Export control commodity number and general description	Unit	Validated license required	GLV $ value limits T&Y	Processing code	Reason for control
4360B Centrifugal balancing machines, fixed or portable, horizontal or vertical, having *all* of the following characteristics:		POSTVWYZ and Canada	0	MG	4
(a) Suitable for balancing flexible rotors having a diameter of from 3 inches to 16 inches, and a length of 24 inches or more; and					
(b) Mass capability of from 2 to 50 lbs.; and					
(c) Capable of balancing to a residual imbalance of 0.001 in.-lb./lb. per plane or greater; and					
(d) Capable of balancing in three or more planes.					

(Secs. 3, 13, 15, and 17(d) Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq*; sec. 309(c), Pub. L. 95-242, 92 Stat. 141, 42 U.S.C. 2139a; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10-3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41-1 (45 FR 11862, February 22, 1980) and 41-4 (45 FR 65003, October 1, 1980))

Dated: November 6, 1981.

William V. Skidmore,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 81-32960 Filed 11-13-81; 8:45 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Revisions of Commodity Pool Operator and Commodity Trading Advisor Regulations; Delegation of Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final regulation to Part 4 which relates to the activities of commodity pool operators and commodity trading advisors which were published on May 8, 1981, 46 FR 26004.

FOR FURTHER INFORMATION CONTACT: Barbara R. Stern, Special Counsel to Front Office Audit Unit, Division of Trading and Markets, 202-254-8955.

SUPPLEMENTARY INFORMATION: Accordingly, the Commodity Futures Trading Commission is correcting 17 CFR 4.31(f)(2) to read as follows:

§ 4.31 Disclosure to prospective clients.

(f) * * *

(2) The commodity trading advisor must file with the Commission three copies of all subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

* * * * *

Issued in Washington, D.C. on November 9, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-32911 Filed 11-13-81; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 240

[Release Nos. 33-6359, 34-18244, 35-22261, IC-12021, AS-302]

Separate Financial Statements Required by Regulation S-X

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of final rules which amend Regulation S-X to significantly modify requirements to include in filings with the Commission separate financial statements of the parent company only and of unconsolidated subsidiaries and 50 percent or less owned persons accounted for by the equity method. In addition, certain related amendments are being adopted to revise the definition of a significant subsidiary. Also, the requirement to provide separate financial statements of consolidated subsidiaries engaged in diverse financial-type businesses has been eliminated from the final rules. These changes are a part of the Commission's reexamination of its requirements for presentation of financial statements in connection with its efforts to simplify and improve the current disclosure system. These rules reduce the number of instances where separate financial statements are required and are designed to place greater reliance on summarized and condensed financial information.

EFFECTIVE DATE: Effective for companies with fiscal years ended after March 15, 1982, with earlier implementation encouraged. Where early application is elected, full application of the new rules is required.

FOR FURTHER INFORMATION CONTACT: Marc D. Oken (202-272-2130) or John W. Albert (202-272-2133), Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting final rules which amend Regulation S-X (17 CFR Part 210) to significantly modify the requirements for filing separate financial statements of (1) the parent company, (2) subsidiaries not consolidated and 50 percent or less owned persons accounted for by the equity method, and (3) consolidated subsidiaries engaged in diverse financial-type businesses. The amended rules eliminate the existing requirement to file complete separate financial statements of the parent company and instead provide for the presentation of certain footnote disclosures and condensed financial information for the parent company. The criteria used to determine whether parent company information is required have been changed to better meet the objectives of parent company disclosures. Existing requirements for separate financial statements of unconsolidated subsidiaries and 50 percent or less owned persons are being amended to provide that only summarized financial information is required if certain tests are met and to increase the threshold for requiring complete separate financial

statements. The amended rules also eliminate existing requirements to furnish separate financial statements of consolidated subsidiaries engaged in diverse financial-type businesses. Finally, amendments to related rules are being adopted to revise the tests used for determination of a significant subsidiary.

Adoption of the final rules announced in this release results in amendments to certain provisions of Articles 1, 3, 3A, 4, 5 and 12 of Regulation S–X.

The final rules, which include a significant reduction in existing requirements, were adopted after careful consideration by the Commission of the needs of investors and the public comments received in response to the proposing release.

The Commission believes that the amended rules improve the disclosure system and continue to provide for necessary and meaningful disclosures. It is interested, however, in hearing further from users of financial information if, after observing the results of application of the new rules, they believe that the results do not meet their needs. Specific areas of interest include the following:

(1) Is the need for parent company and unconsolidated subsidiary information satisfactorily met by the summarized and condensed financial information furnished in the 10–K filings with the Commission?

(2) Does the segment information required by FASB Statement No. 14 provide sufficient information about the activities of regulated industries?

(3) Are there additional criteria which should require the furnishing of parent company information, such as when the parent has outstanding public debt but the net asset restriction test is not met?

If the Commission's monitoring efforts or public comment on these or other matters indicate a need for further action, the related issues will be revisited at that time.

Background

In connection with its program to integrate disclosures required under the Securities Act of 1933 with those of the Securities Exchange Act of 1934, the Commission initiated a broad project to reexamine its requirements for the preparation and presentation of financial statements. This project was designed to identify ways in which the rules may be improved and has already resulted in a significant changes to the disclosure system. A general revision of Articles 3 and 5 and certain portions of Article 12 of Regulation S–X has been accomplfshed and new uniform requirements governing the periods to be covered by financial statements have been adopted. In addition, rules regarding the form and content of interim financial information included in both periodic reports and registration statements have been standardized.

As an important part of this initiative, the Commission established a project to reconsider its requirements to file, in addition to consolidated financial statements, separate financial statements of the registrant and certain consolidated and unconsolidated entities. Under existing rules, registrants meeting certain conditions could be required to include in their filings separate financial statements of (1) the parent company only; (2) significant unconsolidated subsidiaries and 50 percent or less owned persons accounted for by the equity method; (3) significant consolidated subsidiaries engaged in diverse financial-type businesses; and (4) affiliated companies whose securities have been pledged as collateral.

In a release issued on May 11, 1981,[1] the Commission invited public comment on proposed rules which would significantly modify the requirements to include these types of separate financial statements in filings with the Commission. The response to this invitation to comment was substantial, as reflected by the total of 122 comment letters received.[2] The comments included in these letters have been considered and appropriate changes made in the final rules adopted by the Commission.

The final rules are consistent with the Commission's ongoing project to simplify and improve the current disclosure system. They ease reporting burdens in general but provide for meaningful disclosure where necessary. The final rules, and the changes to the proposed rules resulting from the response of commentators, are discussed in detail in the sections which follow.

Parent Company Only Disclosures

The rules being adopted for parent company disclosures require certain additional disclosure in footnotes to consolidated financial statements and the presentation of condensed financial information in a schedule when certain restrictions exist on the ability of subsidiary companies to transfer funds to the parent through intercompany loans, advances or cash dividends. Complete separate financial statements of the parent are no longer required.

The amended rules require, among other things, that registrants identify and quantify restrictions on the ability of subsidiary companies to transfer funds to the parent through intercompany loans, advances and cash dividends. To determine whether additional footnote disclosure is required, registrants must compute the total net assets of subsidiary companies (including unconsolidated subsidiaries) which are restricted from transfer to the parent company in the forms of loans, advances, or cash dividends. This amount is then added to the parent's equity in undistributed earnings of 50 percent or less owned persons accounted for by the equity method[3] and the resulting total compared to total consolidated net assets as of the end of the most recent fiscal year. If the restricted net assets of subsidiaries and the parent's equity in the undistributed earnings of 50 percent or less owned persons exceed 25 percent of total consolidated net assets, additional footnote disclosure regarding funds flow restrictions is required.

The computation of restricted net assets focuses on formal restrictions which have an impact on the flow of funds from subsidiaries to the parent. For this purpose, the restricted net assets of subsidiaries would be the amount of the parent's proportionate share of net assets (after intercompany eliminations) which, as of the end of the most recent fiscal year, may not be transferred to the parent by subsidiaries in the form of loans, advances or cash dividends without the consent of a third party (i.e., lender, regulatory agency, foreign government, etc.). Not all limitations on transferability of assets are considered to be restrictions for purposes of this test, which considers only specific third party restrictions on the ability of subsidiaries to transfer funds outside of the entity. For example, the presence of subsidiary debt which is secured by certain of the subsidiary's assets does not constitute a restriction under this rule. However, if there are any loan provisions prohibiting dividend payments, loans or advances to the parent by a subsidiary, these are considered restrictions for purposes of computing restricted net assets. When a loan agreement requires that a subsidiary maintain certain working capital, net tangible asset, or net asset

[1] Securities Act Release No. 6316 (46 FR 27344).

[2] The majority of the commentators were from industry and related groups (87), with comments also received from representatives of accounting firms or groups (14), banks (12), securities analysts and other financial statement users (7), and law firms (2).

[3] Because the registrant does not control 50 percent or less owned persons accounted for by the equity method, all of the parent's equity in undistributed earnings of such persons would be included in this calculation.

levels, or where formal compensating balance arrangements exist, there is considered to be a restriction under the rule because the lender's intent is normally to preclude the transfer by dividend or otherwise of funds to the parent company. Similarly, a provision which requires that a subsidiary reinvest all of its earnings is a restriction, since this precludes loans, advances or dividends in the amount of such undistributed earnings by the entity. Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary should be used in computing restricted net assets.

The disclosure required in the footnotes to the consolidated financial statements includes 1) a description of the restrictions on the ability of consolidated and unconsolidated subsidiaries to transfer funds to the parent in the form of loans, advances or cash dividends; 2) an identification of the sources of the restrictions (i.e., lender, regulatory agency, foreign government, etc.); and 3) the aggregate amount restricted relative to total consolidated net assets as of the end of the most recent fiscal year.

To determine whether condensed parent company financial information is required to be provided in a schedule, the above computation is modified by excluding the parent's equity in undistributed earnings of 50 percent or less owned persons and the restricted net assets of unconsolidated subsidiaries from the test. If the total amount of restricted net assets of consolidated subsidiaries exceeds 25 percent of total consolidated net assets, disclosures regarding the financial condition of the parent company must be provided in a schedule to the financial statements.

An amended Schedule III, "Condensed Financial Information of Registrant," will provide investors with information as to the financial position, changes in financial position and results of operations of the parent company only as of the same dates and for the same periods for which consolidated statements are required. The financial data required may be provided in a condensed form similar to that currently required for condensed statements on Form 10-Q.

Detailed footnotes normally required for complete financial statements may be omitted except for certain disclosures, which include 1) descriptions of material contingencies, significant provisions of long-term obligations and guarantees of the registrant and a five-year schedule of maturities of the parent's obligations (those items may be excluded from the schedule if they are disclosed in the consolidated financial statements); and 2) disclosure of cash dividends paid to the parent by consolidated subsidiaries, unconsolidated subsidiaries, and 50 percent or less owned persons, respectively, for each of the last three fiscal years.

In a related matter, in an August 1981 release which is currently under consideration by the Commission,[4] it was proposed that, among other things, Regulation S-K should include a new instruction to "Management's Discussion and Analysis of Financial Condition and Results of Operations" to focus on liquidity of the parent company. The instruction would provide that where footnote disclosure of restrictions on the ability of subsidiaries to transfer funds to the parent in the form of cash dividends, loans or advances is required by Regulation S-X, management's discussion of liquidity should include the nature and extent of the restrictions and the impact they have had or are expected to have on the ability of the parent company to meet its cash obligations.

Basis for Disclosure Requirements

The proposed rules for parent company disclosure elicited substantial response from commentators. Of the 122 commentators responding to the proposed rules, 114 addressed the parent company requirements. About half of these commentators were generally supportive of the proposed parent company disclosures, while the others were opposed to one or more of its facets. Many commentators applauded the Commission for providing a rationale for requiring additional parent company disclosures and agreed that complete parent company financial statements are not generally necessary. Other commentators, however, questioned the need for even condensed financial information of the parent company, suggesting that all essential information could be derived from the consolidated financial statements, expanded footnote disclosures and the additional discussions in Management's Discussion and Analysis of liquidity.

Basic premises of consolidated financial statements are that the parent company controls the affairs of its constituent companies, that there is a relatively free flow of funds among the various companies combined in the consolidated entity, and that the parent has the ability to manage their resources in the best interests of shareholders and creditors. The Commission concluded that parent company disclosures were needed in circumstances where the parent company may not exercise the level of control which consolidated statements lead users to presume. The operations of subsidiaries engaged in banking or insurane, for example, are in most cases subject to strict government regulation. The financial flexibility of these entities and the nature of their relationships with affiliated persons, including the parent company, are subject to regulatory restraints. In addition, subsidiaries often have financing agreements which may restrict the transfer of funds to a parent or other affiliated party or other types of transactions with affiliates. Also, where subsidiaries have significant minority equity interests, their operations may be influenced by these equity holders.

Where a parent company's ability to control may be restricted to the extent that substantial control over the flow of funds within an enterprise may be impaired, the Commission believes investors should be provided the information necessary to evaluate the impact of such restrictions on the strength of the enterprise as a whole and on the security of their investments.

The Commission believes that adequate disclosure is not provided in consolidated financial statements where significant restrictions exist on the ability of a parent company to control the flow of funds of its consolidated group. The Commission also concluded that its existing requirements for separate parent company disclosures were not adequate because of the nature of the tests used to determine the need for disclosures. Finally, where parent company financial information is considered necessary, the Commission concluded that complete separate statements of the parent were not necessary to meet the needs of investors.

The rules being adopted for parent company disclosures are based on the concept of identifying significant restrictions on funds flow between subsidiaries and parent set forth in the proposing release. Condensed parent company financial information will be required under certain conditions, but some revisions have been made to specific footnote disclosure requirements and to the related "triggering mechanisms" as a result of the Commission's consideration of the comments received.

[4] Release No. 33-6332 (August 6, 1981) [46 FR 41925, August 18, 1981]. The new instruction was proposed as Instruction 6 to Item 303(a) of Regulation S-K.

Under the proposed rules, both footnote disclosure of restrictions on funds flow to the parent company and condensed parent company financial information would have been triggered by an identical "25% restricted net assets test." Under the proposed test, the amount of undistributed earnings of 50 percent or less owned persons accounted for by the equity method would be added to the restricted net assets of subsidiaries and compared with total consolidated net assets. Certain commentators questioned the inclusion of undistributed earnings of such persons and the restricted net assets of unconsolidated subsidiaries in any test to trigger additional parent company information. Their view was that it did not seem appropriate to trigger footnote and schedule information solely on the basis that a company had significant investments in 50 percent or less owned persons or unconsolidated subsidiaries. Since the parent company would still be able to exercise the level of control over the net assets of consolidated subsidiaries as presumed by users, commentators questioned the need for separate parent company information in such circumstances. Further, commentators noted that if such investments were material the proposed significant subsidiary rules would require summarized financial information and possibly complete financial statements for such persons.

Accordingly, the amount of undistributed earnings of 50 percent or less owned persons and the restricted net assets of unconsolidated subsidiaries have not been included in the final rules for determining whether schedule disclosure of condensed parent company financial information is required. However, these amounts must be included in the tests used to determine whether additional footnote disclosure is required. Since a parent may be unable to control the payment of dividends, loans or advances from a 50 percent or less owned person, the net assets of such persons are relevant and need be considered, if significant, along with restricted net assets of both consolidated and unconsolidated subsidiaries to evaluate the need for footnote discussion of restrictions on the parent's control.

The proposed rules to trigger parent company disclosures defined restricted net assets of subsidiaries as the amount of net assets which may not be loaned or advanced to the parent without the consent of third parties. Restrictions on cash dividends by subsidiaries were not included for purposes of this test based on the view that any restrictions, under loan covenants or otherwise, which limit the transfer of funds to affiliates through loans or advances would similarly restrict cash dividends. Certain commentators suggested that restrictions on loans or advances often do not prevent the distribution of cash dividends. Accordingly, the test for determining restricted net assets has been expanded in the final rules to include restrictions on cash dividends.

In addition to the specific footnote disclosure requirements adopted in the amended rules, the proposed rules would have required disclosure of the amounts of undistributed earnings of consolidated subsidiaries, unconsolidated subsidiaries, and 50 percent or less owned persons accounted for by the equity method, and of the amounts restricted as to dividend distribution. A reconciliation of the parent's equity in undistributed earnings of 50 percent or less owned persons and consolidated and unconsolidated subsidiaries to total consolidated retained earnings would also have been required. Many commentators questioned the usefulness of any reconciliation of retained earnings amounts. Others suggested that such a presentation could be complex, may require arbitrary allocations of consolidating adjustments, and may be difficult to understand. In response to the commentators' concerns about the burdens associated with presenting this information and its utility, the proposed requirement for footnote disclosure of undistributed earnings and the related reconciliation to consolidated retained earnings have not been included in the amended rules.

A majority of the commentators supported the use of net assets as an appropriate base to assess the need for parent company disclosures. In their view, availability of dividends to shareholders and ability to service debt requirements are often assessed by a company's net asset strength. Further, net assets represent a well-defined and familiar unit of financial measure. However, commentators also suggested that guidelines be included in any final rules to specify the appropriate treatment of redeemable preferred stocks and minority interests in computing net assets for purposes of the test. Since the amended rules are intended to provide information as to the ability of a parent company to meet its financial obligations, appropriate consideration should be given to the impact on a parent company of future cash obligations associated with redeemable preferred stocks.[5] Similarly, it would be inappropriate to include minority interests in criteria used to evaluate the parent's control over consolidated resources. Therefore, the final rules provide that redeemable preferred stocks and minority interests shall be deducted in computing net assets for purposes of this test.[6]

Unconsolidated Subsidiaries and 50 Percent or Less Owned Persons

The amended rules require the presentation of summarized financial information for unconsolidated subsidiaries and 50 percent or less owned persons accounted for by the equity method in a footnote when either asset or income tests based on certain 10 percent measurements are met. In addition, audited separate financial statements are required in filings with the Commission if either of the tests are met at a higher level of 20 percent. These tests are referred to in Regulation S–X as the significant subsidiary test and have been amended to include the following:

Asset tests—

- the registrant's and its other subsidiaries' investments in and advances to the subsidiary or 50 percent or less owned person exceed 10 percent of the registrant's consolidated assets.
- the registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary or 50 percent or less owned person exceeds 10 percent of the registrant's consolidated assets.

Income test—

- the registrant's and its other subsidiaries' equity in income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary or 50 percent or less owned person exceeds 10 percent of such income of the registrant consolidated.

By raising the level of the percentage tests for providing audited separate financial statements in Commission filings from 10 to 20 percent, greater reliance is being placed on summarized financial information. To improve consistency in reporting this information, rules are also being adopted to establish standards for the

[5] In Accounting Series Release No. ("ASR") 268 (July 27, 1979) [44 FR 45610], redeemable preferred stocks were defined as any stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer.

[6] Although ASR 268 permits the inclusion of redeemable preferred stocks in stockholder's equity for purposes of presenting ratios, charts or other data, these stocks are to be excluded from net assets for purposes of this test because of the related cash obligations of such stocks.

content of summarized financial information.

Since separate financial statements of unconsolidated subsidiaries and 50 percent or less owned persons are only considered necessary to satisfy the informational needs of sophisticated users, they are required in registration and reporting forms filed with the Commission, but not in annual reports to security holders. These separate statements should comply with all provisions of Regulation S–X, including the schedule requirements.

Discussion of Final Rules

The amended rules for separate financial disclosures for unconsolidated subsidiaries and 50 percent owned persons accounted for by the equity method have been adopted substantially as proposed in the May 1981 release. These rules are based on the Commission's view that summarized financial information may be adequate for disclosure purposes up to the point when the financial impact of a subsidiary or person becomes so significant that more detailed disclosure becomes necessary to an evaluation of the overall financial condition of a reporting entity. While recognizing that quantifying that level of significance may be an arbitrary determination, the Commission concluded that the proposed 20 percent level is a reasonable standard for determining when the more detailed disclosures provided by complete financial statements are necessary in filings with the Commission. A majority of the commentators expressed support for the proposal and agreed that the 20 percent level was a reasonable percentage for the determination of whether separate financial statements are required.

Certain commentators suggested that the Commission's rules should be eliminated because they are duplicative of generally accepted accounting principles ("GAAP"). While the Commission recognizes that GAAP (APB Opinion No. 18) calls for the presentation of either separate financial statements or summarized financial information, guidance is not provided as to when either of these alternatives may be more appropriate. The new rules establish uniform standards to determine the degree of detailed information to be included in filings with the Commission. The Commission recognizes that many registrants often elect to include full separate financial statements for significant unconsolidated subsidiaries or 50 percent or less owned persons in their annual reports to security holders. The new rules do not eliminate this option, and registrants may continue to provide either separate financial statements or summarized financial information in their annual reports as they deem to be appropriate.

As proposed, the significant subsidiary test, used to trigger separate financial disclosure of unconsolidated subsidiaries or persons and other financial disclosures under the Commission's rules, was based on the existing definition, except that the sales test was eliminated. The elimination of the sales criterion from the significant subsidiary test in the final rules is based on the view that the presentation of additional financial disclosures of an affiliated entity may not be meaningful if the affiliate has a high sales volume but a relatively low profit margin. In such circumstances, the affiliate has little financial impact on the operating results of the consolidated group. Most commentators supported the elimination of the sales test from the definition of a significant subsidiary.

Several commentators suggested that the income test, which was proposed to be based on income before income taxes, extraordinary items and the cumulative effect of a change in accounting principle, also exclude the results of discontinued operations and the related gain or loss on disposition. The Commission agrees that income from continuing operations is a more appropriate measure of the relative significance of an individual entity to a consolidated group. The significant subsidiary test in the final rules has been revised to state that the income test should be based on income from continuing operations only.

Historically, separate financial statements of unconsolidated subsidiaries and 50 percent or less owned persons have been required to be audited and presented, insofar as practicable, as of the same dates and for the same periods as those of the registrant. Certain commentators questioned the necessity of an audit requirement for prior years when an entity first meets the test of a significant subsidiary. In their view, the burden of obtaining audits for prior years in which an entity was not significant may not be cost-justified. The Commission believes that this is a valid concern, and, accordingly, the amended rules permit the presentation of prior years' financial statements on an unaudited basis in these circumstances.

The final rules require the presentation of summarized financial information when any of the significant subsidiary tests is met on an aggregate basis by any combination of unconsolidated subsidiaries and 50 percent or less owned persons. The proposed requirements included a provision under which summarized information could be omitted for one or more entities provided that (1) it was impracticable to furnish the information, and (2) the omitted information did not exceed 5 percent under any of the tests. The proposed 5 percent ceiling on omitted information was intended to emphasize that arguments as to impracticability would be rejected if the information to be omitted exceeded the 5 percent test. However, this aspect of the proposed rules had the unintended effect of confusing many of the commentators. Certain of the commentators viewed the proposed ceiling as a reduction of the reporting threshold for presenting summarized information from 10 to 5 percent. Others pointed out that if it is impracticable to obtain certain information, the fact that the omitted information is greater than 5 percent does not make it practicable. For this reason and to avoid confusion, the proposed 5 percent ceiling on omitted information has been deleted from the amended rules. The Commission emphasizes that the required additional financial information is warranted whether "significance" is attributable to the contribution of an individual subsidiary or person or from a combination of such subsidiaries or persons. Since the Commission believes that the summarized information should be complete, requests for permission to omit some entities from the summarized financial information will not be granted in a routine manner.

Summarized Financial Information

An integral part of the proposed rules concerned the establishment of standards for the content of summarized financial information. Such information would be required for those entities which meet the revised significant subsidiary rules. Many commentators suggested that the proposed standards for summarized information should be eliminated and that the private sector should develop such standards. Other commentators, however, noted the absence of specific guidelines for the content of this information and supported the Commission's effort to establish such minimum standards. The Commission believes that standards for summarized information are necessary in order for it to adopt these reduced requirements and to provide consistency in reporting this financial information. Should the FASB establish such standards, the Commission will

reevaluate the necessity for its own standards.

Many commentators questioned the proposed requirement that footnote disclosure accompany summarized financial information. Some commentators opposed the general requirement providing for disclosures necessary to make the information presented "not misleading" on the basis that neither objectives nor detailed standards exist for the presentation of such information. Other commentators argued that disclosure of material contingencies and five-year maturity data should only be required when these items are material to the consolidated financial statements. The Commission has considered these views and agrees that these disclosures are necessary only when material to the consolidated financial statements of the primary reporting entity. Accordingly, the proposed requirements for footnote disclosure are not included in the final rules.

The rules being adopted generally indicate that whenever summarized financial information is required under Regulation S–X it shall consist of summarized information as to assets, liabilities and results of operations of the entity or entities for which the information is required.[7] Insofar as is practicable, summarized financial information shall be provided as of the same dates and for the same periods for which audited consolidated financial statements are required.

The items to be included in the summarized results of operations are based on existing requirements for footnote disclosure of certain selected quarterly financial data [8] and are as follows:

—net sales or gross revenues;

—gross profit (or, alternatively, costs and expenses applicable to net sales or gross revenues);

—income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principle;

—net income or loss.

The content of the summarized results of operations is basically being adopted as proposed, except that income or loss is to be presented on a continuing operations basis for reasons consistent with changes in the significant subsidiary test discussed earlier. For specialized industries in which gross profit is not computed, information may be substituted which is more meaningful to an entity's operations. A bank, for example, could present total interest income, total interest expense, provision for loan losses, and security gains or losses in lieu of sales and related costs and expenses. Similarly, an insurance company could present information as to net premiums earned, net investment income, underwriting costs and expenses, and realized gains or losses on investments.

The rules being adopted for summarized financial information as to assets and liabilities recognize that differences exist in balance sheet presentations among different industries. In industries in which classified balance sheets are presented, disclosure is required of the amounts of current and noncurrent assets and liabilities. For industries in which classified balance sheets are not presented, information is required as to the nature and amount of the major components of an entity's assets and liabilities. A finance company, for example, should disclose the portion of its total assets represented by net loan receivables when that item represents one of that company's largest assets. Long-term liabilities and redeemable preferred stock should be disclosed regardless of the type of balance sheet presented.

Other Issues

The proposed rules would have retained certain existing disclosure requirements where differences exist between the registrant's cost and underlying equity in net assets for an investment accounted for by the equity method. Certain commentators recognized these requirements as duplicative of GAAP [9] and recommended their deletion. These disclosure requirements have been eliminated in the final rules.

Minor revisions have also been made to the proposed rules to clarify their intent where necessary. For example, the rule which explains when the acquisition of another company in a business combination accounted for as a pooling of interests meets the asset test of a significant subsidiary has been expanded to indicate that such test is to be applied only for purposes of determining a reportable event under Form 8–K or a future business succession (§ 210.3–08).

Consolidated Subsidiaries Engaged in Diverse Financial Activities

The amended rules eliminate existing requirements to furnish, in filings with the Commission, separate financial statements of consolidated subsidiaries engaged in diverse financial-type businesses. Under existing rules, registrants with significant subsidiaries engaged in the businesses of life insurance, fire and casualty insurance, banking, securities brokerage, savings and loan, or finance are required to present separate or combined financial statements for consolidated subsidiaries in such businesses.

Consolidated financial statements comprised of a variety of specialized financial-type businesses are often complex and difficult to analyze and the disaggregated disclosure provided by separate financial statements has been considered necessary to perform a detailed analysis of the enterprise. A matter which frequently contributes to the complexity of a consolidated presentation is the fact that certain of the consolidated entities operate in highly regulated environments. The portion of the consolidated entity to which regulatory restraints relate and the impact such restraints have on the enterprise as a whole are often difficult to ascertain from the consolidated statements. The disclosures required under the existing rules can provide sophisticated investors with a better understanding of the relative strengths and weaknesses of the various businesses which the enterprise operates and generally provide a better basis upon which to evaluate trends.

While attentive to the informational needs of the sophisticated investor, the Commission is also sensitive to the reporting burdens imposed by these and other requirements for separate statements. In an effort to ease such reporting burdens, the Commission proposed, as part of the May 1981 release, to eliminate requirements for these separate financial statements and to rely instead on condensed financial information. Under the proposed rule, condensed financial information as to financial position, changes in financial position and results of operations would be required to be presented in a schedule as of the same dates and for the same periods covered by the consolidated financial statements. The financial information would not have to be presented in any greater detail than is required for condensed statements in interim reports filed on Form 10–Q and in registration statements, where required. Detailed footnotes which

[7] Where summarized financial information is referred to and required by § 210.10-01(b) for interim periods, only summarized information as to results of operations is required.

[8] Adopted as § 210.3-16(t) in Accounting Series Release No. 177 (September 10, 1975). The rule has subsequently been transferred to Item 12 of Regulation S–K.

[9] Paragraph 20a of APB Opinion No. 18.

would normally be required for complete financial statements could be omitted.

Most commentators reacted favorably to the perceived reduction in reporting burdens resulting from the new requirements to furnish only condensed information. However, a significant number of commentators questioned the need for even condensed financial information and suggested that there was insufficient basis for requiring additional disclosures of finance-type businesses. These respondents believed that the segment data required by Statement of Financial Accounting Standards ("SFAS") No. 14 provides adequate information both for users of annual reports to security holders and for sophisticated investors.

SFAS No. 14 requires public companies to provide certain disaggregated disclosures regarding operations in different industries, foreign operations, export sales and major customers. Principal disclosures required for each reportable segment include revenues, operating profit or loss, identifiable assets, depreciation and capital expenditures. The Commission reiterates its view that the disclosures required by SFAS No. 14 provide meaningful information regarding the principal segments of a business in which an enterprise operates and that the degree of disclosure provided is adequate for purposes of annual reports to shareholders.

Careful consideration has been given to the benefits of the additional disclosures in Commission filings required by the proposed rules, the related reporting burdens, the needs of sophisticated investors and the comments of respondents on the proposed rules. The Commission's decision to delete all requirements for additional financial information for consolidated finance-type subsidiaries was significantly influenced by its conclusion that the disclosures required by SFAS No. 14 provide adequate information on these activities to most investors, and by the views of commentators that the marginal utility of information required by the proposed rules may not be cost-justified, considering the burdens associated with the presentation of such information.

Affiliates Whose Securities Are Pledged as Collateral

The final rules retain existing requirements to include financial statements of affiliates in filings with the Commission when the securities of the affiliate constitute a substantial portion of the collateral of any class of securities registered or being registered. For purposes of compliance with these requirements, an affiliate's securities are deemed to constitute a substantial portion of collateral if the aggregate principal amount, par value, book value as carried by the registrant, or market value of such securities, whichever is greatest, equals 20 percent or more of the principal amount of the secured class of securities.

These financial statements are generally required to be audited as of the same dates and for the same periods as the consolidated statements and must be presented in full compliance with Regulation S-X. However, financial statements of affiliates are not required when they are otherwise filed with the Commission on an individual or consolidated basis.

Most commentators agreed that such statements are essential to an evaluation of the ability of an affiliate to satisfy its commitment in the event of default by the registrant. The commentators also supported the Commission's view that when such financial statements are required they should be as comprehensive as those presented by the registrant. Accordingly, the existing requirements for separate financial statements of affiliates whose securities are pledged as collateral have been retained in the final rules being adopted.

In addition to situations involving collateralized securities of affiliates, separate financial statements of the guarantors of indebtedness of a registrant are usually required to be filed under the Commission's rules. In such situations, the Commission has generally relied upon the provisions of Regulation S-X (§ 210.3-13) which require the filing of other financial statements when necessary for an adequate presentation of the financial condition of the registrant.

The bases for requiring separate financial statements of both guarantors and affiliates whose securities collateralize an offering are the same. In both instances, separate financial statements are considered necessary for an assessment of the ability of an entity to satisfy its commitment in the event of default by the registrant. To clarify the Commission's practice, the rules have been amended to specify that separate financial statements of guarantors are required in Commission filings.

Summarization of Existing And Amended Rules

The table which follows is presented as a guide to assist the reader in understanding the more significant changes being adopted by comparing the existing and amended rules. This table should be used as a supplement to the discussion of the existing rules and changes to those rules provided in earlier sections of this release.

Existing rules	Amended rules
Parent company only:	
When required:	
—Parent is a holding company; or —Parent is an operating company whose consolidated subsidiaries have minority equity interests or indebtedness to unaffiliated persons in amounts which exceed 5 percent of total consolidated assets; however, if the parent's total assets, exclusive of investments in and advances to its consolidated subsidiaries, constitute 75 percent or more of total consolidated assets, and its total sales and revenues, exclusive of interest and dividends received from or its equity in earnings of consolidated subsidiaries, constitute 75 percent or more of total consolidated sales and revenues, separate statements may be omitted.	—The amended rules focus on the existence of restrictions on the ability of subsidiaries to transfer funds to the parent company. Footnote disclosure requirements are triggered when the registrant's proportionate share of net assets of subsidiaries (after intercompany eliminations) restricted from being transferred to the parent company in the form of loans, advances or cash dividends and its equity in undistributed earnings of 50 percent or less owned persons accounted for by the equity method, together, exceed 25 percent of consolidated net assets as of the end of the most recent fiscal year. Requirements for additional parent company financial disclosure are triggered by the same test, except that unconsolidated subsidiaries and 50 percent or less owned persons are excluded from the computation.
Information required:	
—Separate audited financial statements as of the same dates and for the same periods as consolidated financial statements.	—Separate parent company financial statements (§§ 210.3-03, 3-04 and 3-05) are no longer required. —Disclosure is required in *footnotes to consolidated financial statements* about restrictions on the ability of both consolidated and unconsolidated subsidiaries to transfer funds to the parent company in the form of cash dividends, loans or advances (§ 210.4-08(e)). —The significance of the aggregate amount of restricted net assets to consolidated net assets as of the end of the most recent fiscal year shall be disclosed. —Footnote disclosure will be supplemented by the presentation of *condensed financial information* as to financial position, changes in financial position and results of operations of the parent company only in a schedule to consolidated financial statements (§§ 210.5-04 and 12-04).

Existing rules	Amended rules
Unconsolidated subsidiaries and 50 percent or less owned persons:	
When required:	
—When any one of the following tests are met	—When any one of the following tests are met:
Asset tests	Asset tests.
Registrant's investment in subsidiary or person, or registrant's proportionate share of total assets (after intercompany eliminations) of subsidiary or person exceeds 10 percent of registrant's consolidated assets.	No change.
Sales test	
Registrant's proportionate share of total sales or revenues (after intercompany eliminations) of the subsidiary or person exceeds 10 percent of registrant's consolidated sales and revenues.	This test is deleted.
Income test	Income test.
Registrant's equity in income before income taxes, extraordinary items and cumulative effect of an accounting change of the subsidiary or person exceeds 10 percent of such income of the registrant consolidated.	Registrant's equity in income *from continuing operations* before income taxes, extraordinary items and cumulative effect of an accounting change of the subsidiary or person exceeds 10 percent of such income of the registrant consolidated.
Information required:	
—When the test is met by an *individual* subsidiary or person	—When the test is met on a 10 percent level on an individual or aggregate basis, summarized financial information is required in notes to *consolidated financial statements* (§ 210.4–08(g)). To improve consistency in reporting, standard content requirements for summarized financial information are established (§ 210.1–02(aa)).
—Separate or combined audited financial statements as of the same dates and for the periods as consolidated financial statements.	Separate or combined financial statements are required in filings only when an individual subsidiary or person meets the tests based on a 20 percent reporting threshold (§ 210.3–09).
—When the test is met on an *aggregate* basis by a group of unconsolidated subsidiaries or 50 percent or less owned persons.	
—Summarized financial information as to assets, liabilities and results of operations	
Consolidated subsidiaries engaged in diverse financial activities:	
When required:	
—Consolidated subsidiary or group of consolidated subsidiaries meet the significant subsidiary test and is engaged in the business of life insurance, fire and casualty insurance, banking, savings and loan, securities brokerage or finance.	These requirements are deleted.
—Investment in all nonsignificant financial-type consolidated subsidiaries not included above exceeds 10 percent of registrant's total assets.	
—Notwithstanding above, no additional information required if any one of the following conditions are met:	
—Consolidated subsidiary or group does not meet the significant subsidiary test	
—Consolidated subsidiary's or group's assets, revenues, and pre-tax income each exceed 90 percent of consolidated amounts.	
—Ninety percent of consolidated subsidiary's or group's revenues are derived from registrant and its other subsidiaries.	
Information required:	
—Separate audited financial statements of the subsidiary or subsidiaries as of the same dates and for the same periods as the consolidated financial statements.	
Affiliates whose securities are pledged as collateral:	
When required:	
—Securities of an affiliated company constitute a substantial portion of the collateral for any class of securities being registered.	—No changes adopted to existing rules except to clarify that rules also apply to guarantors of securities of a registrant.
—An affiliate's securities are deemed to constitute a substantial portion of collateral if the greater of aggregate principal amount, par value, book value as carried by the registrant, or market value of such securities equals 20 percent or more of the secured class of securities.	
Information required:	
—Audited separate financial statements as of the same dates and for the same periods as the consolidated financial statements of the registrant.	No change.

Text of Amended Rules

Title 17 CFR Chapter II is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. Section 210.1–02 is amended by revising paragraph (v) and adding new paragraph (aa) to read as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X

* * * * *

(v) *Significant subsidiary.* The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for purposes of determining whether the past or future acquisition of another company in a business combination accounted for as a pooling of interests is significant for purposes of applying § 210.3–08 or reporting on Form 8–K, this condition is also met when the number of common shares exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

* * * * *

(aa) *Summarized financial information.* (1) Except as provided in paragraph (aa)(2), "summarized financial information" referred to in this regulation shall mean the presentation of summarized information as to the assets, liabilities and results of operations of the entity for which the

information is required. Summarized financial information shall include the following disclosures:

(i) Current assets, noncurrent assets, current liabilities, noncurrent liabilities, and, when applicable, redeemable preferred stocks (see § 210.5–02.28) and minority interests (for specialized industries in which classified balance sheets are normally not presented, information shall be provided as to the nature and amount of the major components of assets and liabilities);

(ii) Net sales or gross revenues, gross profit (or, alternatively, costs and expenses applicable to net sales or gross revenues), income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principle, and net income or loss (for specialized industries, other information may be substituted for sales and related costs and expenses if necessary for a more meaningful presentation); and

(2) Summarized financial information for unconsolidated subsidiaries and 50 percent or less owned persons referred to in and required by § 210.10–01(b) for interim periods shall include the information required by paragraph (aa)(1)(ii) of this section.

§§ 210.3–03, 210.3–04 and 210.3–05 [Removed]

2. Sections 210.3–03, 210.3–04 and 210.3–05 are removed.

3. Section 210.3–09 is revised to read as follows:

§ 210.3–09 Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

(a) If any of the conditions set forth in § 210.1–02(v), substituting 20 percent for 10 percent in the tests used therein to determine a significant subsidiary, are met for a majority-owned subsidiary not consolidated by the registrant or by a subsidiary of the registrant, separate financial statements of such subsidiary shall be filed. Similarly, if any of the conditions set forth therein, substituting 20 percent for 10 percent, are met by a 50 percent or less owned person accounted for by the equity method either by the registrant or a subsidiary of the registrant, separate financial statements of such 50 percent or less owned person shall be filed.

(b) Insofar as practicable, the separate financial statements required by this section shall be as of the same dates and for the same periods as the audited consolidated financial statements required by §§ 210.3–01 and 3–02. However, these separate financial statements are required to be audited only for those fiscal years in which any of the conditions described in § 210.1–02(v) are met. For purposes of a filing on Form 10–K, if the fiscal year of any majority-owned subsidiary not consolidated or any 50 percent or less owned person ends within 90 days before the date of filing, or if the fiscal year ends after the date of filing, the required financial statements may be filed as an amendment to the report within 90 days after the end of such subsidiary's or person's fiscal year.

(c) Notwithstanding the requirements for separate financial statements in paragraph (a) of this section, where financial statements of two or more majority-owned subsidiaries not consolidated are required, combined or consolidated statements of such subsidiaries may be filed subject to principles of inclusion and exclusion which clearly exhibit the financial position, changes in financial position and results of operations of the combined or consolidated group. Similarly, where financial statements of two or more 50 percent or less owned persons are required, combined or consolidated statements of such persons may be filed subject to the same principles of inclusion or exclusion referred to above.

4. Section 210.3–10 is amended by revising the section heading and paragraph (a) to read as follows:

§ 210.3–10 Financial statements of guarantors and affiliates whose securities collateralize an issue registered or being registered.

(a) For each guarantor of any class of securities of a registrant and each affiliate of the registrant whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the guarantor or affiliate were a registrant and required to file financial statements. However, statements need not be filed pursuant to this instruction for any person whose statements are otherwise filed with the registration statement on an individual or consolidated basis.

§ 210.3A–02 [Amended]

5. Section 210.3A–02 is amended by removing paragraph (e).

§§ 210.3A–03, 210.3A–05 and 210.3A–07 [Removed]

6. Sections 210.3A–03, 210.3A–05, and 210.3A–07 are removed and §§ 210.3A–04, 210.3A–06 and 210.3A–08 are redesignated as §§ 210.3A–03, 210.3A–04 and 210.3A–05, respectively.

7. Section 210.4–08 is amended by revising paragraph (e), redesignating paragraphs (g) through (k) as paragraphs (h) through (l), and adding new paragraph (g) to read as follows:

§ 210.4–08 General notes to financial statements.

* * * * *

(e) *Restrictions which limit the payment of dividends by the registrant.*

(1) Describe the most significant restrictions, other than as reported under paragraph (d) of this section, on the payment of dividends by the registrant, indicating their sources, their pertinent provisions, and the amount of retained earnings or net income restricted or free of restrictions.

(2) Disclose the amount of consolidated retained earnings which represents undistributed earnings of 50 percent or less owned persons accounted for by the equity method.

(3) The disclosures in paragraphs (3)(i) and (ii) in this section shall be provided when the restricted net assets of consolidated and unconsolidated subsidiaries and the parent's equity in the undistributed earnings of 50 percent or less owned persons accounted for by the equity method together exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year. For purposes of this test, restricted net assets of subsidiaries shall mean that amount of the registrant's proportionate share of net assets (after intercompany eliminations) reflected in the balance sheets of its consolidated and unconsolidated subsidiaries as of the end of the most recent fiscal year which may not be transferred to the parent company in the form of loans, advances or cash dividends by the subsidiaries without the consent of a third party (i.e., lender, regulatory agency, foreign government, etc.). Not all limitations on transferability of assets are considered to be restrictions for purposes of this test, which considers only specific third party restrictions on the ability of subsidiaries to transfer funds outside of the entity. For example, the presence of subsidiary debt which is secured by certain of the subsidiary's assets does not constitute a restriction under this rule. However, if there are any loan provisions prohibiting dividend payments, loans or advances to the parent by a subsidiary, these are considered restrictions for purposes of computing restricted net assets. When a loan agreement requires that a subsidiary maintain certain working capital, net tangible asset, or net asset levels, or where formal compensating arrangements exist, there is considered to be a restriction under the rule because the lender's intent is normally to preclude the transfer by dividend or

otherwise of funds to the parent company. Similarly, a provision which requires that a subsidiary reinvest all of its earnings is a restriction, since this precludes loans, advances or dividends in the amount of such undistributed earnings by the entity. Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary shall be used. Redeemable preferred stocks (§ 210.5-02.28) and minority interests shall be deducted in computing net assets for purposes of this test.

(i) Describe the nature of any restrictions on the ability of consolidated subsidiaries and unconsolidated subsidiaries to transfer funds to the registrant in the form of cash dividends, loans or advances (i.e., borrowing arrangements, regulatory restraints, foreign government, etc.).

(ii) Disclose separately the amounts of such restricted net assets for unconsolidated subsidiaries and consolidated subsidiaries as of the end of the most recently completed fiscal year.

* * * * *

(g) *Summarized financial information of subsidiaries not consolidated and 50 percent or less owned persons.* (1) Summarized information as to assets, liabilities and results of operations shall be presented on an individual or group basis in notes to the financial statements for all subsidiaries not consolidated and for all 50 percent or less owned persons accounted for by the equity method by the registrant or a subsidiary of the registrant if any of the conditions set forth in § 210.1-02(v) for the determination of a significant subsidiary, applied to the aggregate of both subsidiaries not consolidated and 50 percent or less owned persons, are met.

(2) Summarized financial information shall be presented insofar as is practicable as of the same dates and for the same periods as the audited consolidated financial statements provided and shall include the disclosures prescribed by § 210.1-02(aa). Summarized information of subsidiaries not consolidated shall not be combined for disclosure purposes with the summarized information of 50 percent or less owned persons. If the above conditions are met on an aggregate basis by any combination of subsidiaries not consolidated and 50 percent or less owned persons, the summarized financial information required by paragraph (g)(1) shall be provided for all such subsidiaries and persons.

* * * * *

8. Section 210.5-04 is amended by revising paragraph (a) and Schedule III to read as follows:

§ 210.5-04 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) The schedules specified below in this section as Schedules I, VII, XI, XII and XIII shall be filed as of the date of the most recent audited balance sheet for each person or group.

(2) Other schedules specified below in this section as Schedules II, IV, V, VI, VIII, IX and X shall be filed for each period for which an audited income statement is required to be filed for each person or group.

(3) Schedule III shall be filed as of the dates and for the periods specified in the schedule.

* * * * *

Schedule III—Condensed financial information of registrant. The schedule prescribed by § 210.12-04 shall be filed when the restricted net assets (§210.4-08(e)(3)) of consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year. For purposes of the above test, restricted net assets of consolidated subsidiaries shall mean that amount of the registrant's proportionate share of net assets of consolidated subsidiaries (after intercompany eliminations) which as of the end of the most recent fiscal year may not be transferred to the parent company by subsidiaries in the form of loans, advances or cash dividends without the consent of a third party (i.e., lender, regulatory agency, foreign government, etc.). Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary shall be used. Redeemable preferred stocks (§ 210.5-02.28) and minority interests shall be deducted in computing net assets for purposes of this test.

* * * * *

9. Section 210.12-04 is revised to read as follows:

§ 210.12-04 Condensed financial information of registrant.

(a) Provide condensed financial information as to financial position, changes in financial position and results of operations of the registrant as of the same dates and for the same periods for which audited consolidated financial statements are required. The financial information required need not be presented in greater detail than is required for condensed statements by § 210.10-01(a) (2), (3) and (4). Detailed footnote disclosure which would normally be included with complete financial statements may be omitted with the exception of disclosures regarding material contingencies, long-term obligations and guarantees. Descriptions of significant provisions of the registrant's long-term obligations, mandatory dividend or redemption requirements of redeemable stocks, and guarantees of the registrant shall be provided along with a five-year schedule of maturities of debt. If the material contingenices, long-term obligations, redeemable stock requirements and guarantees of the registrant have been separately disclosed in the consolidated statements, they need not be repeated in this schedule.

(b) Disclose separately the amounts of cash dividends paid to the registrant for each of the last three fiscal years by consolidated subsidiaries, unconsolidated subsidiaries and 50 percent or less owned persons accounted for by the equity method, respectively.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. Section 240.14a-101 is amended by revising paragraph (d) of Item 15 to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 15. Financial statements and supplementary data.

* * * * *

(d) Notwithstanding the provisions of Regulation S-X, no schedules other than those prepared in accordance with Rules 12-15, 12-28 and 12-29 of that regulation need be furnished in the proxy statement.

* * * * *

(Secs. 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; Sections 12, 13, 15(d) and 23(a) (15 U.S.C. 78*l*, 78m, 78o(d), 78w) of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) (15 U.S.C. 79e, 79n, 79t) of the Public Utility Holding Company Act of 1935; Sections 8, 30, 31(c) and 38(a) (15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)) of the Investment Company Act of 1940)

George A. Fitzsimmons,

Secretary.

November 6, 1981.

I, John S. P. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C.

605(b) that the amendments contained in Securities Act Release No. 6359 which reduce the number of instances in which various types of separate financial statements are presented will not have a significant economic impact on any entity subject to its provisions and, therefore, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that it is anticipated that the effects of the amendments will not be significant for any class of registrants because the compliance burden is not being increased and the required information is generally available from existing accounting records or otherwise available to the affected companies.

Dated: November 6, 1981.

John S. P. Shad,

Chairman.

[FR Doc. 81-32981 Filed 11-13-81; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 128

[CGD-80-069]

Regulated Navigation Area; New Haven Harbor, Vicinity of Tomlinson Bridge

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations establish a Regulated Navigation Area in the harbor of New Haven, CT around the Tomlinson Bridge. The history of collisions involving the bridge has demonstrated that stricter control of vessel movement in this area is necessary. The regulation of vessel traffic will protect the bridge from damage by significantly reducing the chance of collision.

EFFECTIVE DATE: This amendment becomes effective on December 16, 1981.

ADDRESS: Copies of the final Evaluation on this rule may be obtained from or examined at the Marine Safety Council (G-CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington DC 20593 between the hours of 7:00 a.m. and 5:00 p.m., Monday through Thursday.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Michael J. Powers, Office of Marine Environment and Systems, (G-W), U.S. Coast Guard Headquarters, 2100 Second Street, S.W. Washington, DC 20593, (202) 755-1354, or Ensign Carl Lautenberger, Captain of the Port, New Haven, 120 Woodward Ave., New Haven, CT 06512, (203) 773-2464.

SUPPLEMENTARY INFORMATION: On June 16, 1980 the Coast Guard published proposed regulations in the **Federal Register** (45 FR 40622) that would establish a Regulated Navigation Area in the New Haven Harbor in the vicinity of Tomlinson Bridge. No public hearing was held concerning this proposed rule because there was no request for one by an interested person raising a genuine issue and desiring to comment at a public hearing. Eight comment letters were received, primarily from companies doing business in the area and the State of Connecticut.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant (junior grade) Michael J. Powers, Project Manager, Office of Marine Environment and Systems, Ensign Carl Lautenberger, Captain of the Port, New Haven, CT Lieutenant T. J. Donlon, Third Coast Guard District Legal Office, and Lieutenant Walter J. Brudzinski, Project Counsel, Office of the Chief Counsel.

Discussion of Comments

A total of eight letters were received containing comments addressing the Tomlinson Bridge proposed regulations. There were six letters received during the comment period and two letters received prior to the comment period that were also considered. Seven of the eight letters were written by local marine industries and the eighth from the Connecticut State Department of Transportation.

Industry comments generally questioned the need for such restrictive regulation. The typical comment stated the Coast Guard was questioning the professional ability of the vessel operators. The history of collisions has necessitated the strict control of vessel movement through the bridge. Despite spending over two million dollars on repairs of the bridge, it has not been open to full vehicular or rail traffic since 1972. The Coast Guard's position is that these regulations are a reasonable method to control such movement and reduce the potential for future damage.

A general request of the towing companies was the incorporation of a waiver provision into the regulations allowing a tug captain to deviate from any rule with permission of the Captain of the Port. In fact, such a waiver was included in the proposal, § 128.303(b)(8).

One comment stated the size of the regulated area is larger than necessary and suggested reducing the area by using a dividing line between New Haven and East Haven Beaches. The Coast Guard disagrees inasmuch as the rules only apply to barges actually transiting the bridge. The boundaries of the zone were chosen as easily described points of convenience. A change in the zone would thus serve no purpose.

Two comments addressing the freeboard height in proposed § 128.303(b)(2) were received. One commenter felt that ten feet was very restrictive and suggested that a fifteen to sixteen foot limitation was realistic. Connecticut State DOT took the position that a seven foot restriction was necessary to reduce the potential of major damage to the bridge as the result of a collision. The Coast Guard objective is to regulate barges which have the potential of major damage to the bridge as the result of a collision. According to Connecticut DOT's letter, the top of the fendering system is approximately five feet above the high water. Barges with a freeboard of greater than seven feet have the capability of making contact with the bridge gears, thus creating the potential for major damage to the bridge. Although it is possible that barges with a freeboard greater than seven feet may make contact with the bridge, it is speculative that it will be a common occurrence with all barges. Changing the applicability to seven feet will not significantly regulate any more vessels or provide significantly more safety than the ten foot limit. In view of both comments the ten foot criterion is retained.

Several commenters addressed the issue of the ebb tide current restriction in proposed § 128.303(b)(3)(i). One commenter stated this section created unwarranted financial burden and a scheduling problem. Another commenter felt it was impractical to determine when the maximum ebb current occurs at the Tomlinson Bridge and suggested that slack water, which can be easily observed, be used as a reference. It is the Coast Guard's position that this restriction is an important deterrent in preventing collisions. The strong current has been a contributing factor in at least two bridge collisions. The problem of determining maximum ebb current has been resolved by rewording the requirement to restrict transit to a period three hours before and after the high water slack time. The requirement will be kept.

Six comments addressed the fifteen knot wind restriction in proposed § 128.303(b)(3)(ii). Of those, three commenters stated that the wind direction was more important than

speed and should be considered. The Coast Guard agrees that direction is important. Obviously an abeam wind will have a greater effect on a barge than a head wind. Since all barges must make a slight turn to align themselves properly for outbound transits, a wind from any direction will have some effect on an unladen vessel. However, control of a vessel's movement using wind speed is deemed sufficient. All generally criticized the proposed fifteen knot wind restriction as unreasonably low and most suggested that a twenty-five knot limit would be more realistic. It is the Coast Guard's belief that the twenty-five knot limit would be excessive and would result in a greatly decreased safety level. In light of the concerns expressed by industry a compromise windspeed restriction of twenty knots was reached. Raising the windspeed to this level would greatly diminish the economic impact of this section on affected businesses and continue to assure a minimum level of safety. Accordingly, this section has been changed to the higher windspeed of twenty knots.

The commenters objected to the proposed § 128.303(b)(3)(iii) prohibiting the towing of barges stern first. Commenters felt this infringed upon their professional ability and experience. Some believed pushing an unladen barge stern first, with it lashed alongside the tug, was the safest method. The Coast Guard proposed this section to prohibit towing a barge stern first on a hawser. This towing mode is difficult to control and was a factor in five collisions with the bridge. Accordingly, the requirement is maintained with slight rewording for clarification.

The comments received requested that the requirement which restricts passage of barges with beams greater than 50 feet, unless pushed ahead, as proposed in § 128.303(b)(4), be deleted. One commenter stated that the clear span width of the bridge is one hundred twenty-five feet in the draw and suggested that the restriction was not needed. The Coast Guard recognized that in some cases a towing configuration other than pushing ahead may be acceptable. The regulations allow an operator to request an alternative or waiver from the requirement when it can be demonstrated that the procedure will assure an equivalent level of safety.

Three commenters asked for clarification of a clear view in proposed § 128.303(b)(5). One commenter suggested that, in cases where visibility is restricted on the towboat, navigation control be shifted to the barge. Another commenter recommended requiring towboats to have high or telescoping bridges. The intent of this part is to require a lookout on the barge, with communications to the tug, when the view from the towboat is obstructed by the barge. The concept of a bow lookout is not new to the maritime industry. Navigation control must be maintained on the towboat where operation of the vessel if found. Navigational control shifting back and forth to the barge is not viewed as practical. The provision of a bow lookout should eliminate the need to require higher or telescoping bridges on the towboats.

Two comments addressed the daylight requirement of proposed § 128.303(b)(6)(i). One commenter suggested that this decision be made on a case by case basis taking into account type and size of the barge/tug combination. The other commenter suggested that this requirement be made applicable to one specific barge. Inasmuch as it is impractical to regulate specific vessels the latter comment is rejected. Waivers may be granted on a case by case basis by the COTP under § 128.303(b)(8) after examining the barge/tug relationship. The waiver provision is more practical than putting a multitude of exceptions into the regulations.

Two comments were received on the requirement for a second tug in proposed § 128.303(b)(6)(ii). Both suggested that the requirement should apply only when cross winds were in excess of twenty to twenty-five knots. The Coast Guard rejects these comments in light of the history of collisions with the bridge.

One comment was received asking for clarification of § 128.303(b)(6) with respect to where the first tug was required to be when the second tug was standing by the bow of the barge. This section has been changed by stating the position of the first tug is to be at the stern pushing the barge ahead.

In proposed § 128.303(b)(7)(i) the Coast Guard made specific reference to applicable rules regarding navigation and piloting on inland waters. Although Navigation Rules for Harbors, Rivers, and Inland Waters Generally (33 U.S.C. 161–232) and Pilot Rules for Inland Waters (33 CFR Part 80) are currently in effect they will be superceded upon implementation of the "Inland Navigation Rules Act of 1980" (Pub. L. 96–591, 94 Stat. 3415) enacted on 24 December 1980. The effective date for the law in regard to the waters in the regulated navigation area will be 24 December 1981. Therefore, the specific reference has been replaced with a general statement. This will eliminate the need for future amendment to this regulation when the new law takes effect.

Evaluation

This final rule establishes a Regulated Navigation Area around the Tomlinson Bridge in the harbor of New Haven, CT. It does not involve procuring additional equipment or expenditure of funds.

However, it will place some operating restrictions on tows transiting the Mill and Quinnipiac Rivers in the vicinity of Tomlinson Bridge. It has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, this proposal is considered to be non-significant in accordance with the guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). A final Evaluation has been conducted and copies may be obtained from or examined at the Marine Safety Council (G–CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593 between the hours of 7:00 a.m. and 5:00 p.m., Monday through Thursday. Since the proposed rules were published prior to January 1, 1981 the Regulatory Flexibility Act (94 Stat. 1164) is not applicable; however, these rules will not have a significant economic impact on a substantial number of small entities.

PART 128—REGULATED NAVIGATION AREAS

Regulations

In consideration of the foregoing, Part 128 of Title 33 Code of Federal Regulations is amended by adding a new § 128.303 reading as follows:

§ 128.303 New Haven Harbor, Quinnipiac River, Mill River.

(a) The following is a Regulated Navigation Area: The waters surrounding the Tomlinson Bridge located within a line extending from a point A at the southeast corner of the Wyatt terminal dock at 41°17'50" N, 72°54'36" W thence along a line 126°T to point B at the southwest corner of the Gulf facility at 41°17'42" N, 72°54'21" W thence north along the shoreline to point C at the northwest corner of the Texaco terminal dock 41°17'57" N, 72°54'06" W thence along a line 303°T to point D at the west bank of the mouth of the Mill River 41°18'05" N, 72°54'23" W thence south along the shoreline to point A.

(b) *Regulations.* (1) No person may operate a vessel or tow a barge in this

Regulated Navigation Area in violation of these regulations.

(2) Applicability. The regulations apply to barges with a freeboard of greater than ten feet and any vessel towing or pushing these barges on outbound transits of the Tomlinson Bridge.

(3) Regulated barges may not transit the bridge—

(i) Except during the period of three hours before and after high water slack,

(ii) When the wind speed at the bridge is greater than twenty knots, and

(iii) With the barge being towed on a hawser, stern first.

(4) Regulated barges with a beam greater than fifty feet must be pushed ahead through the bridge.

(5) If the tug operator does not have a clear view over the barge when pushing ahead, the operator shall post a lookout on the barge with a means of communication with the operator.

(6) Regulated barges departing the Mill River may transit the bridge only between sunrise and sunset. Barges must be pushed ahead of the tug, bow first, with a second tug standing by to assist at the bow.

(7) Nothing in this section is intended to relieve any person from complying with—

(i) Applicable Navigation and Pilot Rules for Inland Waters;

(ii) Any other laws or regulations;

(iii) Any order or direction of the Captain of the Port.

(8) The Captain of the Port, New Haven, may issue an authorization to deviate from any rule in this Section if the COTP finds that an alternate operation can be done safely.

(Sec. 12 Pub. L. 95-474, 96 Stat. 1477 (33 U.S.C. 1223, 1231) 49 CFR 1.46(n)(4))

Dated: October 8, 1981.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 81-32786 Filed 11-13-81; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CCGD17-81-04]

Gastineau Channel, Juneau, Alaska; Establishment of a Safety Zone

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard intends to establish a Safety Zone in the vicinity of the old Juneau-Douglas bridge, which is presently being torn down, from 8:00 a.m. PST to 6:00 p.m. PST on November 18, 1981. This Safety Zone is required to minimize the danger to the maritime community during the demolition of the center section (lift span) of the old bridge. This Safety Zone has been requested by Underwater Construction, Inc., the demolition contractor. No marine traffic will be allowed within the Safety Zone during the time it is in effect. Coast Guard and Underwater Construction, Inc. vessels will be patrolling the area during demolition operations.

EFFECTIVE DATE: This amendment becomes effective on November 18, 1981.

FOR FURTHER INFORMATION CONTACT: Lt. Joseph M. Hunt, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office, 612 Willoughby Avenue, Juneau, Alaska 99801, telephone: (907) 586-7279.

SUPPLEMENTARY INFORMATION: This emergency Safety Zone regulation is published without notice and public comment because good cause exists which makes notice and public procedures impractical and contrary to the public interest. This demolition plan was scheduled and notification was given to the Coast Guard without sufficient time to comply with notice and publication requirements. The limited duration of the Safety Zone and the limited effect that this Safety Zone will have on marine commerce constitutes good cause to establish this Safety Zone without prior publication. Because of the immediate nature of this regulation it is exempt from the procedures of Executive Order 12291.

DRAFTING INFORMATION: The principle person involved in drafting this rule is Lt. Joseph M. Hunt, Project Officer, Marine Safety Office, Juneau, Alaska.

FINAL REGULATION: In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended by adding § 165.1705 to read as follows:

§ 165.1705 Gastineau Channel, Juneau, Alaska.

(a) The waters within the following boundaries are a Safety Zone: The area 100 yards South and 100 yards North of the centerline of the old Juneau-Douglas bridge, presently being dismantled, from 8:00 a.m. PST to 6:00 p.m. PST on November 18, 1981.

(b) The general regulations governing Safety Zones as contained in 33 CFR 165.20 apply.

(92 Stat. 2475 (33 U.S.C. 1225); 49 CFR 1.46 (n)(4))

Dated: October 30, 1981.

H. D. Jacoby,

Commander, U.S. Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 81-32912 Filed 11-13-81; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 60

National Register of Historic Places

AGENCY: National Park Service, Interior.

ACTION: Interim rules with request for comments.

SUMMARY: These interim rules incorporate revisions required by the National Historic Preservation Act Amendments of 1980, Pub. L. 96-515, ("Amendments") and update and revise in minor respects the procedures for nominations to the National Register of Historic Places by States and Federal agencies as set forth in 36 CFR Part 60. 36 CFR Part 1202 has been redesignated and transferred to 36 CFR Part 60 consistent with the transfer of the National Register of Historic Places to the National Park Service in accordance with Secretarial Order 3060 abolishing the Heritage Conservation and Recreation Service.

DATE: Interim rule effective November 16, 1981; comments must be received on or before January 15, 1982.

ADDRESS: Send comments to: Keeper of the National Register, National Park Service, United States Department of the Interior, Washington, D.C. 20240 (202/272-3504).

FOR FURTHER INFORMATION CONTACT: Carol D. Shull, Acting Keeper of the National Register (202-272-3504).

SUPPLEMENTARY INFORMATION: Amended §§ 60.1, 2, 3, 4, 5, 6 (except subsections (i) and (m)), 9, 10, 13, 14, and 15 of 36 CFR Part 60 are published herein as interim rules effective immediately. Amended §§ 60.6(m), 8, 11 and 12 of 36 CFR Part 60 are published elsewhere in this same issue of the Federal Register as proposed rules. Except for the amended sections published as interim rules for immediate effect, 36 CFR Part 60 is revoked.

The National Park Service ("NPS") will be receiving comments on the interim rules and those proposed rules at the same time. They will be consolidated in final rules to be published after consideration of comments. The sections of 36 CFR Part 60 which are published as proposed

rules are shown as reserved in this publication. As a matter of usual practice, the Department publishes all agency rules for comment prior to making them effective. These rules are on an interim basis with a request for comment because the National Register listing program was required to be suspended as of December 13, 1980, due to the passage of the National Historic Preservation Act Amendments of 1980, Public Law 96-515 ("Amendments"). The essential feature of the Amendments which caused a suspension of the National Register listing program is the requirement that owners of private properties proposed to be listed in the National Register be given a reasonable opportunity to concur in or object to the listing. If the owner objects (or a majority of owners in the event of a district), the property is not to be listed in the National Register. These regulations incorporate this reasonable opportunity to concur or object requirement.

The suspension of the National Register listing program has had the following detrimental results:

1. Property owners are not able to get their properties listed and thus qualify for Federal income tax benefits under Section 2124 of the Tax Reform Act of 1976. This has caused delays in rehabilitation activities with consequent cost increases and the possibility that some historic properties may have to be demolished rather than rehabilitated;

2. State and local governments are unable in some instances to make decisions under State and local laws and requirements concerning applications to demolish or renovate historic properties, thereby delaying developing plans;

3. Property owners are not able to qualify their historic properties for receipt of historic preservation grant funds from the Department's Historic Preservation Fund.

These disruptions of ongoing activities at the State and local level which rise to the level of emergency with respect to preservation of certain historic properties, coupled with the fact that these regulations grant property owners the right to not have their property listed in the National Register, warrant the publication of these regulations on an interim basis effective immediately.

The National Register nomination and listing procedures are amended by these rules to do the following:

(1) Add "engineering significance" to the National Register criteria for evaluation, as required by the Amendments;

(2) Revise the notification procedures for nominations to provide an opportunity for owners to concur in or object to National Register listing, as required by the Amendments;

(3) Strengthen and clarify the responsibilities of the State Historic Preservation Officer to establish priorities for nominating all eligible properties to the National Register, as intended by the Amendments;

(4) Make clear that when a State Review Board reviews and approves a nomination, if it is procedurally correct, the State Historic Preservation Officer shall submit the nomination to NPS unless the State Historic Preservation Officer believes the property does not meet National Register criteria, as required by the Amendments;

(5) Establish a process which allows the State Historic Preservation Officer or State Review Board to request the Keeper of the National Register ("Keeper") to make a final decision on a nomination upon which they disagree;

(6) Strengthen and clarify the responsibilities of Federal agencies and the Federal Preservation Officer in the nomination process, as intended by the Amendments; and delete the provision allowing the State Historic Preservation Officer to nominate properties under Federal ownership or control;

(7) Include a process with appropriate notification by which the Keeper will review and make determinations of eligibility on nominations where the private owners or a majority of such owners for historic districts object to listing in the National Register, as required by the Amendments;

(8) Amend the procedures by which nominations are reviewed and approved by the NPS, define when substantive reviews of nominations will occur, and establish time frames for the review process, as required by the Amendments;

(9) Include technical modifications of requirements for making changes and revisions to nominations for properties listed in the National Register;

(10) Adopt a new appeals process for removal of properties from the National Register, as required by the Amendments;

(11) Delete all references to the Office of Archeology and Historic Preservation, and replace them with National Park Service where appropriate.

A proposed rulemaking which included amendments to 36 CFR § 60.11(c), 60.15 (a)(1), (a)(4) and (a)5 and b(3), 60.16(b)(2) and (3) and 60.17 and the addition of § 60.18, was published in the **Federal Register** for comment on August 5, 1980. On December 12, 1980, the National Historic Preservation Act Amendments of 1980 became law necessitating additional major revisions in the nomination and listing process.

These interim regulations incorporate the revisions required by the Amendments as well as many of the changes published in the **Federal Register** for comment on August 5. These regulations have been written in consultation with State Historic Preservation Officers, Federal agencies, the National Trust for Historic Preservation, Congressional Committee staff and others with concerns about the program. The National Park Service will consult with these and other parties upon request during the comment period. The Amendments require or authorize the Secretary to promulgate or revise regulations relating to the nomination and listing process for the following:

(a) Establishing or revising criteria for properties to be included in the National Register in consultation with national historical and archeological associations;

(b) Nominating properties for inclusion in, and removal from, the National Register and considering the recommendations of properties by certified local governments;

(c) Considering appeals from such recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(d) Making determinations of eligibility of properties for inclusion in the National Register;

(e) Notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion in the National Register;

(f) Including a State or Federal nomination in the National Register forty-five days after receipt by the Secretary of the nomination and necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed;

(g) Accepting a nomination directly from any person or local government for inclusion of a property in the National Register only if such property is located in a State where there is no approved State program and including that property in the National Register or making a determination of its eligibility within 90 days of the nomination unless the nomination is appealed;

(h) Providing a method whereby any person or local government may appeal to the Secretary a nomination of any historic property for inclusion in the National Register and may appeal to the Secretary the failure or refusal of a

nominating authority to nominate a property;

(i) Requiring that before any private property or district including private property may be included in the National Register, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion;

(j) Reviewing a nomination where the private owner or a majority of such owners object to listing to determine whether or not a property or district is eligible for inclusion in the National Register and informing the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local offical and the owner or owners of such property, of such determination;

(k) Modifying the review process to allow the Keeper to approve a nomination without substantive review if the procedures for making nominations have been properly followed, and documentation is adequate.

Implementation of the other provisions is in the proposed regulations published in this **Federal Register**, with the exception of the provisions regarding certification of local governments. Proposed rules for participation in the National Register program by certified local governments will be published separately after the requirements for certifying local governments are developed. 36 CFR 60.6(i) and 60.7 have been reserved for this purpose. The interim rules also include minor revisions published in the **Federal Register** on August 5 for comment as revised based on the Amendments and comments received from the States, Federal agencies, local governments, the National Trust for Historic Preservation, private companies and individuals.

Commentary:

The National Register is designed to be a comprehensive list of the Nation's significant cultural resources to be used as a planning tool by Federal, State and local governments, private groups and citizens. The nomination process in these regulations was designed to ensure high professional standards for evaluation to maintain the integrity of the National Register as the list of the Nation's significant cultural resources. The system was purposely created to assure use of multiple levels of expert professional opinion at the State level and by Federal agencies prior to the submittal of a nomination to the NPS.

States and Federal agencies first apply the National Register criteria for evaluation within each State or region. The National Register criteria are the standard for identifying historic properties to establish a comprehensive resource management and planning system. The identification of all cultural resources within a State is one aspect of this system. The State Historic Preservation Officer is responsible for establishing a systematic method for identifying cultural resources within a State and priorities for the nomination of all eligible properties to the National Register. Federal agencies are required to inventory and nominate all eligible properties under their ownership or control. The National Register criteria are worded so that they can apply to the wide variety of historic and cultural properties. The States and Federal agencies establish the context for evaluation of resources within State, regional and local preservation planning systems and apply the criteria to the specific types of resources in any given area.

For State nominations the State Historic Preservation Officer has the responsibility of making the first determination of which properties meet the criteria for evaluation. To ensure high professional standards the NPS requires that each State develop expertise in the disciplines of history, architectural history, archeology, and historical architecture on the State staff and State Review Board. Nominations are prepared under the supervision of the State Historic Preservation Officer and his or her professional staff in accordance with an approved State historic preservation plan, which is intended to be a comprehensive resource management and planning system. The State Historic Preservation Officer submits nominations to the State Review Board in accordance with established Statewide priorities for preparation and submittal of nominations for all properties meeting National Register criteria. The nomination is then reviewed and a recommendation concerning whether or not the property meets the National Register criteria for evaluation in made by a State Review Board with professional expertise in the disciplines described above. The State Historic Preservation Officer again reviews the nomination after its consideration by the Review Board, signs it and forwards it to NPS.

Federal agencies submitting nominations to the National Register are required to have a Federal Preservation Officer. Federal agencies obtain qualified personnel either by having professional staffs or obtaining the services of professionals to prepare nominations. Federal nominations are sent to the State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property and its eligibility for the National Register.

Generally, NPS relies on States and Federal agencies to identify historic properties for National Register listing. Because of the experience and ability of the States and Federal agencies in identifying and evaluating historic and cultural properties which Congress recognized in the Amendments, NPS will, in most instances, list nominations by Federal agencies and by States with approved State programs without substantive review, provided the Federal agency or State certifies that the procedures for making nominations have been properly followed, the documentation is sufficient, and the nomination meets the National Register criteria for evaluation. However, the Keeper or his or her designee will review particular nominations as part of a systematic process of monitoring State and Federal historic preservation programs, and as otherwise necessary, to insure the integrity of the program. This change in the review process places important additional responsibilities on State Historic Preservation Officers and Federal Preservation Officers to assure that nominations are sufficiently documented, technically and procedurally correct and in accord with National Register criteria for evaluation.

The Amendments codify the responsibilities of State Historic Preservation Officers and establish a process whereby the Secretary approves State programs. Any State Historic Preservation Program in effect under prior authority of law will be treated as an approved program until the date on which the Secretary approves a program submitted by the State or until three years after the date of the enactment of the Amendments unless the Secretary chooses to rescind such approval because of program deficiencies.

The revisions to 36 CFR Part 60 are intended to make the nomination and listing procedures a more open and comprehensible process. To assure better understanding by the public about the basis for decisions on listing of properties in the National Register, NPS is instituting a new policy. When the Keeper determines that a nomination presents questions that cannot be resolved on the basis of precedent or experience, he or she will resolve the

question in a written opinion. The written opinions of the Keeper will be published and will be available to the public in a consistent format. The purpose of the opinions of the Keeper will be to resolve the question at hand and to serve as guidance for subsequent applications of the National Register criteria and procedures.

The Department has given careful consideration to establishing the most reasonable and legally defensible method for carrying out the requirement that before any privately owned property or district including private property may be included in the National Register, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of a historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district. The statute refers only to owners. The language in the committee report acknowledges that there should be adequate flexibility to address the various situations which might arise. State Historic Preservation Officers are required to obtain the list of owners from the most current list of owners in either the tax or land recordation records, whichever is more appropriate. Only the names of those which appear on the list consulted will be notified. Each owner has a vote in determining whether a majority of owners in a historic district or single property with multiple owners object to listing. To protect the rights of property owners and to assure that the record is defensible, the regulations provide that an owner who wishes to object shall submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, as appropriate, and objects to the listing.

After consideration it was concluded that since Federal agencies are legally responsible for nominating historic properties under their ownership or control, the nomination of Federal properties by the State Historic Preservation Officer is duplicative and unnecessary. Therefore the regulations have been revised to delete the provisions (§§ 60.11(d) and 60.15(a)(2) in the current regulations) allowing the State Historic Preservation Officer to nominate properties under Federal ownership or control to the National Register. Section 60.6(y) of these regulations does provide that the State Historic Preservation Officer may submit completed nomination forms for such properties to the appropriate Federal Preservation Officer who may approve the nomination and forward it to the National Park Service. As required by the 1980 Amendments the failure of a Federal agency to nominate an eligible property is subject to appeal. Provisions for appealing nominations are published for comment in this same issue of the **Federal Register.**

Comments and response to comments upon the August 5, 1980 proposed amendments:

The following summarizes the comments received and actions taken in these interim rules on the August 5 proposed amendments.

One comment recommended that the regulations should make clear that comments on National Register nominations should address only the property's historic significance. The most useful comments are those which address the historic significance of a property and therefore assist in its evaluation. However, the public may comment on any aspect of the matter, including procedural aspects. The regulations have been revised to be more consistent when they refer to comments.

One comment recommended that Federal agencies submitting nominations be required to meet the same professional qualification standards as States. While NPS has no authority to impose such a requirement, the Amendments do require that the head of each Federal agency shall, unless exempted, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act.

A recommendation was received that the regulations should be revised to allow for clear consent before processing a National Register nomination and expressing disagreement with the intent of the proposed revisions. The interim regulations now reflect the Amendments which state that if the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to inclusion, such property shall not be included in the National Register until such objection is withdrawn.

Section 60.15 Processing nominations (§§ 60.6 and 9 in these regulations).

One comment addressed the requirement that nominations be submitted in accord with State priorities. That comment recommended that there be provision for regularly revised State priorities and for review and approval of the priorities by the NPS in accordance with national priorities established by the Secretary. Another comment said that the regulations should make clear that the States should have some method in effect for determining priorities for nominations.

One comment recommended that the proposed amendments be dropped and suggested that factors other than significance could influence whether a property is nominated and listed in the National Register. Consistent with Federal law, except where private owners object, only the significance of a property should be the basis for the decision to list a property. These revisions reinforce that basis.

The National Conference of State Historic Preservation Officers recommended that the head of the local political subdivision be able to request that the State Historic Preservation Officer submit nominations on which the State Historic Preservation Officer and the State Review Board disagree. This provision has been added.

One comment recommended that all nominations be submitted to the National Register when the State Historic Preservation Officer and State Review Board disagree on the eligibility of a property. Comments also recommended that the State Historic Preservation Officer be given discretionary authority in the nomination process. The regulations give the State Historic Preservation Officer, as the authority responsible for nominations in the State, discretion not to submit nominations which the State Historic Preservation Officer does not believe meet the National Register criteria unless requested by the State Review Board, the head of the local political subdivision, or on appeal.

One comment questioned whether Federal nominations should be submitted to the NPS without State Historic Preservation Officer approval. The NPS considers that Federal agencies should retain authority to submit nominations to the National Register for properties under Federal ownership or control after consultation with the State.

Removing Properties from the National Register (published as § 60.7 on August 5, now § 60.15).

One comment suggested that another ground for removal be added to the regulations which would provide for removal of a property if additional information shows that the property does not possess sufficient significance to meet the National Register criteria for evaluation. Properties have previously been removed from the National Register for this reason but this ground

for removal has been made explicit in these regulations.

The National Conference of State Historic Preservation Officers' comments recommended that a 45-day time period be placed on petitioners for removal who with to pursue the request further. They also recommended that the State be given 15 rather than 10 days to forward such petitions to the Keeper. These revisions have been added to the regulations.

The National Trust for Historic Preservation recommended that "prejudicial and substantial" procedural errors be further defined. The term "substantial" has been deleted.

Comments also recommended requiring the petitioner to provide some evidence on the established grounds to support the petition for removal. This requirement has been added. Concern was also expressed that this section might be abused. Others urged that notice be given and an opportunity to comment and that the State Review Board be allowed to reconsider proposals for removal, where appropriate, before a property is removed from the National Register. These recommendations are also incorporated into the regulations. They should assist in assuring that the removal process is a responsible one with adequate public participation.

(National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, and Executive Order 11593)

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities in accordance with the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). These revisions are procedural not substantive. They tell the public how to nominate properties to the National Register and since they are procedural only they have no significant economic effect on small entities.

This regulation does not significantly impact the environment. Because the amendments have to do with procedural aspects of the National Register program and have no impact upon the environment, an environmental impact statement is not required.

The originator of these procedures is Carol Shull of the Division of the National Register of Historic Places (202/272-3504).

Dated: November 18, 1981.

Ira J. Hutchison,

Acting Director, National Park Service.

The following sections of 36 CFR Part 60 are published herein for comment and immediate interim effect. The reserved sections with the exception of § 60.6(i) and § 60.7 are published separately for comment in this same issue of the Federal Register. Except for the following amended sections, 36 CFR Part 60 is suspended.

Accordingly, 36 CFR Part 60 is revised to read as follows:

PART 60—NATIONAL REGISTER OF HISTORIC PLACES

Sec.

Authority: National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, and EO 11593.

§ 60.1 Authorization and expansion of the National Register.

(a) The National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470 *et seq.*, as amended, authorizes the Secretary of the Interior to expand and maintain a National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering and culture. The regulations herein set forth the procedural requirements for listing properties on the National Register.

(b) Properties are added to the National Register through the following processes.

(1) Those Acts of Congress and Executive orders which create historic areas of the National Park System administered by the National Park Service, all or portions of which may be determined to be of historic significance consistent with the intent of Congress;

(2) Properties declared by the Secretary of the Interior to be of national significance and designated as National Historic Landmarks;

(3) Nominations prepared under approved State Historic Preservation Programs, submitted by the State Historic Preservation Officer and approved by the NPS;

(4) Nominations from any person or local government (only if such property is located in a State with no approved State Historic Preservation Program) approved by the NPS and;

(5) Nominations of Federal properties prepared by Federal agencies, submitted by the Federal Preservation Officer and approved by NPS.

§ 60.2 Effects of listing under Federal law.

The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment. Listing of private property on the National Register does not prohibit under Federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.

(a) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act of 1966, as amended. The Council has adopted procedures concerning, *inter alia*, their commenting responsibility in 36 CFR Part 800. Having complied with this procedural requirement the Federal agency may adopt any course of action it believes is appropriate. While the Advisory Council comments must be taken into account and integrated into the decisionmaking process, program decisions rest with the agency implementing the undertaking.

(b) Listing in the National Register also makes property owners eligible to be considered for Federal grants-in-aid for historic preservation.

(c) If a property is listed in the National Register, certain provisions of the Tax Reform Act of 1976 as amended by the Revenue Act of 1978 and the Tax Treatment Extension Act of 1980 may apply. These provisions encourage the preservation of depreciable historic structures by allowing favorable tax treatments for rehabilitation, and discourage destruction of historic buildings by eliminating certain otherwise available Federal tax provisions both for demolition of historic structures and for new construction on the site of demolished historic buildings. Owners of historic

buildings may benefit from the investment tax credit provisions of the Revenue Act of 1978. The Economic Recovery Tax Act of 1981 generally replaces the rehabilitation tax incentives under these laws beginning January 1, 1982 with a 25% investment tax credit for rehabilitations of historic commercial, industrial and residential buildings. This can be combined with a 15-year cost recovery period for the adjusted basis of the historic building. Historic buildings with certified rehabilitations receive additional tax savings by their exemption from any requirement to reduce the basis of the building by the amount of the credit. The denial of accelerated depreciation for a building built on the site of a demolished historic building is repealed effective January 1, 1982. The Tax Treatment Extension Act of 1980 includes provisions regarding charitable contributions for conservation purposes of partial interests in historically important land areas or structures.

(d) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in the determination on issuance of a surface coal mining permit.

§ 60.3 Definitions.

(a) *Building.* A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

Examples

Molly Brown House (Denver, CO)
Meek Mansion and Carriage House (Hayward, CA)
Huron County Courthouse and Jail (Norwalk, OH)
Fairntosh Plantation (Durham vicinity, NC)

(b) *Chief elected local official.* Chief elected local official means the mayor, county judge, county executive or otherwise titled chief elected administrative official who is the elected head of the local political jurisdiction in which the property is located.

(c) *Determination of eligibility.* A determination of eligibility is a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register. A determination of eligibility does not make the property eligible for such benefits as grants, loans, or tax incentives that have listing on the National Register as a prerequisite.

(d) *District.* A district is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

Examples

Georgetown Historic District (Washington, DC)
Martin Luther King Historic District (Atlanta, GA)
Durango-Silverton Narrow-Gauge Railroad (right-of-way between Durango and Silverton, CO)

(e) *Federal Preservation Officer.* The Federal Preservation Officer is the official designated by the head of each Federal agency responsible for coordinating that agency's activities under the National Historic Preservation Act of 1966, as amended, and Executive Order 11593 including nominating properties under that agency's ownership or control to the National Register.

(f) *Keeper of the National Register of Historic Places.* The Keeper is the individual who has been delegated the authority by NPS to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate.

(g) *Multiple Resource Format submission.* A Multiple Resource Format submission for nominating properties to the National Register is one which includes all or a defined portion of the cultural resources identified in a specified geographical area.

(h) *National Park Service (NPS).* The National Park Service is the bureau of the Department of Interior to which the Secretary of Interior has delegated the authority and responsibility for administering the National Register program.

(i) *National Register Nomination Form.* National Register Nomination Form means (1) National Register Nomination Form NPS 10–900, with accompanying continuation sheets (where necessary) Form NPS 10–900a, maps and photographs or (2) for Federal nominations, Form No. 10–306, with continuation sheets (where necessary) Form No. 10–300A, maps and photographs. Such nomination forms must be "adequately documented" and "technically and professionally correct and sufficient." To meet these requirements the forms and accompanying maps and photographs must be completed in accord with requirements and guidance in the NPS publication, "How to Complete National Register Forms" and other NPS technical publications on this subject. Descriptions and statements of significance must be prepared in accord with standards generally accepted by academic historians, architectural historians and archeologists. The nomination form is a legal document and reference for historical, architectural, and archeological data upon which the protections for listed and eligible properties are founded. The nominating authority certifies that the nomination is adequately documented and technically and professionally correct and sufficient upon nomination.

(j) *Object.* An object is a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Examples

Delta Queen Steamboat (Cincinnati, OH)
Adams Memorial (Rock Creek Cemetery, Washington, DC)
Sumpter Valley Gold Dredge (Sumpter, OR)

(k) *Owner or owners.* The term owner or owners means those individuals, partnerships, corporations or public agencies holding fee simple title to property. Owner or owners does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

(l) *Site.* A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

Examples

Cabin Creek Battlefield (Pensacola vicinity, OK)
Mound Cemetery Mound (Chester vicinity, OH)
Mud Springs Pony Express Station Site (Dalton vicinity, NE)

(m) *State Historic Preservation Officer.* The State Historic Preservation Officer is the person who has been designated by the Governor or chief executive or by State statute in each State to administer the State Historic Preservation Program, including identifying and nominating eligible properties to the National Register and otherwise administering applications for listing historic properties in the National Register.

(n) *State Historic Preservation Program.* The State Historic Preservation Program is the program established by each State and approved by the Secretary of Interior for the purpose of carrying out the provisions of the National Historic Preservation Act of 1966, as amended, and related laws and regulations. Such program shall be approved by the Secretary before the State may nominate properties to the National Register. Any State Historic Preservation Program in effect under prior authority of law before December 12, 1980, shall be treated as an approved program until the Secretary approves a program submitted by the State for purposes of the Amendments or December 12, 1983, unless the Secretary chooses to rescind such approval because of program deficiencies.

(o) *State Review Board.* The State Review Board is a body whose members represent the professional fields of American history, architectural history, historic architecture, prehistoric and historic archeology, and other professional disciplines and may include citizen members. In States with approved State historic preservation programs the State Review Board reviews and approves National Register nominations concerning whether or not they meet the criteria for evaluation prior to their submittal to the NPS.

(p) *Structure.* A structure is a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale.

Examples

Swanton Covered Railroad Bridge (Swanton vicinity, VT)
Old Point Loma Lighthouse (San Diego, CA)
North Point Water Tower (Milwaukee, WI)
Reber Radio Telescope (Green Bay vicinity, WI)

(q) *Thematic Group Format submission.* A Thematic Group Format submission for nominating properties to the National Register is one which includes a finite group of resources related to one another in a clearly distinguishable way. They may be related to a single historic person, event, or developmental force; of one building type or use, or designed by a single architect; of a single archeological site form, or related to a particular set of archeological research problems.

(r) *To nominate.* To nominate is to propose that a district, site, building, structure, or object be listed in the National Register of Historic Places by preparing a nomination form, with accompanying maps and photographs which adequately document the property and are technically and professionally correct and sufficient.

§ 60.4 Criteria for evaluation.

The criteria applied to evaluate properties (other than areas of the National Park System and National Historic Landmarks) for the National Register are listed below. These criteria are worded in a manner to provide for a wide diversity of resources. The following criteria shall be used in evaluating properties for nomination to the National Register, by NPS in reviewing nominations, and for evaluating National Register eligibility of properties. Guidance in applying the criteria is further discussed in the "How To" publications, Standards & Guidelines sheets and Keeper's opinions of the National Register. Such materials as available upon request.

National Register criteria for evaluation. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and

(a) that are associated with events that have made a significant contribution to the broad patterns of our history; or

(b) that are associated with the lives of persons significant in our past; or

(c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) that have yielded, or may be likely to yield, information important in prehistory or history.

Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria of if they fall within the following categories:

(a) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

(b) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.

(d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

(e) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

(g) A property achieving significance within the past 50 years if it is of exceptional importance.

This exception is described further in NPS "How To" #2, entitled "How to Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years" which is available from the National Register of Historic Places Division, National Park Service, United States Department of the Interior, Washington, D.C. 20240.

§ 60.5 Nomination forms and information collection.

(a) All nominations to the National Register are to be made on standard National Register forms. These forms are provided upon request to the State Historic Preservation Officer, participating Federal agencies and others by the NPS. For archival reasons, no other forms, photocopied or otherwise, will be accepted.

(b) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number *1024–0018.* The information is being collected as part of the nomination of properties to the National Register. This information will be used to evaluate the eligibility of properties for inclusion in the National Register under established criteria. The obligation to respond is required to obtain a benefit.

§ 60.6 Nominations by the State Historic Preservation Officer under approved State Historic Preservation programs.

(a) The State Historic Preservation Officer is responsible for identifying and nominating eligible properties to the National Register. Nomination forms are prepared under the supervision of the State Historic Preservation Officer. The State Historic Preservation Officer establishes statewide priorities for preparation and submittal of nominations for all properties meeting National Register criteria for evaluation within the State. All nominations from the State shall be submitted in accord with the State priorities, which shall be consistent with an approved State historic preservation plan.

(b) The State shall consult with local authorities in the nomination process.

The State provides notice of the intent to nominate a property and solicits written comments especially on the significance of the property and whether or not it meets the National Register criteria for evaluation. The State notice also gives owners of private property an opportunity to concur in or object to listing. The notice is carried out as specified in the subsections below.

(c) As part of the nomination process, each State is required to notify in writing the property owner(s), except as specified in paragraph (d) of this section, of the State's intent to bring the nomination before the State Review Board. The list of owners shall be obtained from either official land recordation records or tax records, whichever is more appropriate, within 90 days prior to the notification of intent to nominate. If in any State the land recordation or tax records is not the most appropriate list from which to obtain owners that State shall notify the Keeper in writing and request approval that an alternative source of owners may be used.

The State is responsible for notifying only those owners whose names appear on the list consulted. Where there is more than one owner on the list, each separate owner shall be notified. The State shall send the written notification at least 30 but not more than 75 days before the State Review Board meeting. Required notices may vary in some details of wording as the States prefer, but the content of notices must be approved by the National Register. The notice shall give the owner(s) at least 30 but not more than 75 days to submit written comments and concur in or object in writing to the nomination of such property. At least 30 but not more than 75 days before the State Review Board meeting, the States are also required to notify by the above mentioned National Register approved notice the applicable chief elected official of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located. The National Register nomination shall be on file with the State Historic Preservation Program during the comment period and a copy made available by mail when requested by the public, or made available at a location of reasonable access to all affected property owners, such as a local library courthouse, or other public place, prior to the State Review Board meeting so that written comments regarding the nomination can be prepared.

(d) For a nomination with more than 50 property owners, each State is required to notify in writing at least 30 but not more than 75 days in advance of the State Review Board meeting the chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property or district is located. The State shall provide general notice to property owners concerning the State's intent to nominate. The general notice shall be published at least 30 days but not more than 75 days before the State Review Board meeting and provide an opportunity for the submission of written comments and provide the owners of private property or a majority of such owners for districts an opportunity to concur in or object in writing to the nomination. Such general notice must be published in one or more local newspapers of general circulation in the area of the nomination. The content of the notices shall be approved by the National Register. If such general notice is used to notify the property owners for a nomination containing more than 50 owners, it is suggested that a public information meeting be held in the immediate area prior to the State Review Board meeting. If the State wishes to individually notify all property owners, it may do so, pursuant to procedures specified in Subsection 60.6(c), in which case, the State need not publish a general notice.

(e) For Multiple Resource and Thematic Group Format submission, each district, site, building, structure and object included in the submission is treated as a separate nomination for the purpose of notification and to provide owners of private property the opportunity to concur in or object in writing to the nomination in accord with this section.

(f) The commenting period following notifications can be waived only when all property owners and the chief elected local official have advised the State in writing that they agree to the waiver.

(g) Upon notification, any owner or owners of a private property who wish to object shall submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, as appropriate, and objects to the listing. In nominations with multiple ownership of a single private property or of districts, the property will not be listed if a majority of the owners object to listing. Upon receipt of notarized objections respecting a district or single private property with multiple owners, it is the responsibility of the State Historic Preservation Officer to ascertain whether a majority of owners of private property have objected. If an owner whose name did not appear on the list certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property such owner shall be counted by the State Historic Preservation Officer in determining whether a majority of owners has objected. Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

(h) If a property has been submitted to and approved by the State Review Board for inclusion in the National Register prior to the effective date of this section, the State Historic Preservation Officer need not resubmit the property to the State Review Board; but before submitting the nomination to the NPS shall afford owners of private property the opportunity to concur in or object to the property's inclusion in the Register pursuant to applicable notification procedures described above.

(i) [Reserved]

(j) Completed nomination forms or the documentation proposed for submission on the nomination forms and comments concerning the significance of a property and its eligibility for the National Register are submitted to the State Review Board. The State Review Board shall review the nomination forms or documentation proposed for submission on the nomination forms and any comments concerning the property's significance and eligibility for the National Register. The State Review Board shall determine whether or not the property meets the National Register criteria for evaluation and make a recommendation to the State Historic Preservation Officer to approve or disapprove the nomination.

(k) Nominations approved by the State Review Board and comments received are then reviewed by the State Historic Preservation Officer and if he or she finds the nominations to be adequately documented and technically, professionally, and procedurally correct and sufficient and in conformance with National Register criteria for evaluation, the nominations are submitted to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. All comments received by a State and notarized statements of objection to listing are submitted with a nomination.

(l) If the State Historic Preservation Officer and the State Review Board disagree on whether a property meets

the National Register criteria for evaluation, the State Historic Preservation Officer, if he or she chooses, may submit the nomination with his or her opinion concerning whether or not the property meets the criteria for evaluation and the opinion of the State Review Board to the Keeper of the National Register for a final decision on the listing of the property. The opinion of the State Review Board may be the minutes of the Review Board meeting. The State Historic Preservation Officer shall submit such disputed nominations if so requested within 45 days of the State Review Board meeting by the State Review Board or the chief elected local official of the local, county or municipal political subdivision in which the property is located but need not otherwise do so. Such nominations will be substantively reviewed by the Keeper.

(m) [Reserved]

(n) If the owner of a private property or the majority of such owners for a district or single property with multiple owners have objected to the nomination prior to the submittal of a nomination, the State Historic Preservation Officer shall submit the nomination to the Keeper only for a determination of eligibility pursuant to subsection (s) of this section.

(o) The State Historic Preservation Officer signs block 12 of the nomination form if in his or her opinion the property meets the National Register criteria for evaluation. The State Historic Preservation Officer's signature in block 12 certifies that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient;

(4) In the opinion of the State Historic Preservation Officer, the property meets the National Register criteria for evaluation.

(p) When a State Historic Preservation Officer submits a nomination form for a property that he or she does not believe meets the National Register criteria for evaluation, the State Historic Preservation Officer signs a continuation sheet Form NPS 10–900a explaining his/her opinions on the eligibility of the property and certifying that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient.

(q) Notice will be provided in the **Federal Register** that the nominated property is being considered for listing in the National Register of Historic Places as specified in § 60.13.

(r) Nominations will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves a nomination, an appeal is filed, or the owner of private property (or the majority of such owners for a district or single property with multiple owners) objects by notarized statements received by the Keeper prior to listing. Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

(s) If the owner of private property (or the majority of such owners for a district or single property with multiple owners) has objected to the nomination by notarized statement prior to listing, the Keeper shall review the nomination and make a determination of eligibility within 45 days of receipt, unless an appeal is filed. The Keeper shall list such properties determined eligible in the National Register upon receipt of notarized statements from the owner(s) of private property that the owner(s) no longer object to listing.

(t) Any person or organization which supports or opposes the nomination of a property by a State Historic Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petitions received by the Keeper prior to the listing of a property in the National Register or a determination of its eligibility where the private owners object to listing will be considered by the Keeper and the nomination will be substantively reviewed.

(u) State Historic Preservation Officers are required to inform the property owners and the chief elected local official when properties are listed in the National Register. In the case of a nomination where there are more than 50 property owners, they may be notified of the entry in the National Register by the same general notice stated in § 60.6(d). States which notify all property owners individually of entries in the National Register need not publish a general notice.

(v) In the case of nominations where the owner of private property (or the majority of such owners for a district or single property with multiple owners) has objected and the Keeper has determined the nomination eligible for the National Register, the State Historic Preservation Officer shall notify the appropriate chief elected local official and the owner(s) of such property of this determination. The general notice may be used for properties with more than 50 owners as described in § 60.6(d) or the State Historic Preservation Officer may notify the owners individually.

(w) If subsequent to nomination a State makes major revisions to a nomination or renominates a property rejected by the Keeper, the State Historic Preservation Officer shall notify the affected property owner(s) and the chief elected local official of the revisions or renomination in the same manner as the original notification for the nomination, but need not resubmit the nomination to the State Review Board. Comments received and notarized statements of objection must be forwarded to the Keeper along with the revisions or renomination. The State Historic Preservation Officer also certifies by the resubmittal that the affected property owner(s) and the chief elected local official have been renotified. "Major revisions" as used herein means revisions of boundaries or important substantive revisions to the nomination which could be expected to change the ultimate outcome as to whether or not the property is listed in the National Register by the Keeper.

(x) Notwithstanding any provision hereof to the contrary, the State Historic Preservation Officer in the nomination notification process or otherwise need not make available to any person or entity (except a Federal agency planning a project, the property owner, the chief elected local official of the political jurisdiction in which the property is located, and the local historic preservation commission for certified local governments) specific information relating to the location of properties proposed to be nominated to, or listed in, the National Register if he or she determines that the disclosure of specific information would create a risk of destruction or harm to such properties.

(y) With regard to property under Federal ownership or control, completed nomination forms shall be submitted to the Federal Preservation Officer for review and comment. The Federal Preservation Officer, may approve the nomination and forward it to the Keeper of the National Register of Historic

Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240.

§§ 60.7 and 60.8 Reserved

§ 60.9 Nominations by Federal agencies.

(a) The National Historic Preservation Act of 1966, as amended, requires that, with the advice of the Secretary and in cooperation with the State Historic Preservation Officer of the State involved, each Federal agency shall establish a program to locate, inventory and nominate to the Secretary all properties under the agency's ownership or control that appear to qualify for inclusion on the National Register. Section 2(a) of Executive Order 11593 provides that Federal agencies shall locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places. Additional responsibilities of Federal agencies are detailed in the National Historic Preservation Act of 1966, as amended, Executive Order 11593, the National Environmental Policy Act of 1969, the Archeological and Historic Preservation Act of 1974, and procedures developed pursuant to these authorities, and other related legislation.

(b) Nomination forms are prepared under the supervision of the Federal Preservation Officer designated by the head of a Federal agency to fulfill agency responsibilities under the National Historic Preservation Act of 1966, as amended, and

(c) Completed nominations are submitted to the appropriate State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property and its eligibility for the National Register. The chief elected local officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located are notified and given 45 days in which to comment. The State Historic Preservation Officer signs block 12 of the nomination form with his/her recommendation.

(d) After receiving the comments of the State Historic Preservation Officer, and chief elected local official, or if there has been no response within 45 days, the Federal Preservation Officer may approve the nomination and forward it to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. The Federal Preservation Officer signs block 12 of the nomination form if in his or her opinion the property meets the National Register criteria for evaluation. The Federal Preservation Officer's signature in block 12 certifies that

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient;

(4) In the opinion of the Federal Preservation Officer, the property meets the National Register criteria for evaluation.

(e) When a Federal Preservation Officer submits a nomination form for a property that he or she does not believe meets the National Register criteria for evaluation, the Federal Preservation Officer signs a continuation sheet Form NPS 10-900a explaining his/her opinions on the eligibility of the property and certifying that:

(1) All procedural requirements have been met;

(2) The nomination form is adequately documented;

(3) The nomination form is technically and professionally correct and sufficient.

(f) The comments of the State Historic Preservation Officer and chief local official are appended to the nomination, or, if there are no comments from the State Historic Preservation Officer an explanation is attached. Concurrent nominations (see § 60.10) cannot be submitted, however, until the nomination has been considered by the State in accord with Sec. 60.6, supra. Comments received by the State concerning concurrent nominations and notarized statements of objection must be submitted with the nomination.

(g) Notice will be provided in the **Federal Register** that the nominated property is being considered for listing in the National Register of Historic Places in accord with § 60.13.

(h) Nominations will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves such nomination or an appeal is filed. Nominations which are technically or professionally inadequate will be returned for correction and resubmission. When a property does not appear to meet the National Register criteria for evaluation, the nomination will be returned with an explanation as to why the property does not meet the National Register criteria for evaluation.

(i) Any person or organization which supports or opposes the nomination of a property by a Federal Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. Such petition received by the Keeper prior to the listing of a property in the National Register or a determination of its eligibility where the private owner(s) object to listing will be considered by the Keeper and the nomination will be substantively reviewed.

§ 60.10 Concurrent State and Federal nominations.

(a) State Historic Preservation Officers and Federal Preservation Officers are encouraged to cooperate in locating, inventorying, evaluating, and nominating all properties possessing historical, architectural, archeological, or cultural value. Federal agencies may nominate properties where a portion of the property is not under Federal ownership or control.

(b) When a portion of the area included in a Federal nomination is not located on land under the ownership or control of the Federal agency, but is an integral part of the cultural resource, the completed nomination form shall be sent to the State Historic Preservation Officer for notification to property owners, to give owners of private property an opportunity to concur in or object to the nomination, to solicit written comments and for submission to the State Review Board pursuant to the procedures in § 60.6.

(c) If the State Historic Preservation Officer and the State Review Board agree that the nomination meets the National Register criteria for evaluation, the nomination is signed by the State Historic Preservation Officer and returned to the Federal agency initiating the nomination. If the State Historic Presevation Officer and the State Review Board disagree, the nomination shall be returned to the Federal agency with the opinions of the State Historic Preservation Officer and the State Review Board concerning the adequacy of the nomination and whether or not the property meets the criteria for evaluation. The opinion of the State Review Board may be the minutes of the State Review Board meeting. The State Historic Preservation Officer's signed opinion and comments shall confirm to the Federal agency that the State nomination procedures have been fulfilled including notification requirements. Any comments received by the State shall be included with the letter as shall any notarized statements objecting to the listing of private property.

(d) If the owner of any privately owned property, (or a majority of the owners of such properties within a district or single property with multiple owners) objects to such inclusion by notarized statement(s) the Federal Historic Preservation Officer shall submit the nomination to the Keeper for review and a determination of eligibility. Comments, opinions, and notarized statements of objection shall be submitted with the nomination.

(e) The State Historic Preservation Officer shall notify the nonfederal owners when a concurrent nomination is listed or determined eligible for the National Register as required in § 60.6.

§§ 60.11 and 60.12 [Reserved]

§ 60.13 Publication in the "Federal Register" and other NPS notification.

(a) When a nomination is received, NPS will publish notice in the **Federal Register** that the property is being considered for listing in the National Register. A 15-day commenting period from date of publication will be provided. When necessary to assist in the preservation of historic properties this 15-day period may be shortened or waived.

(b) NPS shall notify the appropriate State Historic Preservation Officer, Federal Preservation Officer, person or local government when there is no approved State program of the listing of the property in the National Register and will publish notice of the listing in the **Federal Register.**

(c) In nominations where the owner of any privately owned property (or a majority of the owners of such properties within a district or single property with multiple owners) has objected and the Keeper has determined the nomination eligible for the National Register, NPS shall notify the State Historic Preservation Officer, the Federal Preservation Officer (for Federal or concurrent nominations), the person or local government where there is no approved State Historic Preservation Program and the Advisory Council on Historic Preservation. NPS will publish notice of the determination of eligibility in the **Federal Register.**

(d) [Reserved]

§ 60.14 Changes and revisions to properties listed in the National Register

(a) *Boundary changes.* (1) A boundary alteration shall be considered as a new property nomination. All forms, criteria and procedures used in nominating a property to the National Register must be used. In the case of boundary enlargements only those owners in the newly nominated as yet unlisted area need be notified and will be counted in determining whether a majority of private owners object to listing. In the case of a diminution of a boundary, owners shall be notified as specified in § 60.15 concerning removing properties from the National Register. A professionally justified recommendation by the State Historic Preservation Officer, Federal Preservation Officer, or person or local government where there is no approved State Historic Preservation Program shall be presented to NPS. During this process, the property is not taken off the National Register. If the Keeper or his or her designee finds the recommendation in accordance with the National Register criteria for evaluation, the change will be accepted. If the boundary change is not accepted, the old boundaries will remain. Boundary revisions may be appealed as provided for in Sections 60.12 and 60.15.

(2) Four justifications exist for altering a boundary: Professional error in the initial nomination, loss of historic integrity, recognition of additional significance, additional research documenting that a larger or smaller area should be listed. No enlargement of a boundary should be recommended unless the additional area possesses previously unrecognized significance in American history, architecture, archeology, engineering or culture. No diminution of a boundary should be recommended unless the properties being removed do not meet the National Register criteria for evaluation. Any proposal to alter a boundary has to be documented in detail including photographing the historic resources falling between the existing boundary and the other proposed boundary.

(b) *Relocating properties listed in the National Register.* (1) Properties listed in the National Register should be moved only when there is no feasible alternative for preservation. When a property is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(2) If it is proposed that a property listed in the National Register be moved and the State Historic Preservation Officer, Federal agency for a property under Federal ownership or control, or person or local government where there is no approved State Historic Preservation Program, wishes the property to remain in the National Register during and after the move, the State Historic Preservation Officer or Federal Preservation Officer having ownership or control or person or local government where there is no approved State Historic Preservation Program, shall submit documentation to NPS prior to the move. The documentation shall discuss: (i) the reasons for the move; (ii) the effect on the property's historical integrity; (iii) the new setting and general environment of the proposed site, including evidence that the proposed site does not possess historical or archeological significance that would be adversely affected by the intrusion of the property; and (iv) photographs showing the proposed location.

(3) Any such proposal with respect to the new location shall follow the required notification procedures, shall be approved by the State Review Board if it is a State nomination and shall continue to follow normal review procedures. The Keeper shall also follow the required notification procedures for nominations. The Keeper shall respond to a properly documented request within 45 days of receipt from the State Historic Preservation Officer or Federal Preservation Officer, or within 90 days of receipt from a person or local government where there is no approved State Historic Preservation Program, concerning whether or not the move is approved. Once the property is moved, the State Historic Preservation Officer, Federal Preservation Officer, or person or local government where there is no approved State Historic Preservation Program shall submit to the Keeper for review (i) a letter notifying him or her of the date the property was moved; (ii) photographs of the property on its new site; and (iii) revised maps, including a U.S.G.S. map, (iv) acreage, and (v) verbal boundary description. The Keeper shall respond to a properly documented submittal within 45 days of receipt with the final decision on whether the property will remain in the National Register. If the Keeper approves the move, the property will remain in the National Register during and after the move unless the integrity of the property is in some unforeseen manner destroyed. If the Keeper does not approve the move, the property will be automatically deleted from the National Register when moved. In cases of properties removed from the National Register, if the State, Federal agency, or person or local government where there is no approved State Historic Preservation Program has neglected to obtain prior approval for the move or has evidence that previously unrecognized significance exists, or has accrued, the State, Federal agency, person or local government may resubmit a nomination for the property.

(4) In the event that a property is moved, deletion from the National Register will be automatic unless the above procedures are followed prior to the move. If the property has already

been moved, it is the responsibility of the State, Federal agency or person or local government which nominated the property to notify the National Park Service. Assuming that the State, Federal agency or person or local government wishes to have the structure reentered in the National Register, it must be nominated again on new forms which should discuss: (i) the reasons for the move; (ii) the effect on the property's historical integrity, and (iii) the new setting and general environment, including evidence that the new site does not possess historical or archeological significance that would be adversely affected by intrusion of the property. In addition, new photographs, acreage, verbal boundary description and a U.S.G.S. map showing the structure at its new location must be sent along with the revised nomination. Any such nomination submitted by a State must be approved by the State Review Board.

(5) Properties moved in a manner consistent with the comments of the Advisory Council on Historic Preservation, in accord with its procedures (36 CFR Part 800), are granted as exception to § 60.12(b). Moving of properties in accord with the Advisory Council's procedures should be dealt with individually in each memorandum of agreement. In such cases, the State Historic Preservation Officer or the Federal Preservation Officer, for properties under Federal ownership or control, shall notify the Keeper of the new location after the move including new documentation as described above.

§ 60.15 Removing properties from the National Register.

(a) Grounds for removing properties from the National Register are as follows: (1) the property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing. (2) additional information shows that the property does not meet the National Register criteria for evaluation; (3) error in professional judgement as to whether the property meets the criteria for evaluation; or (4) prejudicial procedural error in the nomination or listing process. Properties removed from the National Register for procedural error shall be reconsidered for listing by the Keeper after correction of the error or errors by the State Historic Preservation Officer, Federal Preservation Officer, person or local government which originally nominated the property, or by the Keeper, as appropriate. The procedures set forth for nominations shall be followed in such reconsiderations. Any property or district removed from the National Register for procedural deficiencies in the nomination and/or listing process shall automatically be considered eligible for inclusion in the National Register without further action and will be published as such in the **Federal Register.**

(b) Properties listed in the National Register prior to December 13, 1980, may only be removed from the National Register on the grounds established in subsection (a)(1) of this section.

(c) Any person or organization may petition in writing for removal of a property from the National Register by setting forth the reasons the property should be removed on the grounds established in paragraph (a) of this section. With respect to nominations determined eligible for the National Register because the owners of private property object to listing, anyone may petition for reconsideration of whether or not the property meets the criteria for evaluation using these procedures. Petitions for removal are submitted to the Keeper by the State Historic Preservation Officer for State nominations, the Federal Preservation Officer for Federal nominations, and directly to the Keeper from persons or local governments where there is no approved State Historic Preservation Program.

(d) Petitons submitted by persons or local governments where there is no approved State Historic Preservation Program shall include a list of the owner(s). In such cases the Keeper shall notify the affected owner(s) and the chief elected local official and give them an opportunity to comment. For approved State programs, the State Historic Preservation Officer shall notify the affected owner(s) and chief elected local official and give them an opportunity to comment prior to submitting a petition for removal. The Federal Preservation Officer shall notify and obtain the comments of the appropriate State Historic Preservation Officer prior to forwarding an appeal to NPS. All comments and opinions shall be submitted with the petition.

(e) The State Historic Preservation Officer or Federal Preservation Officer shall respond in writing within 45 days of receipt to petitions for removal of property from the National Register. The response shall advise the petitioner of the State Historic Preservation Officer's or Federal Preservation Officer's views on the petition.

(f) A petitioner desiring to pursue his removal request must notify the State Historic Preservation Officer or the Federal Preservation Officer in writing within 45 days of receipt of the written views on the petition.

(g) The State Historic Preservation Officer may elect to have a property considered for removal according to the State's nomination procedures unless the petition is on procedural grounds and shall schedule it for consideration by the State Review Board as quickly as all notification requirements can be completed following procedures outlined in § 60.6, or the State Historic Preservation Officer may elect to forward the petition for removal to the Keeper with his or her comments without State Review Board consideration.

(h) Within 15 days after receipt of the petitioner's notification of intent to pursue his removal request, the State Historic Preservation Officer shall notify the petitioner in writing either that the State Review Board will consider the petition on a specified date or that the petition will be forwarded to the Keeper after notification requirements have been completed. The State Historic Preservation Officer shall forward the petitions to the Keeper for review within 15 days after notification requirements or Review Board consideration, if applicable, have been completed.

(i) Within 15 days after receipt of the petitioner notification of intent to pursue his petition, the Federal Preservation Officer shall forward the petition with his or her comments and those of the State Historic Preservation Officer to the Keeper.

(j) The Keeper shall respond to a petition for removal within 45 days of receipt, except where the Keeper must notify the owners and the chief elected local official. In such cases the Keeper shall respond within 90 days of receipt. The Keeper shall notify the petitioner and the applicable State Historic Preservation Officer, Federal Preservation Officer, or person or local government where there is no approved State Historic Preservation Program, of his decision. The State Historic Preservation Officer or Federal Preservation Officer transmitting the petition shall notify the petitioner, the owner(s), and the chief elected local official in writing of the decision. The Keeper will provide such notice for petitions from persons or local governments where there is no approved State Historic Preservation Program. The general notice may be used for properties with more than 50 owners. If the general notice is used it shall be

published in one or more newspapers with general circulation in the area of the nomination.

(k) The Keeper may remove a property from the National Register on his own motion on the grounds established in paragraph (a) of this section, except for those properties listed in the National Register prior to December 13, 1980, which may only be removed from the National Register on the grounds established in paragraph (a)(1) of this section. In such cases, the Keeper will notify the nominating authority, the affected owner(s) and the applicable chief elected local official and provide them an opportunity to comment. Upon removal, the Keeper will notify the nominating authority of the basis for the removal. The state Historic Preservation Officer, Federal Preservation Officer, or person or local government which nominated the property shall notify the owner(s) and the chief elected local official of the removal.

(l) No person shall be considered to have exhausted administrative remedies with respect to removal of a property from the National Register until the Keeper has denied a petition for removal pursuant to this section.

[FR Doc. 81-32873 Filed 11-13-81; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 1955-5]

Approval of Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of a revision of the Maryland State Implementation Plan. The revision is a Secretarial Order excepting the Maryland Cup Corporation's Reistertown Road plant from the State's "no visible emissions" regulations. The variance allows visible emissions not to exceed 25 percent opacity from the company's four new wax coaters with their related cooling and exhaust systems. The variance expires on September 11, 1982.

EFFECTIVE DATE: December 16, 1981.

ADDRESSES: Copies of the revision and associated support material are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Curtis Building, 10th Floor, 6th & Walnut Street, Philadelphia, Pennsylvania 19106, ATTN: Patricia Sheridan.

State of Maryland, Air Management Administration, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201, ATTN: Mr. George Ferreri.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., (Waterside Mall), Washington, D.C. 20460.

The Office of the Federal Register, 1100 L St., NW., Room 804, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Edward A. Vollberg (3AH12), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, telephone (215) 597-8990.

SUPPLEMENTARY INFORMATION:

Background

The State of Maryland submitted a Secretarial Order for the Maryland Cup Corporation as a revision to the Maryland State Implementation Plan. The revision grants an exception to COMAR 10.18.06.02B which requires no visible emissions. It applies to four new wax coaters and their related cooling and exhaust systems at the Corporation's Reistertown Road plant located in Baltimore County. The exception allows visible emissions not to exceed 25 percent opacity and expires September 11, 1982. The State demonstrated that the revision would not impact attainment of National Ambient Air Quality Standards.

The company has been unable to find an effective means to control the visible emissions. During the variance period, the company will continue to research new control technology applicable to its operation.

The revision was proposed for approval in the **Federal Register** on July 29, 1981 (46 FR 38730). For further information regarding the revision, please consult the notice of proposed rulemaking.

Public Comments

No public comments were received during the 30-day comment period.

EPA Action

By this notice, the Administrator hereby approves the exception to COMAR 10.18.06.02B for the Maryland Cup Corporation as a revision to the Maryland State Implementation Plan.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves States actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. Section 605(b) I certify that the SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(42 U.S.C. 7401-642)

Dated: November 6, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart V—Maryland

Section 52.1070 is amended by adding paragraph (c)(54) to read as follows:

§ 52.1070 Identification of plans.

* * * * *

(c) * * *

(54) A revision submitted by the State of Maryland on October 17, 1980, consisting of an exception to COMAR 10.18.06.02B for the Maryland Cup Corporation.

[FR Doc. 81-32983 Filed 11-13-81; 8:45 am]

BILLING CODE 6560-38-M