating Equipment; Helicopter crew (operator-hoist or winch); Hoop; Hoisting Engines; Hoisting Engines on Shaft or Tunnel Work; Industrial-Type Tractor; Jet Engine Dryer (D8 or D9) Class; Mixer, Paving (Single or Double Drum); Mucking Machine; Multiple Scraper; Pile-driving Machine; Power Shovel; Quad 9 (double pusher); Refrigrating Machine (Freezer Operation); Rotary Drill on Calson Work; Side-Boom Dumper; Slip-Form Paver; Tower Derrick; Tractor; Trench Machine (over 24" wide); Truck Mounted Concrete Pumps; Tug Boat; Tunnel Machine and/or Mining Machine; Wheel Excavator; Trailer Concrete Pump (without feet)

CLASS B - Asphalt Paver, Automatic Subgrader Machine, Self-propelled (CMI type); Boring Machine Operator (core than 48"); Bulldozer; End-loader; Front Loader (production type-Dirt); Load Grapple; Main-tenance Operator Class D; Power Grader; Power Scarifier; Push Cat; Trench Machine (24" wide & under)

MODIFICATIONS

DECISION NO. KY83-1061 Mod # 2 (Cont'd)	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
CHANGE: POWER EQUIPMENT OPERATORS- HEAVY CONSTRUCTION PROJECTS INCLUDING BRIDGES ACROSS COMMERCIALLY NAVIGABLE RIVERS:				
CLASS A	\$14.47	2.48	\$13.17	2.48
CLASS B	11.64	2.48	10.75	2.48
CLASS C	10.84	2.48	11.13	2.48
CLASS D (50¢ above CLASS A rate)			10.49	2.48
POWER EQUIPMENT OPERATORS- HIGHWAY CONSTRUCTION:				
CLASS A	13.17	2.48		
CLASS B	10.75	2.48		
CLASS C	11.13	2.48		
CLASS D	10.49	2.48		
DECISION NO. KY83-1061 Mod # 2 (48 FR 41706 - September 16, 1983) Allen...Mobster Counties, Kentucky				
CHANGE: POWER EQUIPMENT OPERATORS- HEAVY CONSTRUCTION PROJECTS INCLUDING BRIDGES ACROSS COMMERCIALLY NAVIGABLE RIVERS:				
CLASS A	\$14.47	2.48		
CLASS B	11.64	2.48		
CLASS C	10.84	2.48		
CLASS D (50¢ above CLASS A rate)				

DECISION NO. KY83-1061  
Mod # 2 (Cont'd)  
CHANGE: (Cont'd)  
POWER EQUIPMENT OPERATORS-  
HIGHWAY CONSTRUCTION:  
CLASS A  
CLASS B  
CLASS C  
CLASS D

MODIFICATIONS

DECISION NUMBER OHS3-5122 (Cont'd)

**CLASS C - A-Frames; Air Compressor on Tunnel Work (low pressure); Asphalt Plant Engineer; Locomotive (narrow gauge); Mixers, concrete (more than one bag capacity); Mixers, one bag capacity (side loader); Power Boilers (over 15 lb. pressure); Pump Op. installing & operating Well Points; Pumps (4" & over discharge rollers - Asphalt; Utility Operator (small equipment); Welding Machine & Generators**

**CLASS D - Back Fillers; Bar, Joint & Mesh Installing Machines; Batch Plant; Boring Machine Operators (48" or less) Bull Floats; Burlap & Curing Machines; Compressor (portable, sewer, heavy, & Highway); Concrete Plant (capacity 4 yd. & under); Concrete Saw (multiple); Conveyors (highway); Crushers; Deckhand; Drill, Highway (with integral power); Farm-Type Tractor with attachments (highway); Finishing Machines; Fireman, Floating Equipment; Fork Lift (highway); Form Trenchers; Hydro Hammer; Hydro Seeders; Pavement Breaker; Plant Mixers; Post Driver; Post Hole Digger (power auger); Power Brush Burner; Power Form Handling Equipment; Road Widening Trencher; Rollers (brick, grade, macadam); Self-propelled Power Spreaders; Self-propelled Power Subgraders; Steam Fireman; Tractor (pulling sheepfoot roller or grader); Vibratory Compactors (with Integral Power)**

**CLASS E - Drum Fireman (asphalt plant); Forklift (masonry); Inboard-Outboard Motor Boat - Launch; Power Scrubber; Power Sweeper; Oil Heaters (asphalt plants); Oilers; Power Driven Heaters; Pumps (under 4" discharge); Tenders**

DECISION #PAB3-3002 - Mod. #1 (48 FR 40841 - September 9, 1983) Allegheny, ..., Westmoreland Counties, Pennsylvania CHANGE:	Rate Hourly Rate	Fringe Benefits	Rate Hourly Rate	Fringe Benefits
CARPENTERS:				
ZONE I	\$14.31	30%		
ZONE II	14.12	30%		
CARPENTERS - WELDERS:				
ZONE I	14.68	30%		
ZONE II	14.50	30%		
CARPENTERS - BURNERS:				
ZONE I	14.50	30%		
ZONE II	14.31	30%		
IRONWORKERS:				
Reinforcing	11.31	3.19		
ZONE I	15.15	30%		
PILEDRIVERMEN - WELDERS	15.40	30%		

Rate Hourly Rate	Fringe Benefits

DECISION NO. M083-4086

COUNTY: Greene  
 DATE: Date of Publication  
 SUPERSEDES Decision No. M082-4047 dated October 1, 1982 in 47 FR 43524,  
 DESCRIPTION OF WORK: Building projects, (excluding single family homes and  
 apartment up to and including 4 stories).

LABORERS CLASSIFICATION DEFINITIONS

- Group 1 - Common labor, handling and carrying of reinforcing steel pumps of all types and heaters
- Group 2 - Asphalt raker, crusher feeder, cement finisher tender, jack-hammer and air tool operator, power tamper operator, pipe layer (concrete or clay), sand blast and gunnite nozzle, vibrator operator, wagon drill operator, cat-drill operator, and all work of a semi-skilled nature not listed
- Group 3 - Mason tenders: Including plasterers tender, mortar mixer and fork lift operator
- Group 4 - Powderman

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

- Group 1 - Crane, dragline, derrick, drum or tower hoist (2 drum), power shovel or back hoe (on tracks), pilerdriver, power blade, motor patrol, mechanic, hydraulic, self-propelled crane, stinger or cherry picker crane
- Group 2 - Bulldozer, dirt scoop or pan, elevating grader, drum or tower hoist (1-drum), loader (track or rubber tire), tractor pusher, roller (asphalt), tractor or backhoe (on rubber tires), tractor (compaction roller or pull blade track)
- Group 3 - Fork lift, roller, tractor (compaction roller or pull blade-tire), distributor, (bituminous), finishing machine (concrete paving), concrete saw (self-propelled), air compressor (600 cu. ft. or over)
- Group 4 - Oiler, oiler-driver

FOOTNOTE: a - Employer contributes 5% of basic hourly rate for over 5 years' service, and 6% of basic hourly rate for 6 months to 5 years Vacation Pay Credit, also 7 Paid Holidays.

- b - 1 Paid Holiday (Labor Day)
- c - \$51.00 per/week

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)).

[R Dec. 04-117 Filed 1-5-84; 04:45 am]  
 BILLING CODE 4510-27-C

Basic Hourly Rate	fringe Benefits	Basic Hourly Rate	fringe Benefits
\$16.92	2.25	\$13.63	2.10
17.345	3.00	13.15	2.10
13.37	1.45	12.55	2.10
13.13	1.43	11.95	2.10
13.38	1.43		
12.75			
14.55	98+	10.25	e+1.10
14.95	98+		
	1.89		
16.53	a+	10.30	e+1.10
708JR	a+		
16.50	2.465	10.40	e+1.10
16.125	b	10.45	e+1.10
9.55	4.25		
9.03	2.35		
9.98	2.35		
10.15	2.35		
13.02	1.45		
13.73	1.00		
14.23	1.00		
12.75			
15.17	1.33		
12.00	.66		
16.18	1.95		
10.05			

Abbeato Workers  
 Boilermakers  
 Bricklayers, Stonemasons  
 & Tuck Pointers  
 Carpenters  
 Millwrights & Pile-  
 drivers  
 Cement Mason  
 Electricians  
 Electricians  
 Cable Splicers  
 Elevator Constructors  
 Elevator Constructors  
 Elevator Constructors,  
 Prob. Helpers  
 Glaziers, Outside  
 Ironworkers  
 Laborers  
 Group 1  
 Group 2  
 Group 3  
 Group 4  
 Marble Masons, Tile  
 Workers & Terrazzo  
 Workers  
 Painters  
 Brush & Roller  
 Spray, Sandblasting,  
 Topcoats, & Paperhangors  
 Plasterors  
 Plumbers & Pipefitters  
 Roofers  
 Sheet Metal Workers  
 Tile Finishers

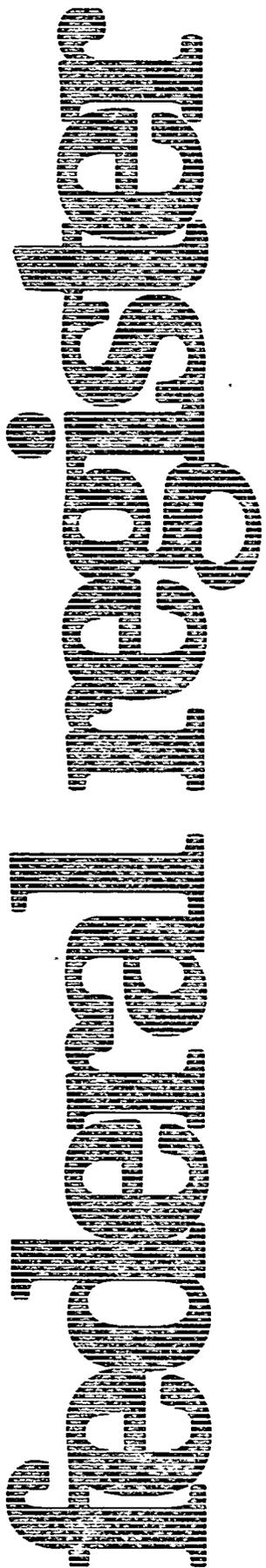
POWER EQUIPMENT OPERATORS:

Group 1  
 Group 2  
 Group 3  
 Group 4  
 Warehouseman, pickup  
 driver, flatbed, single  
 axle, dump truck, single  
 & double axle, oiler,  
 grader  
 Flat bed-double axle,  
 wheel tractor (when  
 used for towing), semi-  
 truck drivers and low  
 boys  
 Heavy hauling, A-frame  
 and winch trucks, fork  
 trucks, hydro-lift,  
 hydraulically operator  
 aerial lifts  
 Mechanics



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Friday  
January 6, 1984



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**Part IV**

**Department of Labor**

**Occupational Safety and Health  
Administration**

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**29 CFR Parts 1910 and 1917**

**Grain Handling Facilities; Safety Hazards;  
Proposed Rulemaking**

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Parts 1910 and 1917**

[Docket H-117]

**Grain Handling Facilities****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Proposed rulemaking.

**SUMMARY:** This notice contains proposed minimum requirements for the control of fires, grain dust explosions and other safety hazards associated with grain handling facilities. Employees in grain handling facilities have been exposed to and continue to be exposed to, fires and explosions. Additionally, employees are exposed to other safety hazards such as the dangers associated with entry into bins, silos and tanks. The proposed requirements in this notice are intended to decrease the number and mitigate the effects of fires and explosions, and to control other known safety hazards in grain handling facilities.

**DATE:** Comments and requests for a hearing must be postmarked by March 9, 1984.

**ADDRESS:** Comments, information and hearing requests should be submitted in quadruplicate to the Docket Officer, Docket H-117, U.S. Department of Labor, Occupational Safety and Health Administration, Room S6212, 200 Constitution Avenue, NW., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue, NW., Washington, D.C. 20210, (292) 523-8151.

**SUPPLEMENTARY INFORMATION:****I. Background**

National attention was focused on the hazards associated with grain handling facilities as a result of a series of devastating explosions that occurred in these facilities in late 1977 and early 1978. During December 1977 alone, 59 deaths and 49 injuries resulted from explosions (Reference 1).

The U.S. Congress, the industry and its organizations, unions, federal agencies and other interested groups responded immediately to these tragedies. Responses included an examination of the history of explosions in grain handling facilities as well as the recent tragic occurrences, an evaluation of the causes and prevention of these

explosions, and initiation of actions to contribute to the understanding and mitigation of explosions. The following discussion highlights some of the activities undertaken by the different groups identified above.

The U.S. Congress held several important hearings on the matter of fires and explosions in grain handling facilities. For example, in 1978 hearings were held by the Subcommittee on Compensation, Health and Safety of the House Committee on Education and Labor, to examine the causes of grain elevator explosions and to determine the action needed to prevent such occurrences (Reference 2).

As recently as July 1982, the Subcommittee on Wheat, Soybeans and Feed Grains of the House Committee on Agriculture held hearings to review research on methods of preventing dust explosions in grain elevators.

Additionally, as a result of several Congressional requests, the U.S. General Accounting Office conducted a study which was released in 1979 (Reference 3). The study scrutinized various aspects of grain dust explosions including the roles of certain federal agencies. One recommendation resulting from the study was that the Department of Labor evaluate the adequacy of coverage of grain elevators in the existing OSHA general industry standards (29 CFR Part 1910).

Trade associations in the grain handling industry also have been actively involved in educational efforts, scientific endeavors and dissemination of information to assist their members in minimizing the possibility of further explosions.

One major trade association, the National Grain and Feed Association (NGFA), issued guidelines in January 1978, to assist association members in improving fire and explosion safety. The guidelines addressed welding and cutting, safety training and fire drills, review of emergency procedure plans, safety communications, preventive maintenance, good housekeeping and enforcement of no-smoking rules (Reference 4).

NGFA has also held special industry conferences that have resulted in the publication of important documents relating to the design of grain elevator facilities (Reference 5) and dust control (Reference 6).

Another important step taken by NGFA was the creation of the Fire and Explosion Research Council (the Council) within the association. Funded and staffed by members of NGFA, the Council has maintained a continuing program of research activity (Reference 7). The Council's goals, as stated in a

NGFA report to Congress (Reference 8, p.3), are:

1. To gather the best information possible on the technology available to control, prevent and eliminate grain dust fires and explosions.

2. To conduct an extensive research effort to learn more about how explosions are caused and ways to control and prevent them.

3. To disseminate written and oral information to all who are interested—information that will add to the knowledge and awareness of how explosions can be mitigated.

Another industry trade association, the Grain Elevator and Processing Society (GEAPS), has been actively emphasizing training and education within the grain handling industry. In 1980, GEAPS was awarded funds under OSHA's New Directions Program. (The goal of the New Directions Program is to assist non-profit groups in providing employer and employee training programs to complement and augment the effectiveness of OSHA standards.) With that assistance, GEAPS embarked on a study of the industry's safety and health training needs (Reference 9). This has led to the development of several excellent slide/tape presentations concerning safety in grain handling facilities. These slide/tape presentations are available from GEAPS and are also available in certain OSHA Area Offices (Reference 10).

Unions representing employees in grain handling facilities (the American Federation of Grain Millers and the Allied Industrial Workers of America—both of the AFL-CIO) have been very active, through training and education, in increasing the safety awareness of those employees they represent in grain handling facilities. The Food and Beverage Trades Department of the AFL-CIO received a New Directions grant to assist in the development of a training program for the American Federation of Grain Millers (Reference 11).

The U.S. Department of Agriculture (USDA), through its various agencies has been actively concerned with the fire and explosion hazards in grain handling facilities. One of these agencies, the Federal Grain Inspection Service (FGIS), is responsible for the quality, grading and weighing of grain that is exported. Thirteen FGIS inspectors lost their lives in grain elevator explosions in December 1977.

Based on its concern for the safety of its employees, USDA set up a special task force on grain elevator safety and explosions. The task force report was issued in 1979; it included a historical

overview of fire and explosion experience in grain elevators and feed mills and contained numerous recommendations that the task force believed would prevent dust explosions in elevators (Reference 1).

In addition, USDA has been a sponsor of two major symposia relating to grain handling facilities. In 1978, the *Symposium on Grain Elevator Explosions* was held on behalf of USDA by the National Academy of Sciences (Reference 12). This symposium will be discussed later in this notice. A second, *Symposium on Grain Dust*, was held in 1979 and was sponsored by USDA together with GEAPS, NGFA, and Kansas State University. Its purpose was to present the latest research on grain dust (Reference 13). In addition to these activities, USDA has since 1978, developed and implemented a system of tracking grain elevator and feed mill explosions.

OSHA undertook several important actions directed toward increasing the safety and health of employees in grain handling facilities. In January 1978, OSHA issued the *Grain Elevator Industry Hazard Alert* (the Alert) (Reference 14) which was distributed to over 10,000 grain handling facilities and other interested concerns. The purpose of the Alert was to provide employers, employees and other officials with available information on safety hazards, as well as health hazards, associated with the storage and distribution of grain. Additionally, a listing of free consultative services was included with the Alert.

In late 1978, OSHA initiated a contract with the National Academy of Sciences (the Academy) to study the causes and prevention of grain elevator fires and explosions. The scope of the study was later expanded to include mills. OSHA believed that this additional inquiry into fires and explosions in grain handling facilities was needed before the Agency could determine how best to address these hazards. Discussion of the Academy contract and reports appears later in this notice.

On February 15, 1980, OSHA published in the Federal Register (45 FR 10732) a request for comments and information, and notice of public meetings concerning the safety and health hazards in grain handling facilities. Although the contract efforts with the Academy were still underway, OSHA believed it was appropriate to provide the public an early opportunity to submit views, data, and information regarding the possible development of a standard for grain handling facilities. Responses to the notice were to be

received by May 5, 1980, but due to numerous requests, the comment period was extended to June 30, 1980 (45 FR 21265).

Over 225 comments were received in response to the notice. In addition, approximately 2000 pages of testimony were received at the three public meetings which were held in Superior, Wisconsin; New Orleans, Louisiana; and Kansas City, Missouri in April-May 1980. Several points were raised consistently throughout the comments and testimony, including the following:

1. OSHA should not develop a standard until the results of research projects were available (e.g., National Academy of Sciences).
2. If OSHA determines that there is a need for a standard, it should be performance-oriented and cost-effective.
3. OSHA should emphasize consultation, education and training.
4. If OSHA develops a standard it should address the known hazards.

Information received as a result of the notice has been invaluable in assisting to focus on those factors which OSHA believes have the greatest potential to mitigate fires and explosions in grain handling facilities.

In conjunction with these information-gathering activities, OSHA increased inspections of grain handling facilities. Since there are no specific standards for grain handling facilities, OSHA relied primarily on the application of housekeeping requirements and other existing general industry standards. In some cases OSHA issued citations under the general duty clause (section 5(a)(1) of the OSH Act, supported by various national consensus standards, such as the National Fire Protection Association's standard 61-B, Prevention of Fires and Explosions in Grain Elevators and Facilities Handling Bulk Raw Grain (Reference 15). Significant problems were encountered in attempting to apply the existing standards and national consensus standards (e.g., numerous contested citations).

As indicated above, OSHA initiated a contract with the National Academy of Sciences to study the causes and prevention of grain elevator and mill explosions. OSHA believed it was important to increase the understanding of the problem of fires and explosions, as well as to obtain recommendations on corrective actions. OSHA chose to contract with the Academy for several reasons. First, the Academy was already working in related areas, such as the classification of dusts present in hazardous locations. Additionally, as noted earlier, the Academy had held an international conference in 1978 on

behalf of the OSHA, *Symposium on Grain Elevator Explosions*, for the purpose of developing a "common understanding of the state of the art and available courses of action regarding the grain dust hazard" (Reference 12). Finally, the Academy had the ability to gather noted scientists, engineers and other experts in related areas. Accordingly, upon initiation of the contract, the Academy established a special panel of experts to study the grain handling problem.

Subsequently, the contract effort was expanded and additional funding was contributed by the National Institute for Occupational Safety and Health (NIOSH) and USDA. The ultimate objectives of the contract are contained in the following reports:

1. An evaluation of OSHA's investigations of grain elevator disasters (Reference 16).
2. A comprehensive discussion of the major aspects of grain elevator and mill fires and explosion problems (Reference 17).
3. A manual including the design, installation and maintenance criteria for pneumatic dust control systems (Reference 18).
4. A report on investigations of explosions (Reference 19).

OSHA believes that the Academy reports are significant contributions to the literature on the safety of employees in grain handling facilities. In particular, the second report, *Prevention of Grain Elevator and Mill Explosions*, establishes corrective actions as first, second and third priority, based upon the Academy's assessment of their relative efficacy, feasibility, and cost-effectiveness (Reference 17, pp. 10-12).

The Academy's first priority actions (Reference 17, pp. 10-11) are set forth as follows:

1. Continue research on methods for reducing the dust concentration in legs to a level below the lower explosive limit.
2. Establish a housekeeping program involving a mechanical dust collection system supplemented by manual or other means.
3. Conduct rigorous preventive maintenance, especially on all parts of bucket elevators.
4. Use a pre-established and enforced permit procedure whenever welding, cutting, or other open flame work is to be done.
5. Incorporate a system to indicate belt slippage and misalignment.
6. Incorporate a method to check frequently the temperature and vibration of critical bearings.

7. Use devices to extract foreign materials from the incoming grain stream.

8. Ground all conveying and electrical equipment.

In an effort to share information resulting from the Academy contract, USDA and OSHA have distributed thousands of copies of the Academy's reports to interested persons and groups throughout the country.

Over the last several years, OSHA has received numerous communications regarding the inadequacy of current OSHA standards to deal with the hazards of grain handling facilities and requesting the development of a specific standard for grain handling facilities. In fulfilling its mission of assuring insofar as possible that the nation's employees have a safe and healthful workplace, OSHA believes that available evidence supports the need for a standard for grain handling facilities. However, OSHA also believes that it is important to provide a sound basis for the development of such a standard. It is for this reason that OSHA did not proceed with a proposed standard until it had reviewed all data and information submitted to the record, and until the Academy's reports had been published, widely distributed, and reviewed.

## II. Agency Action

OSHA believes there is now sufficient data and information upon which a reasonable standard can be based to mitigate fire, explosion, and certain other known safety hazards associated with grain handling facilities. The standard being proposed by OSHA reflects this determination.

Employees in the grain handling industry are exposed to safety hazards associated with fires and explosions as well as those associated with confined spaces and the repair and maintenance of mechanical systems. There are approximately 200,000 employees exposed to these various hazards in this industry which has about 16,000 workplaces. The death and injury experience, which is described in References 1, 2, 3, 14, 17, and 21, is compelling evidence that OSHA needs to take action to reduce or eliminate these deaths and injuries. These reports clearly show that there is a significant risk to employees in this industry, and that mandatory standards are necessary. This proposal meets that need for mandatory standards.

The record indicates that fire and explosion hazards have existed in grain handling facilities for many years (e.g., Reference 20). USDA, in its task force report (Reference 1), evaluated grain elevator and feed mill explosion

experience for the period 1958 through 1978 during which time there were at least 250 explosions. Based on data from USDA and OSHA for the four years since the task force report was prepared, there were at least 29 explosions in 1979; 47 in 1980; 23 in 1981; and 13 in 1982.

In addition to the explosion experience, USDA examined grain elevator and feed mill fire experience for the years 1958 through 1975 (the source used was the National Fire Protection Association). The totals reflect only reported fires and vary from 1800 to 5300 a year. USDA, based on its experience in export elevators, estimates that there may be as many as 11,000 fires in grain handling facilities each year.

Additionally, OSHA has conducted several special studies that have indicated the existence of other safety hazards in grain handling facilities such as entry into bins, silos and tanks, and the repair and maintenance of mechanical systems. One study (Reference 21) analyzed the fatality investigations made by the OSHA field staff between the years 1977 through 1981. Over 100 fatality investigations are discussed which accounted for 126 deaths that occurred in this industry. Thus, OSHA believes that a standard developed for grain handling facilities should contain criteria for other known safety hazards.

## III. Summary and Explanation of the Proposal

In paragraph (a), OSHA identifies the scope for the proposed standard for grain handling facilities. The standard would contain requirements for the control of fires, grain dust explosions, and other safety hazards associated with grain handling facilities in general industry and maritime employments including marine terminals. It is the intent of OSHA that the scope of this standard include all grain handling facilities, specified in proposed paragraph (b) of this standard, whether such facilities are located inland or near water.

In paragraph (b), OSHA is proposing that the standard apply to grain elevators, dust pelletizing plants, feed mills, rice mills, flour mills, and corn and soybean milling operations. OSHA intends the proposed standard to apply to all grain elevators, including those which may be only a segment of a facility. For example, even though the proposed standard is not intended to apply to all portions of such facilities as breweries, or vegetable oil extraction plants, it is intended to apply to grain

elevators which are segments of such facilities.

Thus, the proposed standard would cover many types of grain handling facilities of all sizes. OSHA invites interested parties to comment on the applicability of each of the provisions to various types of facilities and, in general, the appropriateness of covering the many diverse types of operations by a single standard. OSHA is particularly interested in comment, data and views on the appropriateness of coverage of small facilities. It has been suggested to OSHA that coverage not be extended to small elevator facilities under the standard or at least limited based upon the comparative risks found in large and small facilities. The possible limitation of coverage of small facilities based upon comparative risk data presents some extremely difficult issues, which OSHA anticipates will be fully addressed during the rulemaking process. On the one hand, a comparison of the incidence data for fatalities in large and small facilities reveals a considerably lower likelihood of death in the small facilities. However, the risks of injury and of fire and explosion—the principal causes of injuries and deaths in grain facilities—are very similar in small and large operations.

OSHA believes that it is important to explore the reasons for this apparent disparity in order to determine whether small facilities should be covered. OSHA also is concerned about the relatively heavy burdens of compliance imposed on small facilities by the proposal. For example, while large elevators have accounted for almost five times as many deaths from fires and explosions as country elevators between 1976 and 1982, the cost of compliance for all country elevators will be several times that for large facilities. OSHA seeks comment on ways to reduce the regulatory burdens on such facilities without reducing the protections afforded.

The proposed standard would not apply to seed plants or to those segments of facilities dedicated to oil extraction. The oil extraction process usually utilizes flammable liquids (such as hexane) which are currently covered by existing OSHA standards.

Not all grain handling facilities would have to comply with all of the paragraphs contained in the proposed standard. Paragraph (o) of the proposed standard would apply only to grain dryers which are associated with grain elevators. Paragraph (p) and (q) of the proposed standard would apply only to grain elevators which have inside or partially-inside bucket elevator legs.

The proposed standard is intended to focus on the most serious hazards in grain handling facilities. Information collected by OSHA indicates that the elevator leg is the most dangerous location with respect to initial or primary dust explosions (Reference 17). Therefore, as will be discussed below, OSHA believes it is appropriate to propose additional safeguards for those bucket elevators which are inside or partially-inside the grain elevator facility.

It has been suggested to OSHA that the proposed standard apply only to the elevator portion of a mill because the function, design, equipment, and conditions of other portions of a mill vary significantly from those of an elevator. It has also been asserted that while grain elevators and mills both handle agricultural commodities, they do not have the same history and potential for explosions.

On the other hand, the report from the National Academy of Sciences, *Prevention of Grain Elevator and Mill Explosions* (Reference 17), provides a separate Appendix entitled, "Explosions in Mills Handling Grain Products."

The report states, "Mills of any type (feed, flour, soy, rice, etc.) are subject to the same dust explosion hazards as grain elevators since their input is grain and, before processing, it is handled in the same manner as in elevators. . . . Mills, however, are subject to additional dust explosion hazards because of the actual processing of the grain" (Pg. 123).

OSHA is proposing that the standard apply to mills, but the information it possesses on mill explosions is limited. To assist the Agency in determining the appropriate application of the standard, OSHA requests fire and explosion data pertaining to mills, and information on the following questions. Should OSHA apply the standard to any other grain processing facility? Should OSHA limit the application of the standard in mills, to the receipt of bulk raw grain (mill elevators) up to equipment such as hammer mills, grinders, and pulverizers? Which provisions of the standard should apply to mills, and why?

In paragraph (c), OSHA proposes definitions for the following terms: acute debilitating health effects, choked leg, fugitive grain dust, grain elevator, hot work, inside bucket elevator, jogging, lagging, partially-inside bucket elevator, and small elevator facility. These definitions would clarify the meaning and intent of certain terms contained in the proposed standard.

In paragraph (d), OSHA proposes that an emergency action plan be developed and implemented. The plan may be

communicated orally to employees and the employer need not maintain a written plan. OSHA believes it is necessary that employees in grain handling facilities know what actions to take if an emergency occurs.

Information and comments received by OSHA support the need for preplanning for emergencies. OSHA also proposes that the emergency action plan meet the requirements currently contained in § 1910.38(a), which specifies certain minimum elements to be addressed. These include the establishment of an employee alarm system, the development of evacuation procedures, the development of procedures to account for all employees after emergency evacuation has been completed, and for training employees in those actions they are to take during an emergency.

OSHA is proposing training requirements in paragraph (e). There is widespread agreement that the implementation of an effective training program is one of the most important steps that employers can take to enhance employee safety in grain handling facilities. OSHA believes that an effective training program will help employees understand the nature and causes of dust fires and explosions, and will increase employee awareness with respect to the other hazards associated with grain handling facilities.

OSHA realizes that there may be wide variability among grain handling facilities as to the details necessary for an effective training program. Therefore, the proposed training requirements contained in paragraph (e) are performance-oriented to provide the flexibility needed by employers to develop training programs which will reflect the needs of their own particular facility.

OSHA proposes in paragraph (e)(1) that employees be provided training at least annually and when job assignment changes will expose employees to new hazards. OSHA believes that annual training is the minimum frequency for providing employees with adequate training; more frequent training may be necessary to reflect the tasks that employees are to perform.

OSHA also proposes in paragraph (e)(1) that current employees, and new employees prior to starting work, be trained in at least the recognition of and preventive measures for the hazards associated with their work tasks, and the procedures and safety practices established by the employer. Additionally, OSHA is proposing that the training include where applicable, but not be limited to, clearing procedures for choked legs,

housekeeping program procedures, hot work procedures, preventive maintenance program procedures, rules pertaining to smoking and other common ignition sources, and lock-out/tag-out procedures.

OSHA also wants to assure that employees are aware of the hazards associated with any special or unique tasks that they may be assigned to perform. Accordingly, OSHA is proposing in paragraph (e)(2) that employees assigned special tasks such as bin entry or handling of flammable or toxic substances, be provided training to handle safely these materials and work tasks.

In paragraph (f), OSHA is proposing that a permit system be developed and implemented for hot work and for work requiring entry into bins, silos, and tanks. OSHA believes that a permit system is necessary to institute a systematic and consistent manner of evaluating and controlling hazards associated with these types of work tasks.

OSHA does not intend the permit to be a record which must be retained for a specific length of time. Instead, the permit would be a written authorization by the employer for employees to perform identified work operations subject to specified precautions.

It is not the intent of OSHA to require a hot work permit for those welding shops authorized by the employer.

In paragraph (g), OSHA is proposing that certain precautions be taken if employees are to enter bins, silos, and tanks. The hazards associated with entering and working in such confined spaces are not unique to the grain handling industry. However, incidence data obtained and evaluated by OSHA indicate that a number of deaths and injuries have resulted from employees entering and working in bins, silos, and tanks (e.g., Reference 20). Standing directly on the grain without taking necessary precautions, including the failure to wear personal protective equipment, has been responsible for many employee deaths and injuries. The most common cause of death in these incidents has been the suffocation of employees by the grain.

Consequently, the proposed requirements contained in paragraph (g) specify those precautions that OSHA believes are necessary to minimize the hazards associated with employees entering and working in bins, silos, and tanks.

OSHA proposes in paragraph (g)(1) that certain precautions be taken before employees enter bins, silos, or tanks. The precautions include: Assuring that

mechanical and electrical equipment which present a danger to employees inside bins, silos, or tanks, are disconnected or locked-out and tagged; testing the atmosphere within a bin, silo or tank for the presence of combustible gases, vapors, and toxic agents when there is reason to believe they may be present; and testing the atmosphere within a bin, silo, or tank for oxygen content, unless there is continuous forced-air ventilation.

OSHA is also proposing in paragraph (g)(1) that if the oxygen level is less than 19.5%, or if combustible gas or vapor is detected, or if toxic agents are present, that ventilation be provided until the unsafe condition is eliminated. If toxic conditions cannot be eliminated by ventilation, OSHA is proposing that employees wear an appropriate respirator when entering any such bin, silo, or tank.

In paragraph (g)(2), OSHA is proposing that a body harness with lifeline be worn by employees or a boatswain's chair be used when entering bins, silos, or tanks from the top. Information compiled by OSHA indicates that a number of employee deaths and injuries have occurred because adequate steps had not been taken to facilitate the quick removal of employees from inside bins, silos, and tanks when needed. OSHA believes that a body harness with lifeline or use of a boatswain's chair, along with appropriate planning procedures, will provide a necessary degree of safety for those employees who enter bins, silos, or tanks from the top.

OSHA is proposing in paragraph (g)(3) that an observer be stationed outside the bin, silo, or tank being entered by an employee, and that communications be maintained between the observer and employee entering the bin, silo, or tank. Communications may be visual, by voice, or by use of a signal line. The purpose of this requirement is to assure that an employee inside a bin, silo, or tank has an effective means of communication to request assistance when needed, and that an observer will be available and prepared to provide such assistance.

In paragraph (g)(4), OSHA proposes that equipment be provided for rescue operations and that such equipment be specifically suited for the bin, silo or tank being entered. OSHA realizes that employees may be assigned to work inside bins, silos, or tanks to perform various tasks in various situations, and will require different precautions. Accordingly, this proposed requirement is performance-oriented to permit the employer enough flexibility to provide

the type of equipment necessary for the particular situation.

OSHA proposes in paragraph (g)(5) that the employee acting as observer be trained in rescue procedures, including notification methods for obtaining additional assistance. OSHA believes that the first priority of an observer is to obtain additional assistance in an emergency. OSHA also believes that proper training is necessary in order to conduct an effective rescue that will not jeopardize the safety of the employee needing to be rescued, and the employee making the rescue.

OSHA is proposing in paragraph (g)(6) that an employee trained in cardio-pulmonary resuscitation be available to provide assistance. Since suffocation is a major potential hazard to employees entering bins, silos, and tanks, OSHA believes it appropriate for an employee, trained in cardio-pulmonary resuscitation, to be available to provide such assistance.

In paragraph (g)(7), OSHA is proposing that employees not be permitted to enter a bin, silo, or tank underneath a bridging condition, or underneath a buildup of grain or grain products on the sides of a bin, silo, or tank. The intent of this proposed requirement is to address the hazard of large quantities of grain or grain products falling on employees and burying them.

OSHA is proposing in paragraph (h) that the employer inform contractors working at the facility of any potential fire and explosion hazards, and of a applicable safety rules of the facility. OSHA also proposes that the applicable provisions of the facility emergency action plan be explained to contractors. The purpose of these proposed requirement is to assure that contractors are aware of both the hazards associated with the work being performed at the facility, and the actions to be taken during emergencies. Construction contractors would use this information is complying with the relevant provisions of Part 1926, such as Subpart J—Welding and Cutting.

Paragraph (i) contains proposed requirements for housekeeping. OSHA believes that dust control is the most effective and fundamental means of reducing the number of dust fires and explosions in grain handling facilities. OSHA also believes that a sound housekeeping program is the foundation for effective dust control. Accordingly, OSHA is proposing in paragraph (i)(1) that a housekeeping program be developed and implemented, consisting of a dust control and removal method, or combination of methods, that will

minimize dust accumulations on ledges, floors, equipment, and other exposed surfaces.

Paragraph (i)(1) would not require ship, barge, and rail receiving and loadout areas to be addressed in the housekeeping program. Additionally, truck dumps which are open on two or more sides would not have to be addressed by the housekeeping program.

This proposed housekeeping provision is performance-oriented in that it does not require a specific method or frequency of dust control. Instead, the employer would have the flexibility to specify in the facility housekeeping program those methods which would be the most effective in controlling dust in that particular facility. However, the housekeeping program must specify the methods which will be used to control airborne dust emissions as well as the frequency and methods which will be used to remove dust accumulations.

Although OSHA is proposing a performance-oriented provision regarding methods and frequency of dust control, OSHA is interested in receiving information concerning what would constitute an adequate housekeeping program in order to provide guidance to employers.

There has been a great amount of controversy concerning the issue of what constitutes a "safe level" of dust accumulation. It has been suggested that dust accumulations should not even exceed  $\frac{1}{64}$  of an inch (0.4 mm). OSHA does not believe that any level of dust accumulation can be considered completely safe. However, OSHA also realizes it is not feasible, and may be impossible, to remove all dust accumulations at all times. Therefore, it is the intent of OSHA that dust accumulations be minimized through the use of an ongoing housekeeping program which utilizes the most efficient and feasible methods of dust removal.

OSHA is cognizant that there may be several types of housekeeping programs that will effect substantial reductions in the risks of fires and explosions in grain handling facilities. Therefore in paragraph (i)(2), OSHA is proposing to allow employers to choose among three different methods of achieving the goal of reduced dust accumulation and meeting the requirements of this proposed standard.

The first option would require immediate corrective action whenever dust accumulations reach a predetermined depth. The proposal terms this predetermined level of dust accumulation an "action level," rather than a level of dust accumulation considered to be "safe." Accordingly,

under this option, the employer would establish an action level not to exceed a 1/2 inch (3 mm) layer of fugitive dust when averaged over a 200 square foot (18.9 m<sup>2</sup>) floor area. OSHA realizes that dust accumulations near a dust emission source will be larger than those accumulations further away from the source. Consequently, dust may not normally be evenly distributed within any 200 square foot area. To allow for this, the proposal calls for the 1/2 inch action level to be determined as an average depth of the dust accumulation in the area.

OSHA is also proposing that, if employers select this method and dust accumulations reach the established action level, designated means or methods be initiated immediately to remove such accumulations to a safe location.

Should the dust accumulations in a particular part of the facility exceed 1/2 inch, OSHA would consider the employers who have selected this option to be in compliance only if immediate action has been initiated to remove the dust accumulations. Conversely, if dust accumulations exceed 1/2 inch and efforts have not been initiated to remove the dust accumulations, this would constitute a violation of the standard.

Under the second option, the employer would remove hazardous accumulations of dust not less often than once per shift, when the facility is in operation. The program would also have to specify procedures for cleaning and dust disposal and what equipment the employer will use. The employer would, in addition, require training of employees and maintenance of equipment. This option would allow the operators of each facility the flexibility to determine how best to meet the regulatory goal of having a workplace environment free of the fire and explosion hazards of grain dust.

The final option would permit an employer to use an engineering approach to dust control. There is evidence that the installation and maintenance of a pneumatic dust control system would substantially reduce the grain dust hazards of fire and explosions, is the most technologically efficient approach to take in solving the safety problems associated with grain dust and would actually spur modernization and updating of grain handling facilities. The technology exists for implanting this option. A number of grain handling facilities have already installed such dust control systems. Although pneumatic dust control systems may not be practical or feasible for all grain handling facilities, many facilities could adopt, and are

adopting, such systems. Adoption would both modernize the facility and eliminate the safety hazards associated with grain dust.

The Agency would also like those submitting comments to respond to questions concerning these options.

1. Do these options provide effective protection against the hazards associated with explosions and fires? If not, are there other options that would be appropriate?

2. Is the option economically feasible:

(a) For large facilities (elevators, mills),

(b) For small facilities (elevators, mills),

(c) For the industry as a whole (elevators, mills),

(d) For the long run, *i.e.*, should the options be phased in for all or part of the industry, and how long should the phase-in period be?

(e) What is the expected cost of compliance with these options?

3. Are these options technologically feasible:

(a) For large facilities (elevators, mills)?

(b) For small facilities (elevators, mills),

(c) For the industry as a whole (elevators, mills)?

4. What compliance problems do these options present?

5. How could these compliance problems be solved?

Please submit any data which support your answers, and indicate the source for such data.

As discussed further in the Regulatory Impact Analysis section of this Proposal, a preliminary assessment of the compliance costs associated with the Proposal indicates that proposed paragraph (i)(2) may have a greater economic impact on small grain elevator facilities than larger facilities. To mitigate compliance burdens, OSHA is proposing an extended period for compliance with paragraph (i)(2) for small grain elevator facilities.

Accordingly, OSHA is proposing that, effective July 1, 1985, paragraph (i)(2) apply to all grain handling facilities except small grain elevator facilities. Effective July 1, 1988, paragraph (i)(2) would also apply to small grain elevator facilities.

In paragraph (i)(3), OSHA is proposing that the use of compressed air to blow dust from ledges, walls, and other areas which may create a dust explosion hazard (*i.e.* result in dust concentrations above the lower explosive limit), be permitted only when all machinery that represent an ignition source in the area is shut-down, and all other sources of

ignition are removed. OSHA realizes that the use of compressed air with long lances may sometimes be effective to blow down dust from inaccessible areas. The purpose of this proposed requirement is to assure that proper precautions are implemented before the blow down procedures are initiated. OSHA believes these precautions will mitigate potential hazards associated with any suspended dust concentrations resulting from the blow down procedures.

In paragraph (i)(4), OSHA is proposing that grain or product spills not be considered fugitive grain dust accumulations and, additionally, that the housekeeping program address procedures for removing such spills from the work area. Grain or product spills would not meet the definition that OSHA is proposing for the term "fugitive grain dust." Therefore, the purpose of this proposed requirement is to clarify OSHA's intent that the proposed action level requirements concerning fugitive grain dust accumulations would not apply to spills.

OSHA is proposing in paragraph (j) that receiving-pit feed openings, such as truck or railcar receiving pits, be covered by grates. OSHA is also proposing that the length and width of openings in the grates be a maximum of two and one-half inches (6.35 cm). OSHA believes that grates are essential for removing foreign objects from the grain stream. The size of openings permitted (2 1/2") in this proposed paragraph should be large enough for the free-flow of most agricultural commodities. However, OSHA is aware that some facilities, handling ear corn and other commodities which are not free-flowing, may need larger grate openings than the 2 1/2 inch openings specified in the proposed standard. Therefore, OSHA is proposing in paragraph (j) that larger grate openings would be permitted, provided that magnets are used to remove ferrous material from the stream.

OSHA is also considering, as alternatives to proposed paragraph (j), provisions that would afford some measure of regulatory flexibility to small grain handling facilities. This could be achieved by requiring small facilities to comply with paragraph (j) only upon the installation of new grates after the effective date of the standard. Another approach would be to permit such a "grandfathering" of existing grates only with respect to outside legs of small facilities. OSHA seeks comment generally on such alternatives and requests specific information concerning (1) any differences in the level of

protection that would result from such a change and (2) the comparative costs and regulatory burdens associated with the two alternatives.

In paragraph (k), OSHA is proposing requirements for fabric dust filter collectors which are a part of pneumatic dust collection systems. OSHA is proposing in paragraph (k)(1) that, effective January 1, 1985, all fabric dust filter collectors be equipped with a monitoring device that will indicate when the filter becomes blinded, and that such indication be observable at a designated inspection or work location. The purpose of this proposed requirement is to assure that a reliable instrument is provided to indicate when the filter is blinded, and to assure that the instrument can be read at an accessible location.

Filter collectors will contain a large amount of grain dust that can support a fire or an explosion. Therefore, OSHA believes that filter collectors should be located outside of the facility, or be located in a protected area inside the facility, to minimize exposure of employees from the potential hazards of filter collectors.

Accordingly, in paragraph (k)(2), OSHA is proposing that filter collectors installed after the effective date of this standard be located outside of the facility; or be located in an area inside the facility protected by a fire or explosion suppression system; or be located in an area inside the facility provided with explosion venting to the outside and separated from other areas of the facility by construction having at least a one hour fire-resistance rating.

Paragraph (l) contains proposed requirements concerning preventive maintenance. OSHA considers preventive maintenance to be a major and necessary function of a grain handling facility because of its importance in eliminating potential ignition sources. Equipment such as bearings, belts, milling machinery, and dryers are potential ignition sources. Periodic inspection and lubrication of such equipment through a scheduled preventive maintenance program is an effective method for keeping equipment functioning properly and safely. Therefore, OSHA is proposing in paragraph (l)(1) that the employer develop and implement a program of scheduled maintenance which includes inspection and lubrication of at least the mechanical and safety control equipment associated with dryers, removal of ferrous objects, dust collection systems, and grain elevator legs.

Although OSHA considers the inspection of all mechanical and safety

control equipment to be equally important, it also believes that when certain potentially hazardous conditions are detected, prompt corrective action is necessary. Accordingly, OSHA is proposing in paragraph (l)(2) that prompt corrective action be taken when the following conditions are detected: overheated bearings and slipping or misaligned belts that are associated with inside bucket elevator legs; and, blinded filter collectors.

OSHA is not proposing a specific frequency for performing preventive maintenance. However, in paragraph (l)(3), OSHA is proposing that a system be implemented for identifying the date, maintenance performed and/or results of the equipment inspection. This information, along with manufacturers' recommendations for effective equipment operation, will assist the employer in determining the appropriate interval for preventive maintenance.

OSHA is aware of a number of instances where deaths and injuries have occurred to employees working on equipment because of the equipment being inadvertently started or energized. As a control measure for preventing these types of situations from occurring, OSHA is proposing in paragraph (l)(4), that the employer develop and implement procedures consisting of tags and locks which will prevent the inadvertent application of energy or motion to equipment being repaired, serviced, or adjusted, which could result in employee injury. OSHA is also proposing that such locks and tags be removed in accordance with established procedures and only by the employee installing them, or if unavailable, by his or her supervisor.

In paragraph (m), OSHA is proposing that grain stream processing equipment, such as hammer mills, grinders, and pulverizers, be equipped with an effective means of removing ferrous material from the incoming grain stream. The purpose of this proposed requirement is to prevent ferrous material from entering the processing equipment and creating an explosion hazard. It is the intent of OSHA that magnets installed in accordance with proposed paragraph (j) are acceptable as meeting proposed paragraph (m).

Currently, grain handling facilities must comply with 29 CFR Part 1910, Subpart E, with respect to means of egress. By definition, a means of egress consists of three separate and distinct parts: the way of exit access, the exit, and the way of exit discharge (§ 1910.35(a)). Additionally, fire-resistance rated enclosures are required for stairways used as exits (§ 1910.37(b)(1)). Most existing grain

handling facilities have at least two means of escape, but these means of escape do not technically meet the requirements for means of egress. Therefore, OSHA is proposing, in paragraph (n), that at least two means of escape be provided from certain areas of the facility, and that the escape routes be separated from each other to the extent feasible. The intent of this proposed requirement is to recognize windows, emergency escape ladders, controlled descent devices, and other alternative measures, as acceptable means of escaping from certain areas of the facility during an emergency. Rather than requiring existing facilities to comply with the more stringent requirements for means of egress, OSHA believes that specifying two means of escape would provide adequate egress because these means of escape can safely handle the small number of employees using them as would systems meeting the more stringent requirements of §§ 1910.35 through 37.

Paragraph (o) contains proposed requirements pertaining to bulk raw grain dryers. These requirements are intended to apply only to those dryers directly associated with grain elevators and not to those dryers which are a part of the processing and milling segments of a facility, such as those used in the processing of rice.

Information obtained and evaluated by OSHA indicates that grain dryers are a major potential source of fires, and that implementation of certain precautions could potentially reduce the number of fires. Accordingly, OSHA is proposing in paragraph (o)(1) that direct-heat grain dryers be equipped with automatic controls that will shut-off the fuel supply in case of power of flame failure or interruption of air movement through the exhaust fan; and, that will stop the grain from being fed into the dryer if the grain discharge mechanism becomes clogged, or if excessive temperature occurs in the exhaust of the drying section. The purpose of the proposed requirement is to assure that dryers are equipped with devices which will activate automatically to control certain conditions which could potentially be hazardous.

OSHA is also considering, as an alternative to proposed paragraph (o)(1), a provision that would afford some measure of regulatory flexibility to small grain handling facilities. This could be achieved by requiring small facilities to comply with paragraph (o)(1) only upon the installation of new dryers after the effective date of the standard. OSHA seeks comment generally on such an alternative and requests specific

information concerning (1) any differences in the level of protection that would result from such a change and (2) the comparative costs and regulatory burdens associated with the alternative.

Because of the number of fires associated with grain dryers, OSHA believes they should be located outside of the facility, or located in a protected area inside of the facility. Therefore, OSHA is proposing in paragraph (o)(2) that direct-heat grain dryers, installed after the effective date of this standard, be located outside of the facility; or, be located in an area inside the facility protected by a fire or explosion suppression system; or be located in an area inside the facility which is separated from other areas of the facility by construction having at least a one hour fire-resistance rating.

Information available to OSHA indicates that hazards associated with inside bucket elevator legs are the source of many grain elevator fires and explosions (e.g., References 6 and 17).

To mitigate these hazards, OSHA is proposing several requirements in paragraph (p) which would only apply to grain elevators with inside legs. Additionally, OSHA is proposing a phase-in period for some of the requirements to provide employers the time necessary for planning and implementing these provisions.

OSHA recognizes that some of the proposed requirements of paragraph (p), particularly paragraphs (p)(5) and (p)(7), would entail significant burdens for small grain handling facilities. OSHA requests comment on whether more extended phase-in periods should be provided in order to reduce those burdens and whether alternatives to those provisions are available, in addition to proposed paragraph (p)(8), which would provide equivalent protection and be less burdensome.

In paragraph (p)(1), OSHA is proposing that elevator legs not be jogged to free a choked leg. The purpose of this proposed requirement is to assure that safer, alternative methods are utilized to clear a choked leg.

Paragraphs (p)(2) and (p)(3) contain proposed requirements concerning electrical grounding and conductivity to minimize the possibility of electrical arcs which can result from static electricity. In paragraph (p)(2), OSHA is proposing that effective January 1, 1985, the employer assure that elevator legs are electrically grounded.

OSHA is proposing in paragraph (p)(3) that belts and lagging installed after January 1, 1985, be conductive, and that belts have a surface electrical resistance which does not exceed 300 megohms.

OSHA is proposing in paragraph (p)(4) that, effective July 1, 1985, inspection doors be provided in the head pulley section. These doors would facilitate inspection of the head pulley lagging, belt, and discharge throat of the elevator leg. OSHA is also proposing in paragraph (p)(4) that boot sections be provided with doors to facilitate cleanout of the boot, and for inspection of the boot pulley and belt.

In paragraph (p)(5), OSHA is proposing that, effective July 1, 1985, elevator legs be equipped with a motion detection device which would initiate an alarm to employees when belt speed is reduced by no more than 15% of the normal operating speed, and would shut-down the leg when the belt speed is reduced by no more than 20% of the normal operating speed. OSHA is also proposing that conveyor equipment which feeds the leg be equipped with an interlock to shut-down these conveyors in the event that the leg they are serving is shut-down. The purpose of the proposed requirement is to assure that an early warning is provided, which will indicate that a potential problem exists, so that corrective action can be implemented before the potential problem becomes one of a more serious nature.

OSHA is aware that overheated bearings can be a potential ignition source, and if bearings are mounted inside the leg casing, it is difficult to inspect their condition. Accordingly, OSHA is proposing in paragraph (p)(6) that, effective July 1, 1985, bearings be mounted externally to the leg casing; or, that bearings mounted totally or partially inside leg casings be equipped with a temperature monitoring device that can be read at a designated inspection or work location.

OSHA is proposing in paragraph (p)(7) that, effective January 1, 1985, elevator legs be equipped with a belt alignment monitoring device that will initiate an alarm to designated employees when the belt is not tracking properly. The purpose of this proposed requirement is to assure that employees are alerted to the problem so that the corrective action specified in the preventive maintenance program can be implemented.

Information available to OSHA (e.g., Reference 7h) indicates that sufficient protection of the elevator leg can be provided by fire and explosion suppression devices. Additionally, OSHA is aware of the recent advances made with aspiration of the leg which maintains dust concentrations, inside the leg, at well below the lower explosive limit. Accordingly, in paragraph (p)(8), OSHA is proposing that the employer would not have to

comply with paragraphs (p)(5), (p)(6), and (p)(7) if bucket elevators are equipped with an operational fire and explosion suppression system capable of protecting at least the head and boot section of the leg; or if bucket elevators are equipped with a pneumatic or other dust control system that keeps the dust concentration inside the leg casing below 50% of the lower explosive limit at all times during operation.

OSHA believes it is necessary to make a distinction between bucket elevator legs installed inside a grain elevator facility, and those installed only partially-inside a grain elevator facility. However, OSHA also believes that there are some potential hazards common to both types of installations, and that these can be addressed by the same proposed requirements, i.e., the proposed requirements pertaining to the installation of motion detection devices and the prohibition of jogging the leg.

Accordingly, OSHA is proposing in paragraph (q)(1) that partially-inside bucket elevators comply with the proposed requirement concerning the jogging of a choked leg, (p)(1), and the proposed requirement concerning the installation of a motion detection device, (p)(5).

OSHA invites comments on the appropriateness of this proposed requirement, and whether partially-inside legs should comply with other requirements contained in proposed paragraph (p).

In paragraph (q)(2), OSHA is proposing that when partially-inside bucket elevators meet the proposed requirements of paragraphs (p)(8)(i) or (p)(8)(ii), the employer would not have to comply with the proposed requirements of paragraph (p)(5).

#### IV. References

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  - A Survey of Grain Elevator Facilities for the Presence of Combustible Gases/Vapors*, 1980.
  - Electrostatic Characterization of Grain Products*, 1980.
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  - Grain Dust Ignition by Frictional Sparks, A Preliminary Investigation*, 1981.
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  - Explosion Venting and Suppression of Bucket Elevators*, 1981.
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16. National Academy of Sciences (NAS). *The Investigation of Grain Elevator Explosions*. Washington, D.C.: NAS, 1980.
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#### V. Preliminary Regulatory Impact and Regulatory Flexibility Analysis and Environmental Assessment

**A. Preliminary Regulatory Impact Analysis.** The Occupational Safety and Health Administration (OSHA) is proposing a standard to protect workers from occupational exposure to fires, explosions, and other safety hazards in grain handling facilities. The following economic analysis has been prepared in accordance with the requirements of Executive Order 12291 (February 17, 1981), and the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164 [5 U.S.C. 601 et seq.]). It is based in large measure on a report prepared for OSHA by Arthur D. Little, Inc. Due to the complexities of this proposal, OSHA has contracted with Booz-Allen, Inc. to scrutinize the ADL study's cost methodology and alternatives during the rulemaking. Booz-Allen will prepare a supplemental economic report that will be available to interested parties prior to the hearings.

#### Overview of Nonregulatory Environment

Nonregulatory alternatives (including insurance) to mitigate grain handling hazards have resulted in baseline risks of 25.7 explosions and 2,200 reported fires per year, causing an average 23.5 deaths and 950.5 injuries annually.

Other hazards, such as those where employees suffocate in bins and silos or get caught in augers or in machinery, account for an additional 41.3 deaths and 512.6 injuries annually. The most significant cause of death from such other hazards is worker suffocation in grain bins, which accounts for 15 deaths per year. The total annual baseline risk is therefore 64.8 deaths and 1,463.5 injuries on average, with the latter representing 30,040 lost workdays (Table 1).

In addition to the estimated 64.8 deaths and 1,463 injuries per year, the annual economic loss owing to property damage and business interruption is \$170 million (1982 dollars).

#### Overview of the OSHA Proposal

The proposed standard would cover an estimated 16,164 facilities employing about 200,000 workers. The major Standard Industrial Classification (SIC) codes affected are Grain Elevators and Storage (0723, 4221, 5153), Prepared Feed and Feed Ingredients for Animals, and Fowls (20481), Wet Corn Milling (2046), Soybean Oil Mills (2075), Flour and Other Grain Mill Products (2041), Rice Milling (2044), Dog, Cat, and Other Pet Foods (2047), Cereal Breakfast Foods (2043), and Malt (2083).

The population at risk includes not only employees at grain handling facilities but also firefighters, federal grain inspectors, state and local government workers, contractors, farmers, and bystanders. All of these nongrain handling groups have suffered casualties as a result of fires and explosions at grain handling facilities.

TABLE 1.—BASELINE RISK OF VARIOUS HAZARDS IN GRAIN HANDLING INDUSTRIES

Segment	Number of facilities 1982	Type of hazard						Other hazards*		
		Explosions per year*			Reported fires per year**			Bin suffocation	Other deaths	Other injuries
		Events	Deaths	Injuries	Events	Deaths	Injuries			
Grain elevator and Storage	11,200	16.4	15.7	30.3	1,391	3.0	537.0	0.0	10.5	203.0
Country elevators	10,415	7.7	1.1	7.6	1,100	2.3	448.0	4.7	0.3	101.0
Inland terminals	420	6.4	1.3	7.6	184	.5	79.2	0.3	0.5	0.7
High throughput terminal elevators	325	2.3	13.3	15.1	97	.2	33.6	1.0	1.7	32.0
Export terminal elevators										
Prepared feeds and feed ingredients	4,070	4.7	1.3	8.1	129	.3	62.0	3.7	0.5	127.7
Small feed mills	3,030	3.1	0.7	3.8	97	.2	39.0	1.1	2.0	30.0
Large feed manufacturing	1,040	1.6	0.6	4.3	32	.1	13.2	2.6	4.5	69.7

TABLE 1.—BASELINE RISK OF VARIOUS HAZARDS IN GRAIN HANDLING INDUSTRIES—Continued

Segment	Number of facilities 1982	Type of hazard						Other hazards <sup>c</sup>		
		Explosions per year <sup>a</sup>			Reported fires per year <sup>b</sup>			En suffoca-tion	Other deaths	Other injuries
		Events	Deaths	Injuries	Events	Deaths	Injuries			
Oilseed processing	216	1.0	0.2	0.4	10	.3	52.8	1.7	2.9	59.4
Flour and grain mills	323	1.0	0.2	13.5	259	.8	165.6	1.1	1.9	23.4
Rice mills	57	.8	0.2	0.2	65	.1	25.4	0.4	0.6	12.3
Other grain processing	253	1.0	1.1	1.5	228	.5	62.4	2.1	3.9	76.3
<b>Total</b>	<b>16,164</b>	<b>25.7</b>	<b>10.7</b>	<b>54.0</b>	<b>2,000</b>	<b>4.8</b>	<b>609.5</b>	<b>15.0</b>	<b>29.3</b>	<b>512.6</b>

<sup>a</sup> Based on 1977-1981 explosion frequency and distribution of events by segment 1971-81.

<sup>b</sup> Based on 1977-1981 for major fires and 1960-1973 for minor fires. Major fires had property damage in excess of \$10,000, business interruption loss in excess of \$5,000 and usually, casualties.

<sup>c</sup> Other injuries and deaths are based on employment. Deaths are based on averages for 1970-1981, and injuries on averages for 1974-1979 and 1973-1981.

Source: Arthur D. Little estimates are based on the analysis of NFPA Fire Incident Data; on U.S. Department of Agriculture data; on data in U.S. Department of Agriculture, *Prevention of Dust Explosions in Grain Elevators*.

The proposed standard has provisions for the following items, as identified by the appropriate paragraph of the standard (1910.272):

- Emergency action plan (d)
- Training (e)
- Permit system (f)
- Entering into bins, silos, and tanks (g)
- Contractors (h)
- Dust control (i)
- Grate openings (j)
- Filter collectors (k)
- Preventive maintenance (l)
- Grain stream processing equipment (m)
- Emergency escape (n)
- Bulk raw grain driers (o)
- Inside bucket elevator legs (p)
- Partially-inside, bucket elevator legs (q).

Most importantly, the proposed standard would establish several alternative methods that employers can undertake to substantially reduce dust levels in grain handling facilities. One alternative would set an action level for triggering a housekeeping program. The action level would not exceed a 1/8-inch

layer of fugitive dust averaged over a 200 square-foot floor area. Alternatively, employers may meet the proposed dust control provision by installing pneumatic dust control systems or by cleaning up hazardous accumulations of dust not less than once-a-shift. Paragraphs (d) through (n) apply to grain elevators, dust pelletizing plants, feed mills, corn mills, rice mills, and flour mills. Paragraph (o) applies to grain driers associated with grain elevators. Paragraph (p) applies to inside elevator legs, and paragraph (q) applies to partially inside elevator legs.

Grain elevators that have less than a 1-million-bushel storage capacity and less than a 4-million-bushel throughput during the previous 12-month period, if they choose to comply with the 1/8-inch action level, would have a deferred effective date. The delayed effective date would also apply to small elevators that could meet the proposed dust control provision if they install a pneumatic dust control system or clean up the dust levels once-a-shift.

OSHA estimates that if fully implemented, the proposed standard could eliminate as many as 18 explosions and 1,617 fires annually. Based on a risk analysis performed by Arthur D. Little for OSHA, these accidents at present result in an average of 17 deaths and 697 injuries per year. In addition, as many as 21 deaths and 70 injuries could be prevented by controlling grain handling hazards other than fires and explosions. Thus, the proposal could prevent a total of approximately 38 deaths and 767 injuries annually (Table 2).

In addition, OSHA estimates that \$93.31 million (1982 dollars) in annualized property damage and business interruption loss could be averted by the proposed standard.

It should be emphasized that these benefit estimates are based on the 1/8-inch proposed action level. OSHA invites interested parties to comment on the relative effectiveness of the alternatives proposed to comply with the dust control provisions.

TABLE 2.—REDUCTION IN DEATHS AND INJURIES FROM THE PROPOSED STANDARD IN GRAIN HANDLING INDUSTRIES

Segment	Averted explosions			Averted fires			Averted other <sup>a</sup>		Total reduction in casualties	
	Events	Deaths	Injuries <sup>b</sup>	Events	Deaths	Injuries <sup>b</sup>	Deaths	Injuries	Deaths	Injuries
<b>Grain Elevator &amp; Storage:</b>										
Country Elevators	5.5	0.8	5.3	69	1.7	323.0	6.6	22.0	7.6	359.3
Inland Terminals	4.5	0.9	5.3	143	0.4	53.2	.4	1.3	1.7	64.8
High-Throughput Terminal Elevators/Export Terminal Elevators	1.0	0.5	10.7	71	0.1	23.0	1.4	4.5	12.5	44.2
<b>Proposed Feeds &amp; Feed Ingredients:</b>										
Small Feed Mills	2.1	0.5	2.7	71	0.1	23.0	1.5	5.4	2.2	37.1
Large Feed Manufacturing	1.1	0.4	3.0	24	0.1	0.6	3.6	12.1	4.1	24.7
<b>Oilseed Processing</b>	<b>0.7</b>	<b>0.1</b>	<b>0.3</b>	<b>65</b>	<b>0.2</b>	<b>33.7</b>	<b>2.3</b>	<b>7.7</b>	<b>2.8</b>	<b>43.7</b>
Flour & Grain Mills	1.3	0.1	0.5	109	0.4	78.5	1.5	5.0	2.0	93.0
Rice Mills	0.5	0.1	.2	43	0.1	19.2	0.5	1.7	0.7	21.1
Other Grain Processing	0.7	0.9	1.1	169	0.4	67.8	3.1	10.5	4.3	79.4
<b>Total</b>	<b>16.1</b>	<b>13.2</b>	<b>31.1</b>	<b>1,617.0</b>	<b>3.5</b>	<b>650.0</b>	<b>21.0</b>	<b>70.2</b>	<b>37.7</b>	<b>767.3</b>

Source: Estimates by Arthur D. Little, Inc., *Technical Feasibility and Economic Impact Analysis (EIA) for Various Standards Provisions, Applicable to Hazards in Grain Handling Industries*, Vol. 1, p. IV-83.

<sup>a</sup> Distribution according to employment in each segment (15 grain suffocation and 6 other deaths averted).

<sup>b</sup> Of these injuries 74 percent are to employees; others are to firefighters, contractors, and other parties.

<sup>c</sup> Of these injuries 52 percent are to employees; others are to firefighters.

### Overview Of Compliance Costs Of The Proposal

The cost impact analysis of the proposal is based on the ADL cost methodology. As noted above, Booz-Allen is currently examining alternative cost methodologies.

Industry conditions and practices in 1982 were used as the baseline to measure the costs of complying with the proposed standard. The unit cost and cost equations were combined with the estimated number of facilities and employees affected by the proposed regulation to estimate the total cost of compliance (in 1982 dollars). Several provisions of the proposed standard have deferred effective dates. As a consequence, capital expenditures and other initial costs associated with various provisions will occur in 1984, 1986, and, for small elevators, in 1988. Thus, the recurring costs associated with the standard do not reach a steady state until 1989. To capture the variations in cost during the first few years of the regulation, the costs of compliance are presented in several formats.

Assuming that all employers complied with the  $\frac{1}{8}$ -inch dust action level alternative, the annualized costs over a 10-year period with a 10-percent discount rate are estimated at \$122.5 million a year, of which \$105.6 million or 86 percent represents dust control costs. If instead all employers installed pneumatic dust control systems, annualized costs are estimated at \$950.7 million a year, of which dust control accounts for \$933.8 million. This assumes that pneumatic dust control costs are roughly comparable to those estimated for the  $\frac{1}{4}$ -inch dust level alternative described in the next section.

OSHA also calculated the number of annual labor hours required per facility to meet the once-a-shift alternative. The estimated dust control costs for the once-a-shift alternative range between \$22.2 and \$77.6 million, depending on the assumed cleaning rate. The lower cost for the sweeping requirement results largely from elimination of expensive capital equipment purchases such as vacuum cleaners and pneumatic control devices. In order to compare these costs directly to those associated with the  $\frac{1}{8}$ -inch proposal, these labor costs must be annualized, taking into account discount rates, recovery factors and delayed effective dates of various provisions. Based on the calculations, the estimated annual cost of the proposed standard assuming all employers comply with the once-a-shift alternative ranges between \$29.2 and \$66.4 million compared to \$122.5 million for the  $\frac{1}{8}$ -inch action level

alternative and \$950.7 million for the pneumatic control alternative. Since employers may select some combination of these compliance alternatives, actual costs to the industry could fall in-between this range.

OSHA performed a cost effectiveness analysis on the  $\frac{1}{8}$ -inch alternative. The first step is to subtract the \$98.31 million in avoided property and business interruption loss from the \$122.5 million annualized cost (Table 3). Using this \$24 million in annualized costs, the estimated adjusted cost per death avoided is \$642 thousand, \$32 thousand per injury avoided, and \$30 thousand per casualty (death and injuries) avoided.

TABLE 3.—COST PER CASUALTY AVOIDED FOR THE PROPOSED OSHA STANDARD

	Annualized cost (1982 dollars in thousands)	Casualties avoided		
		Deaths	Injuries	Total
		Total.....	37.7	767.3
Benefit related to property damage and business.....	98,309			
Net costs.....	24,212			
Costs/casualty avoided (1982 dollars in thousands).....		642	32	30

Source: Arthur D. Little, Inc. and U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

The total annualized cost of the proposed standard for the  $\frac{1}{8}$ -inch alternative is insignificant when compared to the value of grain traded. This cost is 0.24 percent of the value of grain traded in the United States. Also, the annualized cost of compliance is only 0.58 percent of the value of U.S. grain exported. This leads OSHA to conclude that domestic and international market structures would not be affected significantly by the proposed standard.

At present, most industry segments are experiencing a trend toward a reduction in the number of small grain handling facilities; while the number of larger facilities appears to be increasing slightly. The proposed standard would not affect this pattern of consolidation.

Average-size and large-size facilities would need a long-term revenue increase of about 1 percent to cover compliance costs for the  $\frac{1}{8}$ -inch alternative. Revenue would need to increase from 1 to 3 percent to cover the costs of compliance for small firms.

The proposed standard does not force substitution of capital for labor. The proposed OSHA standard may, however, encourage the improvement of new dust control technologies for grain handling industries. It may also

reinforce the trend in new facility design to use inclined belts instead of elevator legs. On balance, the proposed standards is not expected to reduce the demand for labor. In fact, additional labor will be required to comply with the dust control provisions. The relative increase in labor, in terms of full-time equivalents, would be the smallest for country elevators, because additional labor would only be needed at these elevators during the harvest season.

### Overview of Other Alternatives Considered

A less comprehensive alternative than the proposed standard was also evaluated by OSHA. This alternative would have all of the provisions of the proposal but the scope would be limited to grain elevators. The restricted scope would not protect workers in mills associated with feed, soybean, corn, and other agricultural commodities. This alternative would prevent 13.7 fewer deaths and 264.9 fewer injuries annually than would the proposal.

OSHA also considered a more stringent alternative regulation. The more stringent alternative would have an action level for paragraph (1)(2) not to exceed  $\frac{1}{64}$  inch. All other provisions would be the same as the proposed standard. OSHA rejected this alternative on several grounds. For example, OSHA estimated that there are virtually no facilities currently in compliance with a  $\frac{1}{64}$ -inch dust level requirement. OSHA concluded that even if the more stringent standard were technically feasible, economic feasibility constraints would prevail. The estimated annualized cost of the more stringent alternative would be 676 percent greater than the proposed  $\frac{1}{8}$ -inch alternative.

**B. Regulatory Flexibility Analysis.** The Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat 1164, [5 U.S.C. 601 et seq.]) requires that special consideration be given to the mitigation of economic impacts of a proposed regulation on small entities. Those small business facilities affected include primarily grain elevator facilities, feed mills, and a few small grain processing plants. For purposes of this proposal, a small elevator facility is defined as having a capacity of less than 1 million bushels and a throughput of less than 4 million bushels during the previous 12-month period. The other small entities (mills and processing plants) are defined as those that have 10 or fewer employees. As indicated in Table 4, 13,756 of the 16,164 facilities affected by the proposed regulation are small facilities. Of these 13,756 small facilities,

12,232 are small elevators. The number of employees at work in the small facilities is 69,808.

TABLE 4.—NUMBER OF SMALL FACILITIES BY INDUSTRY SEGMENT, 1982

Grain handling industry/segment (SIC code)	Total facilities	Facilities with under 10 employees	Small elevators	Number of employees at small facilities
Grain elevators and storage (4221, 5153):				
Country elevators	10,415	10,415	9,501	55,635
Inland elevator	460	NA		
High-throughput inland/river terminals	250			
Export terminal elevator	75			
Prepared feeds and feed ingredients for animals and fowls, NEC (2048, other):				
Small feed mill with/without country elevator (2048, other)	3,030	3,030	2,731	12,459
Large feed manufacturing plant (2048)	1,040			
Oilseed processing plants:				
Wet corn milling (2048)	39	6		36
Cottonseed oil mills (2074)	83	18		103
Soybean oil mills (2075)	84	20		120
Grain processing plants:				
Flour and other grain mill products (2041)	369	167		1,002
Rice milling (2044)	57	17		102
Malt (2083)	40	7		42
Cereal breakfast foods (2043)	24	6		24
Dog, cat, and other pet foods (2047)	145	57		223
Other (2082, 2085, other)	44	13		52
<b>Total</b>	<b>16,164</b>	<b>13,756</b>	<b>12,232</b>	<b>69,808</b>

Source: Arthur D. Little, Inc., Reference No. 83042, p. VIII-17.

OSHA examined various means of achieving adequate worker protection without unduly affecting small entities. In addition to other regulatory alternatives previously discussed, OSHA also evaluated selective exemptions, delayed implementation, and the use of performance language in terms of their potential impact on small entities. OSHA has concluded that today's proposal will not have a significant impact on small business. In fact the standard was designed with an eye toward lowering small firm impacts. To this end, the proposal contains a delayed effective date for some provisions. For example, small entities receive an extra three-year extension to comply with dust control provisions.

The compliance date for all grain handling facilities (except small elevator facilities), to meet the alternative housekeeping requirements would be July 1, 1985. For small entities, the

compliance date would be extended to July 1, 1988. This deferral would save small entities adopting the 1/8-inch standard an estimated 43 percent in annualized costs. In addition, the once-a-shift alternative could reduce the compliance costs of dust control by over 60 percent for the small facilities involved.

Finally, some parts of the standard were written to require a level of performance rather than specific equipment. Consequently, the small facility could choose the combination of methods that would minimize costs. For example, the emergency action plan would require an alarm system, whereas compliance in the small facility would be achieved by a verbal alert. Under the provision for dust control, the small facility would satisfy the 1/8-inch action level alternative by increasing the number of housekeeping hours rather than undertaking the same capital investment that may be necessary for a larger facility to come into compliance.

The above discussion summarizes the key findings of the Preliminary Regulatory Impact and Regulatory Flexibility Analysis of the proposed grain handling facilities standard as prepared by OSHA. This analysis includes (1) a profile of the grain handling industry; (2) an assessment of technological feasibility; (3) estimates of compliance costs; risk reduction and benefits; and (4) an analysis of cost-effectiveness and of the effects on employment, market structure, and on small businesses.

OSHA's Preliminary Regulatory Impact and Regulatory Flexibility Analysis are available in the record of this rulemaking. OSHA solicits public comments, data, and arguments on the contents of both these documents. Also, Booz-Allen, Inc. will prepare a supplemental economic report that will be available in the docket prior to the hearings.

**C. Environmental Impact Assessment—Finding of No Significant Impact.** This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

Although safety standards rarely impact on air, water or soil quality, plant or animal life, the use of land or

other aspects of the environment, it is appropriate to examine whether the reduction of dust in grain handling facilities might increase the industry's burden to comply with the Environmental Protection Agency's (EPA) air quality standards or otherwise alter the quality of the environment. Under the Clean Air Act (42 U.S.C. 1857 et seq.), EPA is responsible for maintaining ambient air quality by preventing or controlling air pollution. Grain dust emissions have been recognized as a significant contributor or air quality problem. Grain dust is therefore covered under EPA's National Ambient Air Quality Standards for Total Suspended Particulates. Although the removal of increased amounts of dust from the workplace air might seem to contribute to the pollution of ambient air surrounding grain handling facilities, this is not anticipated because direct exhaust to the external environment would be in violation of EPA air quality standards, and because direct capture systems are already in place to comply with these standards. Such controls include the use of baghouses—which can attain a 99.9 percent efficiency factor—cyclones, or induced-draft/negative pressure systems to capture particulates vented from the workplace to the ambient atmosphere.

Finally, because wet control methods are not practical in controlling dust accumulations in grain handling facilities, it is therefore reasonable to assume that there will be no increased wastewater effluents or significant water quality impact generated as a result of the proposed standard.

Based on this discussion and other information presented in this notice, OSHA concludes that there will be no significant environmental impact as a result of this proposal. OSHA, of course, reserves the right to reevaluate this determination based on additional environmental data and evidence that may be presented in response to this proposed action. Interested persons are invited to submit written data, views, and comments on these or other environmental issues relevant to this Notice.

#### VI. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to this proposal. These comments must be postmarked by March 9, 1984, and submitted in quadruplicate to the Docket Officer, Docket H-117, U.S. Department of Labor, Occupational Safety and Health Administration, Room S6212, 200

Constitution Avenue, N.W., Washington, D.C. 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of proceeding.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. These objections and hearing requests should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must be postmarked by March 9, 1984;
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

#### VII. List of Subjects

##### 29 CFR Part 1910

Fire prevention, Grain handling, Occupational safety and health, Protective equipment, Safety, Welding.

##### 29 CFR Part 1917

Longshoremen, Occupational safety and health.

#### VIII. State Plan Standards

The 24 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

#### IX. Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S.

Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, pursuant to sections 6(b) and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), Section 41 of the Longshoreman's and Harbor Workers' Compensation Act (44 Stat. 1444; 33 U.S.C. 941), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1917 and to add a new § 1910.272 to 29 CFR Part 1910, as set forth below.

Signed at Washington, D.C. this 28th day of December, 1983.

Thorne G. Auchter,  
Assistant Secretary of Labor.

#### PART 1917—MARINE TERMINALS

Part 1917 of Title 29 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. Section 1917.1 would be amended by adding a new paragraph (a)(2)(ix) to read as follows:

##### § 1917.1 Scope and applicability.

- (a) \* \* \*
- (2) \* \* \*
- (ix) *Grain handling facilities.* Subpart R, § 1910.272.

##### \* \* \* \* \*

##### § 1917.72 [Removed]

2. Section 1917.72 *Grain elevator terminals*, which is currently reserved would be removed.

#### PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended by adding a new § 1910.272 and Appendices A, B, and C to § 1910.272 to read as follows:

##### § 1910.272 Grain handling facilities.

(a) *Scope.* This section contains requirements for the control of fires, grain dust explosions, and other safety hazards associated with grain handling facilities in general industry and maritime employments.

(b) *Application.* (1) Paragraphs (d) through (n) of this section apply to grain elevators, dust pelletizing plants, feed mills, rice mills, flour mills, and corn, and soybean milling operations.

(2) Paragraph (o) of this section applies only to grain dryers associated with grain elevators.

(3) Paragraphs (p) and (q) of this section apply only to grain elevators which have inside or partially-inside bucket elevators respectively.

(c) *Definitions.* (1) "Acute debilitating health effects" means health effects resulting from toxic agents which are in

such concentrations that exposed employees would not be able to effect self-rescue or communication to obtain assistance.

(2) "Choked leg" means a condition of material buildup in the bucket elevator that results in the stoppage of material flow and bucket movement.

(3) "Fugitive grain dust" means the dust particles which result from the breakage and handling of grain and grain products which are 400 microns in size or smaller and which are emitted from the stock handling system.

(4) "Grain elevator" means a facility engaged in the receipt, handling, storage, and shipment of bulk raw agricultural commodities such as corn, wheat, oats, barley, sunflower seeds, and soybeans.

(5) "Hot work" means work involving electric or gas welding, cutting, brazing, or similar flame producing operations.

(6) "Inside bucket elevator" means a bucket elevator inside the grain elevator structure and is the enclosed conveying device containing a series of equally spaced buckets which are attached to a continuous belt or chain. The buckets are loaded with grain or other stock at the boot, and then the material is elevated to the elevator head where it is emptied into a chute or spout. Inside bucket elevators include those elevators where only the head pulley is located inside the grain elevator structure.

(7) "Jogging" means repeated starting and stopping of drive motors in an attempt to clear choked legs.

(8) "Lagging" means a covering on drive pulleys used to increase the coefficient of friction between the pulley and the belt.

(9) "Partially-inside bucket elevator" means a bucket elevator which has no more than the boot section (and the portion of the leg casing in the rail or truck dump shed area) located inside the grain elevator facility, with the portion of the leg casing which is located outside the facility being constructed of materials which can vent a primary explosion.

(10) "Small elevator facility" means a grain elevator which has less than one million bushel storage capacity and less than a four million bushel throughput during the previous 12 month period.

(d) *Emergency action plan.* The employer shall develop and implement an emergency action plan meeting the requirements contained in § 1910.38(a) except that the plan may be communicated orally to employees and need not be maintained in writing.

(e) *Training.* (1) The employer shall assure that employees are provided training at least annually and when changes in job assignment will expose

them to new hazards. Current employees, and new employees prior to starting work, shall be trained in at least the following:

(i) Recognition of and preventive measures for the safety hazards associated with their work tasks;

(ii) procedures and safety practices established by the employer including where applicable, but not limited to, clearing procedures for choked legs, housekeeping program procedures, hot work procedures, preventive maintenance program procedures, rules pertaining to smoking and other common ignition sources, and lock-out/tag-out procedures.

(2) The employer shall assure that employees assigned special tasks such as bin entry and handling of flammable, or toxic substances, are provided training to handle safely these materials and work tasks.

(f) *Permit system.* (1) The employer shall develop and implement a permit system for hot work, except for hot work performed in welding shops authorized by the employer, and for work requiring entry into bins, silos, and tanks.

(2) The permit shall be the written certification by the employer authorizing employees to perform identified work operations subject to at least the following precautions:

(i) Hot work operations must meet the requirements contained in § 1910.252(d);

(ii) Entry into bins, silos, and tanks must meet the requirements contained in paragraph (g) of this section.

(g) *Entry into bins, silos, and tanks.*

(1) The employer shall assure that the following precautions have been taken before employees enter bins, silos, and tanks:

(i) Mechanical and electrical equipment which present a danger to employees inside bins, silos, or tanks, shall be disconnected or locked out and tagged.

(ii) The atmosphere within a bin, silo, or tank shall be tested for the presence of combustible gases, vapors, and toxic agents when there is reason to believe they may be present. Additionally, the atmosphere within a bin, silo, or tank, shall be tested for oxygen content unless there is continuous natural air movement or continuous forced-air ventilation before and during the period the employee(s) are inside.

(iii) If the oxygen level is less than 19.5% or if combustible gas or vapor is detected in excess of 10% of the lower flammable limit, or if toxic agents are present in excess of the ceiling levels listed in Subpart Z of this Part, or if toxic agents are present in concentrations that will cause acute debilitating health effects, the following provisions apply.

(A) Ventilation shall be provided until the unsafe condition or conditions are eliminated, and the ventilation shall be continued as long as there is a possibility of recurrence of the unsafe condition while the bin, silo, or tank is occupied by employees.

(B) If toxic conditions cannot be eliminated by ventilation, the employer shall assure that any employee entering a bin, silo, or tank wears an appropriate respirator. Respirator use shall be in accordance with the requirements of § 1910.134.

(2) The employer shall assure that employees wear a body harness with lifeline, or that a boatswain's chair meeting the requirements of Subpart D of this Part is used, when employees enter bins, silos, or tanks from the top.

(3) The employer shall assure that an observer, equipped to provide assistance, is stationed outside the bin, silo, or tank being entered by an employee. Communications (visual, voice, or signal line) shall be maintained between the observer and employee entering the bin, silo, or tank.

(4) The employer shall assure that equipment is provided for rescue operations which is specifically suited for the bin, silo or tank being entered.

(5) The employee acting as observer shall be trained in rescue procedures including notification methods for obtaining additional assistance.

(6) The employer shall assure that an employee trained in cardio-pulmonary resuscitation is available to provide assistance.

(7) Employees shall not be permitted to enter bins, silos, or tanks underneath a bridging condition or a buildup of grain or grain products on the side which could bury them.

(h) *Contractors.* (1) The employer shall inform contractors performing work at the facility of any potential fire and explosion hazards. The employer shall also inform contractors of the applicable safety rules of the facility.

(2) The employer shall explain the applicable provisions of the facility emergency action plan to contractors.

(i) *Housekeeping.* (1) The employer shall develop and implement a housekeeping program consisting of a dust control and removal method or combination of methods which will minimize fugitive grain dust accumulations inside grain handling facilities on ledges, floors, equipment, and other exposed surfaces.

(2) Effective July 1, 1985, all grain handling facilities except small elevator facilities shall be required to implement one of the three following alternatives as part of the employer's housekeeping program; effective July 1, 1988, the

following requirements shall also apply to small elevator facilities:

(i) *Action level.* (A) The employer shall establish an action level not to exceed a  $\frac{1}{32}$ " layer of fugitive dust averaged over a 200 square foot floor area.

(B) If fugitive grain dust accumulations exceed the  $\frac{1}{32}$ " level specified in paragraph (i)(2)(i) of this section, designated means or methods shall be initiated to remove immediately such accumulations to a safe location; or

(ii) *Once per shift cleaning.* The employer's housekeeping program shall ensure the removal of hazardous accumulations of dust. In setting up such a housekeeping program, the employer shall:

(A) Establish and implement a schedule of no less than once per shift for cleaning the workplace of dust, when the facility is in operation,

(B) Set out procedures for cleaning and disposal of the dust and what equipment is to be used,

(C) Alert employees as to where this equipment is stored, and train these employees in the use of the equipment,

(D) Maintain the equipment so that it is functional and operational; or

(iii) *Pneumatic dust control system.* The employer shall install and maintain in its facility a pneumatic dust control system, covering dust emission points from its stock handling system, such that there are no visible dust emissions coming from the stock handling system.

(3) The use of compressed air or other means to blow dust from ledges, walls, and other areas which may create a dust explosion hazard (i.e., result in dust concentrations above the lower explosive limit), shall only be permitted when all machinery that present an ignition source in the area is shut-down, and all other sources of ignition are removed.

(4) Grain or product spills shall not be considered fugitive grain dust accumulations. However, the housekeeping program shall address the procedures for removing such spills from the work area.

(j) *Grate openings.* The employer shall assure that receiving-pit feed openings, such as truck or railcar receiving pits, are covered by grates. The length and width of openings in the grates shall be a maximum of two and one-half inches (6.35 cm). If the required grate openings are too restrictive for an adequate flow of grain through the grating, larger openings in grates are permissible where magnets are used to remove ferrous material from the grain stream.

(k) *Filter collectors.* (1) Effective January 1, 1985, the employer shall equip

all fabric dust filter collectors, which are a part of a pneumatic dust collection system, with a monitoring device that indicates when the filter becomes blinded. Such indication shall be observable at a designated inspection or work location.

(2) Filter collectors installed after the effective date of this standard shall be:

- (i) Located outside the facility; or
- (ii) Located in an area inside the facility protected by a fire or explosion suppression system; or
- (iii) Located in an area inside the facility provided with explosion venting to the outside and separated from other areas of the facility by construction having at least a one hour fire-resistance rating.

(1) *Preventive maintenance.* (1) The employer shall develop and implement a preventive maintenance program consisting of:

- (i) Regularly scheduled inspection of at least the mechanical and safety control equipment associated with dryers, removal of ferrous objects, dust collection systems including filter collectors, and grain elevator legs; and,
- (ii) Lubrication and other appropriate preventive maintenance of the equipment to assure continued, safe operation.

(2) The employer shall promptly correct the following conditions: overheated bearings and slipping or misaligned belts that are associated with inside bucket elevators, and blinded filter collectors.

(3) The employer shall implement a system for identifying the date, maintenance performed and/or results of the equipment inspection.

(4) The employer shall develop and implement procedures consisting of tags and locks which will prevent the inadvertent application of energy or motion to equipment being repaired, serviced, or adjusted, which could result in employee injury. Such locks and tags shall be removed in accordance with established procedures only by the employee installing them or, if unavailable, by his or her supervisor.

(m) *Grain stream processing equipment.* The employer shall assure that grain stream processing equipment (such as hammer mills, grinders, and pulverizers) is equipped with an effective means of removing ferrous material from the incoming grain stream.

(n) *Emergency escape.* (1) The employer shall provide at least two means of escape from tunnels, galleries, scale floors, and work areas normally occupied by employees.

(2) The employer shall assure that escape routes are separated from each other to the extent that a single event,

such as a fire, will not reasonably prevent access to all means of escape.

(o) *Bulk raw grain dryers.* (1) Effective July 1, 1985, the employer shall assure that all direct-heat grain dryers are equipped with automatic controls that:

- (i) Will shut-off the fuel supply in case of power or flame failure or interruption of air movement through the exhaust fan; and,
- (ii) Will stop the grain from being fed into the dryer if the grain discharge mechanism becomes clogged, or excessive temperature occurs in the exhaust of the drying section.

(2) Direct-heat grain dryers installed after the effective date of this standard shall be:

- (i) Located outside the facility; or
- (ii) Located in an area inside the facility protected by a fire or explosion suppression system; or
- (iii) Located in an area inside the facility which is separated from other areas of the facility by construction having at least a one hour fire-resistance rating.

(p) *Inside bucket elevators.* (1) The employer shall assure that elevator legs are not joggled to free a choked leg.

(2) Effective January 1, 1985, the employer shall assure that elevator legs are electrically grounded.

(3) The employer shall assure that belts and lagging installed after January 1, 1985, are conductive. Belts shall have a surface electrical resistance not to exceed 300 megohms.

(4) Effective July 1, 1985, the employer shall assure that inspection doors are provided in the head pulley section to allow inspection of the head pulley lagging, belt, and discharge throat of the elevator leg. Boot sections shall be provided with doors for cleanout of the boot and for inspection of the boot pulley and belt.

(5) Effective July 1, 1985, the employer shall equip elevator legs with a motion detection device which initiates an alarm to employees when belt speed is reduced by no more than 15% of the normal operating speed and which will shut-down the leg when the belt speed is reduced by no more than 20% of the normal operating speed. Conveyor equipment which feeds the leg shall be equipped with interlock to shut-down these conveyors in the event that the leg they are serving is shut-down.

(6) Effective July 1, 1985, the employer shall assure that:

- (i) Bearings are mounted externally to the leg casing; or
- (ii) Bearings mounted totally or partially inside leg casings are equipped with a temperature monitoring device which can be read at a designated inspection or work location.

(7) Effective January 1, 1986, the employer shall equip elevator legs with a belt alignment monitoring device which will initiate an alarm to employees when the belt is not tracking properly.

(8) The employer does not have to comply with paragraphs (p)(5), (p)(6), and (p)(7) of this section where:

(i) Bucket elevators are equipped with an operational fire and explosion suppression system capable of protecting at least the head and boot section of the leg; or

(ii) Bucket elevators are equipped with pneumatic or other dust control systems that keeps the dust concentration inside the leg casing below 50% of the lower explosive limit at all times during operations.

(g) *Partially-inside bucket elevators.*

(1) All partially-inside bucket elevators shall comply with the requirements of paragraphs (p)(1) and (p)(5) of this section.

(2) When partially-inside bucket elevators meet the requirements of paragraph (p)(8)(i) or (p)(8)(ii) of this section, the employer does not have to comply with the requirements of (p)(5) of this section.

*Note.*—The following appendices to § 1910.272 serve as nonmandatory guidelines to assist employers and employees in complying with the requirements of this section in Subpart R, as well as to provide other helpful information.

#### Appendix A to § 1910.272 Grain handling facilities

1. *Scope.* The standard contains requirements for new and existing grain handling facilities in both general industry and maritime employments. Country, inland terminal, and export grain elevators are covered by this standard, as well as dust pelletizing plants and certain grain processing plants.

2. *Application.* All grain elevator facilities including those elevators that are a part of a mill must comply with all of the requirements contained in the standard including paragraphs (p) and (q) if appropriate. The standard does not apply to seed plants which handle and prepare seeds for planting of future crops.

3. *Emergency action plan.* The standard requires the employer to develop and implement an emergency action plan. There is an appendix to § 1910.38(a) which employers should review since it contains information that will be helpful in developing emergency action plans for grain handling facilities.

The emergency action plan (§ 1910.38(a)) covers those designated actions employers and employees are to take to ensure employee safety from fire and other emergencies. The plan specifies certain minimum elements which are to be addressed. These elements include the establishment of an employee alarm system,

the development of evacuation procedures, and training employees in those actions they are to take during an emergency.

The standard does not specify a particular method for notifying employees of an emergency. Public announcement systems, air horns, steam whistles, a standard fire alarm system, or other types of employee alarm may be used. However, employers should be aware that employees in a grain handling facility may have difficulty in hearing an emergency alarm, or distinguishing an emergency alarm from other audible signals at the facility, or both. Therefore, it is important that the type of employee alarm used be distinguishable and distinct.

The means of emergency escape from grain handling facilities may necessitate the use of controlled descent devices or emergency escape ladders, especially if escape must be made from bins, silos, or galleries. Employees are to know the location of the nearest escape routes. This is especially important for elevator employees working in tunnels, galleries, etc., where escape routes may be limited. The use of floor plans or workplace maps which clearly show the emergency escape routes should be included in the emergency action plan; color coding will aid employees in determining their route assignment. The employer should designate a safe area, outside the facility, where employees can congregate after evacuation, and implement procedures to account for all employees after emergency evacuation has been completed.

It is also recommended that employers seek the assistance of the local fire department for the purpose of preplanning for emergencies. Preplanning is encouraged to facilitate coordination and cooperation between facility personnel and those who may be called upon for assistance during an emergency. It is important for emergency service units to be aware of the usual work locations of employees in elevators or mills.

**4. Training.** It is important that employees be trained in the recognition and prevention of hazards associated with grain handling facilities, especially those hazards associated with their own work tasks. Employees should understand the factors which are necessary to produce a fire or explosion, i.e., fuel (such as grain dust), oxygen, ignition source, and (in the case of explosions) confinement. Employees should be made aware that any efforts they make to keep these factors from occurring simultaneously will be an important step in reducing the potential for fires and explosions.

The standard provides flexibility for the employer to design a training program which fulfills the needs of a facility. The type, amount, and frequency of training will need to reflect the tasks that employees are expected to perform. Although training is to be provided to employees at least annually, it is recommended that safety meetings or discussions and drills be conducted at frequent intervals, and the program varied to keep the interest of the employees.

The training program should include those topics applicable to the particular facility as well as topics such as: hot work procedures; lock-out/tag-out procedures; bin entry procedures; bin cleaning procedures; grain

dust explosions; fire prevention; procedures for handling hot grain or other hot agricultural products; housekeeping procedures, including methods and frequency of dust removal; pesticide and fumigant usage; proper use and maintenance of personal protective equipment; and, preventive maintenance. The types of work clothing should also be considered in the program at least to caution against using polyester clothing that easily melts and increases the severity of burns as compared to wool or cotton.

In implementing the training program, it is recommended that the employer utilize films, slide-tape presentations, pamphlets, and other information which can be obtained from such sources as the Grain Elevator and Processing Society, The Cooperative Extension Service of the U.S. Department of Agriculture, Kansas State University's Extension Grain Science and Industry, and other state agriculture schools, industry associations, union organizations, and insurance groups.

**5. Permit system.** The permit system requirements are intended to assure that employers maintain control of operations involving hot work and entry into bins, silos, and tanks, and to assure that employees are aware of and utilize appropriate safeguards when conducting these activities.

Precautions for hot work operations are specified in 29 CFR 1910.252(d) and include such safeguards as relocating the hot work operation to a safe location if possible, relocating or covering combustible material in the vicinity, providing fire extinguishers, and provisions for establishing a fire watch. Permits are not required for hot work operations conducted in welding shops or when work is conducted outside and away from the grain handling facility.

Precautions for entry into bins, silos, and tanks are specified in paragraph (g) of the standard. The same permit system may be issued for hot work operations or entry into bins, silos, or tanks; two different types of permit forms are not required.

The permit should contain at least the following information: Date, time, duration, and location of work to be performed; nature of work to be performed; safety and health precautions to be implemented; personal protective equipment to be worn; fire suppression equipment needed; signature of person performing work; signature of person authorizing work to be performed; time that work was completed; and, time that work completion inspection was made.

It should be noted that the permit is not a record which must be retained for a predetermined length of time but, instead, is a written authorization of the employer for employees to perform identified work operations.

**6. Entry into bins, silos, and tanks.** Employees should have a thorough understanding of the hazards associated with entry into bins, silos, and tanks. Employees are not to be permitted to enter these spaces from the bottom when grain or other agricultural products are hung up or sticking to the sides which may fall on them and possibly bury them. Employees should be made aware that the atmosphere in bins,

silos, and tanks can be oxygen deficient or toxic. Employees should be trained in the proper methods of testing the atmosphere, as well as in the appropriate procedures to be taken if the atmosphere is found to be oxygen deficient or toxic. Where fumigation has been recently applied in these areas and entry must be made, aeration fans should be running continuously to better assure a safe atmosphere for those inside. Periodic monitoring of toxic levels should be done by direct reading instruments to measure the levels, and, if there is an increase in these readings, appropriate actions should be promptly taken.

Employees have been buried, and suffocated in grain or other agricultural product because they sank into the material. It is suggested that employees not be permitted to walk or stand on the grain or other agricultural product where the depth is greater than waist high, but that they use a full body harness or bosun's chair with a lifeline. A winch system with mechanical advantage (either powered or manual) would allow better control of the employee than just using a hand held hoist line, and such a system would allow the observer to remove the employee easily without having to enter the space. Employees are not to be asked to clear a bridging condition or similar situation in bins, silos, or tanks from below.

It is important that employees be trained in the proper selection and use of any personal protective equipment which is to be worn. Equally important is the training of employees in the planned emergency rescue procedures. Employers should carefully read § 1910.134(c)(3) and assure that their procedures follow these requirements. The employee acting as observer is to be equipped to provide assistance and is to know procedures for obtaining additional assistance, including cardio-pulmonary resuscitation (CPR).

**7. Contractors.** These provisions of the standard are intended to ensure that outside contractors are cognizant of the hazards associated with grain handling facilities, particular in relation to the work they are to perform for the employer. Also, in the event of an emergency, contractors should be able to take appropriate action as a part of the overall facility emergency action plan. Contractors should also be aware of the employers permit systems. Contractors should develop specified procedures for performing hot work and for entry into bins, silos, and tanks, and these activities should be coordinated with the employer.

This coordination will help to ensure that employers know what work is being performed at the facility by contractors; where it is being performed; and, that it is being performed in a manner that will not endanger employees.

**8. Housekeeping.** The housekeeping program is to be designed to keep dust accumulations and emissions under control inside the grain handling facility. The housekeeping program is to specify the method(s) used to control airborne dust emissions as well as the frequency and method(s) used to remove dust accumulations. Ship, barge, and rail loadout

and receiving areas which are located outside the facility need not be addressed in the housekeeping program. Additionally, truck dumps which are open on two or more sides need not be addressed by the housekeeping program. Other truck dumps should be addressed in the housekeeping program to the extent that provision is made for regular cleaning during periods of receiving grain or agricultural products. The housekeeping program should provide coverage for all workspaces in the facility, including walls, beams, etc., especially in relation to the extent that fugitive dust could accumulate.

**8A. Dust accumulations.** Almost all facilities will require some level of manual housekeeping. Manual housekeeping methods, such as vacuuming or sweeping with soft bristle brooms, should be used which will minimize the possibility of layered dust being suspended in the air when it is being removed.

The housekeeping program should include a contingency plan to respond to situations where dust accumulates rapidly due to a failure of a dust enclosure hood, an unexpected breakdown of the dust control system, a dust-light connection inadvertently knocked open, etc.

One of the alternatives for dust control is to specify an action level to cleanup and safely dispose of dust or otherwise control the condition. The standard specifies a maximum accumulation of  $\frac{1}{8}$  inch of dust, averaged over a 200 square foot area, as the upper limit for the action level. Any accumulation in excess of this amount and area, and where no action has been taken to implement cleaning, would constitute a violation of the standard. Employers should make every effort to minimize dust accumulations on exposed surfaces since dust is the fuel for a fire or explosion, and it is recognized that a  $\frac{1}{8}$  inch dust accumulation is more than enough to fuel such occurrences.

The housekeeping program should also specify the manner of handling grain or product spills, and the methods to be used for returning the grain or product back into the stock handling system. Grain and product spills are not considered to be fugitive dust accumulations.

A fully enclosed horizontal belt conveying system where the return belt is inside the enclosure should have inspection doors to permit checking of equipment, checking for dust accumulations and facilitate cleaning if needed.

**8B. Dust emissions.** Each employer needs to analyze the entire stock handling system to determine the location of dust emissions and effective methods to control or to eliminate them. The employer should make sure the holes in spouting, casings of bucket elevators, pneumatic conveying pipes, screw augers, or drag conveyor casings, are patched or otherwise properly repaired. Minimizing free falls of grain or grain products by using choke feeding techniques, and utilization of dust-tight enclosures at transfer points, can be effective in reducing dust emissions.

Each housekeeping program should specify the schedules and control measures which will be used to control dust emitted from the

stock handling system. The housekeeping program should address the schedules to be used for cleaning dust accumulations from motors, critical bearings and other potential ignition sources in the working areas. Also, the areas around bucket elevator legs, milling machinery and similar equipment should be given priority in the cleaning schedule. The method of disposal of the dust which is swept or vacuumed should also be planned.

Dust may accumulate in somewhat inaccessible areas, such as those areas where ladders or scaffolds might be necessary to reach them. The employer may want to consider the use of compressed air and long lances to blow down these areas frequently. The employer may also want to consider the periodic use of water and hoses to wash down these areas. If these methods are used, they are to be specified in the housekeeping program along with the appropriate safety precautions, including the use of personal protective equipment such as eyewear and dust respirators.

Several methods have been effective in controlling dust emissions. The most widely used method of controlling dust emissions is a pneumatic dust collection system. However, the installation of a poorly designed pneumatic dust collection system has fostered a false sense of security and has often led to an inappropriate reduction in manual housekeeping. Therefore, it is imperative that the system be designed properly and installed by a competent contractor. Those employers who have a pneumatic dust control system that is not working up to expectations should request the engineering design firm, or the manufacturer of the filter and related equipment, to conduct an evaluation of the system to determine the corrections necessary for proper operation of the system. If the design firm or manufacturer of the equipment is not known, employers should contact their trade association for recommendations of those competent designers of pneumatic dust control systems who could provide assistance.

When installing a new or upgraded pneumatic control system, the employer should insist on an acceptance test period of 30 to 45 days of operation to ensure that the system is operating as intended and designed. The employer should also obtain maintenance, testing, and inspection information from the manufacturer to ensure that the system will continue to operate as designed.

If the employer intends to return collected dust to the stock handling system, the dust should be returned at a point downstream from where it was collection. This will avoid rehandling the same dust twice or more. It is also safer not to reintroduce the collected dust until the loadout end of the stock handling system.

Aspiration of the leg, as part of a pneumatic dust collection system, is another effective method of controlling dust emissions. Aspiration of the leg consists of a flow of air across the entire boot, which entrains the liberated dust and carries it up the leg to take-off points. With proper aspiration, dust concentrations in the leg can be lowered below the lower explosive limit.

Where a prototype leg installation has been instrumented and shown to be effective in keeping the dust level below 50% of the lower flammable limit during normal operations for the various products handled, then other legs of similar size capacity and products being handled which have the same design criteria for the air aspiration would be acceptable to OSHA, provided the prototype test report is available on site.

Another method of controlling dust emissions is enclosing the conveying system, pressurizing the general work area, and providing a lower pressure inside the enclosed conveying system. Although this method is effective in controlling dust emissions from the conveying system, adequate access to the inside of the enclosure is necessary to facilitate frequent removal of dust accumulations. This is also necessary for those systems called "self-cleaning."

The use of edible oil sprayed on or into a moving stream of grain is another method which has been used to control dust emissions. Tests performed using this method have shown that the oil treatment can reduce dust emissions. Repeated handling of the grain may necessitate additional oil treatment to prevent liberation of dust. However, before using this method, operators of grain handling facilities should be aware that the Food and Drug Administration must approve the specific oil treatment used on products for food or feed.

**9. Grates over receiving pits.** Grates are necessary to assist in the removal of foreign objects. Grate openings should be sized for the proper flow of the commodity through the grate that will prevent overflow. Those facilities which are handling ear corn or other non-free flowing commodity may need larger grate openings than the  $2\frac{1}{2}$  inch square openings specified in the standard. Larger grate openings are permitted if permanent or electromagnets are used the full width of the incoming commodity stream to remove ferrous objects. The maintenance required on the magnets is to be covered in the preventive maintenance program.

Where grate openings are larger than those needed or desired, the employer may also use an overlay grate, which can be welded or strapped to the existing grate, to achieve the desired size opening.

**10. Filter collectors.** Proper sizing of filter collectors for the pneumatic dust control system they serve is very important for the overall effectiveness of the system. The air to cloth ratio of the system should be in accordance with the manufacturer's recommendations. If higher ratios are used, it can result in more maintenance on the filter, shorter bag or sock life, increased differential pressure resulting in higher energy costs, and an increase in operational problems.

A photohelic gauge, magnehelic gauge, or manometer, may be used to indicate the pressure rise across the inlet and outlet of the filter. When the pressure exceeds the design value for the filter, the air volume will start to drop, and maintenance will be required. Anyone of these three monitoring devices is acceptable as meeting paragraph (c)(1) of the standard.

The employer should establish a level or target reading on his instrument which is consistent with the manufacturer's recommendations that will indicate when the filter should be serviced. This target reading on the instrument and the accompanying procedures should be in the preventive maintenance program. These efforts would minimize the blinding of the filter and the subsequent failure of the pneumatic dust control system.

There are other instruments that the employer may want to consider using to monitor the operation of the filter. One instrument is a zero motion switch for detecting a failure of motion by the rotary discharge valve on the hopper. If the rotary discharge valve stops turning, the dust released by the bag or sock will accumulate in the filter hopper until the filter becomes clogged. Another instrument is a level indicator which is installed in the hopper of the filter to detect the buildup of dust that would otherwise cause the filter hopper to be plugged. The installation of these instruments should be in accordance with the manufacturer's recommendations.

All of these monitoring devices and instruments are to be capable of being read at an accessible location and checked as frequently as specified in the preventive maintenance program.

Those filter collectors on portable vacuum cleaners, and those where fans are not part of the system, are not covered by these requirements.

**11. Preventive maintenance.** The control of dust and the control of ignition sources are the most effective means for reducing explosion hazards. Preventive maintenance is related to ignition sources in the same manner as housekeeping is related to dust control and should be treated as a major function in a facility. Equipment such as critical bearings, belts, buckets, pulleys, milling machinery are potential ignition sources, and periodic inspection and lubrication of such equipment through a scheduled preventive maintenance program is an effective method for keeping equipment functioning properly and safely. The use of heat sensitive tape or other heat detection methods that can be seen by the inspector or maintenance person will allow for a quick, accurate, and consistent evaluation of bearings and will help in the implementation of the program.

The standard does not require a specific frequency for preventive maintenance. The employer is permitted flexibility in determining the appropriate interval for maintenance. Scheduling of preventive maintenance should be based on manufacturer's recommendations for effective operation, as well as from the employer's previous experience with the equipment. However, the employer's schedule for preventive maintenance will need to be frequent enough both to minimize the possibility of failure or malfunction of the mechanical and safety control equipment associated with bucket elevators, dryers, filter collectors and magnets, and to allow for prompt identification and correction of any problems. A system of identifying the date, maintenance performed and/or results of

equipment inspection will assist employers in continually refining their preventive maintenance schedules and identifying equipment problem areas. Open work orders where repair work or replacement is to be done at a designated future date as scheduled, would be an indication of an effective preventive maintenance program.

It is imperative that the prearranged schedule of maintenance be adhered to regardless of other facility constraints. The employer should give priority to the maintenance or repair work associated with safety control equipment, such as that on dryers, magnets, alarm and shut-down systems on bucket elevators, bearings on bucket elevators, and the filter collectors in the dust control system. Benefits of a strict preventive maintenance program can be a reduction of unplanned downtime, improved equipment performance, planned use of resources, more efficient operations, and, most importantly, safer operations.

The standard also requires the employer to develop and implement procedures consisting of locking out and tagging equipment to prevent the inadvertent application of energy or motion to equipment being repaired, serviced, or adjusted, which could result in employee injury. All employees who have responsibility for repairing or servicing equipment, as well as those who operate the equipment, are to be familiar with the employer's lock and tag procedures. A lock is to be used as the positive means to prevent operation of the disconnected equipment. Tags are to be used to inform employees why equipment is locked out. Tags are to meet the requirements in § 1910.145(f). Locks and tags may only be removed by employees that placed them or by their supervisor, to ensure the safety of the operation.

**12. Grain stream processing equipment.** The standard requires an effective means of removing ferrous material from grain streams so that such material does not enter equipment such as hammer mills, grinders and pulverizers. Large foreign objects, such as stones, should have been removed at the receiving pit. Introduction of foreign objects and ferrous material into such equipment can produce sparks which can create an explosion hazard. Acceptable means for removal of ferrous materials include the use of permanent or electromagnets. Means used to separate foreign objects and ferrous material should be cleaned regularly and kept in good repair as part of the preventive maintenance program in order to maximize their effectiveness.

**13. Emergency escape.** The standard specifies the minimum number of means of escape for the major work spaces in the facility and requires that they be separated from each other to the extent feasible. Small work platforms, elevated inspection station platforms, areas under receiving pits or similar small spaces do not have to have two ways out. A single ladder, ramp or stair is acceptable provided it is not obstructed. Means of emergency escape may include any available means of egress (consisting of three components, exit access, exit, and exit discharge as defined in § 1910.35), the use of controlled descent devices or emergency escape ladders from galleries, or the use of

windows from tunnels that are located under bins, silos or tanks. Importantly, the means of emergency escape are to be addressed in the facility emergency action plan. Employees are to know the location of the nearest means of emergency escape and the action they must take during an emergency.

**14. Dryers.** The paragraph of the standard concerning dryers pertains only to those dryers handling bulk raw grain and which are associated with a grain elevator facility. The paragraph does not apply to those dryers which are a part of the processing and milling segments of a facility.

Liquefied petroleum gas fired dryers should have the vaporizers installed at least ten feet from the dryer. Also the gas piping system should be protected from mechanical damage. The employer should establish procedures for locating and repairing leaks when there is a strong odor of gas or other signs of a leak. An alarm device should sound when the dryer is automatically shut-down to alert employees at the facility.

**15. Inside bucket elevators.** Hazards associated with inside bucket elevator legs are the source of many grain elevator fires and explosions. Therefore, to mitigate these hazards, the standard requires the implementation of special safety precautions and procedures, as well as the installation of safety control devices. However, the standard also provides for a phase-in period for many of the requirements to provide the employer time for planning the implementation of the requirements.

The standard requires that belts have surface electrical resistance not to exceed 300 megohms. Test methods available regarding electrical resistance of belts are: The American Society for Testing and Materials D257-76, "Standard Test Methods for D-C Resistance or Conductance of Insulating Materials"; and, the International Standards Organization's #224, "Conveyor Belts—Electrical Conductivity—Specification and Method of Test." When an employer has written certification from the manufacturer that a belt has been tested using one of the above test methods, and meets the 300 megohm criteria, the belt is acceptable as meeting this standard. Employers should also consider purchasing new belts that are flame retardant or fire resistive. This test is contained in 30 CFR 18.65.

#### Appendix B to § 1910.272 Grain Handling Facilities

##### National Consensus Standards

The following table contains a cross-reference listing of those current national consensus standards which contain information and guidelines that would be considered acceptable in complying with the requirements of the appropriate provisions in § 1910.272.

##### Subject and National Consensus Standards

Grain elevators and facilities handling bulk raw agricultural commodities—ANSI/NFPA 61B
Feed mills—ANSI/NFPA 61C
Facilities handling agricultural commodities for human consumption—ANSI/NFPA 61D

Pneumatic conveying systems for agricultural commodities—ANSI/NFPA 68  
 Guide for explosion venting—ANSI/NFPA 68  
 Explosion prevention systems—ANSI/NFPA 69  
 Dust removal and exhaust system. ANSI/NFPA 91

**Appendix C to § 1910.272 Grain Handling Facilities**

*References for Further Information*

The following references provide information which can be helpful in understanding the requirements contained in various sections of the standard.

1. *Accident Prevention Manual for Industrial Operations*; National Safety Council, 425 North Michigan Avenue, Chicago, Illinois 60611.
2. *Practical Guide to Elevator Design*; National Grain and Feed Association, P.O. Box 28328, Washington, D.C. 20005.
3. *Dust Control for Grain Elevators*; National Grain and Feed Association, P.O. Box 28328, Washington, D.C. 20005.
4. *Prevention of Grain Elevator and Mill Explosions*; National Academy of Sciences, Washington, D.C. (Available from National Technical Information Service, Springfield, Virginia 22151.)
5. *Standard for the Prevention of Fires and Explosions in Grain Elevators and Facilities Handling Bulk Raw Agricultural Commodities*, NFPA 61B; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.
6. *Standard for the Prevention of Fire and Dust Explosions in Feed Mills*, NFPA 61C; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.
7. *Standard for the Prevention of Fire and Dust Explosions in the Milling of Agricultural Commodities for Human Consumption*, NFPA 61D, National Fire Protection Association,

Batterymarch Park, Quincy, Massachusetts 02269.

8. *Standard for Pneumatic Conveying Systems for Handling Feed, Flour, Grain and Other Agricultural Dusts*, NFPA 66; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

9. *Guide for Explosion Venting*, NFPA 68; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

10. *Standard on Explosion Prevention Systems*, NFPA 69; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

11. *Safety-Operations Plans*; U.S. Department of Agriculture, Washington, D.C. 20250.

12. *Hazard Alert*; Occupational Safety and Health Administration, U.S. Department of Labor, 2nd and Constitution Avenue, N.W., Washington, D.C. 20210.

13. *Inplant Fire Prevention Control Programs*; Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

14. *Guidelines for Terminal Elevators*; Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

15. *Standards for Preventing the Horizontal and Vertical Spread of Fires in Grain Handling Properties*, Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

16. *Belt Conveyors for Bulk Materials*, Part I and Part II, Data Sheet 570, Revision A; National Safety Council, 425 North Michigan Avenue, Chicago, Illinois 60611.

17. *Suggestions for Precautions and Safety Practices in Welding and Cutting*; Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

18. *Food Bins and Tanks*, Data Sheet 524; National Safety Council, 425 North Michigan Avenue, Chicago, Illinois 60611.

19. *Pneumatic Dust Control in Grain Elevators*; National Academy of Sciences, Washington, D.C. (Available from National Technical Information Service, Springfield, Virginia 22151.)

20. *Dust Control Analysis and Layout Procedures for Grain Storage and Processing Plants*; Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

21. *Standard for the Installation of Blower and Exhaust Systems for Dust, Stock and Vapor Removal*, NFPA 91; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

22. *Standards for the Installation of Direct Heat Grain Driers in Grain and Milling Properties*; Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

23. *Guidelines for Lubrication and Bearing Maintenance*; Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

24. *Organized Maintenance in Grain and Milling Properties*; Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

25. *Safe and Efficient Elevator Legs for Grain and Milling Properties*; Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

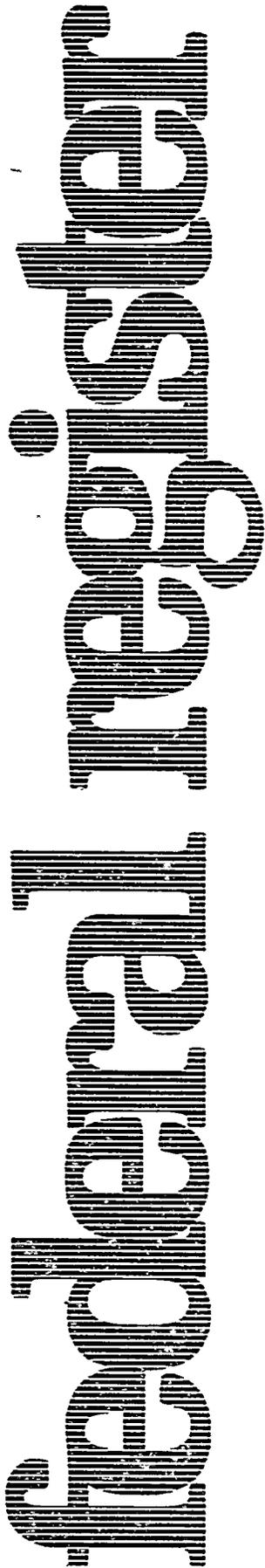
26. *Explosion Venting and Suppression of Bucket Elevators*; National Grain and Feed Association, P. O. Box 28328, Washington, D.C. 20005.

27. *Lightning Protection Code*, NFPA 78; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(Sec. 6, 8, 84 Stat. 1593, 1599 (29 U.S.C. 655, 657); Sec. 41, 44 stat. 1444 (33 U.S.C. 941); 29 CFR Part 1911, Secretary of Labor's Order No. 9-83 (48 FR 35736))

[FR Doc. 84-120 Filed 1-5-84; 8:45 am]

BILLING CODE 4510-23-M



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Friday  
January 6, 1984

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**Part V**

**Department of the  
Interior**

Office of the Secretary

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**Department of  
Agriculture**

Office of the Secretary

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**Tennessee Valley  
Authority**

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**Department of  
Defense**

Office of the Secretary

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43 CFR Part 7

36 CFR Part 296

18 CFR Part 1312

32 CFR Part 229

Archaeological Resources Protection Act  
of 1979; Final Uniform Regulations

**DEPARTMENT OF THE INTERIOR****Office of the Secretary****43 CFR Part 7****DEPARTMENT OF AGRICULTURE****36 CFR Part 296****TENNESSEE VALLEY AUTHORITY****18 CFR Part 1312****DEPARTMENT OF DEFENSE****32 CFR Part 229****Archaeological Resources Protection Act of 1979; Final Uniform Regulations**

**AGENCIES:** Departments of the Interior, Agriculture, and Defense and Tennessee Valley Authority.

**ACTION:** Final rule.

**SUMMARY:** These final regulations establish uniform procedures for implementing provisions of the Archaeological Resources Protection Act of 1979 in response to direction in section 10(a) of the Act. These uniform regulations will serve as the foundation and basic policy standard for additional regulations which departments and other agencies of the Federal government may promulgate pursuant to section 10(b) of the Act. These regulations enable Federal land managers to protect archaeological resources on public lands and Indian lands, by issuing permits for authorized excavation and/or removal of archaeological resources, by imposing civil penalties for unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources, by providing for the preservation of archaeological resource collections and data, and by ensuring confidentiality of information about archaeological resources when disclosure would threaten the resources.

**DATES:** These regulations were submitted on October 7, 1983, to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, and will take effect on February 6, 1984.

**FOR FURTHER INFORMATION CONTACT:** Bennie C. Keel, National Park Service, Department of the Interior, Washington, D.C., 202-343-4101; Barbara Levin, Office of the Solicitor, Department of the Interior, Washington, D.C., 202-343-7957; John G. Douglas, Bureau of Land Management, Department of the

Interior, Washington, D.C., 202-343-9353; Evan I. DeBloois, U.S. Forest Service, Department of Agriculture, Washington, D.C., 202-382-9425; Garland P. Thompson, Army Corps of Engineers, Department of Defense, Washington, D.C., 202-272-0517; or Maxwell D. Ramsey, Office of Natural Resources, Tennessee Valley Authority, Norris, Tennessee, 615-632-6450.

**SUPPLEMENTARY INFORMATION:****Background**

These regulations implement provisions of the Archaeological Resources Protection Act of 1979 ("Act"; Pub. L. 96-95; 93 Stat. 721; 16 U.S.C. 470aa-11). They were prepared by an interagency rulemaking task force composed of representatives of the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, as directed in section 10(a) of the Act.

The Act has two fundamental purposes: (1) To protect irreplaceable archaeological resources on public lands and Indian lands from unauthorized excavation, removal, damage, alteration, or defacement; and (2) to increase communication and exchange of information among governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained prior to enactment of the Act.

Provisions of the Act which address the first purpose, protection, include requirements for a permit, to be issued by the appropriate Federal land manager to any qualified person who would make use of archaeological resources for the purpose of furthering archaeological knowledge in the public interest. For any person who would make unauthorized use of archaeological resources, without a permit, criminal and civil penalty and forfeiture provisions are prescribed in the Act. Basic government-wide standards for the issuance of permits and for the implementation of civil penalty provisions are a principal focus of these regulations. Also, preservation of collections and data, and protection of locational information, when its disclosure might result in harm to archaeological resources, are provided for in the Act and these regulations.

With regard to the second purpose, section 11 of the Act directs that the Secretary of the Interior shall take such action as may be necessary to foster and improve the communication, cooperation, and exchange of

information among private individuals, Federal authorities responsible for the protection of archaeological resources on public lands and Indian lands, and professional archaeologists and archaeological organizations, in order to expand the archaeological data base for the archaeological resources of the United States. Because of the specific assignment, this purpose will be addressed separately.

Section 10(a) of the Act calls for the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, to promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of the Act. Consideration of the provisions of the American Indian Religious Freedom Act is specified as a prerequisite to preparing such regulations. Specific reference to uniform regulations in the Act is included also in section 3(1) (definition of "archaeological resource"), section 4(a) (permit application requirements), section 4(b) (standards for permit application evaluation), section 4(d) (permit terms and conditions), and section 10(b) (agency-specific regulations consistent with uniform regulations).

Certain provisions, such as criminal prohibitions and criminal penalties, are outside the scope of this rulemaking. In order to be fully informed about the nature and extent of archaeological resource protection under the Archaeological Resources Protection Act of 1979, it is necessary to consult the Act as well as these regulations.

These regulations are designed to provide Federal land managers the ability to fully exercise their authority under the Act. However, because a variety of land management conditions exists among Federal agencies, supplemental detailed regulations may be promulgated under the authority of section 10(b) of the Act.

Public hearings were held during March and April 1980, in Denver, Colorado; Phoenix, Arizona; Portland, Oregon; and Knoxville, Tennessee, following publication of a notice of public hearings on March 19, 1980 (45 FR 17622). These hearings were held to provide an opportunity for early public input into the rulemaking process and to initiate an early dialogue among various groups interested in the use and/or protection of archaeological resources. Proposed uniform rules were published

on January 19, 1981 (46 FR 5566), as 36 CFR Part 1215. Public comment on the proposed rules was invited for a 60-day period, to end March 20, 1981. Public hearings were held during the comment period, in Chicago, Illinois; Atlanta, Georgia; Albuquerque, New Mexico; San Francisco, California; Anchorage, Alaska; and Denver, Colorado. Because of widespread interest expressed at the public hearings for additional time to submit written comments, the comment period was extended until April 30, 1981 (46 FR 22208), making a total of 101 days available for interested parties to submit comments on the proposed rules.

Comments were received from a broad array of private individuals, local, State, and Federal agencies, amateur and professional scholarly associations, hobbyist groups, Indian tribes, scientific and educational institutions, various industries, and others with interests in the use of public lands and resources. A total of 137 persons presented testimony during the six public hearings. Two hundred nineteen written responses were received before the end of the comment period, expressing a total of 418 comments. Three of the written responses were in the form of petitions. Comments were addressed to all but two of the 23 sections of the proposed rules, ranging from as few as two to as many as 66 comments on a given section. Sections 1215.3, 1215.6, 1215.4, and 1215.7 drew the greatest volume of comments, in that order, each receiving 45 or more. No other section drew more than 15 comments. There were 62 comments which did not pertain directly to specific sections, but rather addressed the Act or the regulations in more general terms.

Many of the public comments raised valid concerns with, or forced greater attention to, the substance of certain provisions of the proposed regulations, and the construction, concepts, and wording of affected sections were altered accordingly. Many other comments represented misunderstanding of basic issues, and these comments were also helpful in identifying needs for explanatory as well as procedural language. Some comments were critical of wording or provisions drawn directly from the Act, in most cases appearing to show a lack of awareness of the statutory basis for the proposed regulations. In the discussions which follow, reference is frequently made to the section of the Act involved in order to clarify the statutory-regulatory relationship.

Finally, given the volume of comments, it is impractical to respond in detail here to every question raised or

suggestion offered. However, all comments were considered, and most contributed to the rulemaking process.

In the discussions which follow, section numbers given in the central headings refer to the proposed 36 CFR Part 1215, while numbers in the italicized paragraph headings refer to the final part.

#### Changes in Response to Public Comments

##### *§ 1215.1 Purpose (Renumbered § —.1).*

This section was expanded and reworded to make clearer the extent to which these regulations apply. Based on a number of general comments which show misunderstanding of the scope and effect of the proposed regulations, paragraph (a) was expanded to state explicitly that these regulations enable Federal land managers to protect archaeological resources through four mechanisms: permits, civil penalties, preservation of collections and data, and confidentiality of archaeological resource information. Also, specific reference to the American Indian Religious Freedom Act was incorporated in keeping with section 10(a) of the Act.

Several comments suggested greater specificity in paragraph (b). Wording was changed slightly to state more directly that no new restrictions on authorized uses of the public lands are created by these regulations. Comments from representatives of industries which have ongoing interests in the use of public lands and resources expressed concern that land-use applicants would be required to apply for permits under these regulations in addition to applications for use entitlements under other legal authorities. These comments were acknowledged by adding a paragraph (b)(1) to § —.5, "Permit requirements and exceptions," rather than by further expansion of the purpose statement. Permits may be required for archaeological consultants to land-use applicants, but not for the land-use applicants themselves. This does not represent any change from similar requirements applicable under other laws and regulations, primarily the American Antiquities Act of 1906 and 43 CFR Part 3.

##### *§ 1215.2 Authorities (Renumbered § —.2).*

Several comments offered additional legal authorities to be added to this section. One comment pointed out that related authorities are listed at the head of the regulations and need not be listed again. Since the authority for promulgating these regulations is confined to the Archaeological

Resources Protection Act of 1979, the section was shortened to follow this last comment. The two remaining paragraphs were reworded slightly to clarify the relationship of these and subsequent regulations to the provisions of section 10 of the Act; paragraph (b) is retained for informational purposes, so that the public may be informed that authorized agency regulations may add specificity to the general provisions of these uniform regulations.

##### *§ 1215.3 Definition (Renumbered § —.3).*

This section drew a heavier body of comment than any other section in the proposed regulations, with the majority of comments addressing the definition of "archaeological resource" (proposed § 1215.3(a)). This definition is central not only to the remainder of these regulations, but also to the enforcement of criminal provisions of the Act. Section —.3(a) retains the fundamental features of the definition of "archaeological resource" from the proposed regulations, but it has been restructured in important ways, making it a more precise tool for delimiting judgments about whether or not an item in question is an archaeological resource, and making it more clear that certain items excluded by the Act fall outside the scope of the definition.

The key conditioning provisions for determining what is an archaeological resource, taken from the statutory definition in section 3(1) of the Act, are stated in the base definition in § —.3(a) of the regulations: In order to be considered archaeological resources under these regulations, items must be material remains of human life or activities, at least 100 years of age, and of archaeological interest. Subdefinitions, defining "of archaeological interest" and "material remains," provide the standards for applying the base definition. Where classes of material remains and illustrative examples were included as part of the definition of "material remains" in the proposed rules, they are now assigned to a separate paragraph and are specified to be of archaeological interest, and therefore archaeological resources, unless conditions of ensuing paragraph (a)(4) or (a)(5) apply. This definite status responds to comments about residual uncertainties in the proposed definition. Several illustrative examples were added to material remains classes in response to comments

What is not an "archaeological resource" is included in a separate paragraph (a)(4), drawing on sections

3(1) and 12(b) of the Act and responding to comments that certain excluded items had been listed, apparently counter to direction in the Act. Because of the way the definition was structured in the proposed rules, inclusion was appropriate since those items might be "archaeological resources" under certain circumstances. In the revised structure, paleontological remains, coins, bullets, and unworked rocks and minerals are definitely stated not to be "archaeological resources" themselves, unless they are located in immediate association with archaeological resources.

Many commentors expressed concern that the proposed definition would not allow dislocated material remains, which had lost archaeological interest by reason of their dislocation, to be collected by hobbyists. This concern was directed primarily to items eroded from archaeological sites along the shores of artificial lakes and redeposited sufficiently out of context as to remove their information potential. Lakes specifically mentioned were those resulting from projects of the Army Corps of Engineers and the Tennessee Valley Authority. Commentors pointed out that collection of these remains may contribute more to their preservation than allowing them to be further dislocated due to human-caused or natural disturbance. In recognition of the fact that material remains can, in certain circumstances, lose their archaeological interest and that their collection by the public under these circumstances might not be adverse to the purposes of the Act, a new paragraph (a)(5) was added to the definition of "archaeological resource." This new provision is based on the premise that if the circumstances clearly warrant a determination that certain material remains in certain areas have lost archaeological interest because of dislocation or other causes, the protected status of the remains should be removed and the public so informed. In the absence of such a determination, the presumption of archaeological interest would be retained in order to protect the remains. The final regulations provide that Federal land managers may determine that certain material remains, in specified areas under their jurisdiction, and under specified circumstances, are not of archaeological interest. Any such determination would have to be documented and made public.

Under sections 6 and 7 of the Act, criminal and civil penalties are not to be applicable to removal of arrowheads located on the surface of the ground.

"Arrowhead" was defined in a technical manner in § 1215.3(b) of the proposed regulations, generating many comments. Many professional archaeologists commented that distinctions between arrowheads and other tools and weapon projectiles of similar form would prove difficult if not impossible, regardless of how a technical definition might be written. One commentor provided a substantial body of documentation from the published literature which demonstrates the difficulty of relying on shape and size criteria for differentiating "arrowheads" from dart points, spear points, hafted knives, drills, and other tools. Several commentors recommended that a lay definition be used. In light of the fact that the Congress had used the lay term "arrowhead" rather than alternative technical terms that might have been used, and that a stated congressional intent of the non-penalty provisions is to protect unwary recreationists from the heavy fines and other punishment that might be levied under the Act, it was determined that a lay definition for a lay term is appropriate. Such a definition was included as § —.3(b).

Neither the Act nor these regulations exclude arrowheads from the definition of archaeological resources. Arrowheads over 100 years of age and of archaeological interest are archaeological resources under section 3(1) of the Act and § —.3(a)(3)(iii) of these regulations. Their removal from public lands of Indian lands without a permit is prohibited, but is not punishable under the Act or these regulations. However, regulations under other authority which penalize their removal remain effective. Contrary to opinions frequently expressed in the comments and elsewhere, the Act does not legalize the collection of arrowheads from public lands or Indian lands.

Several commentors suggested that the definition of "Federal land manager," paragraph (c) in both proposed and final regulations, should show that a secretary of a department or other agency head may delegate management authority to other persons. A clause to this effect was added to the definition.

The "public lands" definition, paragraph (d) in both versions, received several comments with regard to the effect of "fee title" specification. Some commentors questioned whether the language would exclude certain lands in the public domain administered by the Bureau of Land Management in the Department of the Interior. All Bureau of Land Management lands, including those for which no title document as

such exists, are covered in the fee-title concept as used in the Act. In response to comments, the definition was clarified by addition of the words "except Indian lands" at the end, since the fee-title provisions could be interpreted in a technical way to include certain Indian lands.

The definition of "Indian tribe," paragraph (f) in both versions, was expanded to include Alaska Native villages or tribes recognized as eligible for services provided by the Bureau of Indian Affairs. Related discussion touching on the definition of "Indian tribe" is found in the discussion of changes to § 1215.6 (new § —.7).

Several comments questioned the lack of mention of several trust territories and the Trust Territory of the Pacific Islands in the definition of "State" in paragraph (h) of both versions. The statutory language was retained unchanged since the requested changes are beyond the reach of rulemaking.

A number of comments asked that definitions be provided for certain terms, such as "bullet," "harm," "destruction," and others. The decision was to allow undefined terms to rest on common meaning and dictionary definitions. The extent of the meaning of "excavate" in these regulations was clarified in §—.5(b)(1) in response to one such comment.

*§ 1215.4 Excavation or removal of Archaeological Resources (Renumbered §—.5; Retitled "Permit Requirements and Exceptions!").*

In response to one comment on clarity of purpose, the title of this section was changed. The reason for its movement in the order of sections is explained below, under discussion of proposed rule §1215.14 (new §—.4).

This section also drew a substantial body of comment, most of it aimed at clarifying relationships between this section and other sections of the regulations.

Paragraph (a) in the proposed rules stated the permit requirement in passive construction, inadvertently departing from clear representation of statutory provisions that any person may apply for a permit, and that the Federal land manager may issue a permit if certain conditions are met. Rewording of the paragraph and reference to conditions guiding the Federal land manager's decision corrected this departure. One commentor noted that the word "wishing" was inappropriate, and the word "proposing" was substituted. Linkage to prohibitions, now in §—.4, was incorporated by adding a restraint

against beginning the proposed work before a permit has been issued.

The exceptions to the permit requirement were the subject of many comments. A new paragraph (b)(1) was added in response to concerns, on the part of representatives of mining, forestry product, and other land-use interests, that the statement in the Purpose section, §1215.1(b) (new §—.1(b)), did not fully exempt persons holding authorizations to use public lands or resources from having also to apply for and receive a permit under these regulations. The new paragraph (b)(1) states that land use authorized under permits, leases, licenses, or entitlements does not also require a permit under these regulations. To answer concerns expressed in several comments, it states that authorized earth-moving excavation does not constitute "excavation and/or removal" as used in these regulations. It concludes by pointing out that this exception does not exempt the Federal land manager from responsibilities under other authorities, and that excavation and/or removal pursuant to those authorities are subject to permit requirements of these regulations.

The relationship of the Act and these regulations, other archaeological preservation authorities, and uses of public lands and resources, requires some explanation. As part of the decisionmaking process prior to authorizing the use of public lands or resources, Federal land managers are to take into account the potential effects of the authorization on significant archaeological and historic properties, under provisions of section 106 of the National Historic Preservation Act. Other statutes, such as the National Environmental Policy Act, similarly may require pre-authorization review of potential environmental effects. In some cases, the Federal land manager may request a land-use applicant to retain the professional services of a qualified consulting archaeologist, historian, or other specialist in order to gather resource inventory data pertaining to the area where the proposed land use would occur. Depending on findings, the Federal land manager may also request that the land-use applicant implement measures to mitigate effects of the proposed land use. This might include the recovery of data through the scientific excavation of archaeological resources.

Consultants employed by the land-use applicant (or authorized land user) to perform inventory or mitigation tasks are required to possess a permit to do this work. This requirement is not new.

Until the passage of the Act, such permits were issued under the authority of the American Antiquities Act of 1908 and uniform regulations at 43 CFR Part 3. Permit issuance is now being shifted to the Archaeological Resources Protection Act of 1979 and these regulations as provided in section 4(h) of the Act. As before, qualified persons conducting archaeological work on public lands and Indian lands are required to possess a permit.

Upon satisfaction of environmental review and other pertinent requirements, the Federal land manager may authorize the proposed land use, incorporating any necessary restrictions and stipulations in the authorization instrument. At that point, archaeological resource consideration will normally have been completed, and any further provisions, such as what action to take in the event of discovery of a buried archaeological resource, will be stipulated. At no time is the land-use applicant (or authorized land user), whose purpose is other than the excavation or removal of archaeological resources, required to hold a permit issued under these regulations.

The original paragraph (b)(1), pertaining to an Indian tribe or member thereof excavating or removing any archaeological resource on Indian lands, was moved to become §—.5(b)(3). One change was made in this paragraph. For the proposed rule, the statutory phrase "Indian lands of such Indian tribe" was interpreted to include both tribal lands and allotted lands of tribal members. Therefore, the words "or members of such tribe" were added. However, due to the complexity of this issue, it was decided that any clarification of the applicability of the regulations to allotted lands of tribal members should be addressed in Department of the Interior implementing regulations pursuant to section 10(b) of the Act. Accordingly, the final version adheres to the language of section 4(g)(1) of the Act.

Paragraph (b)(2), excluding from permit requirements the private collection of any rock, coin, bullet, or mineral which is not an archaeological resource, was reworded slightly for clarity. Determinations of whether or not a rock, coin, bullet, or mineral is an archaeological resource depends on §—.3(a)(4) and other provisions of the definition of "archaeological resource."

Paragraphs (b)(3) and (b)(5) of the proposed rules are now paragraphs (b)(4) and (b)(5); they are slightly reworded, but are unchanged in substance.

Several comments were received on paragraph (b)(4) of the proposed rules, regarding the permit status of employees and agents of the Federal government. The provision in the proposed rules had two intents. The first was to prevent putting Federal land managers in the inappropriate position of being required to issue permits to their own employees, hired under the selection constraints of applicable personnel regulations, before allowing them to perform official duties connected with the Federal land manager's archaeological resource management responsibilities. The second intent was to avoid requiring the Federal land manager to duplicate the assessment of qualifications and the definition of work requirements for persons carrying out the Federal land manager's archaeological resource management responsibilities under a contract or similar instrument. The comments did not negate the desirability of these features, but they did point out that the Act provides no exception for employees and agents to the permit requirement and notification provisions. This is acknowledged to be the case. Persons carrying out official agency duties under the Federal land manager's direction cannot be excepted from the permit requirement. Rather, they are not required to apply for a permit, because their status represents an alternative kind of permit, subject to the same standards as permits issued under this part. This is made more explicit in the revised regulations. The former paragraph under exceptions has been elevated to a separate paragraph (c). Because use of the phrase "employees and agents" might inadvertently restrict the classes of persons who could be called on to perform the Federal land manager's duties, the phrase has been changed to "persons." "Official duties" was tightened to "official agency duties under the Federal land manager's direction." And a proviso was added that prior to authorizing a person to perform official agency duties, the Federal land manager shall document compliance with provisions of those sections of the regulations pertaining to professional qualifications appropriate to the work to be conducted, terms and conditions under which authorized work is to be performed, and notification of Indian tribes when official duties might affect an Indian cultural or religious site, as determined by the Federal land manager.

Paragraph (d), in both the proposed and final regulations, provides for the issuance of a permit in response to a request from the Governor of any State. One commentator asked if it is intended

that a Governor may request a permit, which the Federal land manager would be obligated to issue, for persons who would be found not qualified under normal application procedures. This question addresses the fact that qualifications are left to the Governor's determination under provision of section 4(j) of the Act. This possible outcome was clearly not the intent of the Congress, in light of other provisions within section 4(j) and in the broader context of a statute designed to protect archaeological resources. This provision is interpreted to apply to qualified persons acting on behalf of the State, such as a State Archaeologist, a member of the State Historic Preservation Officer's staff, or staff of a State educational institution such as a university or museum. Several other comments questioned whether permits requested by a Governor could be issued for Indian lands, and whether notification procedures with regard to Indian cultural or religious sites would apply. Permits for Indian lands may be issued in response to a Governor's request. However, such requests are subject to the consent provisions of section 4(g)(2) of the Act. Notification provisions of section 4(c) of the Act also apply. These provisions are incorporated in the regulations in §§ —.8(a)(5) and —.7 respectively.

The proposed rules included information in § 1215.4(c) that permits other than those required in these regulations might be needed. The several comments addressing this paragraph indicated that more confusion than information was imparted. The proposed paragraph (c) was included to insure public awareness that there are other general and specific authorities answered to by various Federal land managers which might have prohibitions or permit requirements for certain activities or in regard to material items which do not meet the tests for "archaeological resource" under the Act or these regulations. The confusion was compounded by mention that special use permits might be required for non-collecting or non-disturbing activities, which was intended as an example, but which was interpreted in a number of different ways by commentators. The new § —.5(e) is a more straightforward expression of caution to the public to consider consulting with the Federal land manager before assuming that no permit is needed. The terminology which contributed to this confusion has been dropped.

*§ 1215.5 Application for Permits (Renumbered § —.6; Retitled "Application for Permits and Information Collection).*

This section received relatively little comment, and stands as proposed with only minor rewording. Several of the comments suggested adding specific provisions which are adequately covered in other sections of the regulations. Some recommended useful policy provisions which were considered more appropriate to agency-specific regulations under section 10(b) of the Act than to these uniform regulations. A few comments ran counter to provisions of the Act and were rejected. One comment recommended that "copies of" be inserted ahead of "records, data, photographs, and other documents," and this was done.

*§ 1215.6 Consideration of Indian Tribal Religious and Cultural Concerns (Renumbered § —.7; Retitled "Notification to Indian Tribes of Possible Harm to, or Destruction of, Sites on Public Lands Having Religious or Cultural Importance).*

This section received the second largest number of comments, and involved more of the task force's review and discussion time than any other section. Several of the proposed provisions proved very controversial, and while commentators' opinions were usually cleanly divided, evaluation was made more difficult by the frequent recognition that both sides in polar arguments had equal strength and validity. Upon review it was concluded that the proposed section had suffered from overspecification, and that the most satisfactory resolution of the consequent problems is to return to language more nearly tracking the Act, leaving the closer specification to agency regulations under section 10(b) of the Act.

Some general discussion of the Act's provisions is necessary before explaining the changes that were made in the final regulations. Section 4(c) of the Act provides that:

If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

Section 10(a) of the Act, the statutory basis for these regulations, also specifies that "Such rules and regulations may be promulgated only

after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996)," a charge acknowledged in § —.1(a) of these regulations.

The American Indian Religious Freedom Act (AIRFA) established a Federal policy to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians, their right of freedom to believe, express, and exercise their traditional religions. There are fundamental differences between traditional tribal religions and the more common religions of the larger American society. These differences are described in the report submitted by the President to the Congress pursuant to section 2 of AIRFA. One of the most important characteristics of traditional tribal religions is reverence for the natural world, upon which traditional tribal cultures depend. Specific places may have special religious significance for reasons such as the presence of shrines, cemeteries, vision quest sites, or plants and animals that have religious significance. In enacting AIRFA, the Congress recognized that infringements of religious freedom for traditional Native Americans have resulted in part from lack of knowledge and from the insensitive and inflexible enforcement of Federal policies and regulations. Section 4(c) of the Act and the reference to AIRFA are interpreted to seek to preclude lack of knowledge and insensitive policies and regulations with respect to issuance of permits under the Act.

Section —.7 of these regulations establishes a substantially revised process by which Federal land managers will provide the required notification and consider tribal religious and cultural concerns which may be affected by the issuance of permits under these regulations. In carrying out this process Federal land managers may meet with tribal representatives to discuss tribal interests. Opportunities for tribal representatives to present their views orally will generally result in better communication between tribes and Federal land managers than will exclusive reliance on written communication. Any mitigation or avoidance measures which are adopted as a result of such consultation will be incorporated into terms and conditions of permits.

A number of comments addressed the provisions in the proposed paragraph (a)(1) for providing notice to Indian tribes having a reservation within 200 miles of the proposed permit area, suggesting alternatively that the distance was too great, not great

enough, or irrelevant. The intent of the 200-mile radius was to improve the probability that affected tribes would receive notice. However, as comments pointed out, the provision would have been burdensome for Federal land managers to administer, and in some parts of the country it would have resulted in tribes routinely receiving notice for areas in which they have no particular interest, creating a burden also for them. As one commentator noted, in light of the removal of many Indian tribes to areas distant from their aboriginal territories, it might also have led inadvertently to failure to notify those tribes which have interests but presently reside more than 200 miles away, notwithstanding proposed paragraph (a)(2), which would have caused other Indian tribes known or believed to have interests to be notified.

The final regulations do not retain the 200-mile provision. Instead, paragraph (b)(1) requires the Federal land manager to identify those tribes which have aboriginal or historic ties to particular units of Federal land and to initiate communication with those tribes to determine the location and nature of sites of religious or cultural importance on those lands. Once such information is compiled, if an application for a permit is received for an area which a tribe has identified as important, and the Federal land manager determines that activities proposed in the application might affect religious or cultural sites, that tribe would receive notice of the application.

Several commentators, including some Indian tribes, expressed support for the development of a national inventory of tribal religious and cultural sites on public lands. Paragraph (a)(5) of the proposed rules provided that any such central listing, which may be established by the Secretary of the Interior under the Act or under other authority, would be consulted for notification purposes. However, it was concluded that these uniform regulations are not the appropriate place to stimulate policy options on the part of any single agency. Moreover, reference to an as yet undeveloped program proved confusing. The provision was therefore dropped from the final regulation.

Several commentators pointed out that there are some cases of conflicts between archaeological interests and Indian tribal religious or cultural interests which are irreconcilable. Particular concern was expressed regarding the treatment of Native American graves, grave offerings, cemeteries, and cremation sites, since practices surrounding disposal of the

dead are an integral part of Native American religion. A number of commentators recommended that conflicts between the conduct of archaeology and Native American religious concerns could be reduced by removing graves, human skeletal remains, and related items from the definition of "archaeological resource." This recommendation was rejected for two reasons. First, the Congress explicitly included graves and human skeletal remains in the statutory definition of "archaeological resource," in section 3(1) of the Act. Second, listing items in the definition of "archaeological resource" in these regulations is not done for the purpose of limiting what archaeologists may find to be of interest or the discipline of archaeology may choose as its subject matter. Rather, the definition supplies the basis for enforcing the penalty provisions of the Act. If graves and human skeletal remains were excluded from coverage under the Act, there would be no penalties under the act for their unpermitted disturbance. Because of the notification requirement of § —.7 and its relationship to terms and conditions under § —.9(c) of these regulations, tribal religious and cultural concerns relative to graves and human remains can have an important role in limiting permitted work to that which is not in conflict with religious beliefs or cultural practices.

Several commentators suggested that the Federal land manager should be required to exclude any site of tribal religious or cultural importance from the area embraced by a permit, on the basis of guarantees of religious freedom in the First Amendment and the American Religious Freedom Act. This recommendation is not adopted, since Federal land managers are bound by constitutional standards regardless of the wording of these regulations, and since the application of constitutional standards to specific cases depends on specific fact situations. These regulations set forth a mechanism for Federal land managers to make contact with Indian tribes, notifying them of possible conflicts arising from permit applications and responding to requests for consultation, and to incorporate in terms and conditions of the permit any mitigation or avoidance measures adopted as a result of consultation.

Several comments reflected concern about the confidentiality of information regarding the location of tribal religious and cultural sites. Desecration of sites has occurred in the past, and many Indians view disclosing the location of a site as inviting desecration. In some

instances, disclosing the location of a site is prohibited by tribal religious teachings. Under provisions of the Act and these regulations, Indian tribes may find themselves in the uncomfortable position of having to act counter to their preferences or beliefs by confiding locational information to the Federal land manager, aware that the Federal land manager's legal authority to withhold information from the public may be limited, or to remain silent in the expectation of harm or destruction from activity authorized under a permit. The Federal land manager is bound by the Freedom of Information Act to disclose agency records formally requested, unless the information is subject to an exemption. Two exemptions may apply to some Indian religious or cultural sites. If such sites are also archaeological resources, or coincide in location with archaeological resources, the Federal land manager may hold their location and nature confidential under section 9 of the Act (and § —.18 of these regulations). If they are included in or eligible for inclusion in the National Register of Historic Places, the Federal land manager may withhold information under section 304 of the National Historic Preservation Act. But if neither of these exemptions applies, the Federal land manager may be required to disclose such information in response to a Freedom of Information Act request if it is part of the agency's records. Indian tribes must decide for themselves whether and how to participate in Federal land managers' attempts to determine whether lands under their jurisdiction contain sites of religious or cultural concern to Indian tribes.

Notification of Indian tribes depends to some degree on the definition of "Indian tribe" in the Act and the regulations. Several commentators disagreed with the proposed definition, which used Federal recognition as a determining criterion, because the Act did not refer to Federal recognition. The Act defines "Indian tribe," in part, as "any Indian tribe, band, nation, or other organized group or community." This definition leaves uncertainty as to which social groups of American Indian heritage a Federal land manager might determine to constitute an Indian tribe for purposes of notification. In general, "Indian tribe" as used by the Federal government is a term of art which implies a government-to-government relationship. For groups of Indians which have maintained tribal or other identity, but which are not federally recognized as Indian tribes, a process has been established by the Bureau of Indian Affairs by which they may attain

acknowledgment of tribal status. The definition of "Indian tribe" was expanded slightly, to include also Native Alaska villages or tribes eligible to receive services of the Bureau of Indian Affairs, but was otherwise not changed. The response to concerns that are recognized groups would not be included in notifications was to require the Federal land manager to identify and communicate with federally recognized tribes which have aboriginal or historic ties to involved Federal lands, and also to encourage the Federal land manager to identify and communicate with other groups with similar ties, even though they do not have recognition status. Further, unrecognized groups may identify themselves and initiate communication with the Federal land manager.

Several commentors addressed a related issue, whether tribal governments are always capable of representing the interests of tribal members who practice traditional tribal religions. Factional divisions may exist among some Indian tribes, and some practitioners of traditional religions either may not recognize the legitimacy of tribal governments or may not view their tribal governments as being concerned for traditional religious interests. Notwithstanding these possibilities, the regulations must reflect the requirement of section 4(c) of the Act for the Federal land manager to provide notice to affected tribes. The most practical way for initial contact of this kind is through the government-to-government relationship discussed above, and it is appropriate that notice should be provided to the chief executive officer of the tribal governing body. The issue of adequate representation of religious views is a matter best addressed within the tribes themselves. The final regulations include language in § 7(a)(1) encouraging Indian tribes to designate a tribal official who will be the focal point for any notification and discussion, and this may be a person well versed in the traditional tribal religion.

A number of comments addressed various parts of the Act and the proposed regulations which might be applied differently on Indian lands than they would be on public lands. For example, one commentor suggested that Indian tribes might be delegated the permitting role of the Federal land manager for archaeological work on Indian reservations. Another questioned the implications and applicability of the savings provisions in section 12 of the Act to Indian lands, and another noted

that the Indian landowner consent provisions might be difficult to implement where a permit application involves allotted lands in which numerous persons hold fractional interests. Since these and similar Indian-related issues in need of clarification fall within the implementation responsibilities of the Secretary of the Interior, rather than applying to all Federal land managers, they would best be treated in the regulations to be prepared by the Secretary of the Interior under sections 5 and 10(b) of the Act.

Finally, several commentors suggested that the proposed 45-day period which tribes were to be allowed for responding to notices is too long and would unnecessarily delay issuance of permits. One tribe commented that 45 days is too short a period. In the final regulations the time period is revised to 30 days, which is considered to be a reasonable time period that will not cause unnecessary delay, and will give Indian tribes adequate opportunity to respond that they do have concerns. The specified time period does not require that the Federal land manager issue a permit 30 days after giving notice to an Indian tribe, whether or not concerns are raised, but rather requires that the Federal land manager allow 30 days for Indian tribes to respond. Any further consultation and consideration may occupy additional time without regard to the 30-day response period.

#### *§ 1215.7 Issuance of Permits (Renumbered §—8).*

This section also drew a substantial volume of comments, many of them from archaeologists and others with professional interests in permit issuance under the Act. The section establishes the standards under which Federal land managers will exercise their discretion in determining whether or not to issue permits. It includes provisions for determining applicants' qualifications and the appropriateness of work proposed, and for insuring that collections and records will be cared for properly. It also provides that review of permit applications which overlap jurisdictional boundaries will be coordinated among the Federal land managers involved.

Paragraph (a) was expanded to include reference to the duration of permits. This change is addressed under discussion of proposed § 1215.8.

Paragraph (a)(1) was reworded slightly in response to one comment, changing "theoretical and methodological design" to "archaeological theory and methods," because the intent of the original phrasing was not clear. The revised

wording is intended to incorporate all pertinent aspects of the art and science of archaeology. One commentor recommended that a paragraph be added, among minimum qualifications, to specify managerial capabilities not necessarily demonstrated through the proposed provisions. This suggestion was incorporated essentially as submitted, as paragraph (a)(1)(ii).

Several commentors addressed paragraph (a)(1)(i) of the proposed rules, which requires, alternatively, a graduate degree in anthropology or archaeology, or equivalent training and experience. A number of commentors took the viewpoint that historians should be specified as eligible to receive permits to conduct historical archaeological work. It is recognized that not all qualified persons practicing archaeology in the United States possess graduate degrees in anthropology or archaeology, and the provision was intentionally left open for persons who have attained qualifications through training and experience not leading to a graduate degree in anthropology or archaeology. Persons in this category may be historians, or they may represent any of a number of other educational backgrounds. The original provision was left unchanged. It should be noted that not all persons holding graduate degrees in anthropology or archaeology would meet the minimum qualifications for a permit under these regulations.

One comment suggested that a single authority in each State, such as the State Archaeologist, be established as the official who determines that individuals meet qualification requirements. Under section 4 of the Act, the Federal land manager has the responsibility for determining an applicant's qualifications, pursuant to uniform regulations. It would be an inappropriate delegation of authority for any Federal land manager to rely fully on an outside source for such judgments, but it is possible that such consultation could aid the Federal land manager in reaching decisions. The way that the Federal land manager carries out the responsibility to determine qualifications is open in the Act, and it is left open in these regulations.

Paragraph (a)(2), addressing the public interest purpose of proposed work, has been expanded to clarify that the public interest may be met under either of two general categories, scientific or scholarly research such as might be conducted under a research grant, or preservation or archaeological data such as might be required to mitigate the effects of a competing land use. Several comments expressed concern about the

limits of the "management plan" in paragraph (a)(3). One commentator pointed out that while "management plan" is apparently intended in a general sense, the phrase has different specific meanings among different federal agencies. The provision was expanded to make it clear that the phrase is not intended to apply in any narrow sense that would hamper the Federal land manager from following existing management commitments. A new paragraph (a)(4) provides that compliance with historic preservation law satisfies the requirements of paragraphs (a)(2) and (a)(3).

It should be noted that the language in paragraph (a)(5) differs somewhat from the language of the Act in section 4(g)(2), regarding Indian landowner consent. The wording used was suggested by the Bureau of Indian Affairs and the Office of the Solicitor, Department of the Interior, and appeared in the proposed rule. The reason for changing the statutory language is that allotted Indian land is, in most instances, subject to the regulatory authority of an Indian tribal government. In order to protect the interests of both Indian landowners and tribal governments, these regulations provide clear guidance that the consent of both the Indian landowner(s) and the tribal government having jurisdiction over such allotted lands will be required. In many cases in which there is not tribal government jurisdiction over specific allotted lands, only the consent of the Indian landowner(s) will be required. Further clarification of this issue will be provided in regulations issued by the Secretary of the Interior pursuant to section 10(b) of the Act.

A few comments were received on proposed paragraph (a)(6), which required certification that materials and records would be turned over to the repository not later than the date of submission of the final report to the Federal land manager. Several commentators suggested that a period of 90 days be allowed, which was done in the new paragraph (a)(7). One recommended that the regulations recognize that not all specialized samples should be kept at the same repository, and that some samples are destroyed or altered during analysis (such as pollen, dendrochronology, radiocarbon, and thermoluminescence samples). The validity of this recommendation is acknowledged, and the new paragraph (a)(6) has been changed slightly to allow that more than one repository might be proposed, substituting "any" for "the." This ties indirectly with a new provision in §—13(d), mentioned below under

discussion of proposed § 1215.13. Records accompanying the samples and other materials can satisfactorily account for destroyed or altered samples. Also, there is nothing in these regulations to bar Federal land managers and permittees from reaching agreement on special exceptions to the general provisions regarding preservation of materials and data.

Several commentators pointed out inappropriate differences between proposed paragraphs (a)(6)(i) and (ii). The differences were due to a proofreading oversight and have been corrected in the new paragraphs (a)(7)(i) and (ii).

Paragraph (b) was not clear to several commentators. The intent of the provision is to ensure that when permits would be required from more than one Federal land manager, the resulting permits would not be unnecessarily dissimilar. As a hypothetical example, an archaeologist might propose to carry out settlement and subsistence research by conducting survey and test excavations throughout the watershed area of a small tributary to a major river in the western United States, wherein the lower elevations are managed by one agency, and the higher ground is managed by another. The applicant would submit applications for two permits, making each agency aware of the other's involvement. In accordance with the reworded provision of paragraph (b), the Federal land managers involved would be required to coordinate the review and evaluation of the applications and the issuance of the permits. Because of the coordination, the terms and conditions of the permits should be similar or identical. While it is not provided for in these regulations, it might be within the discretionary latitude of the Federal land managers to agree to combine two (or more) permits which might be issued under such circumstances into a single permit issued jointly.

Several commentators suggested that the time between receipt of an application and a decision should be governed by a 30- or 60-day decision requirement placed on the Federal land manager. No time limits were imposed in these uniform regulations, because of the need to accommodate internal management requirements which vary from agency to agency. In addition, it is necessary to allow adequate time for Federal land managers to consider Indian tribal concerns pursuant to §—7, when applicable. However, timeliness of action in response to permit applications is highly important, and Federal land managers should ensure that review and

evaluation time are held to the minimum needed.

#### *§ 1215.8 Time Limits of Permits—Deleted.*

This section proposed that permits could be issued for up to a 3-year period, could be extended for up to 4 months, could be renewed, and would be reviewed annually if issued for a period greater than 1 year. Because specific time limits are most appropriately determined on a case by case basis, the maximum limit was changed to "a specified period of time appropriate to the work to be conducted" and inserted in §—8(a). An extension provision was included as §—9(f), and an annual review provision as §—9(g). There is no limit on the number of times a permit can be extended, and thus there is no provision for renewal.

#### *§ 1215.9 Terms and Conditions of Permits (Renumbered §—9).*

This section was the subject of relatively few comments, of which nearly half pertained to accounting for Indian concerns. Paragraph (c) dealt with terms and conditions requested by Indian tribes or Indian landowners for work on Indian lands. In response to comments, the paragraph was expanded to apply also to public lands, tying in with the consultation process under §—.7.

One comment recommended insertion of "and required" in paragraph (a)(1), which was done. One suggested that the type of security referenced in paragraph (d) should be specified. The permissive wording of paragraph (d), which would have allowed the Federal land manager to require security, was not drawn from provisions of the Act. Also, circumstances which might necessitate the posting of bond or other security would be rare. Although the provision was deleted from the final regulations, its deletion does not prevent Federal land managers from requiring security.

One commentator suggested new language to specify that individuals named in a permit would not be released from responsibility under a permit in the event of reassignment or separation until all outstanding obligations had been satisfied. A new paragraph (e) was inserted in response to the suggestion, with one important change. In some instances the individuals named in a permit, who are responsible for conducting the work and/or carrying out the permit's terms and conditions, are working on behalf of an institutional or corporate permittee. In such a case, it is the permittee, not named individuals, that is responsible to

the Federal land manager for meeting permit requirements. Accordingly, paragraph (e) requires that the permittee, rather than named individuals, not be released from terms and conditions until obligations have been satisfied, whether or not the permit remains in force. Roles of individuals named in a permit are integral parts of the terms and conditions of a permit, and any change in their involvement in the work authorized, without the Federal land manager's prior approval, might warrant suspension or revocation of the permit.

*§ 1215.10 Suspension, Revocation and Termination of Permits (Renumbered §—10; retitled "Suspension and revocation of permits").*

Few comments were offered on this section. The section was restructured to clarify the "program purposes" provision in the original version, and to adhere more closely to the statutory language in section 4(f) of the Act.

*§ 1215.11 Compliance With Regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) (Renumbered §—12; Retitled "Relationship to Section 106 of the National Historic Preservation Act").*

The order of this section and the section on appeals was reversed, to move the latter into a logically more appropriate proximity to the sections addressed. This section was retitled, since it is not within the scope of these regulations to require compliance with any statute other than the Act or with regulations other than pertaining to the Act.

Section 4(i) of the Act provides: "Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966." This simple statement has occasioned wide misunderstanding and overextension. Some commentators believed that issuance of a permit under this part would eliminate the requirement for section 106 compliance with respect to all land uses associated with the permit. Others felt that eliminating section 106 compliance in any way would be inappropriate. Some explanation is in order.

Permits under this part will be issued under essentially two sets of circumstances. The first is where the applicant proposes to conduct archaeological investigations for purely academic or research purposes. Under section 4(i) of the Act, issuance of a permit for this purpose will not require section 106 compliance. Since there is nothing in the Act or its legislative

history which indicates a different intent, it is beyond the scope of this rulemaking to change the plain meaning of section 4(i).

The second set of circumstances under which permits may be issued pursuant to this part relates to archaeological work required by the Federal land manager under other resource protection statutes (see related discussion under proposed § 1215.14, below). On occasion, archaeological investigations may be required as part of the section 106 compliance process carried out by the Federal land manager prior to authorizing a land-use request. Such investigations will require a permit under this part. Issuance of the permit itself does not and should not require duplication of section 106 compliance procedures. However, the mere fact that a permit will be required as part of the process does not affect the applicability of section 106 to the Federal land manager's proposed authorization of the land use.

As a hypothetical example, utility company might apply for the grant of a right-of-way across public lands to construct an electrical power distribution line. Lacking availability of archaeological staff to respond in a timely manner, the Federal land manager might request the company to provide information about the presence or absence and significance of archaeological resources within the area of the proposed construction project. The company would then retain an archaeological consultant, who would apply to the Federal land manager for a permit, under the Act and these regulations, to conduct archaeological survey and test excavations in the project area. If the consultant met qualification requirements, the Federal land manager would issue a permit without considering this action, in and of itself, to be subject to section 106 compliance procedures. The consultant would conduct the permitted work and submit a report to the company, which would then submit the report to the Federal land manager as requested. If the report were to show that archaeological resources are present in the proposed project area, the Federal land manager would consider the applicability of section 106 before reaching a decision to authorize the right-of-way. The issuance of a permit under the Act and these regulations would be an action substantially independent from the larger requirement of section 106 compliance with regard to Federal authorization of the proposed right-of-way.

Alternatively, had the Federal land manager already possessed sufficient

information, so that no request to the company would have been necessary, and had that information shown that an archaeological property, eligible for the National Register of Historic Places, would be intersected by the proposed right-of-way, there would be no question about the need to comply with section 106. Whether or not a permit is issued under the Act and these regulations, the Federal land manager's responsibility to determine the effects of a proposed undertaking on eligible or listed National Register properties remains unchanged.

*§ 1215.12 Appeals Relating to Permits (Renumbered §—11).*

Very few comments addressed this section. It was revised slightly for clarity. Since many agencies already have appeal procedures, no attempt was made to establish standard appeal procedures in these uniform regulations.

*§ 1215.13 Custody of Archaeological Resources (Renumbered §—13).*

Among the relatively few comments on this section several pertained to tightening or loosening the ownership provisions. Paragraphs (a) and (b) have an information function; ownership is not subject to regulation under the Act.

A new paragraph (d) was added to give Federal land managers the latitude to provide for exchange of materials among appropriate repositories until such time as the Secretary of the Interior may promulgate the regulations provided for in section 5 of the Act. This ties in with provisions mentioned above, under discussion of proposed § 1215.7, for allowing materials to be housed in more than one repository.

One commentator, representing a State museum, saw a need to protect reputable repositories from committing a technical violation of section 6 of the Act, through "receiving" archaeological resources which might have been removed illegally from public lands or Indian lands. Under the Act, receiving archaeological resources, removed from public lands or Indian lands in violation of the permit requirement in the Act or these regulations, is itself a violation. However, a university, museum, or other institution should be free to receive such resources, in the same sense of taking temporary custody on behalf of a Federal land manager or Indian tribe, so long as the appropriate Federal land manager or Indian tribe is given prompt notification. Such notification would be evidence of a lack of intent to violate the Act, thereby eliminating an essential element of a criminal violation. And although intent need not be established

for imposing civil penalties, Federal land managers would not be expected to seek civil penalties under such circumstances. Nevertheless, no provision has been added to extend the requested protection to museums. First, the regulations do not apply to criminal prosecutions; and second, with respect to civil penalties, it was deemed unwise to waive civil penalties by regulation for all persons who might return archaeological resources illegally removed or excavated from public lands or Indian lands, and unfair to waive penalties for certain institutions only. Such matters are best left to discretion, to be handled on a case-by-case basis.

**§ 1215.14 Prohibited Acts (Renumbered §—4).**

In the proposed rules, this section included all prohibitions from section 6 of the Act. The final regulations include only those prohibitions relating to permit requirements or for which civil penalties are provided in these regulations. The application of civil penalties to persons engaged in trafficking in archaeological resources in interstate or foreign commerce in violation of State or local law is not practical or appropriate due to the manner in which civil penalties must be assessed. Consequently, the prohibition against such trafficking, proposed paragraph (c), was deleted. The section was moved to occupy a new place ahead of the permit sections, since its prohibitions are the basis for the permit sections.

**§ 1215.15 Criminal Penalties—Deleted.**

Because criminal prosecution will be pursued independently from these regulations, the criminal penalties section was dropped. The Act should be consulted for information on criminal penalties which the courts may impose.

**§ 1215.16 Determination of Archaeological or Commercial Value and Cost of Restoration and Repair (Renumbered §—14).**

Under both the criminal penalty and civil penalty sections of the Act, sections 6 and 7, penalty amounts are to be established in reference to two factors, the archaeological and commercial value of the archaeological resources involved in the violation and costs of restoration and repair. Several commentors were critical of the idea of using commercial value, since the importance of fair market value in the assessment of penalty amounts tends to lend a false legitimacy to the marketing of archaeological resources, and might promote illicit trade. However, through the use of commercial value to set

penalty amounts, persons who traffic in archaeological resources will find that their own price schedules are being used against them. In the long run, high prices translated into fines may be instrumental in discouraging illegal excavation, removal, and commerce. It is also important to have more than one measure for setting penalty amounts. Archaeological resources with very high dollar value might be removed under some circumstances without doing a great deal of damage to archaeological value, while conversely, extreme amounts of damage might be done to archaeological value for the sake of removing items which have very little market value. Archaeological value and commercial value as used in the Act and these regulations are enforcement tools; they are independent from concepts about the intrinsic worth of archaeological resources, whether those be based on scientific detachment, awe, aesthetics, or profit motive.

One commentor suggested application of cost-benefit analysis to costs of restoration and repair. This suggestion is inappropriate to determining a penalty amount. Such analysis might be used for management purposes, to help reach a decision about whether or not to proceed with restoration and repair, but to apply it to penalties could result in the least fine for the most destructive violation.

One comment proposed including the costs of reinterment of human remains according to tribal customs as part of the cost of restoration and repair. This proposal was incorporated in paragraph (c)(7).

**§ 1215.17 Assessment of Civil Penalties (Renumbered §—15).**

Several changes were made to this section in response to comments and for purposes of clarification and simplification.

The proposed regulations provided for three notices, a "notice of violation" (§ 1215.17(b)), a "notice of assessment" (§ 1215.17(c)), and a "notice of penalty" (§ 1215.17(g)). The first two, the notice of violation and notice of assessment, were to have been served either separately or concurrently. The purpose for proposing these two distinct notices was twofold. First, the notice of violation was viewed as an educational tool. The proposed regulations called for its issuance in "minor" offenses where the Federal land manager had already determined not to assess a civil penalty. Comments focusing on the "minor" offenses led to the recognition that issuance of a notice of violation under the civil penalty provisions, with no intention to follow through with civil penalty proceedings,

was inappropriate. If it is appropriate to use the civil penalty provisions in a non-punitive way, the proper procedure is to remit (i.e., cancel) or mitigate (i.e., lessen) the penalty assessed, as provided in the Act. References to remitting the penalty have therefore been inserted along with references to mitigation, and notices of violation in these final regulations are to be used only to initiate civil penalty proceedings.

The second purpose to be served by the two notices was to provide the Federal land manager a vehicle for serving a notice of violation before determination of the damages associated with the violation. However, the option of serving a notice of violation can be preserved by providing for a delayed notice of the proposed penalty amount, if necessary, without reference to a separate type of notice. Accordingly, the former notice of violation and notice of assessment have been combined into one notice, a "notice of violation," with an optional provision for a deferred notice of a proposed penalty amount. The former notice of penalty has been redesignated as the "notice of assessment."

The regulations were also restructured to de-emphasize the importance of the maximum penalty amount allowable. Using this amount to establish the initial proposed penalty amount in every violation was viewed as too inflexible and potentially too onerous on persons served with a notice of violation. The Federal land manager is therefore no longer required to determine the maximum penalty amount allowable for each violation, although care must be taken that no penalty assessed exceeds the statutory maximum.

**§ 1215.18 Civil Penalty Amounts (Renumbered §—16).**

In keeping with the decision to place less emphasis on the maximum penalty amount, the requirement to determine the amount was removed from this section. The maximum penalty amount is simply stated in paragraph (a), and paragraph (b) was relabeled "Determination of penalty amount, mitigation, and remission."

Among the several comments addressed to this section, a few suggested that there be no mitigation or remission of penalty amounts without the consent of the affected Indian tribe, where the violation occurred on Indian lands or affected a tribal religious or cultural site on public lands. This suggestion was not accepted because the Act charges the Federal land manager with determining civil penalty amounts. However, the final regulations

include new paragraphs (b)(2) and (b)(3) which provide for consultation with affected Indian tribes before making a decision to mitigate or remit a penalty, in order to enable the Federal land manager to achieve a more just result.

One comment recommended that tribal religious or cultural values which can be quantified by the affected Indian tribe should be considered in setting penalty amounts. This recommendation was not incorporated in the regulations, since it is but one potential example of "other factors" the Federal land manager is directed to take into account under Section 7(a)(2) of the Act. It should be noted that there may be opportunity for an Indian tribe to make damages known through provisions in (§ —.16(b) (2) and (3) of these regulations.

One commentor suggested that a uniform fixed schedule of fines should be established to apply to most civil violations, not just minor offenses. Fines and applicability criteria would be based on broad and easily determined categories of damage. This would simplify the task of the Federal land manager, and would place the burden on the violator to demonstrate that the statutory limits of "fair market value of resources destroyed or not recovered" and "costs of restoration and repair" are less than the proposed penalty. While this suggestion has merit, establishment of fixed penalty amounts in accordance with the statutory criteria could be best accomplished by agency regulations issued pursuant to section 10(b) of the Act or by other administrative action, after some experience in assessing civil penalties under the Act has been acquired.

A new criterion, § —.16(b)(1)(vi), was added to allow reducing a proposed penalty determined to be excessive under the circumstances.

*§ 1215.19 Forfeiture and Rewards (Renumbered § —.17; Retitled "Other Penalties and Rewards").*

There were several comments offering suggestions for clarifying forfeiture provisions. These are statutory provisions, and were included for information only. In order to allow the public to be aware that other penalties besides those detailed in these regulations might apply, the revised section includes reference to the sections of the Act pertaining to criminal prohibitions, criminal penalties, and forfeiture provisions. Forfeiture regulations may be issued by individual agencies pursuant to section 10(b) of the Act.

The rewards provisions remain essentially the same, with the addition

of a provision that persons who provide information in connection with having a civil penalty amount mitigated under (§ —.17(b)(3)(iii) shall not be eligible to receive a reward.

*§ 1215.20 Confidentiality of Archaeological Resource Information (Renumbered § —.18).*

This section closely follows the wording of section 9 of the Act. Several comments suggested changes which would have departed from statutory provisions. One commentor recommended that the wording be restated in a positive form, so as to encourage dissemination of knowledge, increase public appreciation, and promote a public conservation ethic. This is a very worthwhile suggestion, but it pertains more to the charge of the Secretary of the Interior under section 11 of the Act than to the protection of sensitive information. With some minor corrections, the section remains essentially as proposed.

*§ 1215.21 (Reserved)—Deleted.*

*§ 1215.22 Report (Renumbered § —.19).*

This section was left exactly as proposed. There were no comments.

*§ 1215.23 Interpretive Rulings—Deleted.*

The proposed section stated: "Each Federal land manager may publish from time to time, as an appendix to this part, statements of policy and legal opinions relating to the interpretation, enforcement, and implementation of the Act and this part." The section was deleted, since individual agency statements of policy or legal interpretation would not be binding on other agencies, and therefore should not be codified with these uniform regulations (see 44 U.S.C. 1510).

*The Issue of Metal Detector Use*

At the public hearings in March and April 1980 and during the commenting period, concern was expressed that the use of metal detectors and associated collector-hobbyist activities on public lands and Indian lands could be a major enforcement target of the Act and the regulations. Nothing in the Act or in these regulations addresses the use of metal detectors on public lands or Indian lands. In considering the legislation, Senator Dale Bumpers stated in the Congressional Record, "This legislation does not affect the use of metal detectors on public lands. If it is legal to use metal detectors currently, this act does not diminish that use. If it is illegal to use metal detectors, as in national parks, this act does not allow such use" (125 CR S14722, October 17,

1979). The same is true of these regulations. However, while the use of metal detectors is neither authorized nor prohibited by the Act and these regulations, unauthorized excavation of archaeological resources discovered while using metal detectors is prohibited on public lands and Indian lands. Also, it is important for users of metal detectors and others to be aware that there are other land management regulations and land use restrictions which govern activities on public lands and Indian lands.

Hobby collecting in various forms is engaged in by a large number of responsible persons, and such hobbyists are encouraged to work together with Federal land managers to deter resource destruction. To protect themselves from unintentionally violating any law or regulations, persons wanting to use public lands and Indian lands should obtain information regarding permissible activities from the Federal land manager's local representative. To the small percentage of collectors, treasure hunters, and metal detector users who destroy archaeological resources in violation of prohibitions, the Act and these regulations prescribe heavy criminal and civil penalties.

*Authorship*

These uniform rules were prepared by an interagency rulemaking task force composed of representatives of the Department of the Interior (Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, National Park Service, Office of the Solicitor); Department of Agriculture (Forest Service, Office of the Secretary); Department of Defense (Departments of Army, Navy, Air Force); and the Tennessee Valley Authority.

*Compliance With Other Authorities*

*Environmental Effects*

The Secretary of the Interior has prepared an Environmental Assessment on this rulemaking and has made a Finding of No Significant Impact pursuant to regulations of the Council on Environmental Quality implementing the National Environmental Policy Act (42 U.S.C. 4332). Copies of the Environmental Assessment and Finding of No Significant Impact are available for public review in the National Park Service's Washington Office.

*Economic Impact*

The Secretary of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193,

February 17, 1981), and would not have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (5 W.S.C. 601 *et seq.*). These determinations are based on findings that the rulemaking is primarily directed toward the management of Federal resources, with negligible or no impact on the general public, and with cumulative economic impact of less than \$100,000,000 per year.

#### Information Collection

The Office of Management and Budget has given approval for the information collection requirements in section—.6 of these regulations (Application for permits and information collection") pursuant to the Paperwork Reduction Act (44 U.S.C. 3507). The clearance number is 1024-0037.

#### Regulations Promulgation

The Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority are promulgating identical regulations on protection of archaeological resources and are codifying these regulations in their respective titles of the Code of Federal Regulations. Since the regulations are identical, the text of the regulations is set out only once at the end of this document. The part heading, table of contents, and authority citation for the regulations as they will appear in each CFR title precede the text of the regulations.

#### Approval

These regulations have been approved by the Secretary of Agriculture, the Secretary of Defense, the Secretary of Interior, and the Chairman of the Board of the Tennessee Valley Authority.

#### Department of the Interior (43 CFR Part 7)

##### List of Subjects in 43 CFR Part 7

Historic preservation, Monuments and memorials, Antiquities, Archaeology.

Title 43 of the Code of Federal Regulations is amended by adding Part 7 to read as follows:

#### PART 7—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

- Sec.
- 7.1 Purpose.
  - 7.2 Authority.
  - 7.3 Definitions.
  - 7.4 Prohibited acts.
  - 7.5 Permit requirements and exceptions.
  - 7.6 Application for permits, and Information Collection.
  - 7.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public

lands having religious or cultural importance.

- 7.8 Issuance of permits.
- 7.9 Terms and conditions of permits.
- 7.10 Suspension and revocation of permits.
- 7.11 Appeals relating to permits.
- 7.12 Relationship to section 103 of the National Historic Preservation Act.
- 7.13 Custody of archaeological resources.
- 7.14 Determination of archaeological or commercial value and cost of restoration and repair.
- 7.15 Assessment of civil penalties.
- 7.16 Civil penalty amounts.
- 7.17 Other penalties and rewards.
- 7.18 Confidentiality of archaeological resource information.
- 7.19 Report.

Authority: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa-11) (Sec. 10(a)). Related authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 88-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 83 Stat. 174 (1974); Pub. L. 89-635, 80 Stat. 915 (16 U.S.C. 470a-1), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 80 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2937 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1938). (OMB Control No.: 1024-0037)

J. Craig Potter,  
*Acting Assistant Secretary, Fish and Wildlife and Parks.*

#### Department of Agriculture, Forest Service (36 CFR Part 296)

##### List of Subjects in 36 CFR Part 296

Historic preservation, Monuments and memorials, Antiquities, Archaeology.

Title 36 of the Code of Federal Regulations is amended by adding Part 296 to read as follows:

#### PART 296—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

- Sec.
- 296.1 Purpose.
  - 296.2 Authority.
  - 296.3 Definitions.
  - 296.4 Prohibited acts.
  - 296.5 Permit requirements and exceptions.
  - 296.6 Application for permits and Information Collection.
  - 296.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.
  - 296.8 Issuance of permits.
  - 296.9 Terms and conditions of permits.
  - 296.10 Suspension and revocation of permits.
  - 296.11 Appeals relating to permits.
  - 296.12 Relationship to section 103 of the National Historic Preservation Act.
  - 296.13 Custody of archaeological resources.
  - 296.14 Determination of archaeological or commercial value and cost of restoration and repair.
  - 296.15 Assessment of civil penalties.
  - 296.16 Civil penalty amounts.
  - 296.17 Other penalties and rewards.
  - 296.18 Confidentiality of archaeological resource information.

#### 296.19 Report.

Authority: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa-11) (Sec. 10(a)). Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 88-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 83 Stat. 174 (1974); Pub. L. 89-635, 80 Stat. 915 (16 U.S.C. 470a-1), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 80 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2937 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1938). (OMB Control No.: 1024-0037)

Dated: October 24, 1983.

Douglas W. MacCleery,  
*Deputy Assistant Secretary for Natural Resources and Environment.*

#### Department of Defense (32 CFR Part 229)

##### List of Subjects in 32 CFR Part 229

Historic preservation, Monuments and memorials, Antiquities, Archaeology.

Title 32 of the Code of Federal Regulations is amended by adding Part 229 to read as follows:

#### PART 229—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

- Sec.
- 229.1 Purpose.
  - 229.2 Authority.
  - 229.3 Definitions.
  - 229.4 Prohibited acts.
  - 229.5 Permit requirements and exceptions.
  - 229.6 Application for permits, and Information Collection.
  - 229.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.
  - 229.8 Issuance of permits.
  - 229.9 Terms and conditions of permits.
  - 229.10 Suspension and revocation of permits.
  - 229.11 Appeals relating to permits.
  - 229.12 Relationship to section 103 of the National Historic Preservation Act.
  - 229.13 Custody of archaeological resources.
  - 229.14 Determination of archaeological or commercial value and cost of restoration and repair.
  - 229.15 Assessment of civil penalties.
  - 229.16 Civil penalty amounts.
  - 229.17 Other penalties and rewards.
  - 229.18 Confidentiality of archaeological resource information.
  - 229.19 Report.
- Authority: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa-11). (Sec. 10(a)). Related authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 88-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 83 Stat. 174 (1974); Pub. L. 89-635, 80 Stat. 915 (16 U.S.C. 470a-1), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 80 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2937 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1938).

(OMB Control No.: 1024-0037)

M. S. Healy,  
OSD Federal Register Liaison Officer,  
Department of Defense.

**Tennessee Valley Authority (18 CFR  
Part 1312)**

**List of Subjects in 18 CFR Part 1312**

Historic preservation, Monuments and  
memorials, Antiquities, Archaeology.

Title 18 of the Code of Federal  
Regulations is amended by adding Part  
1312 to read as follows:

**PART 1312—PROTECTION OF  
ARCHAEOLOGICAL RESOURCES:  
UNIFORM REGULATIONS**

Sec.

- 1312.1 Purpose.
- 1312.2 Authority.
- 1312.3 Definitions.
- 1312.4 Prohibited acts.
- 1312.5 Permit requirements and exceptions.
- 1312.6 Application for permits, and  
Information Collection.
- 1312.7 Notification of Indian tribes of  
possible harm to, or destruction of, sites  
on public lands having religious or  
cultural importance.
- 1312.8 Issuance of permits.
- 1312.9 Terms and conditions of permits.
- 1312.10 Suspension and revocation of  
permits.
- 1312.11 Appeals relating to permits.
- 1312.12 Relationship to section 106 of the  
National Historic Preservation Act.
- 1312.13 Custody of archaeological  
resources.
- 1312.14 Determination of archaeological or  
commercial value and cost of restoration  
and repair.
- 1312.15 Assessment of civil penalties.
- 1312.16 Civil penalty amounts.
- 1312.17 Other penalties and rewards.
- 1312.18 Confidentiality of archaeological  
resource information.
- 1312.19 Report.

Authority: Pub. L. 96-85, 93 Stat. 721 (16  
U.S.C. 470aa-11) (Sec. 10(a)). Related  
authority Pub. L. 59-209, 34 Stat. 225 (16  
U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220,  
221 (16 U.S.C. 469), as amended, 88 Stat. 174  
(1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C.  
470a-1), as amended, 84 Stat. 204 (1970), 87  
Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat.  
3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-  
341, 92 Stat. 469 (42 U.S.C. 1996).

(OMB Control No.: 1024-0037)

Dated: December 15, 1983.

C. H. Dean, Jr.  
Chairman.

**§—1 Purpose.**

(a) The regulations in this part  
implement provisions of the  
Archaeological Resources Protection  
Act of 1979 (16 U.S.C. 470aa-11) by  
establishing the uniform definitions,  
standards, and procedures to be  
followed by all Federal land managers  
in providing protection for

archaeological resources, located on  
public lands and Indian lands of the  
United States. These regulations enable  
Federal land managers to protect  
archaeological resources, taking into  
consideration provisions of the  
American Indian Religious Freedom Act  
(92 Stat. 469; 42 U.S.C. 1996), through  
permits authorizing excavation and/or  
removal of archaeological resources,  
through civil penalties for unauthorized  
excavation and/or removal, through  
provisions for the preservation of  
archaeological resource collections and  
data, and through provisions for  
ensuring confidentiality of information  
about archaeological resources when  
disclosure would threaten the  
archaeological resources.

(b) The regulations in this part do not  
impose any new restrictions on  
activities permitted under other laws,  
authorities, and regulations relating to  
mining, mineral leasing, reclamation,  
and other multiple uses of the public  
lands.

**§—2 Authority.**

(a) The regulations in this part are  
promulgated pursuant to section 10(a) of  
the Archaeological Resources Protection  
Act of 1979 (16 U.S.C. 470ii), which  
requires that the Secretaries of the  
Interior, Agriculture and Defense and  
the Chairman of the Board of the  
Tennessee Valley Authority jointly  
develop uniform rules and regulations  
for carrying out the purposes of the Act.

(b) In addition to the regulations in  
this part, section 10(b) of the Act (16  
U.S.C. 470ii) provides that each Federal  
land manager shall promulgate such  
rules and regulations, consistent with  
the uniform rules and regulations in this  
part, as may be necessary for carrying  
out the purposes of the Act.

**§—3 Definitions.**

As used for purposes of this part:

(a) "Archaeological resource" means  
any material remains of human life or  
activities which are at least 100 years of  
age, and which are of archaeological  
interest.

(1) "Of archaeological interest" means  
capable of providing scientific or  
humanistic understandings of past  
human behavior, cultural adaptation,  
and related topics through the  
application of scientific or scholarly  
techniques such as controlled  
observation, contextual measurement,  
controlled collection, analysis,  
interpretation and explanation.

(2) "Material remains" means physical  
evidence of human habitation,  
occupation, use, or activity, including  
the site, location, or context in which  
such evidence is situated.

(3) The following classes of material  
remains (and illustrative examples), if  
they are at least 100 years of age, are of  
archaeological interest and shall be  
considered archaeological resources  
unless determined otherwise pursuant to  
paragraph (a)(4) or (a)(5) of this section:

(i) Surface or subsurface structures,  
shelters, facilities, or features (including,  
but not limited to, domestic structures,  
storage structures, cooking structures,  
ceremonial structures, artificial mounds,  
earthworks, fortifications, canals,  
reservoirs, horticultural/agricultural  
gardens or fields, bedrock mortars or  
grinding surfaces, rock alignments,  
cairns, trails, borrow pits, cooking pits,  
refuse pits, burial pits or graves, hearths,  
kilns, post molds, wall trenches,  
middens);

(ii) Surface or subsurface artifact  
concentrations or scatters;

(iii) Whole or fragmentary tools,  
implements, containers, weapons and  
weapon projectiles, clothing, and  
ornaments (including, but not limited to,  
pottery and other ceramics, cordage,  
basketry and other weaving, bottles and  
other glassware, bone, ivory, shell,  
metal, wood, hide, feathers, pigments,  
and flaked, ground, or pecked stone);

(iv) By-products, waste products, or  
debris resulting from manufacture or use  
of human-made or natural materials;

(v) Organic waste (including, but not  
limited to, vegetal and animal remains,  
coprolites);

(vi) Human remains (including, but  
not limited to, bone, teeth, mummified  
flesh, burials, cremations);

(vii) Rock carvings, rock paintings,  
intaglios and other works of artistic or  
symbolic representation;

(viii) Rockshelters and caves or  
portions thereof containing any of the  
above material remains;

(ix) All portions of shipwrecks  
(including, but not limited to,  
armaments, apparel, tackle, cargo);

(x) Any portion or piece of any of the  
foregoing.

(4) The following material remains  
shall not be considered of  
archaeological interest, and shall not be  
considered to be archaeological  
resources for purposes of the Act and  
this part, unless found in a direct  
physical relationship with  
archaeological resources as defined in  
this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked  
minerals and rocks.

(5) The Federal land manager may  
determine that certain material remains,  
in specified areas under the Federal  
land manager's jurisdiction, and under  
specified circumstances, are not or are

no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such determination shall in no way affect the Federal land manager's obligations under other applicable laws or regulations.

(b) "Arrowhead" means any projectile point which appears to have been designed for use with an arrow.

(c) "Federal land manager" means:

(1) With respect to any public lands, the secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands, including persons to whom such management authority has been officially delegated;

(2) In the case of Indian lands, or any public lands with respects to which no department, agency or instrumentality has primary management authority, such term means the Secretary of the Interior;

(3) The Secretary of the Interior, when the head of any other agency or instrumentality has, pursuant to section 3(2) of the Act and with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.

(d) "Public lands" means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, except lands on the Outer Continental Shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

(e) "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) "Indian tribe" as defined in the Act means any Indian tribe, band, nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the Federal Register by the

Secretary of the Interior pursuant to 25 CFR Part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

(g) "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(h) "State" means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(i) "Act" means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-11.).

#### §—4 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § —.8 or exempted by § —.5(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

#### §—5 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal land manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal land manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § —.8(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting

activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal land manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1908 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1908 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1908 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal land manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of §—.6. However, the Federal land manager shall insure that provisions of §—.8 and

§—9 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal land manager, have been the subject of consideration under §—7.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of §—5(b)(5), §—7, §—8(a)(3), (4), (5), (6), and (7), §—9, §—10, §—12, and §—13(a) to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal land manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of public lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands or Indian lands any activities related to but believed to fall outside the scope of this part should consult with the Federal land manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

**§—6 Application for permits and information collection.**

(a) Any person may apply to the appropriate Federal land manager for a permit to excavate and/or remove archaeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in §—8(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, or willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal land manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) *Paperwork Reduction Act.* The information collection requirement contained in § —6 of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the

management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

**§ —7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.**

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such a permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § —9.

(4) When the Federal land manager determines that a permit applied for under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on

sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Federal land manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

#### §—8 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and

(v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the public lands or Indian lands, and the proposed work has been agreed to in writing by the Federal land manager pursuant to section 103 of the National Historic Preservation Act (16 U.S.C. 470j), paragraphs (a)(2) and (a)(3) shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal land manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional

boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land manager shall coordinate the review and evaluation of applications and the issuance of permits.

#### §—9 Terms and conditions of permits.

(a) In all permits issued, the Federal land manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal land manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on public lands shall include such terms and conditions as may have been developed pursuant to §—7.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal land manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal land manager, at least annually.

#### §—10 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.* (1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the

permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or §—4. The Federal land manager shall provide written notice to the permittee of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal land manager may revoke a permit upon assessment of a civil penalty under §—15 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal land manager may suspend or revoke a permit, without liability to the United States, its agents, or employees, when continuation of work under the permit would be in conflict with management requirements in effect when the permit was issued. The Federal land manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

#### §—11 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal land manager pursuant to section 10(b) of the Act and this part.

#### §—12 Relationship to Section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal land manager from compliance with section 106 where otherwise required.

#### §—13 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations providing for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition

of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

(d) In the absence of regulations referenced in paragraph (c) of this section, the Federal land manager may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Federal land manager.

#### §—14 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § —4 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § —4 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

- (1) Reconstruction of the archaeological resource;
- (2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.

(8) Preparation of reports relating to any of the above activities.

#### §—15 Assessment of civil penalties.

(a) The Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in §—4 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Federal land manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal land manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount,

if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal land manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal land manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Federal land manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal land manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with §—16.

(f) *Notice of assessment.* The Federal land manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in §—16 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. § 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal land manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal land manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely

request for appeal has been filed with a United States District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal land manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

#### §—16 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in §—4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in §—4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal land manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Federal land manager archaeological resources removed from public lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of

archaeological resources on public lands or Indian lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal land manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Federal land manager should consult with and consider the interests of the affected

tribe(s) prior to proposing to mitigate or remit the penalty.

#### § —.17 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal land manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under — .16(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

#### § —.18 Confidentiality or archaeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other

provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

#### § —.19 Report.

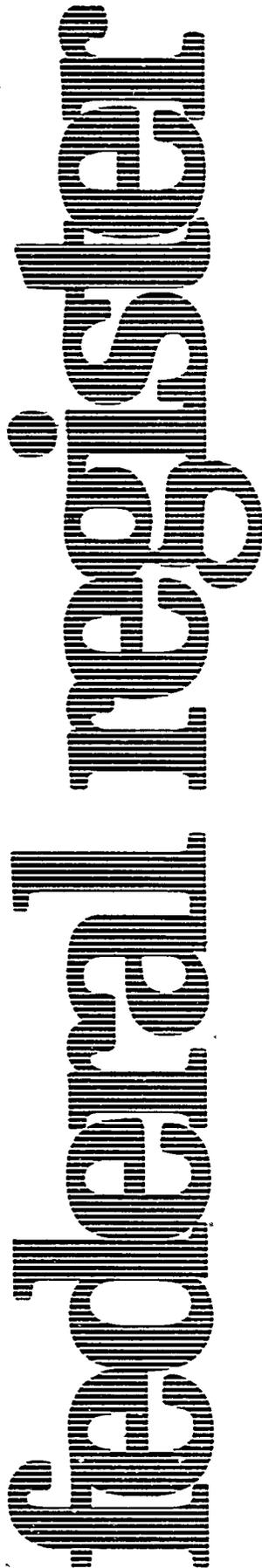
Each Federal land manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

[FR Doc. 84-346 Filed 1-5-84; 8:45 am]

BILLING CODES 4310-70-M, 3410-11, 3910-01, 8120-01-M

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Friday  
January 6, 1984



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**Part VI**

**Department of  
Commerce**

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National Oceanic and Atmospheric  
Administration

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**Department of  
Transportation**

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Coast Guard

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15 CFR Part 904

50 CFR Part 620

Written Warnings; Interim Final Rule

15 CFR Part 904, et al.

50 CFR Part 215, et al.

Civil Procedures; Permit Sanctions and  
Denials; Interim Rule

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****DEPARTMENT OF TRANSPORTATION****Coast Guard****15 CFR Part 904****50 CFR Part 620**

[Docket No. 31031-214]

**Written Warnings**

**AGENCIES:** National Oceanic and Atmospheric Administration, Commerce; Coast Guard, Transportation.

**ACTION:** Interim final rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration and the Coast Guard are establishing a standard policy and procedure for issuing a warning to one who commits a technical or minor violation of one of the laws that NOAA and the Coast Guard enforce. This rule supersedes 50 CFR Part 620 Citations.

**EFFECTIVE DATE:** These rules are effective February 6, 1984. Comments must be submitted on or before March 6, 1984.

**ADDRESS:** Interested persons are invited to submit written comments to NOAA Office of General Counsel [GCEL], Room 275, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:**

Amy Svoboda, Staff Attorney, (202) 254-8350.

**SUPPLEMENTARY INFORMATION:****Discussion**

NOAA may issue written warnings to persons committing minor or technical offenses, in lieu of commencing civil penalty actions or initiating criminal prosecutions. These regulations establish a written warning policy and procedure applicable to all statutes NOAA enforces (see list in § 904.400).

Insofar as the Act of August 4, 1949, 14 U.S.C. 2, grants the Coast Guard authority to enforce or assist in the enforcement of all federal laws upon the high seas and waters subject to the jurisdiction of the United States, these regulations apply to Coast Guard officers when they are enforcing NOAA-administered laws.

Two of the statutes that NOAA and the Coast Guard jointly enforce require the agencies to promulgate regulations jointly as a prerequisite to the issuance of citations. Regulations were jointly

promulgated pursuant to section 1861(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, on February 25, 1977, and codified at 50 CFR Part 620. The regulations at 50 CFR Part 620 are superseded by this Subpart E. No regulations concerning citations have previously been promulgated by NOAA and the Coast Guard pursuant to Section 773i(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 733 *et seq.* These regulations implement section 773i(c) of the Halibut Act. A citation under the Magnuson Act or the Halibut Act is considered a written warning under these regulations.

Section 904.410 gives notice that a written warning may be used as the basis for imposing a higher penalty for a later, similar offense.

Section 904.420 provides that, upon written request of the recipient of a warning, a warning will be reviewed by the Regional Attorney. If dissatisfied with the decision of the NOAA Regional Attorney, the violator may then appeal to the NOAA Assistant General Counsel for Enforcement and Litigation in Washington, D.C.

**Effective Dates**

Although we are requesting comment on the regulations and will review them in light of the comments, these interim rules will take effect in 30 days. Because the rules merely simplify and consolidate existing rules of agency procedure and practice, a notice and comment period is not required.

**Classification**

The National Oceanic and Atmospheric Administration (NOAA) and the Coast Guard have determined that these regulations are not major rules as defined by Executive Order 12291, "Federal Regulations." The Regulatory Flexibility Act does not apply because no notice of proposed rulemaking is required. These regulations are categorically excluded from preparation of an Environmental Analysis under the National Environmental Policy Act of 1969 by NOAA Directive 02-10. They do not require information to be collected, and therefore the Paperwork Reduction Act does not apply.

**List of Subjects in 15 CFR Part 904**

Administrative practice and procedure, Penalties, Fisheries, Fishing, Fishing vessels.

Dated: December 28, 1983.

Samuel A. Lawrence,  
Director, Office of Administrative and Technical Services, NOAA.

Thomas H. Rutledge,  
Captain, Office of Operations U.S. Coast Guard.

Title 50—Wildlife and Fisheries

**PART 620—[AMENDED]**

50 CFR Part 620 is amended by removing the table of contents, the authority citation, the source, and § 620.1 through § 620.7. The following is added: The policy and procedure governing citations issued under the Act may be found in Subpart E of 15 CFR Part 904.

Title 15—Commerce and Foreign Trade

**PART 904—[AMENDED]**

15 CFR Part 904 is amended by adding a new Subpart E to read as follows:

**Subpart E—Written Warnings**

Sec.

904.400 Purpose and scope.

904.405 Definition.

904.410 Written warning as a prior offense.

904.415 Procedures.

904.420 Review and appeal of a written warning.

Authority: Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627; Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882; Endangered Species Act of 1973, 16 U.S.C. 1531-1543; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Lacey Act Amendments of 1981, 16 U.S.C. 3371-3372; Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k; Tuna Conventions Act of 1950, 16 U.S.C. 951-961; North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032; Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f; Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.*; Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*; Atlantic Tuna Conventions Act of 1975, 16 U.S.C. 971-971g; Sponge Act, 16 U.S.C. 781 *et seq.*; Antarctic Conservation Act of 1978, 16 U.S.C. 2401-2412; Whaling Convention Act of 1949, 16 U.S.C. 916-916a; Fur Seal Act of 1988, 16 U.S.C. 1158 *et seq.*; Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601 *et seq.*; and the Merchant Marine Act of 1936, 40 U.S.C. 1271-1279.

**Subpart E—Written Warnings****§ 904.400 Purpose and scope.**

These regulations provide a uniform policy and procedure regarding the issuance and use of written warnings by persons authorized to enforce the statutes administered by the National Oceanic and Atmospheric Administration (NOAA). A written warning may be issued in lieu of assessing a civil penalty or initiating

criminal prosecution for violation of any of the fishery or marine resource laws that NOAA administers, including the following:

Agricultural Marketing Act of 1948, 7 U.S.C. 1621-1627;  
 Antarctic Conservation Act of 1978, 16 U.S.C. 2401-2412;  
 Atlantic Tuna Conventions Act of 1975, 16 U.S.C. 971-971g;  
 Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601 *et seq.*;  
 Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*;  
 Endangered Species Act of 1973, 16 U.S.C. 1531-1543;  
 Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.*;  
 Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378;  
 Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882;  
 Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;  
 Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434;  
 Merchant Marine Act of 1936, 46 U.S.C. 1271-1279;  
 Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k;  
 North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032;  
 Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.*;  
 Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f;  
 Sponge Act, 16 U.S.C. 781 *et seq.*;  
 Tuna Conventions Act of 1950, 16 U.S.C. 951-951;  
 Whaling Convention Act of 1949, 16 U.S.C. 916-916l.

#### § 904.405 Definitions.

A written warning is a notice in writing to a person that a violation of a minor or technical nature has been documented against the person or against the vessel which is owned or operated by the person. A "citation" under Section 311(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and Section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773i(c), is considered a written warning under these regulations.

#### § 904.410 Written warning as a prior offense.

A written warning may be used as a basis for dealing more severely with a subsequent offense, including, but not limited to, a violation of the same statute or an offense involving an activity that is related to the prior offense.

#### § 904.415 Procedures.

(a) Any person authorized to enforce the laws listed in § 904.400 of this Subpart E who finds a violation of one of the laws may issue a written warning to a violator in lieu of other law enforcement action that could be taken under the applicable statute.

(b) The written warning will: (1) State that it is a "written warning"; (2) state the factual and statutory or regulatory basis for its issuance; (3) advise the violator of its effect in the event of a future violation; and (4) inform the violator of the right of review and appeal under § 904.420 of this Subpart E.

(c) NOAA will maintain a record of written warnings that are issued.

(d) If, within 120 days of the date of the written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the violator previously committed a similar offense for which a written warning was issued or other enforcement action was taken, NOAA may withdraw the warning and commence other civil or criminal proceedings.

(e) For written warnings under the Magnuson Fishery Conservation and Management Act or the Northern Pacific Halibut Act of 1982, the enforcement officer will note the warning, its date, and reason for its issuance on the permit, if any, of the vessel used in the violation. If noting the warning on the permit of the vessel is impracticable, notice of the written warning will be served personally, or by registered or certified mail, return receipt requested, on the vessel's owner, operator, or designated agent for service of process, and such service will be deemed notation on the permit.

#### § 904.420 Review and appeal of a written warning.

(a) If a person believes that he or she should not have been given a written warning, the person may, within 90 days of the date of receipt of the written warning, submit to the appropriate NOAA Regional Attorney in writing the facts and circumstances that explain or deny the violation described in the warning. The NOAA Regional Attorneys are located at:

Regional Counsel, Office of General Counsel, NOAA, 14 Elm Street, Federal Building, Gloucester, MA 01930

Regional Counsel, Office of General Counsel, NOAA, 9450 Koger Blvd., Suite 127, St. Petersburg, FL 33702

Regional Counsel, Office of General Counsel, NOAA, Bin C15700, 7600 Sandpoint Way, NE., Seattle, WA 98115

Regional Counsel, Office of General Counsel, NOAA, 300 South Ferry Street, Room 2020, Terminal Island, CA 90731

Regional Counsel, Office of General Counsel, NOAA, P.O. Box 1668, Juneau, AK 99802.

The Regional Attorney will review the information and notify the person of his or her decision.

(b) A person may appeal the decision of the Regional Attorney to the NOAA Assistant General Counsel for Enforcement and Litigation, Room 275, Page I Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235. The appeal must be brought within 30 days of receipt of the decision of the Regional Attorney. The Assistant General Counsel for Enforcement and Litigation may, in his or her discretion, affirm, expunge, or modify the written warning and will notify the appellant of the decision. The decision constitutes the final agency action.

[FR Doc. 84-12 Filed 1-5-84; 8:45 am]  
 BILLING CODE 3510-12-M

15 CFR Parts 904, 924, 929, 935, 936, 937, and 938

50 CFR Parts 215, 216, 220, 222, 285, 611, 621, 649, 650, 651, 652, 655, 672, 674, 675, 680, and 681

[Docket No. 31031-215].

Civil Procedures; Permit Sanctions and Denials

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: NOAA issues this interim rule consolidating its procedural regulations for sanctioning permits issued under many of the statutes for which it has enforcement responsibility. The major statutes are the Magnuson Fishery Conservation and Management Act, the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Atlantic Tunas Convention Act of 1975. The intended effect is to consolidate, expand, and replace numerous procedural regulations. The regulations are added as Subpart D to NOAA's interim final regulations governing civil procedures.

DATES: These rules are effective January 6, 1984, as interim rules. Comments must be submitted on or before April 5, 1984.

ADDRESSES: Interested persons are invited to submit written comments to the NOAA Office of General Counsel (GCEL), Room 275, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Margaret Frailey or Linda Marks, (202) 254-8350 [Address above].

**SUPPLEMENTARY INFORMATION:** These regulations consolidate existing regulations that provide for suspension, revocation, modification, or denial of permits issued under the following statutes: Magnuson Fishery Conservation and Management Act; Marine Mammal Protection Act of 1972; Endangered Species Act of 1973; Atlantic Tunas Convention Act of 1975; Fur Seal Act of 1966; Marine Protection, Research and Sanctuaries Act; and Northern Pacific Halibut Act of 1982. They do not replace regulations governing permit sanctions or denials under the Deep Seabed Hard Mineral Resources Act, Ocean Thermal Energy Conversion Act of 1980, or Agricultural Marketing Act of 1946.

The regulations provide for a permit sanction or denial upon the commission of an offense prohibited by a NOAA-administered statute, or when a civil penalty or judicial assessment has not been paid. The regulations make clear that all of a permit holder's permits may be subject to sanction or denial because of a violation or nonpayment. Violation of a statute, regulation, or permit may be the basis of a sanction when committed by the actual permit holder or by an agent or employee of the permit holder.

These regulations are not intended to affect permits issued by a state, even though the administration of some fishery management plans relies on state permits.

The regulations provide for the issuance of a Notice of Permit Sanction (NOPS) that would set forth any opportunity for a hearing. The opportunity for a hearing is not given in all instances; no hearing will be granted if the permit holder was provided an earlier opportunity for a hearing on the matter forming the basis of the sanction (e.g., an unpaid civil penalty). However, the Administrator, on his or her own initiative, may order a hearing on a permit sanction. This does not expand a permit holder's right to a hearing, but merely gives the Administrator the discretion to hold a hearing. Hearing procedures governing permit sanction proceedings are already set forth in 15 CFR Part 904, Subpart C.

When no opportunity for a hearing is provided, the permit holder ordinarily will have 30 days to achieve compliance (e.g., pay the penalty) before the sanction takes effect.

After a hearing, the Administrative Law Judge (ALJ) makes a recommended decision to the Administrator on the matter. The Administrator (or designee) then issues the final agency decision on the sanction. Because a NOPS may be issued in conjunction with a Notice of Violation and Assessment (NOVA), and

hearings on the two may be consolidated, the Administrator might wait to issue the permit sanction decision until the civil penalty matter is settled. For example, an ALJ's initial decision on a Magnuson Act civil penalty may be under review by the Administrator, while the ALJ's recommendation as to the permit sanction must be acted on by the Assistant Administrator for Fisheries. The Assistant Administrator might defer final action on the permit sanction, since the basis for the civil penalty and the NOPS is the same violation. This may also happen when a related case is being litigated in a federal court.

The regulations establish a new procedure not found in existing permit sanction regulations, the issuance of a Notice of Intent to Deny Permit (NIDP). An NIDP may be issued to a permit applicant if an administrative or judicial case is pending against the applicant and the violation warrants a permit sanction. An NIDP will be issued instead of a NOPS where there is no existing permit or where the previous permit has expired, or may be issued in combination with a NOPS. An NIDP, like a NOPS, may be issued in conjunction with a NOVA, and the hearings on the two consolidated.

NOAA is considering adding language at § 904.302(c) that would allow a vessel permit sanction to be linked to the vessel itself, so that a sale or other transfer would not extinguish the sanction. This would be particularly useful when suspending a permit for failure to pay a civil penalty. The sanction would not follow the transfer when the purchaser or transferee had no actual or constructive notice of the sanction. NOAA invites comments on this idea, including methods of providing notice.

Section 904.322 provides for emergency action to be taken in limited instances. NOAA would seek such action after a NOPS or NIDP is issued, but before a final decision is made on the sanction or denial. Interim action will be taken only after the ALJ finds there is probable cause to believe the violation(s) charged was committed. If ordered by the ALJ, the sanction will take effect immediately.

#### Request for Comments

These rules are effective on January 6, 1983, as interim rules. Although no notice and comment period is required for rules of agency procedure or practice, we are requesting comment on the regulations and will review them in light of the comments.

#### Classification

NOAA has determined that these regulations are not a major rule as defined by Executive Order 12291, "Federal Regulations." The Regulatory Flexibility Act does not apply because no notice of proposed rulemaking is required. These regulations are categorically excluded from preparation of an Environmental Analysis under the National Environmental Policy Act of 1969 by NOAA Directive 02-10. They do not require information to be collected, and therefore the Paperwork Reduction Act does not apply.

#### List of Subjects in 50 CFR Part 904

Administrative practice and procedure, Permits, Sanctions.

Dated: December 28, 1983.

Samuel A. Lawrence,

Director, Office of Administrative and Technical Services, National Oceanic and Atmospheric Administration.

1. The following new Subpart D is added to 15 CFR Part 904:

#### PART 904—CIVIL PROCEDURES

##### Subpart D—Permit Sanctions and Denials

###### General

Sec.	
904.300	Scope and applicability.
904.301	Definitions.
904.302	Bases for sanctions or denials.
904.303	Notice of permit sanction.
904.304	Notice of intent to deny permit.
904.305	Opportunity for hearing.
904.308	Hearing and decision.
904.307-904.309	[Reserved]

###### Sanctions for Nonpayment of Penalties

904.310	Nature of sanctions.
904.311	Compliance.
904.312-904.319	[Reserved]

###### Sanctions for Violations

904.320	Nature of sanctions.
904.321	Reinstatement of permit.
904.322	Interim action.
904.323-904.399	[Reserved]

Authority: Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g; Endangered Species Act of 1973, 16 U.S.C. 1531-43; Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.*; Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-34; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k.

###### General

###### § 904.300 Scope and applicability.

(a) This Subpart establishes policies and procedures for the suspension, revocation, modification, and denial of

permits for reasons relating to enforcement of many of the statutes NOAA administers. These reasons include nonpayment of civil penalties or criminal fines, and violations of statutes, regulations, or permit conditions. Nothing in this Subpart precludes sanction or denial of a permit for reasons not relating to enforcement. As appropriate, and unless otherwise specified in this Subpart, the provisions of Subparts B and C apply to these regulations.

(b) These regulations cover sanctions and denials of permits issued under the following statutes:

- (1) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g;
- (2) Endangered Species Act of 1973, 16 U.S.C. 1531-43;
- (3) Fur Seal Act of 1986, 16 U.S.C. 1153 *et seq.*;
- (4) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*;
- (5) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;
- (6) Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-34;
- (7) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k.

Regulations governing sanctions for permits under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR Part 970; under the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 *et seq.*), at 15 CFR Part 981; under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-27), at 50 CFR 260.50.

#### § 904.301 Definitions.

Unless the context otherwise requires, terms in this Subpart have the meanings prescribed in the applicable statute or in Subparts B and C. In addition, the following definitions apply:

"Applicant"—means any person who applies or is expected to apply for a permit covered by this Subpart.

"NIDP"—means notice of intent to deny application or permit.

"NOPS"—means notice of permit sanction.

"Payment agreement"—means any promissory note, security agreement, or other contract specifying the terms according to which a permit holder agrees to pay a civil penalty.

"Permit holder"—means the holder of a permit or any agent or employee of the holder, and includes the owner and operator of a vessel for which the permit was issued.

"Sanction"—means suspension, revocation, or modification of a permit (see § 904.320).

#### § 904.302 Bases for sanctions or denials.

(a) Unless otherwise specified in a settlement agreement, the Administrator may take action under this Subpart with respect to any permit issued under the statutes listed in § 904.300(b). The bases for an action to sanction or deny a permit are as follows:

(1) The commission of any offense prohibited by statutes administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel;

(2) The failure to pay a civil penalty assessed under Subparts B and C of this Part; or

(3) The failure to pay a criminal fine imposed or any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA.

(b) A sanction or denial of a permit under this Subpart is not limited to the particular permit pertaining to the offense or nonpayment, but may be applied to any NOAA permit held or sought by the permit holder, including permits for other activities or for other vessels. Examples of the application of this policy are the following:

(1) NOAA suspends Vessel A's fishing permit for nonpayment of a civil penalty pertaining to Vessel A. The owner of Vessel A buys Vessel B and applies for a permit for Vessel B to participate in a different fishery. NOAA may withhold that permit until the sanction against Vessel A is lifted.

(2) NOAA revokes a Marine Mammal Protection Act permit for violation of its conditions. The permit holder subsequently applies for a permit under the Endangered Species Act. NOAA may deny the ESA application.

(3) Captain X, an officer in Country Y's fishing fleet, is found guilty of assaulting an enforcement officer. NOAA may impose a condition on the permits of Country Y's vessels that they may not fish in the fishery conservation zone with Captain X aboard. (See § 904.320(c) of this Part 904.)

(c) Sanction not extinguished by sale. [Reserved]

#### § 904.303 Notice of permit sanction.

(a) A NOPS will be served personally or by registered or certified mail, return receipt requested, on the permit holder. When a foreign fishing vessel is involved, service will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

(b) The NOPS will set forth the sanction to be imposed, the bases for the sanction, and any opportunity for a hearing. It will state the effective date of

the sanction, which will ordinarily not be earlier than 30 calendar days after the date of receipt of the NOPS (see § 904.322). If a hearing opportunity is provided and a hearing is requested in a timely manner, the sanction will take effect pursuant to § 904.303.

(c) Upon demand by an authorized enforcement officer, a permit holder shall surrender a permit against which a sanction has taken effect. The effectiveness of the sanction, however, does not depend on surrender of the permit.

#### § 904.304 Notice of intent to deny permit.

(a) The Administrator may issue an NIDP if the applicant has been charged with a violation of a NOAA-administered statute, regulation, or permit.

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing, and will be served in accordance with § 904.303(a).

(c) The Administrator will not refund any fee(s) submitted with a permit application if an NIDP is issued.

(d) An NIDP may be issued in conjunction with or independent of a NOPS. Nothing in this section should be interpreted to preclude NOAA from initiating a permit sanction action following issuance of the permit, or from withholding a permit pursuant to § 904.310(c) or § 904.320.

#### § 904.305 Opportunity for hearing.

(a) Except as provided in paragraph (b) of this section, the recipient of a NOPS or NIDP will be provided an opportunity for a hearing. The hearing may be combined with any other hearing under this Part.

(b) There will be no opportunity for a hearing if, with respect to the violation that forms the basis for the NOPS or NIDP, the permit holder had a previous opportunity to participate as a party in a judicial or administrative hearing, whether or not the permit holder did participate, and whether or not such a hearing was held.

(c) If entitled to a hearing under this section, the recipient of a NOPS or NIDP will have 30 calendar days from receipt of the notice to request a hearing. A request for hearing must be dated and in writing. Failure to request a hearing within 30 days constitutes a waiver of the opportunity for a hearing.

(d) If no hearing is requested, the Administrator may nonetheless order a hearing if required in the interests of justice. This paragraph does not create any right to a hearing in addition to the right provided in paragraph (a) of this section.

§ 904.306 Hearing and decision.

(a) Except as provided in this section, hearing procedures are governed by Subpart C of this Part.

(b) After the close of a hearing and the submission of briefs in accordance with § 904.262, the Administrative Law Judge will issue a recommended decision to the Administrator. As soon as practicable, the Administrator will decide the matter and serve notice of the decision on the parties in the manner provided by § 904.303(a). The decision will be final and unappealable and not subject to § 904.272.

(c) In his or her discretion, the Administrator may refrain from issuing a decision on a NOPS or NIDP pending a decision on a related matter.

§§ 904.307-904.309 [Reserved]

Sanctions for Nonpayment of Penalties

§ 904.310 Nature of sanctions.

(a) The Administrator may suspend a permit if:

(1) A civil penalty has been assessed against the permit holder under Subparts B and C of this Part, but the permit holder has failed to pay the penalty, or has defaulted on a payment agreement; or

(2) A criminal fine or other liability for violation of any of the statutes administered by NOAA has been imposed against the permit holder in a judicial proceeding, but payment has not been made.

(b) Suspension of a permit under the circumstances set forth in paragraph (a) is mandatory if the permit is for a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act.

(c) The Administrator will withhold any other permit for which the permit holder applies if either condition in § 904.310(a) is applicable.

§ 904.311 Compliance.

If the permit holder pays the fine or penalty in full or agrees to terms satisfactory to the Administrator for payment:

(a) The suspension will not take effect;

(b) Any permit suspended under § 904.310 will be reinstated by affirmative order of the Administrator; or

(c) Any application by the permit holder may be granted if the permit holder is otherwise qualified to receive the permit.

§§ 904.313-904.319 [Reserved]

Sanctions for Violations

§ 904.320 Nature of sanctions.

Subject to the requirements of this Subpart, the Administrator may take any of the following actions or combination of actions if a permit holder or permitted vessel violates a statute administered by NOAA, or any regulation promulgated or permit condition prescribed thereunder:

(a) *Revocation.* A permit may be cancelled, with or without prejudice to issuance of the permit in the future. Additional requirements for issuance of any future permit may be imposed.

(b) *Suspension.* A permit may be suspended either for a specified period of time or until stated requirements are met, or both. If contingent on stated requirements being met, the suspension is with prejudice to issuance of the permit until the requirements are met.

(c) *Modification.* A permit may be modified, as by imposing additional conditions and restrictions. If the permit was issued for a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act, additional conditions and restrictions may be imposed on the application of the foreign nation involved and on any permits issued under such application.

§ 904.321 Reinstatement of permit.

(a) A permit suspended for a specified period of time will be reinstated automatically at the end of the period.

(b) A permit suspended until stated requirements are met will be reinstated only by affirmative order of the Administrator.

§ 904.322 Interim action.

(a) To prevent substantial harm to marine resources during the pendency of an action under this Subpart, or as otherwise required in the interest of public health, welfare, or safety, or in cases of willfulness, an Administrative Law Judge may order immediate suspension, modification, or withholding of a permit until a decision is made on the action proposed in a NOPS or NIDP.

(b) The Judge will order interim action under paragraph (a) only after finding that there exists probable cause to believe that the violation(s) charged in the NOPS or NIDP was committed. The Judge's finding of probable cause, which will be summarized in the order, may be made:

(1) After review of the factual basis of the alleged violation, following an opportunity for the parties to submit their views (orally or in writing, in the Judge's discretion); or

(2) By adoption of an equivalent finding of probable cause or an admission in any administrative or judicial proceeding to which the recipient of the NOPS or NIDP was a party, including, but not limited to, a hearing to arrest or set bond for a vessel in a civil forfeiture action or an arraignment or other hearing in a criminal action. Adoption of a finding or admission under this paragraph may be made only after the Judge reviews pertinent portions of the transcript or other records, documents, or pleadings from the other proceeding.

(c) An order for interim action under paragraph (a) of this section is unappealable and will remain in effect until a decision is made on the NOPS or NIDP. Where such interim action has been taken, the Administrator will expedite any hearing requested under § 904.305.

§§ 904.323-904.399 [Reserved]

PART 924—MONITOR MARINE SANCTUARY

2. In § 924.6, paragraph (g) is revised to read as follows:

§ 924.6 Permit procedures and criteria.

\* \* \* \* \*

(g) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

3. In § 924.8, paragraph (a) is revised to read as follows:

§ 924.8 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 924.6 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The appellant may request an informal hearing on the appeal.

\* \* \* \* \*

**PART 929—KEY LARGO NATIONAL MARINE SANCTUARY**

4. In § 929.10, paragraph (h) is revised to read as follows:

**§ 929.10 Permit procedures and criteria.**

\* \* \* \* \*

(h) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or Permittee has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or Permittee, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

5. In § 929.11, paragraph (a) is revised to read as follows:

**§ 929.11 Appeals of administrative action.**

(a) Except as provided in Subpart D of 15 CFR Part 904, the applicant for a permit or the Permittee, or any other interested person (hereafter Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 929.10 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

\* \* \* \* \*

**PART 935—CHANNEL ISLANDS NATIONAL MARINE SANCTUARY**

6. In § 935.9, paragraph (f) is revised to read as follows:

**§ 935.9 Permit procedures and criteria.**

\* \* \* \* \*

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

7. In § 935.11, paragraph (a) is revised to read as follows:

**§ 935.11 Appeals of administrative action.**

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 935.9 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

\* \* \* \* \*

**PART 936—THE POINT REYES/FARALLON ISLANDS MARINE SANCTUARY REGULATIONS**

8. In § 936.8, paragraph (f) is revised to read as follows:

**§ 936.8 Permit procedures and criteria.**

\* \* \* \* \*

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

9. In § 936.10, paragraph (a) is revised to read as follows:

**§ 936.10 Appeals of administrative action.**

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 936.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

\* \* \* \* \*

**PART 937—THE LOOE KEY NATIONAL MARINE SANCTUARY REGULATIONS**

10. In § 937.8, paragraph (g) is revised to read as follows:

**§ 937.8 Permit procedures and criteria.**

\* \* \* \* \*

(g) The Administrator may suspend, revoke, modify, or deny a permit granted

or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

11. In § 937.10, paragraph (a) is revised to read as follows:

**§ 937.10 Appeals from administrative action.**

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 937.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

\* \* \* \* \*

**PART 938—THE GRAY'S REEF NATIONAL MARINE SANCTUARY REGULATIONS**

12. In § 938.8, paragraph (f) is revised to read as follows:

**§ 938.8 Permit procedures and criteria.**

\* \* \* \* \*

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

13. In § 938.10, paragraph (a) is revised to read as follows:

**§ 938.10 Appeals from administrative action.**

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 938.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the

action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

Title 50—Wildlife and Fisheries

PART 215—PRIBILOF ISLANDS

14. In § 215.13, the introductory text of paragraph (d) is revised to read as follows:

§ 215.13 Procedures for the issuance, modification, suspension or revocation of permits.

(d) Except as provided in Subpart D of 15 CFR Part 904, any permit shall be subject to modification, suspension or revocation by the Director in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

15. Section 216.24 is amended by revising paragraph (b)(4), adding paragraph (c)(8), and removing paragraphs (d)(1)(vi), (d)(2)(viii), (d)(3)(vi), (d)(4)(vi), and (d)(5)(vi), to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(b) \*\*\* (4) A general permit shall be valid for the time period indicated on the face of the permit. General permits may contain terms and conditions prescribed in accordance with sec. 104(b)(2) of the Act, 16 U.S.C. 1374(b)(2). General permits may be suspended, revoked, modified, or denied. Procedures governing permit sanctions or denials for reasons relating to enforcement are found at Subpart D of 15 CFR Part 904.

(c) \*\*\* (8) Failure to comply with provisions of the general permit, certificate, or these regulations may lead to suspension, revocation, modification, or denial of a certificate of inclusion. It may also subject the certificate holder, vessel, vessel owner, operator, or master to the penalties provided under the Act. Procedures governing permit sanctions

and denials are found at Subpart D of 15 CFR Part 904.

- (d) \*\*\* (1) \*\*\* (vi) [Removed] (2) \*\*\* (viii) [Removed] (3) \*\*\* (vi) [Removed] (4) \*\*\* (vi) [Removed] (5) \*\*\* (vi) [Removed]

16. In § 216.31, paragraph (c) is revised to read as follows:

§ 216.31 Scientific research permits and public display permits.

(c) Except as provided in Subpart D of 15 CFR Part 904, permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 216.33. In determining whether to issue a scientific research permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; and whether the granting of the permit is required to further a bona fide and necessary or desirable scientific purpose, taking into account the benefits anticipated to be derived from the scientific research contemplated and the effect of the proposed taking or importation on the population stock and the marine ecosystem. In determining whether to issue a public display permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; whether the marine mammal in question is from a species listed as depleted under § 216.15 of this part; whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking or importation on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal or the marine mammal product, and the adequacy of his facilities.

PART 220—GENERAL PERMIT PROCEDURES

17. In § 220.21, paragraph (b)(1) is revised to read as follows:

§ 220.21 Issuance of permits.

- (b) The Director shall issue the appropriate permit unless— (1) Denial of a permit has been made pursuant to Subpart D of 15 CFR Part 904; (2) \*\*\* (3) \*\*\* (4) \*\*\* (5) \*\*\*

18. Section 220.22 is revised to read as follows:

§ 220.22 Duration of permit.

Permits shall entitle the person to whom issued to engage in the activity specified in the permit, within the limitations of the applicable statute and regulations contained in Parts 217–222 of this chapter for the period stated on the permit, unless sooner modified, suspended, or revoked pursuant to Subpart D of 15 CFR Part 904.

PART 222—ENDANGERED FISH OR WILDLIFE

19. Section 222.11–7 is revised to read as follows:

§ 222.11–7 Procedures for suspension, revocation, or modification of certificates of exemption.

Any violation of the applicable provisions of Parts 217–222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following:

- (a) The penalties provided in the Act; and (b) Suspension, revocation, or modification of the certificate of exemption, as provided in Subpart D of 15 CFR Part 904.

20. In § 222.24, paragraph (c) is revised to read as follows:

§ 222.24 Procedures for issuance of permits.

(c) Except as provided in Subpart D of 15 CFR Part 904, as soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Director shall issue or deny issuance of the permit. Notice of the decision of the Director shall be published in the Federal Register within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

21. Section 222.27 is revised to read as follows:

§ 222.27 Procedures for suspension, revocation, or modification of certificates of exemption.

Any violation of the applicable provisions of Parts 217-222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following:

(a) The penalties provided in the Act; and

(b) Suspension, revocation, or modification of the certificate of exemption, as provided in Subpart D of 15 CFR Part 904.

PART 285—ATLANTIC TUNA FISHERIES

22. In § 285.21, paragraphs (d)(1) and (j) are revised to read as follows:

§ 285.21 Vessel permits.

(d) Issuance. (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) \* \* \*

(j) Sanctions. The Administrator may suspend, revoke, modify, or deny a permit issued or sought pursuant to this section. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

23. In § 285.22, paragraphs (c)(1) and (i) are revised to read as follows:

§ 285.22 Dealer permits.

(c) Issuance. (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director shall issue a permit within 30 days of receipt of a completed application.

(i) Sanctions. The Administrator may suspend, revoke, modify, or deny a permit issued or sought pursuant to this section. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 611—FOREIGN FISHING

24. In § 611.3, paragraph (g) is revised to read as follows:

§ 611.3 Permits for foreign fishing vessels.

(g) The Assistant Administrator may suspend, revoke, modify, or deny a permit issued under paragraph (c) of this section. Procedures governing permit sanctions and denials for reasons relating to enforcement are found at Subpart D of 15 CFR Part 904.

\* \* \*

PART 621—CIVIL PROCEDURES

25. Subpart D, consisting of §§ 621.51 through 621.56, is removed and the subpart is reserved.

Subpart D—[Reserved]

§§ 621.51 through 621.56 [Removed]

PART 649—AMERICAN LOBSTER FISHERY

26. In § 649.4, paragraphs (c)(1), (e), and (j) are revised to read as follows:

§ 649.4 Vessel permits.

(c) Issuance. (1) Except as provided in Subpart D of 15 CER Part 904, the Regional Director will issue a permit within 30 days.

(2) \* \* \*

(e) Duration. A Federally-issued permit is valid until it expires or is revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(j) Sanctions. Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 650—ATLANTIC SEA SCALLOP FISHERY

27. In § 650.4, paragraphs (c)(1), (e), and (j) are revised to read as follows:

§ 650.4 Vessel permits.

(c) Issuance. (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director must issue a permit within 30 days.

(2) \* \* \*

(e) Duration. A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(j) Sanctions. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 651—ATLANTIC GROUND FISH (COD, HADDOCK, AND YELLOWTAIL FLOUNDER)

28. In § 651.4, paragraphs (c)(1), (e), and (j) are revised to read as follows:

§ 651.4 Vessel permits.

\* \* \*

(c) Issuance. (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director will issue a permit within 30 days.

(2) \* \* \*

(e) Duration. A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

\* \* \*

(j) Sanctions. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

\* \* \*

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

29. In § 652.4, paragraphs (d) and (i) are revised to read as follows:

§ 652.4 Permits.

\* \* \*

(d) Issuance. Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit to each eligible vessel for which an application is submitted. The eligibility of a vessel to fish for surf clams will be determined consistent with this section. There will be no fee for the permit.

\* \* \*

(i) Sanctions. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

30. In § 655.4, paragraphs (e), (g), and (j) are revised to read as follows:

§ 655.4 Vessel permits and fees.

\* \* \*

(e) Issuance. Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director will issue a permit within 30 days.

\* \* \*

(g) Duration. A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

\* \* \*

(j) Sanctions. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

PART 672—GROUND FISH OF THE GULF OF ALASKA

31. In § 672.4, paragraphs (c)(1), (e), and (i) are revised to read as follows:

§ 672.4 Permits.

\* \* \*

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application, the Regional Director will issue a permit.

(2) \* \* \*

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

**PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA**

32. In § 674.4, paragraph (b)(3)(i) is revised and new paragraph (b)(6) is added to read as follows:

§ 674.4 Permits.

(b) \* \* \*

(3) *Issuance.* (i) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application and any document required under paragraph (b)(2)(iv), the Regional Director will promptly determine whether permit eligibility conditions have been met, and if so, will issue a permit. If the permit is denied, the Regional Director will notify the

applicant in accordance with paragraph (d) of this section.

(ii) \* \* \*

(6) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

**PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS**

33. In § 675.4, paragraphs (c)(1), (e), and (i) are revised to read as follows:

§ 675.4 Permits.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application, the Regional Director will issue a permit required by paragraph (a) of this section.

(2) \* \* \*

(e) *Duration.* A permit issued under this section shall authorize the permitted vessel to fish for groundfish in the Bering Sea and Aleutian Islands management area during a single specified year, and shall continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified pursuant to Subpart D of 15 CFR 904.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

**PART 680—WESTERN PACIFIC PRECIOUS CORALS**

34. In § 680.4, paragraph (l) is revised to read as follows:

§ 680.4 Permits

(l) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

**PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES**

35. In § 681.4, paragraph (l) is revised to read as follows:

§ 681.4 Permits

(l) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

Authority: Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g; Endangered Species Act of 1973, 16 U.S.C. 1531-43; Fur Seal Act of 1966, 16 U.S.C. 1158 *et seq.*; Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-34; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k.

[FR Doc. 84-14 Filed 1-5-84; 8:45 am] BILLING CODE 3510-12-M

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Friday, January 8, 1934

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