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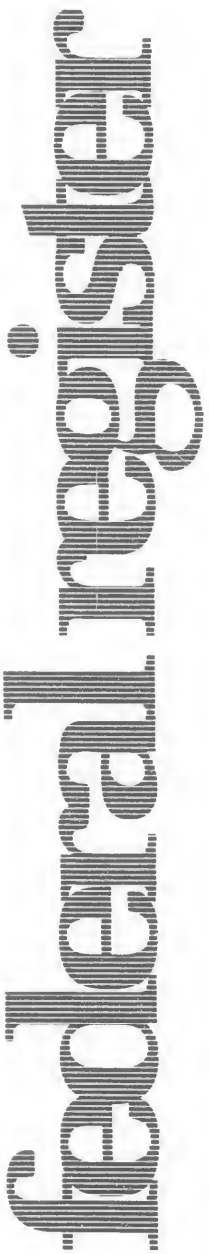

Friday
April 9, 1999

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WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

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RESERVATIONS: 202–523–4538

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560–AF46

Noninsured Crop Disaster Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the Noninsured Crop Disaster Assistance Program (NAP) which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). Currently, the regulations specify that the Executive Vice President, CCC, or designee determines areas, prices, and yields for NAP. The regulations are being revised to inform the public that the Deputy Administrator for Farm Programs (DAFP) has been delegated the authority to determine areas, prices, and yields for NAP. The regulation has also been revised to specify that DAFP may at his discretion delegate to selected Farm Service Agency (FSA) State committees (STC's) and other FSA officials, authority to determine areas, prices, and yields for NAP. Additionally, amendments made by the interim rule specify that seed crops may be considered separate eligible crops under NAP if certain criteria is met, and provide a definition for industrial crops.

DATES: The interim rule is effective on April 9, 1999. Comments on this rule must be received on or before June 8, 1999 to be assured of consideration.

ADDRESSES: Submit comments regarding this rule to G. Sean O'Neill, Chief, Noninsured Assistance Programs Branch (NAPB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone (202) 720–9003; e-mail Sean__Oneill@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: G. Sean O'Neill, telephone (202) 720–9003; e-mail Sean__Oneill@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by OMB.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither FSA nor the CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12988

The interim rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995 (UMRA)

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

This interim rule does not include any new or additional information collection requirements. The information relative to the criteria stated in the interim rule was previously collected during the 1996/1997 growing period under approved OMB control numbers 0560–0175 and 0560–0004.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Federal Assistance Programs

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Background

The regulation reflects changes in existing definitions, additional definitions, and acreage reporting requirements. Changes include:

(1) Section 1437.2 is amended to specify that the Deputy Administrator for Farm Programs (DAFP) shall make determinations regarding NAP area and price and yield approvals and at DAFP's discretion, DAFP may further delegate authority to selected FSA State committees and other FSA officials to make determinations regarding NAP area and price and yield approvals.

(2) Section 1437.3 is amended to: (a) revise the definition of eligible crop to include the criteria for defining a crop intended for use as commercial seed; and (b) include a definition of industrial crops.

(3) Section 1437.4 is amended to specify that in the case of commercial seed, the seed intended use may be treated as a separate eligible crop if the criteria in § 1437.3 is met.

List of Subjects in 7 CFR Part 1437

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, 7 CFR Chapter XIV is amended as set forth below.

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM REGULATIONS FOR THE 1998 AND SUCCEEDING CROP YEARS

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 714b and 714c and 7 U.S.C. 7333.

2. Revise the heading for part 1437 to read as set forth above.

3. In § 1437.2 paragraphs (f) and (g) are revised and paragraph (h) is added to read as follows:

§ 1437.2 Administration.

* * * * *

(f) The State committee will, in accordance with this part, recommend the geographical size and shape of the area where a natural disaster has occurred, and whether the area eligibility requirement has been satisfied. The recommendations must be approved by the Deputy Administrator for Farm Programs unless the State committee has been specifically delegated authority under paragraph (h) of this section.

(g) Except when a State committee has been authorized to approve NAP prices and yields according to paragraph (h) of this section, the Deputy Administrator for Farm Programs shall approve all yields and prices under this part.

(h) The Deputy Administrator for Farm Programs, may delegate to State committees authority to make area, price, and yield determinations specified in paragraphs (f) and (g) of this section. The delegation shall be in writing. State committees authorized and delegated to make area determinations referenced in paragraph (f) may do so only if the entire proposed NAP area resides entirely within the State or geographical region for which the State committee is responsible. If an area delineated according to § 1437.6 is both within and outside the region governed by the State committee, the Deputy Administrator for Farm Programs must approve the area. This decision to delegate or revoke delegated authority to any State committee or other FSA official to make any determination referenced in either paragraph (f) or (g) of this section is solely at the discretion of the Deputy Administrator for Farm Program and is not subject to administrative review.

4. In § 1437.3 the definition of eligible crop is revised and a new definition for industrial crops is added in proper alphabetical order and to read as follows:

§ 1437.3 Definitions.

* * * * *

Eligible crop means an agricultural commodity for which catastrophic coverage is not available and which is commercially produced for food or fiber as specified in this part. Eligible crop will also include floriculture, ornamental nursery, and Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), and industrial crops. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being planted, each planting may be considered a different crop for determining payments under this part as determined by CCC. In the case of a crop, except for forage determined by CCC to be predominantly grazed, that has different varieties or types, each variety or type may be considered a separate crop for determining payments under this part, if CCC determines there is a significant difference in price or yield between the varieties or types. For the 1996 and subsequent crop years, a seed crop may be viewed as a separate crop, as determined by CCC, if all the following apply: The specific crop acreage is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use; there is no possibility of other commercial uses of production from the seed crop acreage without regard to market conditions; and the crop acreage planted, or intended to be planted, with an intended use of seed must have a growing period uniquely conducive to the production of commercial seed and such growing period is not conducive to the production of any other intended use. The unique growing period necessary for successful commercial seed production must be something that is physiologically required for the production of commercial seed (i.e. vernalization in a biennial crop such as carrots and onions) and where such physiological event renders the possibility of production of any other use of the crop acreage improbable. Commercial seed intended uses not meeting the aforementioned criteria shall be viewed as an intended use and a single crop together with all other intended uses of the crop type or variety.

* * * * *

Industrial crop means castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago, ovato, sesame, and other crops specifically designated by CCC that are either food or fiber or are used in food or fiber applications.

* * * * *

5. In § 1437.4 paragraph (a) is revised to read as follows:

§ 1437.4 Eligibility.

(a) Crops that are eligible for NAP benefits are any commercial agricultural crop (excluding livestock and their by-products), commodity, or acreage of a commodity grown for food or fiber for which catastrophic coverage is not available. Except for ornamental nursery and species or type or variety of a species of forage determined by CCC to be predominantly grazed, different types or varieties of a crop or commodity, may be treated as a separate eligible crop, if CCC determines there is a significant difference in price or yield. For the 1996 and subsequent crop years, as seed crop may be viewed as a separate crop if CCC determines the crop meets the definition of an "eligible crop" pursuant to § 1437.3.

* * * * *

Signed at Washington, DC, on April 5, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–8763 Filed 4–8–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29521; Amdt. No. 1924]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight

operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on April 2, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective Upon Publication*

FDC date	State	City	Airport	FDC Number	SIAP
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03/19/99	NE.	YORK	YORK MUNI	9/1672	GPS RWY 35, ORIG...
03/19/99	OH.	NEWARK	NEWARK–HEATH	9/1684	SDF RWY 9, AMDT 5...
03/22/99	OH.	CLEVELAND	CLEVELAND–HOPKINS INTL	9/1728	ILS RWY 28, AMDT 21...
03/24/99	GA.	SAVANNAH	SAVANNAH INTL	9/1750	MLS RWY 27, ORIG–A...
03/25/99	AK.	COLD BAY	COLD BAY	9/1878	LOC/DME BC RWY 32, AMDT 7...
03/25/99	AK.	HOMER	HOMER	9/1812	LOC/DME BC RWY 3, AMDT 9...
03/25/99	AK.	HOMER	HOMER	9/1815	LOC/DME BC RWY 21, AMDT 4...
03/25/99	AK.	HOMER	HOMER	9/1816	GPS RWY 21, ORIG...
03/25/99	AK.	HOMER	HOMER	9/1817	GPS RWY 3, ORIG...
03/25/99	AK.	HOMER	HOMER	9/1828	NDB–A, ORIG...
03/25/99	IL.	CHICAGO/ROMEOVILLE	LEWIS UNIVERSITY	9/1790	LOC/DME RWY 9, ORIG...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1870	ILS RWY 5R, AMDT 2...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1872	NDB OR GPS RWY 23L, AMDT 1...

FDC date	State	City	Airport	FDC Number	SIAP
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1874	VOR OR GPS RWY 14, AMDT 25...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1875	ILS RWY 32, AMDT 17A...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1876	ILS RWY 14, AMDT 4...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1882	ILS RWY 23L, AMDT 2...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1899	NDB OR GPS RWY 5R, AMDT 1...
03/25/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1926	NDB RWY 5L, ORIG...
03/25/99	MS.	OLIVE BRANCH	OLIVE BRANCH	9/1867	NDB OR GPS RWY 18, AMDT 4...
03/25/99	NJ.	NEWARK	NEWARK INTL	9/1895	VOR RWY 11 AMDT 1A...
03/25/99	NY.	POUGHKEEPSIE	DUTCHESS COUNTY	9/1888	VOR/DME RWY 6 AMDT 5A...
03/25/99	NY.	POUGHKEEPSIE	DUTCHESS COUNTY	9/1889	VOR OR GPS–A AMDT 10...
03/25/99	NY.	POUGHKEEPSIE	DUTCHESS COUNTY	9/1891	VOR/DME OR GPS RWY 24 AMDT 3A...
03/25/99	NY.	POUGHKEEPSIE	DUTCHESS COUNTY	9/1892	VOR/DME RNAV OR GPS RWY 6 AMDT 5...
03/25/99	NY.	POUGHKEEPSIE	DUTCHESS COUNTY	9/1968	ILS RWY 6 AMDT 5A...
03/25/99	SC.	NORTH MYRTLE BEACH.	NORTH MYRTLE BEACH/GRAND STRAND.	9/1863	VOR RWY 5 AMDT 20...
03/25/99	SC.	NORTH MYRTLE BEACH.	NORTH MYRTLE BEACH/GRAND STRAND.	9/1864	VOR RWY 23 AMDT 19...
03/25/99	SC.	NORTH MYRTLE BEACH.	NORTH MYRTLE BEACH/GRAND STRAND.	9/1865	ILS RWY 23 AMDT 10...
03/25/99	TX.	HEREFORD	HEREFORD MUNI	9/1807	GPS RWY 21, ORIG...
03/25/99	TX.	PANHANDLE	PANHANDLE-CARSON COUNTY	9/1809	GPS RWY 35, ORIG...
03/25/99	VA.	NORFOLK	NORFOLK INTL	9/1843	VOR/DME RWY 5 AMDT 4...
03/25/99	VA.	NORFOLK	NORFOLK INTL	9/1844	VOR RWY 23 AMDT 8...
03/25/99	VA.	NORFOLK	NORFOLK INTL	9/1845	VOR/DME RWY 32 AMDT 4...
03/25/99	VA.	WISE	LONESOME PINE	9/1818	LOC/DME RWY 24 ORIG...
03/26/99	IA.	OELWEIN	OELWEIN MUNI	9/1938	VOR/DME RNAV OR GPS RWY 13, AMDT 2...
03/26/99	IA.	OELWEIN	OELWEIN MUNI	9/1943	VOR OR GPS–A, AMDT 3...
03/26/99	IA.	OELWEIN	OELWEIN MUNI	9/1944	NDB RWY 13, AMDT 2...
03/26/99	IA.	SHENANDOAH	SHENANDOAH MUNI	9/1942	NDB OR GPS RWY 4, ORIG...
03/26/99	IA.	SHENANDOAH	SHENANDOAH MUNI	9/1947	VOR/DME OR GPS RWY 12, AMDT 3...
03/26/99	IN.	INDIANAPOLIS	INDIANAPOLIS INTL	9/1941	NDB OR GPS RWY 32, AMDT 14...
03/26/99	SC.	GREENVILLE	GREENVILLE DOWNTOWN	9/1970	NDB OR GPS RWY 36, AMDT 20...
03/26/99	TN.	MURFREESBORO	MURFREESBORO MUNI	9/1950	NDB RWY 18, ORIG–A...
03/29/99	FL.	TAMPA	VANDENBERG	9/2061	GPS RWY 23, ORIG...
03/29/99	FL.	TAMPA	VANDENBERG	9/2062	GPS RWY 18, AMDT 1...
03/29/99	GA.	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	9/2066	ILS RWY 9L, AMDT 5...
03/29/99	IA.	MARSHALLTOWN	MARSHALLTOWN MUNI	9/2021	GPS RWY 12, ORIG...
03/29/99	IA.	MONTICELLO	MONTICELLO MUNI	9/2019	NDB OR GPS–A, AMDT 3A...
03/29/99	IA.	MONTICELLO	MONTICELLO MUNI	9/2020	VOR/DME RNAV OR GPS RWY 31, AMDT 1A...
03/29/99	IA.	ORANGE CITY	ORANGE CITY MUNI	9/2036	NDB OR GPS RWY 34, AMDT 3...
03/29/99	IA.	SHELDON	SHELDON MUNI	9/2017	VOR OR GPS RWY 33, AMDT 1...
03/29/99	IA.	SHELDON	SHELDON MUNI	9/2018	NDB RWY 33, AMDT 6...
03/29/99	ID.	JEROME	JEROME COUNTY	9/2043	VOR/DME OR GPS–A AMDT 1...
03/29/99	MA.	BEVERLY	BEVERLY MUNI	9/2031	LOC RWY 16 AMDT 5A...
03/29/99	MA.	BEVERLY	BEVERLY MUNI	9/2032	GPS RWY 16 ORIG...
03/29/99	MA.	BEVERLY	BEVERLY MUNI	9/2033	VOR RWY 16 AMDT 4A...
03/29/99	MA.	BEVERLY	BEVERLY MUNI	9/2034	NDB OR GPS–A AMDT...
03/29/99	NY.	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FILED.	9/2045	ILS RWY 34 AMDT 2...
03/29/99	NY.	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	9/2046	NDB OR GPS RWY 34 AMDT 17...
03/29/99	NY.	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	9/2047	VOR OR GPS RWY 10 AMDT 6...
03/29/99	NY.	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	9/2048	VOR/DME OR GPS RWY 28 AMDT 9...
03/29/99	NY.	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	9/2049	ILS RWY 16 AMDT 6...
03/29/99	PA.	EASTON	EASTON	9/2064	VOR/DME OR GPS–D ORIG–B...

FDC date	State	City	Airport	FDC Number	SIAP
03/29/99	SC.	COLUMBIA	COLUMBIA METROPOLITAN	9/2022	VOR/DME RNAV OR GPS RWY 5, ORIG–B...
03/29/99	SC.	GREENVILLE	GREENVILLE DOWNTOWN	9/2052	ILS RWY 36 AMDT 27...
03/29/99	SC.	GREENVILLE	GREENVILLE DOWNTOWN	9/2053	RADAR 1 ADMT 12...
03/31/99	IL.	GREENWOOD/WONDER LAKE.	GALT	9/2105	VOR OR GPS–A, AMDT 9...

[FR Doc. 99–8919 Filed 4–8–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–011; Order No. 587–K]

Standards For Business Practices Of Interstate Natural Gas Pipelines

Issued April 2, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to incorporate by reference the most recent version of the standards, Version 1.3 promulgated July 31, 1998, by the Gas Industry Standards Board (GISB). These standards establish rules for conducting business practices and electronic communication with interstate natural gas pipelines.

DATES: Effective Date: The rule is effective May 10, 1999. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register of May 10, 1999.

Implementation Date: Pipelines must implement the regulations adopted in this rule by August 1, 1999.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission. 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at (202) 208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

The Federal Energy Regulatory Commission (Commission) is amending § 284.10 of its regulations to incorporate by reference the most recent version, Version 1.3, of the consensus industry standards, promulgated by the Gas Industry Standards Board (GISB). The GISB standards establish uniform principles for conducting business and electronic communications with interstate natural gas pipelines.

I. Background

In Order Nos. 587, 587–B, 587–C, 587–G, 587–H, and 587–I [1] the Commission adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In those orders, the Commission incorporated by reference consensus standards developed by GISB, a private, consensus standards developer composed of members from all segments of the natural gas industry.

On November 9, 1998, GISB filed with the Commission Version 1.3 of its standards. On December 17, 1998, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to incorporate by reference Version 1.3 of the GISB standards. Comments were due by January 22, 1999. Comments were filed by Williston Basin Interstate Pipeline Company (Williston Basin) and, collectively, Process Gas Consumers, American Iron and Steel Institute, and Georgia Industrial Group (PGC, *et al.*).

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 (Sept. 29, 1998).

II. Discussion

The Commission is adopting Version 1.3 of GISB's consensus standards with an implementation date on the first day of the month occurring 90 days after publication of the final rule in the **Federal Register**. Version 1.3 of the GISB standards updates and improves the standards, with the principal changes occurring in the areas of confirmation practices, further standardization of the information provided on pipeline Internet web sites, and revisions to the data sets.[2] Commission adoption of these standards will keep the Commission regulations current.

GISB approved the standards under its consensus procedures.[3] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act (NTT&AA) of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like GISB, as means to carry out policy objectives or activities.[4]

Because the Version 1.3 standards include the nomination and intra-day nomination standards adopted by the Commission in Order No. 587–H, separate reference to these standards in the regulations is no longer necessary and will be removed. The Commission also is continuing its previous practice by not incorporating standards 2.3.29 dealing with operational balancing agreements (OBAs), 2.3.30 dealing with netting and trading of imbalances, and 4.3.4 dealing with retention of electronic data. The Commission has issued its own regulations in these areas,[5] so that incorporation of the GISB standards is unnecessary and may cause confusion as to the applicable Commission requirements.

In its comments, Williston Basin does not object to the adoption of Version 1.3 of the standards. It suggests, however, that the Commission defer implementation of any future GISB standards until three months following the completion of the pipelines' transition to Internet communication by June 1, 2000. Williston Basin states that, as a relatively small interstate pipeline, it would have difficulty implementing any additional standards at the same time as it completes its transition to Internet communication and resolves any Year 2000 computer problems.

The Commission cannot, at this time, anticipate when it will require pipelines to implement additional standards developed by GISB. That will depend in part on GISB's schedule for revising its standards and the importance to the industry of the additional standards. For example, GISB still has not completed development of standards necessary to implement imbalance trading, which the Commission required in Order No. 587–G.

PGC, *et al.* object to the Commission's policy of not making copies of the standards available to the public for copying, leaving the public to obtain copies from GISB. They contend that if the Commission is requiring adherence to the standards, the Commission must make those standards available to the public for copying. The Commission previously responded to this contention in Order No. 587–A, explaining that when dealing with copyrighted material, the appropriate, and required, method for adoption is to incorporate the material by reference with the material being available from the source.[6] When the NOPR was issued, the standards were publicly available from GISB, and PGC, *et al.* do not contend that they encountered difficulty in obtaining them.

III. Implementation Schedule

Pipelines are required to implement this rule August 1, 1999. Pipelines must file revised tariff sheets to conform their tariffs to Version 1.3 of the standards not more than 60 and not less than 30 days prior to the implementation date.

IV. Notice of Proposed Use of Standards

Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that, when a federal agency is issuing or revising a regulation that contains a standard, the agency must publish a statement in the preamble of a final rule identifying whether a voluntary consensus standard or a government-unique standard is being proposed. In this rule, the Commission is adopting Version 1.3 (July 31, 1998) of the voluntary consensus standards developed by GISB.

V. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The collections of information related to the subject Final Rule fall under the existing reporting requirements of: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal) (OMB Control No. 1902–0154) and FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines (OMB Control No. 1902–0174). The following burden estimates are related only to this rule and include the costs of complying with GISB's version 1.3 standards. The burden estimates are primarily related to start-up for implementing the latest version of the standards and data sets and will not be on-going costs.

Public Reporting Burden:

[2] Tha following reflects the changes from tha Version 1.2 standards previously adopted by tha Commission. The list doas not includa the intra-day nomination standards that already were adopted in Order No. 587–H. Revised standards are: 1.3.3, 1.3.14, 1.3.24, 1.3.27, 2.3.9, 2.3.16, 2.3.20, and 4.3.16. New standards ara: 1.3.35 through 1.3.38, 1.3.45, 1.3.46, 3.3.22, 4.1.16 through 4.1.21, 4.2.1 through 4.2.8, and 4.3.17 through 4.3.35. Revised data sets are: 1.4.1 through 1.4.6, 2.4.1 through 2.4.6, 3.4.1 through 3.4.3, 5.4.1 through 5.4.9, 5.4.11 through 5.4.13, 5.4.16, and 5.4.17. Naw data sets ara: 1.4.7 and 3.4.4.

[3] This process first requires a supar-majority vota of 17 out of 25 members of GISB's Exacutive Committee with support from at least two members from each of tha fiva industry segments—interstata pipelinas, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of GISB's general membership must ratify the standards.

[4] Pub L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 nota (1997).

[5] 18 CFR 284.10(c)(2)(i) (OBAs), (c)(2)(ii) (natting and trading of imbalances), and (c)(3)(v) (record retention).

[6] Order No. 587–A, 61 FR 55208, 55212–13 (Oct. 25, 1996), 77 FERC ¶ 61,061, at 61,232–33 (Oct. 21, 1996). *See* 5 U.S.C. 552 (a)(1) and (a)(3) (documents incorporated by referanca need not be publishad in the **Federal Register** or providad by tha agency); 1 CFR 51 (1998) (standards for approval of incorporation by reference).

ESTIMATED ANNUAL BURDEN

Data collection	No. of respondents	No. of responses per respondent	Hrs. per response	Total no. of hrs.
FERC–545	93	1	38	3,534
FERC–549C	93	1	2,610	242,730

The total annual hours for collection (including recordkeeping) are estimated to be 246,264. The average annualized cost per respondent is projected to be the following:

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$2,008	$137,888
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	2,008	137,888

The Commission received no comments on the burden estimates and is submitting a copy of this Final Rule to OMB for information purposes because the Final Rule is not significantly different from the NOPR and OMB has not provided any comments on the NOPR.

The Commission regulations adopted in this order are necessary to further the process begun in Order No. 587 of standardizing business practices and electronic communications with interstate pipelines. Adoption of these regulations will update the Commission's regulations relating to business practices and communication protocols to conform to the latest version, Version 1.3, approved by GISB.

The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this Final Rule will be reported directly to the industry users and later be subject to audit by the Commission. This information also will be retained for a three year period. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Office of the Chief Information Officer, phone (202) 208–1415, fax (202) 208–2425, E-mail mike.miller@ferc.fed.us]; or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone 202–395–3087, fax (202) 395–7285].

VI. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[7] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[8] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[9] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[10] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted in this rule would impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

VIII. Effective Date

These regulations will become effective May 10, 1999. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In section 284.10, paragraphs (b)(1)(i) through (v) are revised to read as follows:

§ 284.10 Standards for pipeline business operations and communications.

* * * * *

(b) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.3, July 31, 1998);

[7] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[8] 18 CFR 380.4.

[9] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[10] 5 U.S.C. 601–612.

(ii) Flowing Gas Related Standards (Version 1.3, July 31, 1998) with the exception of Standards 2.3.29 and 2.3.30;

(iii) Invoicing Related Standards (Version 1.3, July 31, 1998);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.3, July 31, 1998) with the exception of Standard 4.3.4; and

(v) Capacity Release Related Standards (Version 1.3, July 31, 1998).

* * * * *

[FR Doc. 99–8691 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8818]

RIN 1545–AV13

Public Disclosure of Material Relating to Tax-Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the public disclosure requirements of section 6104(d) of the Internal Revenue Code (Code), as amended by the Tax and Trade Relief Extension Act of 1998. These final regulations apply only to tax-exempt organizations (organizations described in sections 501(c) or (d) and exempt under section 501(a)) other than private foundations. These final regulations provide guidance for tax-exempt organizations (other than private foundations) required to make their applications for tax exemption and annual information returns available for public inspection. In particular, these regulations provide guidance for tax-exempt organizations required to comply with requests made in person or in writing from individuals who seek a copy of those documents. These regulations describe how a tax-exempt organization can make those documents widely available and, therefore, not be required to provide copies in response to individual requests. These regulations also address the standards that apply in determining whether a tax-exempt organization is the subject of a harassment campaign and provide guidance on the applicable procedures for obtaining relief from the requirement that copies of documents be provided in response to requests.

DATES: These regulations are effective June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Michael B. Blumenfeld, (202) 622–6070 (not toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1560. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper varies from 0 hours to 55 hours, depending on individual circumstances with an estimated average of 30 minutes.

Comments on the accuracy of this burden estimate and suggestions for reducing the burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the section 6104(d) public disclosure requirements applicable to tax-exempt organizations (organizations described in sections 501(c) or (d) and exempt from taxation under section 501(a)). Section 6104(d), as amended by section 14(b) of the Tax and Trade Relief Extension Act of 1998 (Division J of H.R. 4328, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999) (Public Law 105–277, 112 Stat. 2681) (Tax and Trade Relief Extension Act of 1998), will apply to requests made to all tax-exempt organizations (other than private foundations) after June 8, 1999. Until such date, all tax-exempt organizations continue to be subject to the requirements of section 6104(e) as currently in effect, without regard to the Tax and Trade Relief Extension Act of 1998.

Although the Tax and Trade Relief Extension Act of 1998 extended fully to private foundations the public disclosure requirements that apply to other tax-exempt organizations, those requirements do not go into effect with respect to private foundations until the 60th day after the Secretary of the Treasury issues final regulations under section 6104(d) that apply to private foundations. In the meantime, private foundations continue to be subject to the public disclosure requirements under sections 6104(d) and (e) of the Internal Revenue Code, as in effect prior to the Tax and Trade Relief Extension Act of 1998.

Description of Current Law Section 6104(e)

Section 10702 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) added subsection (e) to section 6104. Section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to allow public inspection of the organization's application for recognition of tax exemption. Section 6104(e) also requires each tax-exempt organization, other than one that is a private foundation, to allow public inspection at the organization's principal office (and certain regional or district offices) of its three most recent annual information returns. (Section 6104(e) does not apply to private foundation annual information returns, which are subject to public disclosure under section 6104(d), as in effect prior to the Tax and Trade Relief Extension Act of 1998.) Under section 6104(e), each annual information return must be made available for a 3-year period beginning on the date the return is required to be filed or is actually filed, whichever is later. In Notice 88–120 (1988–2 C.B. 454), the IRS provided tax-exempt organizations with guidance for complying with the public inspection requirements.

The Taxpayer Bill of Rights 2 (TBOR2), enacted on July 30, 1996, amended section 6104(e) by adding additional public disclosure requirements. As amended, section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to comply with requests, made either in person or in writing, for copies of the organization's application for recognition of tax exemption. Section 6104(e) also requires each tax-exempt organization, other

than one that is a private foundation, to comply with requests, made either in person or in writing, for copies of the organization's three most recent annual information returns. The organization must fulfill these requests without charge, other than a reasonable fee for reproduction and postage. If the request for copies is made in person, the organization generally must provide the requested copies immediately. If the request for copies is made in writing, the organization must provide the copies within 30 days. Section 6104(e) also provides that an organization is relieved of its obligation to provide copies upon request if, in accordance with regulations promulgated by the Secretary of the Treasury, (1) the organization has made the requested documents widely available, or (2) the Secretary of the Treasury determines, upon application by the organization, that the organization is subject to a harassment campaign such that a waiver of the obligation to provide copies would be in the public interest.

Issuance of Proposed Regulations Under Section 6104(e)

In Notice 96–48 (1996–2 C.B. 214), the IRS invited comments on the changes made by TBOR2. Twenty-two comments were received and considered in the drafting of a notice of proposed rulemaking (REG–246250–96), published in the **Federal Register** (62 FR 50533) on September 26, 1997. The IRS received twenty written comments on the proposed regulations and held a public hearing on February 4, 1998. After consideration of all the written comments regarding the proposed regulations, and the amendments made by the Tax and Trade Relief Extension Act of 1998, described below, those regulations are adopted as revised by this Treasury decision.

Amendments Made by the Tax and Trade Relief Extension Act of 1998

The Tax and Trade Relief Extension Act of 1998, which was enacted on October 21, 1998, amended section 6104(e) of the Internal Revenue Code to subject private foundations to the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. In addition, the Tax and Trade Relief Extension Act of 1998 repealed existing section 6104(d), and redesignated section 6104(e), as amended, as new section 6104(d). (Unless otherwise noted, all references in these final regulations to section 6104(d) are to section 6104(d) as amended by the Tax and Trade Relief Extension Act of 1998.)

The Tax and Trade Relief Extension Act of 1998 amendments apply to requests made after the later of December 31, 1998 or the 60th day after the Secretary of the Treasury issues regulations referred to in section 6104(d)(4) (relating to when documents are made widely available and when a particular request is considered part of a harassment campaign). This Treasury decision adopts final regulations under section 6104(d)(4) that are applicable to tax-exempt organizations other than private foundations. Accordingly, amendments to section 6104(d) will become applicable with respect to requests made to tax-exempt organizations other than private foundations after June 8, 1999.

Future Regulations Will Apply to Private Foundations

The IRS and the Treasury Department intend to issue shortly a notice of proposed rulemaking relating to the public disclosure requirements of section 6104(d) as those requirements apply to private foundations. Until 60 days after final regulations are issued, private foundations continue to be subject to sections 6104(d) and (e), as in effect prior to the Tax and Trade Relief Extension Act of 1998. For that reason, existing § 301.6104(d)–1, relating to public inspection of private foundation annual returns, is not affected by this Treasury decision.

Explanation of Provisions

Overview

The final regulations provide guidance concerning the application for tax exemption and annual information returns a tax-exempt organization, other than a private foundation, must make available for public inspection and must supply in response to requests for copies. The final regulations also provide guidance on (1) the place and time the organization must make these documents available for public inspection, (2) conditions the organization may place on requests for copies of the documents, and (3) the amount, form and time of payment of any fees the organization may charge. The final regulations also prescribe how an organization can make its application for tax exemption and annual information returns widely available. Finally, the final regulations provide guidance on the standards that apply in determining whether an organization is the subject of a harassment campaign and on the applicable procedures for obtaining relief from the general requirement that copies of documents be provided in response to requests.

Application for Tax Exemption

A tax-exempt organization, other than one that is a private foundation, must make its application for tax exemption available pursuant to these final regulations. An application for tax exemption includes the application form (such as Form 1023 or Form 1024) and any supporting documents filed by, or on behalf of, the organization in connection with its application. It also includes any letter or document issued by the IRS in connection with the application. Consistent with the guidance provided in Notice 88–120, if an organization filed its application before July 15, 1987, the final regulations provide that the organization is required to make available a copy of its application only if it had a copy of the application on July 15, 1987.

Annual Information Returns

A tax-exempt organization, other than one that is a private foundation, must make its three most recent annual information returns available pursuant to these final regulations. Generally, an annual information return includes Forms 990, 990–EZ, 990–BL, and Form 1065. It also includes, generally, all schedules and attachments filed with the IRS. An organization is not required, however, to disclose the parts of the return that identify names and addresses of contributors to the organization, nor is it required to disclose Form 990–T.

A few commentators asked that the final regulations exempt certain items reported on an application for tax exemption or an annual information return from disclosure. For example, one commentator observed that only an organization described in section 501(c)(3) is required by statute (section 6033) to report certain compensation information. By contrast, it is the regulations under section 6033 that require tax-exempt organizations described in other parts of section 501(c) or section 501(d) to report certain compensation information. Accordingly, the commentator asked that the final regulations require public disclosure of the compensation section of Form 990 only when it is a statutory requirement, as opposed to a regulatory requirement, to report such information. Because section 6104(d) requires, except for specific exceptions, disclosure of all the information reported on an application or return, the IRS and the Treasury Department decided that requiring public disclosure of compensation information required to be reported on an annual information return either by

statute or regulation is consistent with section 6104(d).

One commentator requested that final regulations require an organization that has not been determined by the IRS to be exempt from taxation under section 501(a) to make its application for tax exemption available for public inspection and to provide copies upon request. Section 301.6104(e)–1(b)(3) of the proposed regulations provided that an organization is not required to disclose its application for tax exemption until the IRS determines it is exempt from taxation. Section 6104(d)(1) requires an organization to disclose its application for tax exemption only where it is exempt under section 501(a). Thus, the statute does not require an organization to disclose its application for tax exemption while the application is pending or in a case where the IRS issues an adverse determination. Accordingly, the IRS and the Treasury Department continue to believe that the rule of the proposed regulation is consistent with the statute and have decided not to change this provision.

One commentator proposed that a special rule be included in the final regulations so that a religious or apostolic organization described in section 501(d) would not be required to publicly disclose a Schedule K–1 of Form 1065 because it contains taxpayer information with respect to the distributees (i.e., the ratable portions of the net income and expenses of the individual members of the organization). After the submission of this comment, the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) was enacted. Section 6019 of this Act amended Code sections 6104(b) and 6104(e) to provide specifically that organizations described in section 501(d) are not required to publicly disclose a Schedule K–1 filed by the organization. Consistent with this statutory modification of section 6104, the final regulations eliminate the requirement that a religious or apostolic organization described in section 501(d) disclose a Schedule K–1.

Place and Time Documents Must Be Available for Public Inspection

Section 6104(d) requires a tax-exempt organization to make its documents available for public inspection, and provide copies upon request, at its principal office and at certain regional or district offices. Under Notice 88–120, certain sites where services are provided (such as day care or health care) are not treated as regional or district offices for purposes of the public inspection requirements, provided that such sites do "not serve as offices of management staff (other than managers involved solely in managing the specific service of that service provider office)." The IRS and the Treasury Department recognize that many tax-exempt organizations maintain sites where their employees or volunteers solely provide services that further exempt purposes, including services provided directly to the public, but do not maintain administrative or management staff at such sites necessary to respond to public disclosure requests. Accordingly, the proposed regulations expanded the "service provider exception" of Notice 88–120 slightly. Under the proposed regulations, sites where the only services provided further exempt purposes (such as day care, health care or scientific or medical research) were excluded from the definition of a regional or district office. Thus, under the proposed regulations, a research organization that maintains a laboratory used solely by individuals conducting scientific research on behalf of the organization would not have to respond to public disclosure requests made at the laboratory even though the researchers are not providing direct services to the public. However, a research organization would have a public disclosure obligation at a laboratory if the organization also uses space at that location as offices for some of its management staff (other than those involved solely in managing the exempt function activities at the laboratory).

Several comments were received on this topic. One commentator expressed the view that the definition of regional or district office in the proposed regulations was reasonably well balanced. Other commentators, however, expressed concern that this definition would reduce the number of sites from which the documents could be obtained. One of these commentators expressed the view that exempting organizations from complying with public disclosure requests made at sites where employees engage solely in providing exempt services would unnecessarily complicate the determination whether an organization is required to respond to public disclosure requests at a particular site. This commentator suggested that the final regulations treat any site with 3 or more employees as a regional or district office where an organization must respond to requests for public inspection or copies. Another commentator expressed the view that the exception for sites dedicated solely to providing exempt services was reasonable, but suggested that the final regulations clarify what activities would constitute management activities that would require an organization to respond to public disclosure requests at the site.

The IRS and the Treasury Department believe that the "regional and district office" rule of section 6104(d) was intended to enhance the availability of documents in the case of an organization that maintains management staff at one or more offices in addition to its principal office. However, Congress explicitly recognized that the burden to an organization of complying with requests for public inspection or copies made at small regional or district offices (those with fewer than 3 employees) would outweigh the public benefit of increased availability of the documents. This rationale applies equally as well to certain sites of a tax-exempt organization where its employees and volunteers engage solely in providing services that further exempt purposes and which do not serve as an office for management staff. The IRS and the Treasury Department believe the rule expressed in the proposed regulations is consistent with the intent of the statute and prior IRS guidance, particularly in light of the new provisions that allow copies to be obtained by mail. Therefore, the rule of the proposed regulations is followed in the final regulations.

The proposed regulations prescribed how an organization that does not maintain a permanent office or whose office has very limited hours during certain times of the year can comply with the public inspection requirements. The proposed regulations also provided rules concerning the conditions the organization may impose on public inspections that are consistent with Notice 88–120. In this regard, the final regulations follow the proposed regulations.

The proposed regulations permitted a principal, regional, or district office of an organization to use an agent to process requests for copies. One commentator asked that the final regulations also allow a tax-exempt organization to retain a local agent to satisfy the organization's public inspection obligation. After careful consideration of this comment, the IRS and the Treasury Department have concluded that, to avoid potential inconvenience to members of the public, it is important that tax-exempt organizations make their applications and returns available for inspection at their offices. Therefore, the IRS and the Treasury Department did not adopt this comment.

Another commentator asked that the final regulations clarify that an organization may apply the same security measures to individuals that request inspection or copies that it applies to the public in general. The IRS and the Treasury Department have determined that the proposed regulations would not preclude a tax-exempt organization from implementing its normal security measures. Thus, no change is reflected in the final regulations.

Requirement to Furnish Copy to a Requester

The proposed regulations generally required that a tax-exempt organization accept requests for copies made in person at the same place and time that the specified documents must be available for public inspection. In general, the proposed regulations required that the copies be provided on the day of the request. However, the proposed regulations provided that, in unusual circumstances, an organization may provide the requested copies on the next business day. Some commentators expressed concern that a one-day delay may not be sufficient. In response to these comments, the final regulations provide that an organization must comply with requests for copies made in person by providing copies no later than the next business day following the day the unusual circumstances cease to exist. However, in no event may the period of delay exceed five business days. In response to another comment, the final regulations clarify that unusual circumstances include times when the organization's managerial staff capable of fulfilling the request attends an off-site meeting or convention.

When a request for copies is made in writing, the proposed regulations required that a tax-exempt organization mail the copies within 30 days from the date it receives the request. However, the proposed regulations provided that, if an organization requires advance payment of a reasonable fee for copying and postage, it may provide the copies within 30 days from the date it receives payment, rather than from the date of the initial request. In addition, the proposed regulations provided guidance as to what constitutes a request, when a request is considered received, and when copies are deemed provided. The final regulations follow the rules in the proposed regulations.

The proposed regulations provided that individuals may request a specific part of an application for tax exemption or annual information return. One commentator expressed concern that requiring a tax-exempt organization to provide a copy of only part of a document may create a significant burden on the tax-exempt organization because the organization would have to identify the particular information requested. In order to minimize this potential burden, without requiring the requester to pay for a copy of parts of a document that the requester has no interest in obtaining, the final regulations permit a requester to request a copy of any specifically identified part or schedule of an application or a return (except for information which is not subject to public disclosure under section 6104(d)(3)). For example, a requester may request a copy of Part V (List of Officers, Directors, Trustees and Key Employees) of Form 990.

Reasonable Fee for Providing Copies

Section 6104(d)(1)(B) permits an organization to charge a reasonable fee for the cost of copying and mailing documents in response to requests for copies. The proposed regulations stated that a fee was reasonable only if it did not exceed the fees the IRS charges for copies of tax-exempt organization tax returns and related documents. This fee is currently $1.00 for the first page and $.15 for each subsequent page. In addition, the proposed regulations allowed a charge for actual postage costs. Some commentators requested that the reasonable fee be greater than the amount stated in the proposed regulations. One commentator suggested that the final regulations allow organizations to consider personnel costs and not limit the fee to the IRS charge. The IRS and the Treasury Department are concerned that permitting organizations to charge a higher fee could hinder the public's ability to receive a copy of an application or return. Consequently, it was decided that, on balance, the reasonable fee set forth in the proposed regulations is appropriate. Thus, the final regulations adopt the reasonable fee provision of the proposed regulations.

The proposed regulations permitted an organization to collect payment in advance of providing the requested copies. Under the proposed regulations, if an organization receives a written request for copies with no payment enclosed, and the organization requires payment in advance, the organization must request payment within 7 days from the date it receives the request. The proposed regulations required an organization to accept payment made by cash or money order and, when the request is made in writing, also accept payment made by personal check. An organization is permitted to accept other forms of payment. One commentator asked for the elimination of the requirement to accept a personal check because an organization could be liable for bank charges if there are insufficient funds to cover the personal check. The final regulations generally follow the proposed regulations, except that the final regulations provide that a tax-exempt organization that accepts payment by credit card is not required to accept personal checks.

Consistent with the proposed regulations, the final regulations protect requesters from unexpected fees where a tax-exempt organization does not require prepayment and where a requester does not enclose prepayment with a request, by requiring that an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage is in excess of $20.

Local and Subordinate Organizations

Some commentators stated that the proposed regulations were overly burdensome with respect to local or subordinate organizations recognized as tax-exempt under a group exemption letter or that file a group return pursuant to § 1.6033–2(d) and Rev. Proc. 80–27 (1980–1 C.B. 677). Specifically, they objected to the requirement that a local or subordinate organization make available copies of documents submitted by the central or parent organization to the IRS to include the local or subordinate organization in the group ruling, which often consists of lengthy lists or directories of names and addresses of affiliated organizations. In addition, one commentator expressed the view that the annual filing under Rev. Proc. 80–27 that a central or parent organization submits to the IRS to cover a local or subordinate organization under its group exemption letter does not constitute an application for tax exemption within the meaning of section 6104(d)(2)(A). In response to these comments, the final regulations reduce the burden on local and subordinate organizations. Under the final regulations, a local or subordinate organization that receives a request made in person for inspection or for a copy of its application for tax exemption is required to acquire, and make available within a reasonable amount of time (normally not more than two weeks), the application for a group exemption letter (if any) filed by the central or parent organization. In addition, a local or subordinate organization must also make available any documents submitted by the central or parent organization to the IRS to include the subordinate organization in

the group ruling. However, if the central or parent organization submits a list or directory of organizations covered by the group exemption letter, the local or subordinate organization need only provide the application for group exemption and those pages of the list or directory that refer to it. If a local or subordinate organization that does not file its own annual information return but is covered under a group return receives a request made in person for inspection or for a copy of its annual information return, the local or subordinate organization must make its group return available for inspection or provide copies within a reasonable amount of time (normally not more than two weeks). However, if the group return includes separate schedules with respect to each local or subordinate organization included in the group return, the local or subordinate organization receiving the request may omit any schedules relating only to other organizations included in the group return.

If the requester seeks inspection of an application for tax exemption or an annual information return, the local or subordinate organization may mail a copy of the applicable document to the requester within a reasonable amount of time (normally not more than two weeks) in lieu of allowing an inspection. In such a case, the local or subordinate organization may not charge for the copies without the consent of the requester. A local or subordinate organization must comply with written requests for copies in accordance with the general rules for written requests discussed above.

The final regulations also clarify, consistent with Notice 88–120, the obligation of the central or parent organization to comply, at its principal office, with requests for inspection or copies of documents relating to its local and subordinate organizations.

Making Applications and Information Returns Widely Available

The final regulations provide that a tax-exempt organization is not required to comply with requests for copies if the organization has made the requested documents widely available. The final regulations specify that an organization can make its application for tax exemption and/or its annual information returns widely available by posting the applicable document on the organization's World Wide Web page on the Internet or by having the applicable document posted on another organization's World Wide Web page as part of a database of similar materials, provided that the documents are posted in a format which meets the criteria set forth in the final regulations. An organization that makes its application for tax exemption and/or its annual information returns widely available must provide the individuals who request copies with the World Wide Web address where the documents are available.

The proposed regulations provided that an organization must post its documents on its World Wide Web page in a format that the IRS uses to post forms and publications. Unlike the proposed regulations, the final regulations do not enumerate one or more particular formats that must be used. Instead, the final regulations provide that the documents must be posted in a format that meets the following criteria. First, any individual with access to the Internet must be able to access, download, view and print the posted document in a format which exactly reproduces the image of the original document filed with the IRS, except for any information permitted to be withheld from public disclosure under section 6104(d). The final regulations require an exact reproduction because a format that does not exactly reproduce the image of the original document may raise questions about the accuracy or authenticity of the posted document. Second, the format must allow any individual with access to the Internet to access, download, view and print the posted document without payment of a fee to either the tax-exempt organization or the entity maintaining the World Wide Web page and without special computer hardware or software required for that format, other than software that is readily available to members of the public free of charge.

The IRS and the Treasury Department understand that some of the formats that the IRS itself uses to post forms and publications on the IRS World Wide Web page may not satisfy the criteria specified in the final regulations. For example, some of these formats could require users to have access to special hardware or software that is not commonly used by the public to access, download, view and print documents. The final regulations provide a one-year transition rule for any tax-exempt organization that posted its documents on the Internet on or before April 9, 1999 in a manner consistent with the proposed regulations. Until June 8, 2000 such an organization will be treated as having made its documents "widely available" for purposes of the final regulations even if the format used does not currently satisfy all of the criteria set forth in the final regulations.

Some commentators suggested that the final regulations permit an organization to post its documents on the Internet in HTML format. As discussed above, the approach of the final regulations is to identify the criteria that an Internet format must satisfy. The IRS and the Treasury Department understand that, currently, when a heavily formatted document, such as a tax return, is posted in HTML format, it may not exactly reproduce the image of the original document.

One format that currently satisfies the criteria set forth in the final regulations is Portable Document Format (PDF). PDF is designed to reproduce the image of the original document exactly. In addition, documents in the PDF format can be viewed, navigated and printed by anyone using the freely available reader software. Of course, there may be other formats that currently satisfy the criteria set forth in the final regulations. The IRS and the Treasury Department refer to PDF only for the purpose of illustrating an acceptable format. No inference should be drawn that the IRS and the Treasury Department view PDF as an especially or singularly qualified format, that IRS and the Treasury Department endorse or warrant a specific document format (or software used in connection with a format), or that use or failure to use a specific document format (or software used in connection with a format) will result in any preferential treatment from the IRS or the Treasury Department. The IRS and the Treasury Department note that a specific format that currently satisfies the "widely available" criteria set forth in the final regulations may be altered such that it no longer satisfies the "widely available" criteria in the future. Conversely, a specific format that does not currently satisfy the "widely available" criteria may be refined to satisfy the "widely available" criteria in the future.

As technology advances, the IRS and the Treasury Department anticipate that an increasing number of formats will meet the criteria set forth in the final regulations. Accordingly, the IRS and the Treasury Department do not intend to limit technologies that organizations may use to post their documents as long as the posted document is readily and freely accessible and appears, whether viewed on screen or in print, exactly as the original.

The IRS and the Treasury Department will continue to consider other additional methods by which applications and returns could be made widely available. Accordingly, the final regulations provide that the Commissioner may prescribe, by

revenue procedure or other guidance, additional methods that an organization can use to make its application for tax exemption and/or its annual information returns widely available.

Harassment Campaigns

The proposed regulations provided guidance in determining whether a tax-exempt organization is the subject of a harassment campaign such that requiring compliance with requests for copies that are part of the harassment campaign would not be in the public interest. Generally, the proposed regulations provided that a harassment campaign exists where the relevant facts and circumstances show that the purpose of a group of requests was to disrupt the operations of the tax-exempt organization rather than to obtain information. The proposed regulations also contained examples that evaluated whether particular situations constituted a harassment campaign and whether an organization had a reasonable basis for believing that a request was part of the harassment campaign. The final regulations retain this rule and the examples set forth in the proposed regulations.

The proposed regulations provided that an organization may suspend compliance with a request if the organization reasonably believes that the request is part of a harassment campaign. Commentators expressed concern that, if there is a delay in the issuance of an IRS determination as to whether the organization's belief is reasonable, the organization could be subject to significant penalties for the intervening period. The final regulations do not limit the penalties that may be retroactively imposed in cases where an organization is subsequently determined to have lacked a reasonable belief for suspending compliance. However, the IRS and the Treasury Department recognize that it may be appropriate to mitigate penalties in certain circumstances, especially where a delay in the issuance of a determination is completely outside the control of the organization requesting the determination. The IRS intends to publish a revenue procedure that will provide additional detail concerning harassment campaign determinations procedures and may prescribe rules concerning the imposition and mitigation of penalties.

The proposed regulations required an organization to file an application for a harassment campaign determination within 5 days after suspending compliance with a request that the organization believes to be part of such harassment campaign. One commentator asked that the time period for filing an application be expanded to either 10 or 15 business days. Another commentator observed, however, that such an extension of time would further delay compliance with requests for copies that an organization reasonably believes, but are determined not to be, part of a harassment campaign. The final regulations require an organization to file an application for a harassment determination within 10 business days after suspending compliance. The IRS and the Treasury Department believe that this time period strikes an appropriate balance by providing organizations sufficient time to prepare and file an application without substantially delaying access to copies of the documents. In addition, the final regulations allow an organization, without submitting an application, to disregard requests for copies in excess of two per month or four per year made by a single individual or sent from a single address.

Some commentators asked for clarification concerning the period that an organization may continue not to comply with requests for copies that are part of a harassment campaign once it has received such a determination. The IRS and the Treasury Department believe that the district director for the key district in which the organization's principal office is located (or such other person as the Commissioner may designate) should exercise reasonable discretion, based on the facts and circumstances of each case, in deciding the exact terms and conditions of a harassment campaign determination. Consequently, the final regulations do not change this provision of the proposed regulations.

Various comments concerned the examples of harassment campaigns and requests from members of the news media. In this regard, example 4 has been modified to better illustrate that a request made by a member of the news media is a strong factor tending to indicate that the request is not part of a harassment campaign.

Other Matters

The proposed regulations provided that an individual denied inspection, or a copy, of an application for tax exemption or an annual information return could seek assistance from the IRS by providing to the Director of the Exempt Organizations Division a statement that describes the request and the reason for the individual's belief that the denial was in violation of the legal requirements. The final regulations provide instead that such individuals should send their statements directly to the district director for the key district in which the principal office of the tax-exempt organization is located (or such other person as the Commissioner may designate). Finally, various comments raised questions regarding the availability of an administrative appeal of a harassment campaign determination and whether harassment campaign applications and determinations are publicly available. Whether an administrative appeal is available and whether a harassment campaign determination is publicly available are matters beyond the scope of these regulations, but may be addressed in subsequent guidance.

Effective Date

The final regulations are effective June 8, 1999.

Special Analyses

It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the average time required to maintain and disclose the information required under these regulations is estimated to be 30 minutes for each tax-exempt organization. This estimate is based on the assumption that, on average, a tax-exempt organization will receive one request per year to inspect or provide copies of its application for tax exemption and its annual information returns. Less than 0.001 percent of the tax-exempt organizations affected by these regulations will be subject to the reporting requirements contained in the regulations. It is estimated that annually, approximately 1,000 tax-exempt organizations will make their documents widely available by posting them on the Internet. In addition, it is estimated that annually, approximately 50 tax-exempt organizations will file an application for a determination that they are the subject of a harassment campaign such that a waiver of the obligation to provide copies of their applications for tax exemption and their annual information returns is in the public interest. The average time required to complete, assemble and file an application describing a harassment campaign is expected to be 5 hours. Because applications for a harassment campaign determination will be filed so infrequently, they will have no effect on the average time needed to comply with the requirements in these regulations. In addition, a tax-exempt organization is allowed in these regulations to charge a reasonable fee for providing copies to requesters. Therefore, it is estimated

that on average it will cost tax-exempt organizations less than $10 per year to comply with these regulations, which is not a significant economic impact. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these regulations is Michael B. Blumenfeld, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and the Treasury Department also participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6104(d)–4 also issued under 26 U.S.C. 6104(e)(3);

Section 301.6104(d)–5 also issued under 26 U.S.C. 6104(e)(3); * * *

Par. 2. Sections 301.6104(d)–2 through 301.6104(d)–5 are added to read as follows:

§ 301.6104(d)–2 Table of contents.

This section lists captions contained in §§ 301.6104(d)–3 through 301.6104(d)–5.

§ 301.6104(d)–3 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations (other than private foundations).

(a) In general.
(b) Definitions.
(1) Tax-exempt organization.
(2) Private foundation.
(3) Application for tax exemption.
(i) In general.
(ii) No prescribed application form.
(iii) Exceptions.
(iv) Local or subordinate organizations.
(4) Annual information return.
(i) In general.
(ii) Exceptions.
(iii) Returns more than 3 years old.
(iv) Local or subordinate organizations.
(5) Regional or district offices.
(i) In general.
(ii) Site not considered a regional or district office.
(c) Special rules relating to public inspection.
(1) Permissible conditions on public inspection.
(2) Organizations that do not maintain permanent offices.
(d) Special rules relating to copies.
(1) Time and place for providing copies in response to requests made in person.
(i) In general.
(ii) Unusual circumstances.
(iii) Agents for providing copies.
(2) Request for copies in writing.
(i) In general.
(ii) Time and manner of fulfilling written requests.
(A) In general.
(B) Request for a copy of parts of document.
(C) Agents for providing copies.
(3) Fees for copies.
(i) In general.
(ii) Form of payment.
(A) Request made in person.
(B) Request made in writing.
(iii) Avoidance of unexpected fees.
(iv) Responding to inquiries of fees charged.
(e) Documents to be provided by regional and district offices.
(f) Documents to be provided by local and subordinate organizations.
(1) Applications for tax exemption.
(2) Annual information returns.
(3) Failure to comply.
(g) Failure to comply with public inspection or copying requirements.
(h) Effective date.

§ 301.6104(d)–4 Making applications and returns widely available.

(a) In general.
(b) Widely available.
(1) In general.
(2) Internet posting.
(i) In general.
(ii) Transition rule.
(iii) Reliability and accuracy.
(c) Discretion to prescribe other methods for making documents widely available.
(d) Notice requirement.
(e) Effective date.

§ 301.6104(d)–5 Tax-exempt organization subject to harassment campaign.

(a) In general.
(b) Harassment.
(c) Special rule for multiple requests from a single individual or address.
(d) Harassment determination procedure.
(e) Effect of a harassment determination.
(f) Examples.
(g) Effective date.

§ 301.6104(d)–3 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations (other than private foundations).

(a) *In general.* Except as otherwise provided in this section, if a tax-exempt organization (as defined in paragraph (b)(1) of this section), other than a private foundation (as defined in paragraph (b)(2) of this section), filed an application for recognition of exemption under section 501, it shall make its application for tax exemption (as defined in paragraph (b)(3) of this section) available for public inspection without charge at its principal, regional and district offices during regular business hours. Except as otherwise provided in this section, a tax-exempt organization, other than a private foundation, shall make its annual information returns (as defined in paragraph (b)(4) of this section) available for public inspection without charge in the same offices during regular business hours. Each annual information return shall be made available for a period of three years beginning on the date the return is required to be filed (determined with regard to any extension of time for filing) or is actually filed, whichever is later. In addition, except as provided in §§ 301.6104(d)–4 and 301.6104(d)–5, an organization shall provide a copy without charge, other than a reasonable fee for reproduction and actual postage costs, of all or any part of any application or return required to be made available for public inspection under this paragraph to any individual who makes a request for such copy in person or in writing. See paragraph (d)(3) of this section for rules relating to fees for copies.

(b) *Definitions.* For purposes of applying the provisions of section 6104(d), this section and §§ 301.6104(d)–4 and 301.6104(d)–5, the following definitions apply:

(1) *Tax-exempt organization.* The term *tax-exempt organization* means any organization that is described in section 501(c) or section 501(d) and is exempt from taxation under section 501(a).

(2) *Private foundation.* The term *private foundation* means a private foundation as defined in section 509(a).

(3) *Application for tax exemption*—(i) *In general.* Except as described in paragraph (b)(3)(iii) of this section, the term *application for tax exemption* includes any prescribed application form (such as Form 1023 or Form 1024), all documents and statements the Internal Revenue Service requires an applicant to file with the form, any

statement or other supporting document submitted by an organization in support of its application, and any letter or other document issued by the Internal Revenue Service concerning the application (such as a favorable determination letter or a list of questions from the Internal Revenue Service about the application). For example, a legal brief submitted in support of an application, or a response to questions from the Internal Revenue Service during the application process, is part of an application for tax exemption.

(ii) *No prescribed application form.* If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes—

(A) The application letter and copy of the articles of incorporation, declaration of trust, or other similar instrument that sets forth the permitted powers or activities of the organization;

(B) The organization's bylaws or other code of regulations;

(C) The organization's latest financial statements showing assets, liabilities, receipts and disbursements;

(D) Statements describing the character of the organization, the purpose for which it was organized, and its actual activities;

(E) Statements showing the sources of the organization's income and receipts and their disposition; and

(F) Any other statements or documents the Internal Revenue Service required the organization to file with, or that the organization submitted in support of, the application letter.

(iii) *Exceptions.* The term *application for tax exemption* does not include—

(A) Any application for tax exemption filed by an organization that the Internal Revenue Service has not yet recognized, on the basis of the application, as exempt from taxation under section 501 for any taxable year;

(B) Any application for tax exemption filed before July 15, 1987, unless the organization filing the application had a copy of the application on July 15, 1987; or

(C) Any material, including the material listed in § 301.6104(a)–1(i) and information that the Secretary would be required to withhold from public inspection, that is not available for public inspection under section 6104.

(iv) *Local or subordinate organizations.* For rules relating to applications for tax exemption of local or subordinate organizations, see paragraph (f)(1) of this section.

(4) *Annual information return*—(i) *In general.* Except as described in paragraph (b)(4)(ii) of this section, the term *annual information return* includes an exact copy of any return filed by a tax-exempt organization pursuant to section 6033. It also includes any amended return the organization files with the Internal Revenue Service after the date the original return is filed. The copy must include all information furnished to the Internal Revenue Service on Form 990, Return of Organization Exempt From Income Tax, or any version of Form 990 (such as Forms 990–EZ or 990–BL except Form 990–T) and Form 1065, as well as all schedules, attachments and supporting documents, except for the name and address of any contributor to the organization. For example, the annual information return includes Schedule A of Form 990 (containing supplementary information on section 501(c)(3) organizations), and those parts of the return that show compensation paid to specific persons (currently, Part V of Form 990 and Parts I and II of Schedule A of Form 990).

(ii) *Exceptions.* The term *annual information return* does not include Schedule A of Form 990–BL, Form 990–T, Exempt Organization Business Income Tax Return, Schedule K–1 of Form 1065 or Form 1120–POL, U.S. Income Tax Return For Certain Political Organizations, and the return of a private foundation. See § 301.6104(d)–1 for requirements relating to public disclosure of private foundation annual returns.

(iii) *Returns more than 3 years old.* The term *annual information return* does not include any return after the expiration of 3 years from the date the return is required to be filed (including any extension of time that has been granted for filing such return) or is actually filed, whichever is later. If an organization files an amended return, however, the amended return must be made available for a period of 3 years beginning on the date it is filed with the Internal Revenue Service.

(iv) *Local or subordinate organizations.* For rules relating to annual information returns of local or subordinate organizations, see paragraph (f)(2) of this section.

(5) *Regional or district offices*—(i) *In general.* A regional or district office is any office of a tax-exempt organization, other than its principal office, that has paid employees, whether part-time or full-time, whose aggregate number of paid hours a week are normally at least 120.

(ii) *Site not considered a regional or district office.* A site is not considered a regional or district office, however, if—

(A) The only services provided at the site further exempt purposes (such as day care, health care or scientific or medical research); and

(B) The site does not serve as an office for management staff, other than managers who are involved solely in managing the exempt function activities at the site.

(c) *Special rules relating to public inspection*—(1) *Permissible conditions on public inspection.* A tax-exempt organization may have an employee present in the room during an inspection. The organization, however, must allow the individual conducting the inspection to take notes freely during the inspection. If the individual provides photocopying equipment at the place of inspection, the organization must allow the individual to photocopy the document at no charge.

(2) *Organizations that do not maintain permanent offices.* If a tax-exempt organization does not maintain a permanent office, the organization shall comply with the public inspection requirements of paragraph (a) of this section by making its application for tax exemption and its annual information returns, as applicable, available for inspection at a reasonable location of its choice. Such an organization shall permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day. At the organization's option, it may mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester in lieu of allowing an inspection. The organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. An organization that has a permanent office, but has no office hours or very limited hours during certain times of the year, shall make its documents available during those periods when office hours are limited or not available as though it were an organization without a permanent office.

(d) *Special rules relating to copies*—(1) *Time and place for providing copies in response to requests made in-person*—(i) *In general.* Except as provided in paragraph (d)(1)(iii) of this section, a tax-exempt organization shall provide copies of the documents it is required to provide under section 6104(d) in response to a request made in person at its principal, regional and district offices during regular business hours. Except as provided in paragraph (d)(1)(ii) of this section, an organization

shall provide such copies to a requester on the day the request is made.

(ii) *Unusual circumstances.* In the case of an in-person request, where unusual circumstances exist such that fulfilling the request on the same business day places an unreasonable burden on the tax-exempt organization, the organization must provide the copies no later than the next business day following the day that the unusual circumstances cease to exist or the fifth business day after the date of the request, whichever occurs first. Unusual circumstances include, but are not limited to, receipt of a volume of requests that exceeds the organization's daily capacity to make copies; requests received shortly before the end of regular business hours that require an extensive amount of copying; or requests received on a day when the organization's managerial staff capable of fulfilling the request is conducting special duties, such as student registration or attending an off-site meeting or convention, rather than its regular administrative duties.

(iii) *Agents for providing copies.* A principal, regional or district office of a tax-exempt organization subject to the requirements of this section may retain a local agent to process requests made in person for copies of its documents. A local agent must be located within reasonable proximity of the applicable office. A local agent that receives a request made in person for copies must provide the copies within the time limits and under the conditions that apply to the organization itself. For example, a local agent generally must provide a copy to a requester on the day the agent receives the request. When a principal, regional or district office of a tax-exempt organization using a local agent receives a request made in person for a copy, it must immediately provide the name, address and telephone number of the local agent to the requester. An organization that provides this information is not required to respond further to the requester. However, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization if the organization's local agent fails to provide the documents as required under section 6104(d).

(2) *Request for copies in writing*—(i) *In general.* A tax-exempt organization must honor a written request for a copy of documents (or the requested part) that the organization is required to provide under section 6104(d) if the request—

(A) Is addressed to, and delivered by mail, electronic mail, facsimile, or a private delivery service as defined in section 7502(f) to a principal, regional or district office of the organization; and

(B) Sets forth the address to which the copy of the documents should be sent.

(ii) *Time and manner of fulfilling written requests*—(A) *In general.* A tax-exempt organization receiving a written request for a copy shall mail the copy of the requested documents (or the requested parts of documents) within 30 days from the date it receives the request. However, if a tax-exempt organization requires payment in advance, it is only required to provide the copies within 30 days from the date it receives payment. For rules relating to payment, see paragraph (d)(3) of this section. In the absence of evidence to the contrary, a request or payment that is mailed shall be deemed to be received by an organization 7 days after the date of the postmark. A request that is transmitted to the organization by electronic mail or facsimile shall be deemed received the day the request is transmitted successfully. If an organization requiring payment in advance receives a written request without payment or with an insufficient payment, the organization must, within 7 days from the date it receives the request, notify the requester of its prepayment policy and the amount due. A copy is deemed provided on the date of the postmark or private delivery mark (or if sent by certified or registered mail, the date of registration or the date of the postmark on the sender's receipt). If an individual making a request consents, a tax-exempt organization may provide a copy of the requested document exclusively by electronic mail. In such case, the material is provided on the date the organization successfully transmits the electronic mail.

(B) *Request for a copy of parts of document.* A tax-exempt organization must fulfill a request for a copy of the organization's entire application for tax exemption or annual information return or any specific part or schedule of its application or return. A request for a copy of less than the entire application or less than the entire return must specifically identify the requested part or schedule.

(C) *Agents for providing copies.* A tax-exempt organization subject to the requirements of this section may retain an agent to process written requests for copies of its documents. The agent shall provide the copies within the time limits and under the conditions that apply to the organization itself. For example, if the organization received the request first (e.g., before the agent), the deadline for providing a copy in response to a request shall be determined by reference to when the organization received the request, not when the agent received the request. An organization that transfers a request for a copy to such an agent is not required to respond further to the request. If the organization's agent fails to provide the documents as required under section 6104(d), however, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization.

(3) *Fees for copies*—(i) *In general.* A tax-exempt organization may charge a reasonable fee for providing copies. A fee is reasonable only if it is no more than the per-page copying charge stated in § 601.702(f)(5)(iv)(B) of this chapter (fee charged by the Internal Revenue Service for providing copies to a requester), plus no more than the actual postage costs incurred by the organization to provide the copies. Before the organization provides the documents, it may require that the individual requesting copies of the documents pay the fee. If the organization has provided an individual making a request with notice of the fee, and the individual does not pay the fee within 30 days, or if the individual pays the fee by check and the check does not clear upon deposit, the organization may disregard the request.

(ii) *Form of payment*—(A) *Request made in person.* If a tax-exempt organization charges a fee for copying (as permitted under paragraph (d)(3)(i) of this section), it shall accept payment by cash and money order for requests made in person. The organization may accept other forms of payment, such as credit cards and personal checks.

(B) *Request made in writing.* If a tax-exempt organization charges a fee for copying and postage (as permitted under paragraph (d)(3)(i) of this section), it shall accept payment by certified check, money order, and either personal check or credit card for requests made in writing. The organization may accept other forms of payment.

(iii) *Avoidance of unexpected fees.* Where a tax-exempt organization does not require prepayment and a requester does not enclose payment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage exceeds $20.

(iv) *Responding to inquiries of fees charged.* In order to facilitate a requester's ability to receive copies promptly, a tax-exempt organization shall respond to any questions from potential requesters concerning its fees for copying and postage. For example,

the organization shall inform the requester of its charge for copying and mailing its application for exemption and each annual information return, with and without attachments, so that a requester may include payment with the request for copies.

(e) *Documents to be provided by regional and district offices.* Except as otherwise provided, a regional or district office of a tax-exempt organization must satisfy the same rules as the principal office with respect to allowing public inspection and providing copies of its application for tax exemption and annual information returns. A regional or district office is not required, however, to make its annual information return available for inspection or to provide copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing such return) or is actually filed, whichever is later.

(f) *Documents to be provided by local and subordinate organizations*—(1) *Applications for tax exemption.* Except as otherwise provided, a tax-exempt organization that did not file its own application for tax exemption (because it is a local or subordinate organization covered by a group exemption letter referred to in § 1.508–1 of this chapter) must, upon request, make available for public inspection, or provide copies of, the application submitted to the Internal Revenue Service by the central or parent organization to obtain the group exemption letter and those documents which were submitted by the central or parent organization to include the local or subordinate organization in the group exemption letter. However, if the central or parent organization submits to the Internal Revenue Service a list or directory of local or subordinate organizations covered by the group exemption letter, the local or subordinate organization is required to provide only the application for the group exemption ruling and the pages of the list or directory that specifically refer to it. The local or subordinate organization shall permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day. In a case where the requester seeks inspection, the local or subordinate organization may mail a copy of the applicable documents to the requester within the same time period in lieu of allowing an inspection. In such a case, the organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. If the local or subordinate organization receives a written request for a copy of its application for tax exemption, it must fulfill the request in the time and manner specified in paragraph (d)(2) of this section. The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of the application for group exemption and the material submitted by the central or parent organization to include a local or subordinate organization in the group ruling. If the central or parent organization submits to the Internal Revenue Service a list or directory of local or subordinate organizations covered by the group exemption letter, it must make such list or directory available for public inspection, but it is required to provide copies only of those pages of the list or directory that refer to particular local or subordinate organizations specified by the requester. The central or parent organization must fulfill such requests in the time and manner specified in paragraphs (c) and (d) of this section.

(2) *Annual information returns.* A local or subordinate organization that does not file its own annual information return (because it is affiliated with a central or parent organization that files a group return pursuant to § 1.6033–2(d) of this chapter) must, upon request, make available for public inspection, or provide copies of, the group returns filed by the central or parent organization. However, if the group return includes separate schedules with respect to each local or subordinate organization included in the group return, the local or subordinate organization receiving the request may omit any schedules relating only to other organizations included in the group return. The local or subordinate organization shall permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day. In a case where the requester seeks inspection, the local or subordinate organization may mail a copy of the applicable documents to the requester within the same time period in lieu of allowing an inspection. In such a case, the organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. If the local or subordinate organization receives a written request for a copy of its annual information return, it must fulfill the request by providing a copy of the group return in the time and manner specified in paragraph (d)(2) of this section. The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of group returns filed by the central or parent organization. The central or parent organization must fulfill such requests in the time and manner specified in paragraphs (c) and (d) of this section.

(3) *Failure to comply.* If an organization fails to comply with the requirements specified in this paragraph, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 apply.

(g) *Failure to comply with public inspection or copying requirements.* If a tax-exempt organization denies an individual's request for inspection or a copy of an application for tax exemption or an annual information return as required under this section, and the individual wants to alert the Internal Revenue Service to the possible need for enforcement action, the individual may provide a statement to the district director for the key district in which the applicable tax-exempt organization's principal office is located (or such other person as the Commissioner may designate) that describes the reason why the individual believes the denial was in violation of the requirements of section 6104(d).

(h) *Effective date.* This section is effective June 8, 1999.

§ 301.6104(d)–4 Making applications and returns widely available.

(a) *In general.* A tax-exempt organization is not required to comply with a request for a copy of its application for tax exemption or an annual information return pursuant to § 301.6104(d)–3(a) if the organization has made the requested document widely available in accordance with paragraph (b) of this section. An organization that makes its application for tax exemption and/or annual information return widely available must nevertheless make the document available for public inspection as required under § 301.6104(d)–3(a), as applicable.

(b) *Widely available*—(1) *In general.* A tax-exempt organization makes its application for tax exemption and/or an annual information return widely available if the organization complies with the requirements specified in paragraph (b)(2) of this section, and if the organization satisfies the requirements of paragraph (d) of this section.

(2) *Internet posting*—(i) *In general.* A tax-exempt organization can make its application for tax exemption and/or an annual information return widely available by posting the document on a World Wide Web page that the tax-exempt organization establishes and maintains or by having the document posted, as part of a database of similar documents of other tax-exempt organizations, on a World Wide Web page established and maintained by another entity. The document will be considered widely available only if—

(A) the World Wide Web page through which it is available clearly informs readers that the document is available and provides instructions for downloading it;

(B) the document is posted in a format that, when accessed, downloaded, viewed and printed in hard copy, exactly reproduces the image of the application for tax exemption or annual information return as it was originally filed with the Internal Revenue Service, except for any information permitted by statute to be withheld from public disclosure. (See section 6104(d)(3) and § 301.6104(d)–3(b)(3) and (4)); and

(C) any individual with access to the Internet can access, download, view and print the document without special computer hardware or software required for that format (other than software that is readily available to members of the public without payment of any fee) and without payment of a fee to the tax-exempt organization or to another entity maintaining the World Wide Web page.

(ii) *Transition rule.* A tax-exempt organization that posted its application for tax exemption or its annual information returns on a World Wide Web page on or before April 9, 1999 in a manner consistent with regulation project REG–246250–96 (1997 C.B. 627) (See § 601.601(d)(2) of this chapter.) will be treated as satisfying the requirements of paragraphs (b)(2)(i)(B) & (C) of this section until June 8, 2000 provided that an individual can access, download, view and print the document without payment of a fee to the tax-exempt organization or to another entity maintaining the World Wide Web page.

(iii) *Reliability and accuracy.* In order for the document to be widely available through an Internet posting, the entity maintaining the World Wide Web page must have procedures for ensuring the reliability and accuracy of the document that it posts on the page and must take reasonable precautions to prevent alteration, destruction or accidental loss of the document when posted on its page. In the event that a posted document is altered, destroyed or lost, the entity must correct or replace the document.

(c) *Discretion to prescribe other methods for making documents widely available.* The Commissioner, from time to time, may prescribe additional methods, other than an Internet posting meeting the requirements of paragraph (b)(2) of this section, that a tax-exempt organization may use to make its documents widely available.

(d) *Notice requirement.* If a tax-exempt organization has made its application for tax exemption and/or an annual information return widely available it must notify any individual requesting a copy where the documents are available (including the address on the World Wide Web, if applicable). If the request is made in person, the organization shall provide such notice to the individual immediately. If the request is made in writing, the notice shall be provided within 7 days of receiving the request.

(e) *Effective date.* This section is effective June 8, 1999.

§ 301.6104(d)–5 Tax-exempt organization subject to harassment campaign.

(a) *In general.* If the district director for the key district in which the organization's principal office is located (or such other person as the Commissioner may designate) determines that the organization is the subject of a harassment campaign and compliance with the requests that are part of the harassment campaign would not be in the public interest, a tax-exempt organization is not required to fulfill a request for a copy (as otherwise required by § 301.6104(d)–3(a)) that it reasonably believes is part of the campaign.

(b) *Harassment.* A group of requests for an organization's application for tax exemption or annual information returns is indicative of a harassment campaign if the requests are part of a single coordinated effort to disrupt the operations of a tax-exempt organization, rather than to collect information about the organization. Whether a group of requests constitutes such a harassment campaign depends on the relevant facts and circumstances. Facts and circumstances that indicate the organization is the subject of a harassment campaign include: a sudden increase in the number of requests; an extraordinary number of requests made through form letters or similarly worded correspondence; evidence of a purpose to deter significantly the organization's employees or volunteers from pursuing the organization's exempt purpose; requests that contain language hostile to the organization; direct evidence of bad faith by organizers of the purported harassment campaign; evidence that the organization has already provided the requested documents to a member of the purported harassing group; and a demonstration by the tax-exempt organization that it routinely provides copies of its documents upon request.

(c) *Special rule for multiple requests from a single individual or address.* A tax-exempt organization may disregard any request for copies of all or part of any document beyond the first two received within any 30-day-period or the first four received within any one-year-period from the same individual or the same address, regardless of whether the district director for the applicable key district (or such other person as the Commissioner may designate) has determined that the organization is subject to a harassment campaign.

(d) *Harassment determination procedure.* A tax-exempt organization may apply for a determination that it is the subject of a harassment campaign and that compliance with requests that are part of the campaign would not be in the public interest by submitting a signed application to the district director for the key district where the organization's principal office is located (or such other person as the Commissioner may designate). The application shall consist of a written statement giving the organization's name, address, employer identification number, and the name, address and telephone number of the person to contact regarding the application. The application must describe in detail the facts and circumstances that the organization believes support a determination that the organization is subject to a harassment campaign. The organization may suspend compliance with respect to any request for a copy of its documents based on its reasonable belief that such request is part of a harassment campaign, provided that the organization files an application for a determination within 10 business days from the day the organization first suspends compliance with respect to a request that is part of the alleged campaign. In addition, the organization may suspend compliance with any request it reasonably believes to be part of the harassment campaign until it receives a response to its application for a harassment campaign determination.

(e) *Effect of a harassment determination.* If the appropriate district director (or such other person as the Commissioner may designate) determines that a tax-exempt organization is the subject of a harassment campaign and it is not in the public interest to comply with requests

that are part of the campaign, such organization is not required to comply with any request for copies that it reasonably believes is part of the campaign. This determination may be subject to other terms and conditions set forth by the district director (or such other person as the Commissioner may designate). A person (as defined in section 6652(c)(4)(C)) shall not be liable for any penalty under sections 6652(c)(1)(C), 6652(c)(1)(D) or 6685 for failing to timely provide a copy of documents in response to a request covered in a request for a harassment determination if the organization fulfills the request within 30 days of receiving a determination from the district director (or such other person as the Commissioner may designate) that the organization is not subject to a harassment campaign. Notwithstanding the preceding sentence, if the district director (or such other person as the Commissioner may designate) further determines that the organization did not have a reasonable basis for requesting a determination that it was subject to a harassment campaign or reasonable belief that a request was part of the campaign, the person (as defined in section 6652(c)(4)(C)) remains liable for any penalties that result from not providing the copies in a timely fashion.

(f) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. V, a tax-exempt organization, receives an average of 25 requests per month for copies of its three most recent information returns. In the last week of May, V is mentioned in a national news magazine story that discusses information contained in V's 1996 information return. From June 1 through June 30, 1997 V receives 200 requests for a copy of its documents. Other than the sudden increase in the number of requests for copies, there is no other evidence to suggest that the requests are part of an organized campaign to disrupt V's operations. Although fulfilling the requests will place a burden on V, the facts and circumstances do not show that V is subject to a harassment campaign. Therefore, V must respond timely to each of the 200 requests it receives in June.

Example 2. Y is a tax-exempt organization that receives an average of 10 requests a month for copies of its annual information returns. From March 1, 1997 to March 31, 1997, Y receives 25 requests for copies of its documents. Fifteen of the requests come from individuals Y knows to be active members of the board of organization X. In the past X has opposed most of the positions and policies that Y advocates. None of the requesters have asked for copies of documents from Y during the past year. Y has no other information about the requesters. Although the facts and circumstances show that some of the individuals making requests are hostile to Y, they do not show that the individuals have organized a campaign that will place enough of a burden on Y to disrupt its activities. Therefore, Y must respond to each of the 25 requests it receives in March.

Example 3. The facts are the same as in *Example 2*, except that during March 1997, Y receives 100 requests. In addition to the fifteen requests from members of organization X's board, 75 of the requests are similarly worded form letters. Y discovers that several individuals associated with X have urged the X's members and supporters, via the Internet, to submit as many requests for a copy of Y's annual information returns as they can. The message circulated on the Internet provides a form letter that can be used to make the request. Both the appeal via the Internet and the requests for copies received by Y contain hostile language. During the same year but before the 100 requests were received, Y provided copies of its annual information returns to the headquarters of X. The facts and circumstances show that the 75 form letter requests are coordinated for the purpose of disrupting Y's operations, and not to collect information that has already been provided to an association representing the requesters' interests. Thus, the fact and circumstances show that Y is the subject of an organized harassment campaign. To confirm that it may disregard the 90 requests that constitute the harassment campaign, Y must apply to the applicable district director (or such other person as the Commissioner may designate) for a determination. Y may disregard the 90 requests while the application is pending and after the determination is received. However, it must respond within the applicable time limits to the 10 requests it received in March that were not part of the harassment campaign.

Example 4. The facts are the same as in *Example 3*, except that Y receives 5 additional requests from 5 different representatives of the news media who in the past have published articles about Y. Some of these articles were hostile to Y. Normally, the Internal Revenue Service will not consider a tax-exempt organization to have a reasonable belief that a request from a member of the news media is part of a harassment campaign absent additional facts that demonstrate that the organization could reasonably believe the particular requests from the news media to be part of a harassment campaign. Thus, absent such additional facts, Y must respond within the applicable time limits to the 5 requests that it received from representatives of the news media.

(g) *Effective date.* This section is effective June 8, 1999.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * * * *	*
301.6104(d)–3	1545–1560
301.6104(d)–4	1545–1560
301.6104(d)–5	1545–1560
* * * * * * *	*

Approved: March 25, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–8638 Filed 4–8–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF–411]

RIN: 1512–AB82

Technical Amendments (98R–376P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision changes the titles "Regional Director (Compliance)" to "Director of Industry Operations" and "Chief, Firearms and Explosives Licensing Center" to "Chief, National Licensing Center." It also replaces the term "region" with "division" and the term "regional counsel" with "Assistant Chief Counsel and Division Counsel." Finally, the decision replaces the words "local ATF office (compliance)" with "local ATF office." The changes are to provide clarity and uniformity throughout Title 27 Code of Federal Regulations (CFR).

DATES: Effective April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Marsha D. Baker, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms (ATF) administers regulations published in chapter I of Title 27 CFR. Upon reviewing Title 27, ATF determined that the regulations in part 178 should be revised to reflect the ATF field structure reorganization that established Directors of Industry Operations in place of Regional directors (compliance), Chief, National Licensing Center in place of Chief, Firearms and Explosives Licensing Center, and Assistant Chief Counsels and Division Counsels in place of Regional Counsels. The reorganization also replaces regions with divisions.

These amendments do not make any substantive changes and are only intended to make Title 27 consistent with the agency's reorganization.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no recordkeeping or reporting requirements.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this final rule because no notice of proposed rulemaking is required.

Executive Order 12866

This final rule is not subject to the requirements of Executive Order 12866 because the regulations make nonsubstantive technical corrections to previously published regulations.

Administrative Procedure Act

Because this final rule merely makes technical amendments to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b).

Drafting Information: The principal author of this document is Marsha D. Baker, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR Part 178 as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504 (h).

Par. 2. Section 178.11 is amended by removing the title in the definition "Chief, Firearms and Explosives Licensing Center" and adding in its place "Chief, National Licensing Center," by removing the definitions "Regional director (compliance)" and "Region," and by adding the definitions "Director of Industry Operations" and "Division" to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Dirrector of Industry Operations. The principal ATF official in a Field Operations division responsible for administering regulations in this part.

* * * * *

* * * * *

Division. A Bureau of Alcohol, Tobacco and Firearms Division.

* * * * *

Par. 3. Remove the words "Regional director (compliance)" each place it appears and add, in place thereof, the words "Director of Industry Operations" in the following sections:

(a) Section 178.22(a)(3) and (b);
(b) Section 178.25;
(c) Section 178.35;
(d) Section 178.47(c) and (d);
(e) Section 178.52(b);
(f) Section 178.71;
(g) Section 178.72;
(h) Section 178.73;
(i) Section 178.74;
(j) Section 178.76;
(k) Section 178.78;
(l) Section 178.111(b)(1) and (c);
(m) Section 178.115(a);
(n) Section 178.122(c);
(o) Section 178.123(c);
(p) Section 178.124(i);
(q) Section 178.125(h);
(r) Section 178.126;
(s) Section 178.130(e);
(t) Section 178.144(i)(4).

Par. 4. Remove the words "Chief, Firearms and Explosives Licensing Center" each place it appears and add, in place thereof, the words "Chief, National Licensing Center" in the following sections:

(a) Section 178.41(b) and (c);
(b) Section 178.45;
(c) Section 178.47;
(d) Section 178.48;
(e) Section 178.52;
(f) Section 178.53;
(g) Section 178.54;
(h) Section 178.56(b);
(i) Section 178.57(a);
(j) Section 178.60;
(k) Section 178.95;
(l) Section 178.127.

Par. 5. Remove the word "region" each place it appears in § 178.127 and add, in place thereof, the word "division."

Par. 6. Remove the words "regional counsel" each place they appear in section 178.76 and add, in place thereof, the words "Assistant Chief Counsel or Division Counsel."

Par. 7. Remove the words "local ATF office (compliance)" each place it appears in section 178.130(e) and add, in place thereof, the words "local ATF office."

Signed: February 8, 1999.

John W. Magaw,

Director.

Approved: March 12, 1999.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–8869 Filed 4–8–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–9082–10; I.D. 031997B]

RIN 0648–A184

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Partial Stay

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; partial stay.

SUMMARY: On February 16, 1999, NMFS issued a final rule implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP). This document stays the provisions concerning gear marking requirements for all fisheries regulated by the ALWTRP (published on February 16, 1999) until November 1, 1999. The remainder of 50 CFR 229.32 is not changed.

DATES: In regulations published at 64 FR 7529 (February 16, 1999), paragraphs § 229.32 (b), (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), (d)(5)(ii), and (f)(2) are stayed until November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Douglas Beach, NMFS, Northeast Region, 978-281-9254; Katherine Wang, NMFS, Southeast Region, 727-570-5312; or Gregory Silber, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1999, NMFS published a final rule (64 FR 7529) implementing the ALWTRP. The effective date given in the regulatory text of 64 FR 7529 pertaining to gear marking of all fisheries regulated by the ALWTRP was April 1, 1999. It was generally noted in the Response to Comments portion of the final rule (64 FR 7544) that, although gear marking is an important data gathering device, the proposed scheme published in the Interim Final Rule on July 22, 1997 (62 FR 39157), was not likely to be as effective as expected. NMFS also stated in the final rule (64 FR 7545) that, as requested in other comments, that the Gear Advisory Group (GAG) and the Atlantic Large Whale Take Reduction Team (ALWTRT) would be tasked with reviewing the current scheme, and if recommendations were provided, NMFS would modify the scheme.

The GAG met in October 1998, and the ALWTRT met on February 8-10, 1999. The ALWTRT discussed the gear marking scheme in detail and recommended by consensus (NMFS members abstaining) that NMFS suspend the implementation of the gear marking requirement until November 1, 1999, or until a better system is designed. The ALWTRT recommended a specific course of action be followed to provide an appropriate gear marking scheme that could be implemented by NMFS by November 1, 1999. They asked that the GAG be reconvened quickly to design a better system for approval by the ALWTRT. The criteria established by the ALWTRT for an appropriate gear marking system were: (1) the system should identify the buoy lines by individual fishermen; (2) the system should apply to all waters affected by the plan; (3) it should be easily implemented by the affected fisheries; (4) to allow identification when the gear is not removed from a whale, the system should allow identification of gear type from a photograph; and (5) the system should allow identification of where the gear had been set.

The ALWTRT asked that, in order to minimize unnecessary confusion and expense for fishermen, the existing gear marking provision be stayed until November 1, 1999. This would assure that, should the GAG or ALWTRT not be able to reach a consensus on an appropriate gear marking scheme, the existing final rule gear marking scheme would remain in place. NMFS notes that the final rule comments on gear marking state that gear marking does not, by itself, reduce risk but provides important data for fine tuning the ALWTRP. Therefore, NMFS is staying the gear marking regulations for all fisheries affected by the ALWTRP so that the GAG and ALWTRT will have time to provide a more appropriate scheme to be implemented through the appropriate rulemaking process.

Dated: April 5, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8907 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 68
Friday, April 9, 1999

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

DEPARTMENT OF INTERIOR

National Park Service

36 CFR Parts 1, 2, 3, 4, 5, 6, and 7

[Docket No. 27643; Notice No. 94–4]

RIN 2120–AF46

Overflights of Units of the National Park System

AGENCY: Federal Aviation Administration; National Park Service.

ACTION: Advanced notice of proposed rulemaking (ANPRM); Disposition of comments.

SUMMARY: This document disposes of comments received in response to an ANPRM published in the **Federal Register** on March 17, 1994. The ANPRM sought public comment on general policy options and specific recommendations for voluntary and regulatory actions to address the impacts of aircraft overflights on national parks. This document summarizes those comments and provides an update to the public on matters concerning air tours over units of the national park system.

ADDRESSES: The complete docket, No. 27643, including a copy of the ANPRM and comments on it, may be examined in the Rules Docket, Room 915G, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC, 20591, weekdays (except Federal holidays), from 8 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Air Transportation Division (AFS–200), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267–4710.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1994, the FAA and the National Park Service (NPS) jointly issued an ANPRM titled Overflights of Units of the National Park System (59 FR 12740). The ANPRM cited the commitment of both Secretary Babbitt and (then) Secretary Pena to address the issue that increased flights over the Grand Canyon and other national parks have diminished the park experience for park visitors and that measures should be taken to preserve the quality of the park experience. This ANPRM sought comments and suggestions that could minimize the adverse impacts (e.g., noise) of commercial air tour operations and other overflights affecting units of the national park system.

The FAA and the NPS sought public comment and recommendations on a number of options, including voluntary measures, the use of the Grand Canyon Model, a prohibition of flights during flight-free time periods, altitude restrictions, flight-free zones and flight corridors, restrictions on noise through allocation of aircraft noise equivalencies, and incentives to encourage use of quiet aircraft. In addition, the FAA and NPS asked specific questions, from both a technical and a policy perspective. For example, the agencies asked whether commercial flights should be banned from some parks, and what criteria should be used in making these determinations. In the ANPRM the FAA also asked the public to consider categories other than air tour/sightseeing operations, and the factors to be considered for addressing recommendations regarding overflights. The agencies sought comment on the use of quiet technology, and whether overflights should be conducted under the regulations of part 135. The use of special operations specifications was questioned, as well as the use of the Grand Canyon, with its extensive regulation of airspace, and Hawaii, which at the time was undergoing a public planning process, as models for other parks. The full range of questions is found at 52 FR 12745 (March 17, 1994).

The FAA received over 30,000 comments in response to the ANPRM, most of which were duplicate form letters (one form letter accounts for over 24,000 comments). Some of the comments included references to other studies and analyses of overflights issues, which the FAA considered in its review. Of the comments received, other than form letters, slightly more than half favor further regulation, and slightly less than half oppose further regulation. Of the form letters, most of which were collected and submitted by air tour operators, over 90% oppose further regulation.

Commenters included individual park users, air tour operators and their representatives, environmental organizations, state and local organizations, and congressional representatives.

Summary of Comments

The following is a brief summary of the comments received. While space does not permit an in depth discussion of every comment, this summary presents an overview of the public positions on the most important issues related to overflights.

(1) *Voluntary measures.* Many commenters state that the voluntary measures already in place, such as the 2,000 foot minimum altitude guideline, are not working. Some of these commenters argue that such measures fail because aircraft operators do not recognize the inherent conflict between solitude and noise.

Other commenters argue that voluntary measures work, stating that the few operators who refuse to comply with the voluntary programs are at fault, not the industry as a whole. Several of the commenters note that pilots who make the effort to comply with existing voluntary guidelines are not recognized and are often criticized along with pilots who are not following voluntary guidelines.

(2) *National rule versus park-specific rules.* Although the ANPRM did not specifically address a national rule versus park-specific rules, there were some who commented on this issue. Generally, those persons do not think that a general rule could cover all park situations because of the variations among parks in such areas as ambient sound levels. For example, Air Line Pilots Association (ALPA) points to the amount of air traffic and unusual terrain at the Grand Canyon, which require specific regulations for that park.

Several commenters, including the Alaska Regional Office of the National Parks and Conservation Association, recommend separate regulations for national parks in Alaska because, in

some instances, air travel may be the only way to access these parks.

Some commenters suggest flexible regulations that could adjust to the varying considerations of parks (e.g., rules that could vary the spacing of flight-free times).

(3) *Regulation of sightseeing versus regulation of all commercial overflights.* Several commenters recommend extending overflight regulation to other types of aircraft that create noise over national parks, including military aircraft, NPS aircraft used for administrative and park maintenance flights, and commercial jets. Several commenters suggest distinguishing between private and commercial flight operations over parkland zones.

(4) *Grand Canyon and Hawaii as models.* Some commenters support applying the same limits used at the Grand Canyon and Hawaii to other parks, while other commenters oppose such measures.

(a) *Flight-free zones and corridors.* Several commenters oppose the imposition of flight-free zones because they would create higher traffic density and therefore increase the possibility of accidents, as well as produce greater noise impacts. Some of these commenters point to the experience at the Grand Canyon stating that SFAR 50–2 has created more compressed air traffic resulting in less safety and increased noise problems. Others say that 84 percent of the Grand Canyon is already traffic-free, and therefore additional flight-free zones and corridors are unnecessary.

Other commenters support the establishment of such corridors over certain sections of national parks. For example, several commenters support a two mile wide no-fly buffer zone around the entire perimeter of Hawaii's national parkland.

(b) *Flight-free times.* Some commenters are against establishing flight-free time periods and say that they would do little to mitigate the negative impacts of overflights. Some air tour operators say that these restrictions would also have substantial economic consequences on their operations.

Other commenters support the establishment of flight-free times or days, some of whom recommend capping the total number of flights allowed per day over national park. For example, the Grand Canyon Chapter of the Sierra Club recommends restricting the total number of flights at Grand Canyon National Park to pre-1975 levels in order to reduce crowding in flight corridors, thereby lessening noise impacts and increasing safety.

(c) *Altitude restrictions.* Many commenters suggest imposing specific minimum flight altitudes, for example, the Grand Canyon Chapter of the Sierra Club recommends that altitude restrictions not allow flights below 14,500 feet mean sea level.

Some commenters, such as the Grand Canyon Air Tourism Association, oppose blanket altitude restrictions that do not take geographic structures into account. Other commenters argue that altitude restrictions could be dangerous in weather that necessitates IFR operations.

(5) *Use of noise budgets and incentives for quiet aircraft technology.* Most commenters oppose the adoption of noise budgets because they are difficult to administer and are not cost effective. For example, the Grand Canyon Air Tourism Association says that noise budgets would be difficult to apply to the Grand Canyon because they would require expensive noise monitoring to ensure equal implementation by operators. Others argue that noise budgets would not substantially relieve the overall noise problem.

Several commenters support the adoption of noise budgets because they would provide operators with an incentive to operate quiet aircraft. A number of commenters recommend that if noise budgets are adopted, they should be grandfathered to the current noise level.

Regarding the use of quiet aircraft technology, some commenters support governmental incentives to encourage operators to use quiet aircraft. Such incentives could include tax benefits, fee abatements, loan programs, and increased allocations on the number of flights allowed. Several air tour operators point out that without such incentives, air tour operators could not afford to use quiet aircraft technologies.

(6) *Factors for evaluating recommendations.* One commenter, the Sierra Club Legal Defense Fund, says that the FAA and NPS, in evaluating recommendations, should ask: Will the measures be effective in eliminating aircraft noise in noise sensitive areas? Are fundamental park values, including natural quiet and protection of wildlife habitats, fully preserved by the rulemaking? Can the FAA and NPS implement effective management and enforcement strategies?

Another commenter, Helicopter Association International, recommends the creation of a Federal Advisory Committee to conduct studies, analyze information, and recommend regulatory actions on the issue of overflights over national parks.

(7) *The need for special operations specifications for conducting sightseeing flights.* Some commenters say that special operations specifications for air tour operators are unnecessary, while others support referencing the operation as part of operator specifications.

Some commenters, addressing air tour operations in Hawaii, recommend that air tour operators conducting operations over water or mountains be required to have special safety equipment and appropriate pilot training. These commenters also recommend that low-altitude aircraft operators in Hawaii adhere to instrument flight rules and minimum flight regulations.

(8) *Certificate under Part 121 or Part 135.* Most commenters agree that tour operation flights should be conducted under part 135. Commenters do not support conducting these flights under part 121, and several commenters argue that the safety record would not improve if the requirements of part 121 were imposed. These commenters also argue that operating under part 121 would not be cost effective.

(9) *Specific parks that should be regulated.* Some commenters mention specific parks or areas that should be regulated. These areas include: Polipoli State Park in Maui, Guadalupe Mountains National Park in west Texas, Chiricahua National Monument in southeastern Arizona, Catskill Park, Adirondak Park, the Shawangunk Ridge, Allegany State Park, Glacier National Park, the Great Smoky Mountains National Park, Fort Vancouver National Historic Site, the Jamaica Bay wildlife preserve, Grand Teton National Park, Jedediah Smith Wilderness Area, and the Grand Canyon National Park.

(10) *Justification.* Some commenters object to the justification for rulemaking presented in the ANPRM. Several commenters state that NPS has not conducted a study that would show that the park experience has been derogated by air tour operations. Others commented that noise studies being prepared for the NPS are biased against aircraft operations and should not be used in their present form for any of the future decisions regarding the use of airspace over NPS land.

As to the authority to regulate, commenters were divided: some state that the FAA should continue to regulate airspace, others suggest that NPS should have authority so that it can regulate all visitors to a park. Certain commenters question whether the FAAct gives the agency the authority to "protect" the population on the ground from aircraft noise.

FAA Response

The FAA appreciates the time and effort that persons expended to respond to this ANPRM. Although comments concerning overflights of the national parks, and specifically how those flights should be regulated, are somewhat polarized, many commenters gave the FAA specific advice that will be helpful in future rulemaking. Commenters have indicated, for example, that different parks have different needs, and that even within parks, some areas may have different priorities for restoring 'natural quiet'. We understand that while quiet technology aircraft can make a difference in noise levels, there must be some incentive for operators to obtain expensive equipment. Overall, both the FAA and NPS have gained a better understanding of the various positions on these issues, both from those representing air tour operators and those interested in preserving the beauty and quiet in our national parks.

Subsequent Rulemaking Efforts

On April 22, 1996, President Clinton issued a Memorandum to address the significant impacts on visitor experience in national parks. In this memorandum the President set out three goals: to place appropriate limits on sightseeing aircraft at the GCNP; to address the potential impact of noise at Rocky Mountain National Park; and, for the national park system as a whole, to establish a framework for managing aircraft operations over those park units identified in the NPS 1994 study as priorities for maintaining or restoring the natural quiet.

In response to this memorandum, the FAA and NPS established, under the authority of the Aviation Rulemaking Advisory Committee (ARAC) and the National Park Service Advisory Board, a National Parks Overflights Working Group (NPOWG). The NPOWG members were selected to represent balanced interests that included the air tour operators, general aviation users, other commercial interests, environmental and conservation organizations, and Native Americans. The NPOWG was given the task of reaching consensus on a recommended NPRM which would establish a process for reducing or preventing the adverse effects of commercial air tour operations over units of the National Park System.

The NPOWG met from May through November 1997. In December 1997, members presented a concept paper to both the ARAC and the NPS Advisory Board. Both advisory groups accepted the proposed concept, which provides a mechanism, a process, whereby each unit of the National Park System will determine the necessary restrictions for that unit based on a park management plan that will be developed by the FAA with guidance from the NPS and with input from all interested parties.

Following the acceptance of the concept by the ARAC and NPS Advisory Board, the FAA and NPS are assisting the NPOWG in developing an NPRM. The FAA anticipates that when the NPRM is ready for publication, it would also plan public meetings to gain additional comment on how the concept would work for individual parks.

Issued in Washington, DC on April 5, 1999.

David Traynham,

Assistant Administrator for Policy, Planning, and International Aviation.

Jacqueline Lowey,

Deputy Director, National Park Service.

[FR Doc. 99–8920 Filed 4–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98P–0968]

Food Labeling: Declaration of Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its ingredient labeling regulations to permit the use of "and/or" labeling for the various fish species used in the production of processed seafood products, i.e., surimi and surimi-containing foods. This action responds to a petition submitted by the National Fisheries Institute (NFI) requesting more flexible ingredient labeling for the fish ingredients used in the production of surimi products. This proposed rule would permit manufacturers of surimi and surimi-containing products to maintain a single label inventory identifying all of the fish species that may be used in the manufacture of the surimi product.

DATES: Comments by June 23, 1999. See section VIII of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

"Surimi" is a fish protein product made from minced fish meat that has been washed to remove fat, blood, pigments, odorous and other undesirable substances and that has been mixed with cryoprotectants such as sugar or sorbitol to prevent freezer burn (Ref. 1). The fish species used in surimi and surimi-containing products are primarily Alaskan pollock, Pacific whiting/hake, cod, and arrowtooth flounder. As an intermediate processed seafood product, surimi is then used in the formulation of a variety of finished seafood products, such as imitation crab and lobster meat.

Section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) provides that the label of a food like surimi that is fabricated from two or more ingredients must bear the common or usual name of each ingredient. Section 403(i)(2) of the act further provides that when compliance with this requirement is impracticable, or results in deception or unfair competition, FDA can establish exemptions by regulation. FDA's regulations implementing section 403(i)(2) of the act generally require that ingredients used to fabricate a food must be declared on the label by their common or usual name in descending order of predominance by weight (§ 101.4(a)(1) and (b)(2) (21 CFR 101.4(a)(1) and (b)(2))). However, under section 403(i)(2) of the act, FDA has, through rulemaking, issued exceptions to the requirement in § 101.4(a)(1) and (b)(2) when the agency has concluded that compliance with these provisions is impracticable or may result in deception or unfair competition. For example, FDA allows "and/or" ingredient labeling when the agency believes it is impracticable for manufacturers to adhere to a fixed ingredient profile. The most recent rulemaking where FDA has provided for the use of "and/or" labeling is in the declaration of wax and resin coatings on fresh fruits and vegetables (58 FR 2850 at 2875, January 6, 1993).

With respect to the general requirements for compliance with section 403(i)(2) of the act, the agency has specifically outlined in guidance documents how ingredients in certain foods should be declared. For processed and/or blended seafood products that

are composed, all or in part, of surimi, FDA's Compliance Policy Guide (CPG) 540.700 advises that manufacturers of these products should declare the specific names of all seafoods used in the product in the ingredient statement in descending order of predominance. To comply with section 403(i)(2) of the act and § 101.4(a) and (b), ingredient statements on the labels of surimi and surimi-containing products that are made from more than one fish species must declare each of the fish species used to fabricate that food in descending order of predominance by weight (§ 101.4(a)).

II. The Petition

A. Requested Provisions

FDA received a citizen petition from the NFI (filed October 13, 1998, Docket No. 96P–0968) (hereinafter referred to as the petition) requesting that the agency revise CPG 540.700 to permit the use of "and/or" labeling in the ingredient declaration of the fish species used in surimi and surimi-containing foods (Ref. 2). Specifically, the petition requested that the CPG be revised as follows:

> The specific names of all seafoods used in the product shall appear in the ingredient statement in descending order of predominance ("pollock" must be used as opposed to "white fish"; "snow crab" rather than "crab"), except that, if the manufacturer is unable to adhere to a constant pattern of fish species in the product, the listing of species need not be in descending order of predominance. Fish species not present in the product may be listed if they are sometimes used in the product. Such ingredients shall be identified by words indicating that they may or may not be present, such as "or," "and/or," or "contains one or more of the following:".

The petition contends that the requested action would alleviate significant quality, manufacturing, logistical, and financial burdens that the surimi industry currently faces, yet still ensure that consumers receive truthful, nonmisleading information about the composition of surimi and surimi-containing products.

B. Basis for Requested Provisions

The request in the petition for permission to use "and/or" labeling for surimi-containing products was based on several arguments. While the agency finds merit in all of the arguments discussed in the petition, it will only discuss in this document those arguments that pertain to the standards set out in section 403(i)(2) of the act and form the primary basis on which the agency has been persuaded to propose an exception to the existing ingredient labeling regulations.

1. Due to Seasonality and Quota Limitations, Manufacturers are Unable To Adhere to a Constant Pattern of Fish Species in Producing Surimi and Surimi-Containing Foods

According to the petition, the commercial availability of a specific fish species used in the manufacture of surimi and surimi-containing foods is variable and depends upon several factors out of the manufacturer's control, including: The length of the harvesting season, the quota limitations for each species, and the cost. Each fish species is available for harvesting only during certain periods of the year. For example, the harvest season for pollock "A" normally opens in mid-January and runs through mid-February. The harvest season for Pollock "B" typically runs from mid-September through mid-October. Similarly, the harvest season for Pacific whiting begins in May and continues into the summer.

Harvest quotas will also impact on the availability of a particular fish species. According to the petition, only limited quantities of specific fish species may be harvested during a given season. Due to provisions established under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), harvest quotas are established through the National Fishery Management Program and are managed by regional fishery management councils. Once a quota has been filled, no more of that species may be harvested until the next season. (Thus, the actual length of a harvest season can be unpredictable, depending upon the type and number of companies or vessels entering a fishery, and the pace with which applicable quotas are filled.) Quotas fluctuate according to estimated species biomass, and, therefore, vary from season to season, and from year to year. In sum, the petition contends that, because surimi can be and is made from a variety of fish species, the variability in harvest seasons and quotas confounds prediction of the specific composition of surimi that will be available at any given time for processing into a finished seafood product.

2. FDA's Current Ingredient Labeling Requirements Place Unwarranted Burdens on Manufacturers of Surimi and Surimi-containing Foods by Forcing Them to Maintain and Coordinate Several Inventories of Species-specific Surimi and Contingent Labels That Declare the Specific Fish Species Used to Make the Surimi

The petition states that the associated label storage burdens (i.e., maintaining different label inventories for surimi-containing foods that account for all possible fish species or predominance combinations) are compounded because frozen surimi quickly loses its functionality during storage, and manufacturers are constantly forced to adjust overall product formulations to maintain consistent quality.[1] Therefore, the petition argues that modification of the existing ingredient labeling requirements would not only significantly reduce the economic burden on surimi manufacturers, but also promote the goal of effective management of harvestable resources.

The petition contends that because of the inventory constraints on holding multiple labels for the same product, administrative difficulties of ensuring that correct labels are used, and logistical problems of having multiple product codes for the same item, companies are effectively forced to produce finished surimi food products from single fish species. This becomes a problem, however, due to the limitations of availability of various fish species used to make surimi. Consequently, the petition contends that it is impracticable for manufacturers of surimi and surimi-containing foods to comply with the existing ingredient labeling regulations and that an exception in the form of "and/or" labeling is warranted. According to the petition, permitting the use of a single label that declares each of the fish species that may be present in the product would ease the impracticability and unwarranted burdens of the existing ingredient labeling requirements.

The petition also explains that, because the fish ingredients used in surimi are decharacterized through processing, the specific fish species used in surimi is unimportant and neither characterizes the food nor influences consumers' purchase decisions. According to the petition, finished surimi products have similar economic value and nutritional attributes regardless of the species originally used in its manufacture.

As noted previously, the fish species used in surimi and surimi-containing products are primarily Alaskan pollock, Pacific whiting/hake, cod, and

[1] The petition further mentioned that the limitations created by the existing ingredient labeling requirements also hinder the ability of the seafood industry to use conventional and innovative surimi processing technologies to optimize the yield of both target fish species (e.g., pollock, cod, Pacific whiting) and nontarget, by catch species (e.g., arrowtooth flounder) and that the North American Pacific Fishery Management Council has imposed increased utilization and recovery mandates on seafood harvesters and processors.

arrowtooth flounder. When making surimi, the fish are processed shortly after they are caught. They are headed, gutted, gilleted, skinned, deboned, and minced. Once minced, the meat is processed through a series of washes. After each wash, the minced fish is pressed through a rotary screen to dewater the product. The wash and screening steps are critical in removing blood, fat, pigments, and enzymes characteristic of the particular fish species used. Each wash step, beginning with the first, removes features associated with taste, smell, and color. The resultant fish ingredient is further refined, mixed with cryoprotectants, extruded into blocks, and frozen.

The petition argues that this processing produces a completely decharacterized myofibrillar (i.e., muscle fiber) protein such that even the most sophisticated laboratory techniques cannot determine with certainty the source fish of the protein. Likewise, the petition argues, this processing allows the interchangeability of different fish species because regardless of the fish species used, the resultant myofibrillar proteins are functionally interchangeable.

III. Agency Response

The agency has considered the arguments raised in the petition and finds that there is considerable merit in the need for more flexible ingredient labeling with regard to the particular fish species used in the production of surimi and surimi-containing foods. Information available to the agency (Ref. 1) supports the position stated in the petition that the processing of surimi sufficiently decharacterizes the fish protein such that the species from which the fish protein is derived is no longer distinguishable. In addition, the agency recognizes the limitations imposed by harvesting seasons and quotas on the availability of specific fish species, and the impracticability of maintaining different label inventories to reflect any and all possible formulation combinations. Consequently, the agency tentatively concludes that the existing ingredient labeling requirements are impracticable for the declaration of the fish ingredient in surimi and surimi-containing foods. Moreover, the agency is persuaded by the arguments presented in the petition that the use of a more flexible ingredient labeling requirement will not disadvantage consumers because the specific source of the fish protein has little bearing on the economic value, taste, or quality of the finished food. Under the provision the agency is proposing in this document, consumers who use the ingredient label to avoid certain foods for health-related reasons will still receive adequate information about the basic nature of the food and will be able to make informed purchase decisions. Thus, the agency tentatively finds that, like other permitted uses of "and/or" ingredient labeling, the use of such labeling for the declaration of the fish species in processed seafood products is consistent with other exceptions to the ingredient labeling requirements and would not compromise the type or amount of information received by the consumer regarding surimi and surimi-containing foods.

The agency notes, however, that the action requested in the petition, i.e., revision of CPG 540.700, is not an appropriate mechanism for the type of relief requested. As set out in section 403(i)(2) of the act, FDA can affirmatively sanction the use of "and/or" labeling only through notice and comment rulemaking. Thus, the agency is proposing to amend its ingredient labeling regulations in § 101.4(b) to provide for the use of "and/or" labeling of the specific fish species used in the fabrication of surimi and surimi-containing foods. (The agency notes that at the time a final rule is issued in this matter, a revised CPG also will be issued to reflect the final rule.)

IV. The Proposal

As noted in section III of this document, revising the CPG is not an appropriate mechanism to provide for the use of "and/or" labeling in the ingredient declaration of the fish protein species in surimi and surimi-containing foods. Consequently, the agency is not proposing the language that was suggested in the petition. However, the agency believes that the language that it is proposing in this document will effectively permit manufacturers of surimi and surimi-containing foods to maintain a single label inventory for use on such products formulated from protein derived from a variety of fish species. Furthermore, the agency believes that the action it is proposing in this document is consistent with its other provisions providing flexibility in ingredient declaration of certain ingredients. Specifically, the agency is proposing that the specific fish species may be declared using "and/or" labeling to list the fish species that are sometimes used in the food. Considering the information presented in the petition regarding the processing of the fish ingredient coupled with other information available to the agency describing the production of surimi (Ref. 1), the agency believes that a term such as "fish protein" could be used to describe the fish ingredient used in the production of surimi. For example, a manufacturer of a processed seafood product that contains surimi could list the various fish species that might be used to produce the surimi in the product's list of ingredients by stating "fish protein (contains one or more of the following: Pollock, cod and/or pacific whiting)."

V. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this proposed rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this proposed rule is not a major rule for the purpose of congressional review. For the purpose of congressional review, a major rule is one which is likely to cause an annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FDA agrees with the petitioner that the current combination of seasonal species harvests, harvesting limits, labeling regulations, and limited product storage times places an unwarranted and costly logistical burden on surimi manufacturers. This combination of circumstances forces surimi manufacturers to maintain and coordinate several inventories of species-specific surimi and contingent labels that declare the specific fish species used to make the surimi. The convergence of these conditions also hampers the seafood industry's efforts to use conventional and innovative surimi processing technologies to optimize fishery yield.

This proposed rule will mitigate the logistical burden faced by surimi manufacturers. Because surimi manufacturers will be able to maintain a single label inventory and use innovative technologies, they will be able to operate more efficiently. Because of lower production costs, consumers may see slightly lower prices for surimi. Because of the greater flexibility for species usage, the goals of fisheries management will be easier to achieve.

This proposed rule will not result in any increase in societal costs. Because the proposed rule is permissive, there are no costs imposed on producers. Because the new labels adequately inform consumers, there will be no costs to them in terms of lost information or increased search costs.

B. Small Entity Analysis

FDA has examined the impacts of this proposed rule under the Regulatory Flexibility Act (RFA). The RFA (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the RFA, FDA finds that this proposed rule will not have a significant impact on a substantial number of small entities.

Because this proposed rule imposes no costs, it will not have a significant impact on a substantial number of small entities. Accordingly, under the RFA (5 U.S.C. 601–612), the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this proposed rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This rule does not trigger the requirement for a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million (adjusted annually for inflation) or more by State, local, and tribal governments in the aggregate, or by the private sector, in any one year.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains ingredient declaration provisions that fall within the scope of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The agency tentatively concludes that the proposed provisions set forth below for the declaration of fish ingredients using "and/or" labeling would not impose any new information collection requirements because they create an exception from existing ingredient declaration requirements to make compliance easier. The ingredient declaration burden under § 101.4(b) has been approved by the Office of Management and Budget (OMB control number 0910–0381). To ensure that no additional burden has been overlooked, however, FDA seeks public comment on this tentative conclusion.

VIII. Comments and Proposed Dates

Interested persons may, on or before June 23, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above, between 9 a.m. and 4 p.m., Monday through Friday.

FDA proposes that any final rule that may issue based on this proposal become effective on the date that it is published in the **Federal Register**.

IX. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Lee, C. M., "Surimi Process Technology," *Food Technology*, pp. 69–80, 1984.

2. Letter from Roy E. Martin to the Food and Drug Administration, dated October 13, 1998.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.4 is amended by adding paragraph (b)(23) to read as follows:

§ 101.4 Food; designation of ingredients.

* * * * * *

(b) * * *

(23) When processed seafood products contain fish protein ingredients consisting primarily of the myofibrillar protein fraction from one or more fish species and the manufacturer is unable to adhere to a constant pattern of fish species in the fish protein ingredient, because of seasonal or other limitations of species availability, the common or usual name of each individual fish species need not be listed in descending order of predominance. Fish species not present in the fish protein ingredient may be listed if they are sometimes used in the product. Such ingredients must be identified by words indicating that they may not be present, such as "or", "and/or", or "contains one or more of the following:", e.g., "fish protein (contains one or more of the following: Pollock, cod, and/or pacific whiting)".

Dated: March 27, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8795 Filed 4–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–182N]

Schedules of Controlled Substances: Proposed Placement of Ketamine Into Schedule III

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Drug Enforcement Administration (DEA) is withdrawing a Notice of Proposed Rulemaking (NPRM) which was published on June 2, 1981 (46 FR 29484). This NPRM proposed the placement of the substance ketamine, and salts thereof, into Schedule III of the Controlled Substances Act (CSA). In 1981, however, the DEA concluded that evidence of actual abuse was not sufficient to proceed with the rulemaking process. The DEA did not withdraw the NPRM, but continued to monitor the diversion and abuse of the drug. In light of additional evidence, the DEA now has sufficient data to proceed with the control of ketamine.

So as to eliminate any confusion which may arise regarding the basis of the proposed action, the DEA is withdrawing the original NPRM (46 FR 29484) and under a separate notice in this issue of the **Federal Register**, the DEA is publishing a new NPRM which proposes the placement of the substance ketamine, its salts, isomers, and salts of isomers, into Schedule III of the CSA.

DATES: The proposed rule is withdrawn on April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537; Telephone: 202–307–7183; FAX: 202–307–8570.

SUPPLEMENTARY INFORMATION: On June 2, 1981, the DEA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (46 FR 29484). The NPRM proposed to add the noncontrolled substance ketamine and any salts thereof to Schedule III of the Controlled Substances Act (21 U.S.C. 801 *et seq.*). The DEA received seven letters in response to the NPRM. Comments in support of the proposed action were received from the American Veterinary Medical Association and a professor at the Texas A & M University, College of Veterinary Medicine. Comments in opposition were received from the Warner-Lambert Company, the Humane Society of the United States, the Division of Comparative Medicine at the Johns Hopkins University School of Medicine, the Department of Laboratory Animal Medicine at the Southwest Foundation for Research and Education, and the Director of Scientific Support Services, Primate Research Institute at the New Mexico State University. No requests for a hearing were received.

The DEA, after careful consideration, determined to postpone proceeding with the proposed regulatory action. While the substance's potential for abuse was established, the DEA concluded that the number of documented cases of abuse of the substance was insufficient to justify the regulatory action in 1981. The DEA did not withdraw the NPRM and terminate further rulemaking on the proposal, but continued to monitor the diversion and abuse of ketamine. In 1992, an increase in the number of cases of diversion and abuse was first noted. Elsewhere in this issue of the **Federal Register**, the DEA publishes a new NPRM, which results from the current experience as it relates to the diversion and abuse of ketamine. So as to eliminate any confusion which might arise regarding the basis of the proposed action, the DEA is withdrawing the 1981 NPRM (46 FR 29484 June 2, 1981) and terminating further rulemaking on this proposal.

Dated: April 2, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–8812 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–183P]

21 CFR Part 1308

Schedules of Controlled Substances: Proposed Placement of Ketamine Into Schedule III

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA). It proposes the placement of the substance ketamine, including its salts, isomers, and salts of isomers, into Schedule III of the Controlled Substances Act (CSA). This proposed action is based on an evaluation of the relevant data by the DEA and a recommendation from the Assistant Secretary for Health and Surgeon General of the Department of Health and Human Services (DHHS) that ketamine and products containing it be placed into Schedule III of the CSA. The effect of this proposed action will be to discourage the diversion and abuse of ketamine, and subject ketamine to the regulatory, civil and criminal controls of a Schedule III controlled substance.

DATES: Comments and objections must be received on or before June 8, 1999.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537; Telephone: 202–307–7183; FAX: 202–307–8570.

SUPPLEMENTARY INFORMATION: Ketamine hydrochloride has been marketed in the United States since 1971 as a rapid-acting general anesthetic. It is used in both human and veterinary practice. Chemically, ketamine is related to PCP, a Schedule II controlled substance. The effects produced with use of ketamine are similar, although less intense and shorter in duration, to those produced by PCP.

The DHHS, by letter of March 18, 1981, recommended to the DEA that ketamine and products containing it be place into Schedule III of the CSA. The DEA published a notice of proposed rulemaking (NPRM) (46 FR 29484, June 2, 1981) which proposed the placement of the substance ketamine and salts thereof, into Schedule III of the CSA. In response to the NPRM, the DEA received seven letters. Comments in support of the proposed action were received from the American Veterinary Medical Association and a professor at the Texas A & M University, College of Veterinary Medicine. Comments in opposition were received from the Warner-Lambert Company, the Humane Society of the United States, the Division of Comparative Medicine at the Johns Hopkins University School of Medicine, the Department of Laboratory Animal Medicine at the Southwest Foundation for Research and Education, and the Director of Scientific Support Services, Primate Research Institute at the New Mexico State University. On review of the comments and the yearly average of four documented instances of diversion or abuse between 1975 and 1981, the DEA determined that the incidence of actual abuse was not sufficient to sustain the scheduling action. The DEA continued to monitor the situation.

The DEA summarized the relatively little actual abuse information available to it, and by letter of August 14, 1984, asked the DHHS if its previous recommendation for control of ketamine as a Schedule III controlled substance should stand. The DHHS, by letter of November 29, 1984, requested the information of abuse to which the DEA had referred. The DEA furnished the information to the DHHS by letter of February 18, 1985. By letter of September 8, 1986, the DHHS reaffirmed the recommendation to place ketamine into Schedule III of the CSA. On this occasion, as earlier, the DEA determined that the incidence of actual abuse, roughly five documented cases of diversion or abuse per year for the 1980–1986 period, was not sufficient to sustain the scheduling action and continued to monitor the situation.

Since 1992, 775 reports of ketamine diversion or abuse have been received by the DEA. The incidence of law enforcement encounters of individuals selling the drug, under its influence, or who had it in their possession, along with the wide geographic distribution of the encounters, the involvement of teenagers and young adults, the occurrence of veterinary clinic

burglaries directed at ketamine, the spreading notoriety of ketamine as a party drug, "Special K" or "K", and the number of ketamine abuse related hospital emergency department visits have caused the DEA to reconsider the noncontrolled status of the drug.

In 1998, the DEA submitted the DHHS information relevant to each of the eight factors which are determinative of control under the CSA. By letter of December 17, 1998, the Assistant Secretary for Health and Surgeon General responded recommending that ketamine be added to Schedule III. Enclosed with the letter was a document which summarized the findings related to the factors which the CSA requires the Secretary to consider [21 U.S.C. 811(c)].

The factors considered by the Assistant Secretary for Health and Surgeon General and the DEA with respect to ketamine were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacologocial effect;

(3) The state of current scientific knowledge regarding the drug or other substance;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under the CSA.

Ketamine is used in human and veterinary medicine to produce a unique anesthetic state characterized by sedation, immobility, marked analgesia, and amnesia. Since 1992, the DEA has documented more than 568 incidents of the sale and/or use of the drug in schools by minors, on college campuses, at night clubs and rave dances, incidents of public intoxication and improper operation of a motor vehicle while under the influence of ketamine, burglaries of veterinary clinics in which ketamine was the sole item targeted, and the sale of ketamine as a drug of abuse to undercover police. During the same period of time, 207 ketamine abuse related visits to hospital emergency departments were recorded by the Drug Abuse Warning Network.

The pharmacological and behavioral effects of ketamine are similar, but somewhat less intense and shorter in duration, to those of PCP. Low dose intoxication with ketamine results in impaired attention, learning, and memory functions. Higher doses may result in ataxia, dizziness, elevated blood pressure, mental confusion, hyperexcitability, catalepsy (the inability to move), convulsions, a delusional dream-like, hallucinations, and psychosis. Long-term use of ketamine is associated with hallucinatory flashbacks and as inability to concentrate. Several case reports suggest that psychological dependence and tolerance develop in humans after long-term use of ketamine. Behavioral and physical dependence have been demonstrated in animals.

Diversion of ketamine pharmaceutical products from practitioners has been the most frequently documented source of the drug, with the primary sources being veterinary clinics. The liquid pharmaceutical product is injected or, more commonly, evaporated and the resultant powder inhaled (snorted). Clandestine manufacture of ketamine has not been encountered. In contrast to that of PCP, the synthesis of ketamine is difficult.

Ketamine is presently regulated as a controlled substance in 18 states; 15 states have placed it into Schedule III, two states have placed it into Schedule IV, and Massachusetts has designated it as a Class A substance. By letter of July 10, 1996, the President of Fort Dodge Animal Health asked the DEA to place ketamine into Schedule III of the CSA. That position reflected the belief "that moving the product to a Schedule III classification is in the best interest of the veterinary industry and the public." In letters to the DEA earlier that same year, the New Jersey Veterinary Medical Association and 43 veterinarians licensed by that State urged the DEA to place ketamine into Schedule III, as a means to limit the abuse of the drug while ensuring its continued availability for appropriate veterinary use.

Relying on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health in accordance with section 201(b) of the CSA [21 U.S.C. 811(b)], and the independent review of the DEA, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the CSA [21 U.S.C. 811(a) and 811(b)], finds that:

(1) Based on information now available, ketamine has a potential for abuse less than the drugs or other substances in Schedules I and II.

(2) Ketamine hydrochloride has a currently accepted medical use in treatment in the United States; and

(3) Abuse of ketamine may lead to moderate or low physical dependence or high psychological dependence.

Based on these findings, the Deputy Administrators of the DEA concludes that ketamine, its isomers, salts, and salts of isomers, should be placed into Schedule III of the CSA.

Interested persons are invited to submit their comments, objections, or requests for a hearing, in writing, with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537. Attention: DEA Federal Register Representative/CCR. In the event that comments, objections, or requests for a hearing raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administration shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, section 3(d)(1). The Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this proposed rule and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. Ketamine products are prescription drugs used as anesthetics in hospitals and clinics. Handlers of ketamine are likely to handle other controlled substances which are already subject to the regulatory requirements of the CSA.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule, as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign based

companies in domestic and export markets.

This rule will not have substantial direct effects on the United States, on the relationship between the national government and the United States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule, if finalized, will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.13 is proposed to be amended by redesignating the existing paragraphs (c)(5) through (c)(11) as (c)(6) through (c)(12).

3. Section 1308.13 is proposed to be amended by adding a new paragraph (c)(5) to read as follows:

§ 1308.13 Schedule III.

* * * * *

(c) Depressants.

* * * * *

(5) Ketamine, its salts, isomers, and salts of isomers . . 7285 [Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone.

* * * * *

Dated: April 2, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–8815 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–03]

Negotiated Rulemaking Committee on Operating Fund Allocation; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Negotiated Rulemaking Committee Meetings.

SUMMARY: This notice announces the second and third meetings of the Negotiated Rulemaking Committee on Operating Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs).

DATES: The second committee meeting will be held on April 13 and April 14, 1999. On April 13, 1999, the meeting will begin at approximately 9:30 am and run until completion; on April 14, 1999, the meeting will begin at approximately 9:00 am and run until approximately 4:00 pm.

The third committee meeting will be held on May 13 and may 14, 1999. On May 13, 1999, the meeting will begin at approximately 9:30 am and run until completion; on May 14, 1999 the meeting will begin at approximately 9:00 am and run until approximately 4:00 pm.

ADDRESSES: The second and third committee meetings will take place at the Hyatt Dulles Hotel (Concorde Ballroom), 2300 Dulles Corner Boulevard, Herndon, VA 22071.

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 ext. 4035 (this telephone numbers is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Secretary of HUD has established the Negotiated Rulemaking Committee on Operating Fund Allocation to negotiate and develop a proposed that would change the current method of determining the payment of operating subsidies to PHAs. The establishment of the committee is required by the Quality Housing and Work Responsibility Act of 1996 (Pub.L. 105–276, approved October 21, 1998; 112 Stat. 2461) (the "Public Housing Reform Act"). The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures.

On March 16, 1999 (64 FR 12920), HUD published a notice in the **Federal Register** that announced: (1) The establishment of the negotiated rulemaking committee; (2) the names of the committee members; and (3) the dates, location, and agenda for the first committee meeting. The second and third meetings of the negotiated rulemaking committee will take place as described in the **DATES** and **ADDRESSES** section of this notice.

The agenda planned for the committee meetings includes: (1) The adoption of committee protocols, as appropriate; (2) defining the goals for the operating fund formula; (3) discussing the various methods for translating these goals into a formula-based allocation system; and (4) the scheduling of future meetings.

In accordance with the General Services Administration (GSA) regulations implementing the Federal Advisory Committee Act, HUD normally publishes a **Federal Register** meeting notice at least 15 calendar days before the date of an advisory committee meeting. The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting notice. (See 41 CFR 10–6.1015(b).) Due to the difficulty in obtaining suitable hotel and conference room accommodations in the Washington, DC area during April, 1999, it has not been possible for HUD to announce the date and location of the second committee meeting before today. Given the strict statutory deadline for implementation of the Operating Fund formula, HUD believes it is imperative that the negotiations for development of the formula not be delayed. Failure to publish the Operating Fund final rule on a timely basis will delay the provision of operating subsidies to PHAs. Accordingly, rather than defer the negotiations, HUD has decided to proceed with the second committee meeting on April 13 and April 14, 1999.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: April 7, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–9004 Filed 4–8–99; 8:45 am]

BILLING CODE 4210–33–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2522, 2525, 2526, 2527, 2528, and 2529

RIN 3045–AA09

AmeriCorps Education Awards

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: The Corporation proposes to amend several provisions relating to the AmeriCorps education award, including those governing the process for determining a participant's eligibility and the ways in which participants may use the award. These changes will promote efficiency and consistency in providing education awards to AmeriCorps participants.

DATES: Written comments should be received on or before June 8, 1999.

ADDRESSES: Comments may be mailed or delivered to Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525, sent by facsimile transmission to (202) 565–2784, or sent electronically to gkowalcz@cns.gov. Copies of all communications received will be available for review at the Corporation by members of the public.

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799. This proposed rule may be requested in an alternative format for persons with visual impairments.

SUPPLEMENTARY INFORMATION: Pursuant to the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), the Corporation for National and Community Service ("the Corporation"), through the National Service Trust, provides education awards and interest benefits to AmeriCorps participants who successfully complete a term of service in an approved national service position. AmeriCorps participants who successfully complete a term of national service receive an education award and student loan interest benefits from the National Service Trust. The AmeriCorps education award may be used to pay for specified educational costs and to repay certain types of student loans. In addition, upon a participant's successful completion of a term of service, the National Service Trust will pay the interest on certain types of student loans that accrued during the term.

On March 23, 1994 (59 FR 13772), the Corporation published final rules covering its grant programs, including general provisions regarding the provision of a partial education award for participants who are released because of compelling personal circumstances before completing their terms of service. On June 15, 1994 (59 FR 30709), the Corporation published interim final rules for the National Service Trust governing the AmeriCorps education award and related interest benefits. This notice of proposed rulemaking is intended to clarify the rules applicable to the determination of compelling personal circumstances as well as several National Service Trust rules concerning the education award.

Because AmeriCorps*State/National is administered under different legal authorities than AmeriCorps*National Civilian Community Corps and AmeriCorps*VISTA, in several instances (e.g., eligibility criteria, grievance procedure) the proposed rules govern the former but not the latter.

Eligibility Criteria for AmeriCorps* State/National

The proposed rule clarifies the eligibility criteria for AmeriCorps*State/National participants by making clear that 16 year olds may participate only if they are considered "out-of-school" and serving in a specified type of program and by making other technical changes.

The proposed rule also lists the type of documentation acceptable to establish an individual's status as a U.S. citizen, U.S. national, or lawful permanent resident alien (LPRA) for purposes of eligibility to participate in AmeriCorps. The Corporation strongly discourages the use of INS Form I–9, Employment Eligibility Verification, because that form includes categories of non-citizens who may be eligible for employment but who are not eligible under the more narrow eligibility for participation in AmeriCorps. Also, programs should note that a Social Security card or a driver's license is not acceptable for documenting citizenship, national, or LPRA status because individuals outside the three categories may obtain those forms of identification. In addition, programs should note that an application for permanent-resident status is not sufficient to establish eligibility to participate in AmeriCorps. Finally, programs should understand that no other non-citizens (for example, refugees, asylees, parolees, or individuals holding visas) are eligible to participate in AmeriCorps.

Release for Compelling Personal Circumstances

The proposed rule clarifies the circumstances under which an AmeriCorps participant who does not complete a term of service may receive a pro-rated education award. The proposed rule makes clear that a participant in an AmeriCorps*State/National program has the primary responsibility for demonstrating that compelling personal circumstances make completion of a term unreasonably difficult or impossible. Under the proposed rule, the program makes this determination and must document the basis for its decision.

The proposed rule gives examples of situations that would constitute compelling personal circumstances and examples of situations that are not considered compelling personal circumstances. These revisions are intended to increase consistency across all AmeriCorps programs in approving pro-rated education awards. The examples of compelling personal circumstances include those that are unforeseeable (e.g., serious illness). The examples also include circumstances that may be foreseeable but which the Corporation has determined, for public policy reasons, should not involve a penalty for those who leave service early (e.g, military service obligation, welfare to work transition). Programs may not make a determination of compelling personal circumstances solely to avoid a dispute involving a participant.

The proposed rule will supercede guidance previously provided by the Corporation in the provisions of its AmeriCorps*State/National cooperative agreements and related materials. For example, the proposed rule will

supercede AmeriCorps*State/National Grants Guidance 2 which authorizes a pro-rated education award to full-time members who fall less than five percent short of completing 1700 hours of service for reasons other than chronic truancy, tardiness, or performance problems.

The proposed rule restates that programs may, after determining that compelling personal circumstances are present, either suspend the individual's term to allow completion at a later time or release the individual and approve a pro-rated education award. The proposed rule removes precatory language encouraging programs to suspend, rather than release, individuals to maximize the service opportunities available to participants. However, it remains the Corporation's policy to encourage this outcome whenever possible.

Release for Cause

The proposed rule makes clear for AmeriCorps* State/National programs that if compelling personal circumstances are not present, the only other type of release is one for cause. A release for cause may cover a wide variety of circumstances and does not necessarily mean that a participant has engaged in wrongdoing or misconduct. The proposed rule removes language that may have indicated otherwise. The proposed rule includes additional guidance to AmeriCorps* State/National programs handling grievances filed by participants to contest a release for cause.

Suspension and Reinstatement

The proposed rule restates provisions regarding the suspension of a term of service and the process for reinstating suspended participants. For members placed in suspension status while they contest a release for cause, programs may not provide federally-funded benefits beyond those attributable to service actually performed without obtaining written approval from the Corporation.

References to Stafford Loan Forgiveness

The proposed rule removes references to Stafford Loan Forgiveness. Congress eliminated authority for this program in the Higher Education Amendments of 1998, Pub. L. 105–244.

School-to-Work Programs

The proposed rule makes minor technical amendments to reflect the current structure of the School-to-Work program.

Qualified Student Loans

The proposed rule provides examples of the types of loans that are eligible for repayment and adds a specific reference to other loans that may be designated as such by Congress. This is intended to encompass provisions in appropriations laws that expand the list of qualified student loans. For the past several years, Congress has used appropriations laws, rather than an amendment to the National and Community Service Act itself, to classify as a qualified student loan any loan made directly to a student by the Alaska Commission on Postsecondary Education.

First and Second Terms of Service

By statute, an individual may receive an education award for only the first and second term of service for which an education award is approved for successful completion. The proposed rule clarifies the circumstances under which a term of service counts as a first or second term for which an education award may be provided. The proposed rule makes clear that if an individual is released for reasons other than misconduct prior to completing fifteen percent of the term of service, that term does not count as one of the two terms for which an education award may be provided.

Amount of Education Award

The proposed rule clarifies the provisions regarding the amount of the education award for various terms of service.

Procedures for Accessing an Education Award and Related Interest Benefits

The proposed rule clarifies the steps necessary to access an education award.

Executive Order 12866

The Corporation has determined that this regulatory action is not a "significant" rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Corporation has determined that this regulatory action will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because the proposed changes do not authorize any information collection activity outside the scope of existing regulations, this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*). If the Corporation proposes to modify any of the forms used in connection with determining eligibility of individuals for payments from the National Service Trust, the Corporation will comply with clearance procedures as provided under the Paperwork Reduction Act.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2522

AmeriCorps, Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2525

Grant programs-social programs, Student aid, Volunteers.

45 CFR Part 2526

Grant programs-social programs, Student aid, Volunteers.

45 CFR Part 2527

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2528

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2529

Grant programs—social programs, Student aid, Volunteers.

For the reasons stated in the preamble, chapter XXV, title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Section 2522.200 is revised to read as follows:

§ 2522.200 What are the eligibility requirements for an AmeriCorps participant?

(a) *Eligibility.* An AmeriCorps participant must—

(1)(i) Be at least 17 years of age at the commencement of service; or

(ii) Be an out-of-school youth 16 years of age at the commencement of service participating in a program described in § 2522.110(b)(3) or § 2522.110(g);

(2)(i) Have a high school diploma or its equivalent; or

(ii) Not have dropped out of elementary or secondary school to enroll as an AmeriCorps participant and must agree to obtain a high school diploma or its equivalent prior to using the education award; or

(iii) Obtain a waiver from the Corporation of the requirements in paragraphs (a)(2)(i) and (a)(2)(ii) of this section based on an independent evaluation secured by the program demonstrating that the individual is not capable of obtaining a high school diploma or its equivalent; or

(iv) Be enrolled in an institution of higher education on an ability to benefit basis and be considered eligible for funds under section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091);

(3) Be a citizen, national, or lawful permanent resident alien of the United States.

(b) *Primary documentation of status as a U.S. citizen or national.* The following are acceptable forms of certifying status as a U.S. citizen or national:

(1) A birth certificate showing that the individual was born in one of the 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, or the Northern Mariana Islands;

(2) A United States passport;

(3) A report of birth abroad of a U.S. Citizen (FS–240) issued by the State Department;

(4) A certificate of birth-foreign service (FS 545) issued by the State Department;

(5) A certification of report of birth (DS–1350) issued by the State Department;

(6) A certificate of naturalization (Form N–550 or N–570) issued by the Immigration and Naturalization Service; or

(7) A certificate of citizenship (Form N–560 or N–561) issued by the Immigration and Naturalization Service.

(c) *Primary documentation of status as a lawful permanent resident alien of the United States.* The following are acceptable forms of certifying status as a lawful permanent resident alien of the United States:

(1) Permanent Resident Card, INS Form I–551;

(2) Alien Registration Receipt Card, INS Form I–551;

(3) A passport indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence; or

(4) A Departure Record (INS Form I–94) indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence.

(d) *Secondary documentation.* If primary documentation is not available, the program must obtain written approval from the Corporation that other documentation is sufficient to demonstrate the individual's status as a U.S. citizen, U.S. national, or lawful permanent resident alien.

3. Section 2522.230 is revised to read as follows:

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

An AmeriCorps program may release a participant from completing a term of service for compelling personal circumstances as demonstrated by the participant, or for cause.

(a) *Release for compelling personal circumstances.* (1) An AmeriCorps program may release a participant upon a determination by the program, consistent with the criteria listed in paragraphs (a)(5) through (a)(6) of this section, that the participant is unable to complete the term of service because of compelling personal circumstances.

(2) A participant who is released for compelling personal circumstances and who completes at least 15 percent of the required term of service is eligible for a pro-rated education award.

(3) The participant has the primary responsibility for demonstrating that compelling personal circumstances prevent the participant from completing the term of service.

(4) The program must document the basis for any determination that compelling personal circumstances prevent a participant from completing a term of service.

(5) Compelling personal circumstances include:

(i) Those that are beyond the participant's control, such as, but not limited to:

(A) A participant's disability or serious illness;

(B) Disability, serious illness, or death of a participant's family member if this makes completing a term unreasonably difficult or impossible; or

(C) Conditions attributable to the program or otherwise unforeseeable and beyond the participant's control, such as a natural disaster, a strike, relocation of a spouse, or the nonrenewal or premature closing of a project or program, that make completing a term unreasonably difficult or impossible;

(ii) Those that the Corporation, has for public policy reasons, determined as such, including:

(A) Military service obligations;

(B) Acceptance by a participant of an opportunity to make the transition from welfare to work; or

(C) Acceptance of an employment opportunity by a participant serving in a program that includes in its approved objectives the promotion of employment among its participants.

(6) Compelling personal circumstances do not include leaving a program:

(i) To enroll in school;

(ii) To obtain employment, other than in moving from welfare to work or in leaving a program that includes in its approved objectives the promotion of employment among its participants; or

(iii) Because of dissatisfaction with the program.

(7) As an alternative to releasing a participant, an AmeriCorps *State/National program may, after determining that compelling personal circumstances exist, suspend the participant's term of service for up to two years (or longer if approved by the Corporation based on extenuating circumstances) to allow the participant to complete service with the same or similar AmeriCorps program at a later time.

(b) *Release for cause.* (1) A release for cause encompasses any circumstances

other than compelling personal circumstances that warrant an individual's release from completing a term of service.

(2) AmeriCorps programs must release for cause any participant who is convicted of a felony or the sale or distribution of a controlled substance during a term of service.

(3) A participant who is released for cause may not receive any portion of the AmeriCorps education award or any other payment from the National Service Trust.

(4) An individual who is released for cause must disclose that fact in any subsequent applications to participate in an AmeriCorps program. Failure to do so disqualifies the individual for an education award, regardless of whether the individual completes a term of service.

(5) An AmeriCorps *State/National participant released for cause may contest the program's decision by filing a grievance. Pending the resolution of a grievance procedure filed by an individual to contest a determination by a program to release the individual for cause, the individual's service is considered to be suspended. For this type of grievance, a program may not—while the grievance is pending or as part of its resolution—provide a participant with federally-funded benefits (including payments from the National Service Trust) beyond those attributable to service actually performed, without the program receiving written approval from the Corporation.

(c) *Suspended service.* (1) A program must suspend the service of an individual who faces an official charge of a violent felony (e.g., rape, homicide) or sale or distribution of a controlled substance.

(2) A program must suspend the service of an individual who is convicted of possession of a controlled substance.

(3) An individual may not receive a living allowance or other benefits, and may not accrue service hours, during a period of suspension under this provision.

(d) *Reinstatement.* (1) A program may reinstate an individual whose service was suspended under paragraph (c)(1) of this section if the individual is found not guilty or if the charge is dismissed.

(2) A program may reinstate an individual whose service was suspended under paragraph (c)(2) of this section only if the individual demonstrates the following:

(i) For an individual who has been convicted of a first offense of the possession of a controlled substance, the individual must have enrolled in a drug rehabilitation program;

(ii) For an individual who has been convicted for more than one offense of the possession of a controlled substance, the individual must have successfully completed a drug rehabilitation program.

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

1. The authority citation for part 2525 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2525.10 is revised to read as follows:

§ 2525.10 What is the National Service Trust?

The National Service Trust is an account in the Treasury of the United States from which the Corporation makes payments of education awards, pays interest that accrues on qualified student loans for AmeriCorps participants during terms of service in approved national service positions, and makes other payments authorized by Congress.

3. Section 2525.20 is amended by revising the definitions for "Approved school-to-work program," "Education award," and "Qualified student loan" and by adding a definition for "Current educational expenses" in alphabetical order to read as follows:

§ 2525.20 Definitions.

* * * * *

Approved school-to-work program. The term *approved school-to-work program* means a program that is involved in a federally-approved school-to-work system, as certified by a State, designated local partnership, or other entity that receives a grant under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 *et seq.*).

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance for a period of enrollment that begins after an individual receives an education award.

Education award. The term *education award* means the financial assistance available under parts 2526 and 2528 of this chapter for which an individual in an approved AmeriCorps position may be eligible.

* * * * *

Qualified student loan. The term *qualified student loan* means any loan made, insured, or guaranteed pursuant to title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), other than a loan to a parent of a student pursuant to section 428B of such Act (20 U.S.C. 1078–2), any loan made pursuant to title VII or VIII of the Public Service Health Act (42 U.S.C. 292a et seq.), or any other loan designated as such by Congress. This includes, but is not necessarily limited to, the following:

(1) *Federal Family Education Loans.* (i) Subsidized and Unsubsidized Stafford Loans.

(ii) Supplemental Loans to Students (SLS).

(iii) Federal Consolidation Loans.

(iv) Guaranteed Student Loans (predecessor to Stafford Loans).

(v) Federally Insured Student Loans (FISL).

(2) *William D. Ford Federal Direct Loans.* (i) Direct Subsidized and Unsubsidized Stafford Loans.

(ii) Direct Subsidized and Unsubsidized Ford Loans.

(iii) Direct Consolidation Loans.

(3) *Federal Perkins Loans.* (i) National Direct Student Loans.

(ii) National Defense Student Loans.

(4) *Public Health Service Act Loans.* (i) Health Education Assistance Loans (HEAL).

(ii) Health Professions Student Loans (HPSL).

(iii) Loans for Disadvantaged Students (LDS).

(iv) Nursing Student Loans (NSL).

(v) Primary Care Loans (PCL).

* * * * *

PART 2526—ELIGIBILITY FOR AN EDUCATION AWARD

1. The heading for part 2526 is revised to read as set forth above.

1a. The authority citation for part 2526 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2526.10 is revised to read as follows:

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

(a) *General.* An individual is eligible to receive an education award from the National Service Trust if the individual—

(1) Is a citizen, national, or lawful permanent resident alien of the United States;

(2) Is either at least 17 years of age at the commencement of service or is an out-of-school youth 16 years of age at the commencement of service participating in a program described in § 2522.110(b)(3) or (g) of this chapter;

(3) Successfully completes a term of service in an approved national service position.

(b) *High school diploma or equivalent.* To use an education award, an individual must—

(1) Have received a high school diploma or its equivalent; or

(2) Be enrolled at an institution of higher education on the basis of meeting the standard described in paragraph (1) or (2) of subsection (a) of section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) and meet the requirements of subsection of section 484; or

(3) Have received a waiver described in § 2522.200(b) of this chapter.

(c) *Prohibition on duplicate benefits.* An individual who receives a post-service benefit in lieu of an education award may not receive an education award for the same term of service.

(d) *Penalties for false information.* Any individual who makes a materially false statement or representation in connection with the approval or disbursement of an education award or other payment from the National Service Trust may be liable for the recovery of funds and subject to civil and criminal sanctions.

3. Section 2526.20 is revised to read as follows:

§ 2526.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?

(a) *Compelling personal circumstances.* A participant who is released prior to completing an originally-approved term of service for compelling personal circumstances and who completes at least 15 percent of the originally-approved term of service is eligible for a pro-rated education award.

(b) *Release for cause.* A participant who is released prior to completing an originally-approved term of service for cause is not eligible for any portion of an education award.

§ 2526.30 [Removed]

§ 2526.60 [Redesignated as § 2526.30]

4. Section 2526.30 is removed and § 2526.60 is redesignated as § 2526.30.

§ 2526.40 [Removed]

§ 2526.70 [Redesignated as § 2526.40]

5. Section 2526.40 is removed and § 2526.70 is redesignated as § 2526.40.

§ 2526.40 [Amended]

6. Newly redesignated § 2526.40 is amended in paragraph (b)(2) by removing the words "under § 2526.40".

§ 2526.50 [Removed]

§ 2526.80 [Redesignated as § 2526.50]

7. Section 2526.50 is removed and § 2526.80 is redesignated as § 2526.50.

8. Newly redesignated § 2526.50 is revised to read as follows:

§ 2526.50 Is there a limit on the number of education awards an individual may receive?

(a) *First and second terms of service.* An individual may receive an education award for only the first and second terms of service for which an education award is available, regardless of the length of the term.

(b) *Release for cause.* Except as provided in paragraph (c) of this section, a term of service from which an individual is released for cause counts as one of the two terms of service for which an individual may receive an education award.

(c) *Early release.* If a participant is released for reasons other than misconduct prior to completing fifteen percent of a term of service, the term will not be considered one of the two terms of service for which an individual may receive an education award.

§ 2526.90 [Redesignated as § 2526.60]

9. Section 2526.90 is redesignated as § 2526.60 and revised to read as follows:

§ 2526.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service?

No. An individual may not receive an education award and related interest benefits from the National Service Trust for a term of service and have that same service credited toward repayment, discharge, or cancellation of other student loans.

§ 2526.100 [Removed]

10. Section 2526.100 is removed.

PART 2527—DETERMINING THE AMOUNT OF AN EDUCATION AWARD

1. The heading for part 2527 is revised to read as set forth above.

1a. The authority citation for part 2527 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2527.10 is revised to read as follows:

§ 2527.10 What is the amount of an AmeriCorps education award?

(a) *Full-time term of service.* The education award for a full-time term of service of at least 1,700 hours is $4,725.

(b) *Part-time term of service.* The education award for a part-time term of service of at least 900 hours is $2,362.50.

(c) *Reduced part-time term of service.* The education award for a reduced part-time term of service of fewer than 900 hours is—

(1) An amount equal to the product of—

(i) The number of hours of service required to complete the reduced part-time term of service divided by 900; and

(ii) 2,362.50; or

(2) An amount as determined otherwise by the Corporation.

(d) *Release for compelling personal circumstances.* The education award for an individual who is released from completing an originally-approved term of service for compelling personal circumstances is equal to the product of—

(1) The number of hours completed divided by the number of hours in the originally-approved term of service; and

(2) The amount of the education award for the originally-approved term of service.

1. Revise part 2528 to read as follows:

PART 2528—USING AN EDUCATION AWARD

Sec.

Authority: 42 U.S.C. 12601–12604.

§ 2528.10 For what purposes may an education award be used?

(a) *Authorized uses.* An education award may be used—

(1) To repay qualified student loans in accordance with § 2528.20;

(2) To pay all or part of the current cost of attendance at an institution of higher education in accordance with § 2528.30 through § 2528.50;

(3) To pay expenses incurred in participating in an approved school-to-work program in accordance with § 2528.60 through § 2528.70.

(b) *Multiple uses.* An education award is divisible and may be applied to any

combination of loans, costs, or expenses described in paragraph (a) of this section.

§ 2528.20 What steps are necessary to use an education award to repay a qualified student loan?

(a) *Required information.* Before disbursing an amount from an education award to repay a qualified student loan, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Identifying and other information from the holder of the loan as requested by the Corporation and necessary to ensure compliance with this part.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the holder of the loan and notify the individual of the payment.

(c) *Aggregate payments.* The Corporation may establish procedures to aggregate payments to holders of loans for more than a single individual.

§ 2528.30 What steps are necessary to use an education award to pay all or part of the current cost of attendance at an institution of higher education?

(a) *Required information.* Before disbursing an amount from an education award to pay all or part of the current cost of attendance at an institution of higher education, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Information from the institution of higher education as requested by the Corporation, including verification that—

(i) It has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) Its eligibility to participate in any of the programs under title IV of the Higher Education Act of 1965 has not been limited, suspended, or terminated;

(iii) It has in effect a fair and equitable refund policy, consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b), and must ensure an appropriate refund to the Corporation if an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided;

(iv) Individuals using education awards to pay for the current cost of attendance at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The amount requested will be used to pay all or part of the individual's cost of attendance;

(vi) The amount requested does not exceed the difference between:

(A) The individual's cost of attendance; and

(B) The sum of the individual's estimated student financial assistance for that period under part A of title IV of the Higher Education Act and the individual's veterans' education benefits as defined in section 480(c) of the Higher Education Act (20 U.S.C. 1087vv(c)).

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the institution and notify the individual of the payment.

(c) *Installment payments.* The Corporation will disburse the education award to the institution of higher education in at least two separate installments, none of which exceeds 50 percent of the total amount. The interval between installments may not be less than one-half of the period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or other division of a period of enrollment.

§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?

Yes. The Corporation's disbursement from an individual's education award for any period of enrollment may not exceed the difference between—

(a) The individual's cost of attendance for that period of enrollment, determined by the institution of higher education in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1987ll); and

(b) The sum of—

(1) The individual's estimated financial assistance for that period under part A of title IV of the Higher Education Act; and

(2) The individual's veterans' education benefits as defined under section 480(c) of the Higher Education Act (20 U.S.C. 1087vv(c)).

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) An institution of higher education that receives a disbursement of education award funds from the Corporation must have in effect, and must comply with, a fair and equitable refund policy that includes procedures for providing a refund to the Corporation if an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment.

(2) For purposes of this part, an institution of higher education's refund policy is deemed "fair and equitable" if it is consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b).

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

§ 2528.60 What steps are necessary to use an education award to pay expenses incurred in participating in an approved school-to-work program?

(a) *Required information.* Before disbursing an amount from an education award to pay expenses incurred in participating in an approved school-to-work program, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Information from the school-to-work program as requested by the Corporation, including verification that—

(i) It is involved in a federally-approved school-to-work system, as certified by a State, designated local partnership, or other entity that receives a grant under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101);

(ii) The amount requested will be used to pay all or part of the individual's cost of participating in the school-to-work program;

(iii) It will ensure an appropriate refund, consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b), to the Corporation if an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided.

(b) *Payment.* When the Corporation receives the information required under paragraph (a), the Corporation will pay the program and notify the individual of the payment.

§ 2528.70 What happens if an individual withdraws or fails to complete the period of enrollment in an approved school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) An approved school-to-work program that receives a disbursement of education award funds from the Corporation must provide a fair and equitable refund to the Corporation if an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment.

(2) For purposes of this part, a refund is deemed "fair and equitable" if it is an amount consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b).

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

1. Revise part 2529 to read as follows:

PART 2529—PAYMENT OF ACCRUED INTEREST

Sec.

Authority: 42 U.S.C. 12601–12604.

§ 2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position?

(a) *Eligibility.* The Corporation will pay interest that accrues on an individual's qualified student loan, subject to the limitation on amount in paragraph (b) of this section, if—

(1) The individual successfully completes a term of service in an approved AmeriCorps position; and

(2) The holder of the loan approves the individual's request for forbearance during the term of service.

(b) *Amount.* The percentage of accrued interest that the Corporation will pay is the lesser of—

(1) The product of—

(i) The number of hours of service completed divided by the number of days for which forbearance was granted; and

(ii) 365 divided by 17; and

(2) 100.

(c) *Supplemental to education award.* A payment of accrued interest under this part is supplemental to an education award received by an individual under parts 2526 through 2528 of this chapter.

(d) *Limitation.* The Corporation is not responsible for the repayment of any accrued interest in excess of the amount determined in accordance with paragraph (b) of this section.

(e) *Suspended service.* The Corporation will not pay any interest expenses that accrue on an individual's qualified student loan during a period of suspended service.

§ 2529.20 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?

(a) An individual seeking forbearance must submit a request to the holder of the loan.

(b) If, before approving a request for forbearance, the holder of the loan requires verification that the individual is serving in an approved AmeriCorps position, the Corporation will provide verification upon a request from the individual or the holder of the loan.

§ 2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which an individual has obtained forbearance?

(a) The Corporation will make payments from the National Service Trust for interest that has accrued on a qualified student loan during a term of service which the individual has successfully completed and for which an individual has obtained forbearance, after the following:

(1) The program verifies that the individual has successfully completed the term of service and the dates upon which the term of service began and ended;

(2) The holder of the loan verifies the amount of interest that has accrued during the term of service.

(b) When the Corporation receives all necessary information from the program and the holder of the loan, the Corporation will pay the holder of the loan and notify the individual of the payment.

Dated: March 31, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–8363 Filed 4–8–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Application for Approval of HEVI-METAL™ as a Nontoxic Shot Material for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: We are providing public notification that Standard Resources Corporation, of Cherry Hill, New Jersey, has applied for approval of HEVI–METAL™ shot as nontoxic for waterfowl hunting in the United States. The Service has initiated review of HEVI–METAL™ under the criteria set out in Tier 1 of the revised nontoxic shot approval procedures contained in 50 CFR 20.134.

DATES: A comprehensive review of the Tier 1 information is to be concluded no later than June 8, 1999.

ADDRESSES: The Standard Resources Corporation (Standard) application may be reviewed in Room 634 at the Fish and Wildlife Service, Office of Migratory Bird Management, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, (703) 358–1714, or James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management, (703) 358–1964.

SUPPLEMENTARY INFORMATION: We continue to provide opportunity for submission for approval of alternative types of shot for waterfowling that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife when ingested. Currently, only bismuth-tin and steel shot are unconditionally approved for use in waterfowling. Tungsten-iron (published October 7, 1998; 63 FR 54016), tungsten-polymer (published October 7, 1998; 63 FR 54022), and tungsten-matrix (published October 19, 1998; 63 FR 55840) shot types received temporary conditional approval for the 1998–99 waterfowl hunting season. We are currently reviewing applications for approval for shot types other than those previously referenced in this notice. We anticipate that approval of additional suitable candidate shot materials as nontoxic is feasible in the near future.

On January 25, 1999, Standard submitted its application with the counsel that it contained all of the specified information for a complete Tier 1 submission. Tier 1 approval for

HEVI–METAL™ is being sought under the revised test protocol for nontoxic approval procedures for shot and shot coatings that we published in 50 CFR 20.134 (December 1, 1997; 62 FR 63608).

We have determined that Standard's application is complete, and have initiated a comprehensive review of the Tier 1 information. After this review, we will either: (1) publish a Notice of Review to inform the public that the Tier 1 test results are inconclusive; or (2) publish a proposed rule for approval of the candidate shot. We will indicate in a Notice of Review if we will require other tests before nontoxic approval of HEVI–METAL™ shot is again considered. If review of the Tier 1 application results in a preliminary determination that the candidate material does not pose a significant hazard to migratory birds, other wildlife, and their habitats, we will proceed with a rulemaking that proposes to approve the candidate shot.

HEVI–METAL™ pellets have specific gravity of 11.0 g/cm^3 and are composed of 50 percent tungsten, 35 percent nickel, and 15 percent iron. Part A of the application contains a statement of proposed use, a chemical and physical description of the shot material, a statement of the expected variability of shot during production, an estimate of yearly production, and a 5-pound sample of the fabricated shot. Part B of the application contains a discussion of the acute toxicities of HEVI–METAL™ components to mammals and to birds, limited information on the fate of ingested shot on a small sample of captive-reared mallard ducks, and a summary of the known toxicities of HEVI–METAL™ components for vertebrates. Part C of the application considers the effects of firing on the shot, the half-life of components of breakdown products, the estimated environmental concentration in soil and water, and other environmental impacts of components of the shot. References are provided to support the information and conclusions contained in the application; the list of references cited is available from us upon request.

Authorship: The primary author of this document is James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management.

Dated: April 2, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–8921 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 68
Friday, April 9, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspaper Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.
ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 15, 1999. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Acting Regional Appeals and Litigation Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette
Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review
Regional Forester decisions in North Dakota: Bismarck Tribune
Regional Forester decisions in South Dakota: Rapid City Journal
Beaverhead/Deerlodge—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—Billings Gazette (Montana), Rapid City Journal (South Dakota)
Dakota Prairie National Grasslands—Bismarck Tribune (North Dakota), Rapid City Journal (South Dakota)
Flathead—Daily Interlake
Gallatin—Bozeman Chronicle
Helena—Independent Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Interlake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: April 5, 1999.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 99–8880 Filed 4–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Keystone-Quartz Ecosystem Management Project, Beaverhead-Deerlodge National Forest, Beaverhead County, Montana

AGENCY: Forest Service, USDA.
ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to document the analysis and disclose the environmental impacts of a proposed action to manipulate forest and range vegetation on about 1200 acres. This area lies at the northern end of the Pioneer Mountains, three miles south of Wise River, Montana.

The proposed action would thin about 1042 acres of Douglas-fir forest to improve wildlife habitat, release about 85 acres of aspen/shrub communities to restore wildlife habitat, thin about 21 acres of dense lodgepole pine to improve overall forest health, and restore about 43 acres of shrub/grass habitat that has been lost to conifer succession.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than April 26, 1999.

ADDRESSES: The responsible official is Cynthia A. Tencick, District Ranger, Wise River Ranger District, PO Box 100, Wise River, MT 59762. Send written comments to the responsible official.

FOR FURTHER INFORMATION CONTACT: Brian Quinn, Interdisciplinary Team Leader, Wise River Ranger District, or phone: (406) 683–3900.

SUPPLEMENTARY INFORMATION: About 65% of the Douglas-fir thinning will be done using slashing and prescribed fire, and 35% using wood product removal and prescribed fire. Aspen/shrub restoration will be done using commercial timber harvest. Lodgepole pine thinning will be done by the sale of fence materials. Shrub/grass restoration will be done using slashing and prescribed fire.

The project area is located in the Keystone, Spring, Titan, Lime Kiln and Quartz Hill drainages (T1S, R11W, Sections 10, 11, 12 and 14; and T1S, R10W, Sections 16, 17, 20, 29 and 30). The scope of this proposal is limited to specific forest thinning, timber harvest, prescribed burning and other stand treatments, area improvements and related mitigation requirements lying within the affected area.

Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues. A scoping notice describing the project was mailed to those who requested information on timber harvest and burning activities on the Beaverhead-Deerlodge National Forests. The Montana Department of Fish, Wildlife and Parks has been involved in the development of this proposal and will be consulted through the analysis and decision making process. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species.

Preliminary issues identified by Forest Service specialists include effects to vegetation, wildlife habitat, and the existing character of inventoried roadless areas. Timber harvest and

prescribed fire are proposed in Inventoried Roadless Area 1–010. No road building is proposed in an inventoried roadless area. The analysis will consider all reasonably foreseeable activities, including proposed actions on adjacent BLM lands.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS period.

During the scoping process, the Forest Service is seeking additional information and comments from Federal, State and local agencies and other individuals or organization who may be interested in or affected by the proposed action. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

The draft EIS should be available for review in April, 1999. The final EIS is scheduled for completion in June, 1999.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at CFR 1503.3 in addressing these points.

The responsible official who will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: March 29, 1999.

Cynthia A. Tencick,

District Ranger.

[FR Doc. 99–8896 Filed 4–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on May 7, 1999, in Incline Village, Nevada. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held May 7, 1999, beginning at 9:00 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the Donner Room inside the Hyatt Lake Tahoe, Country Club Drive and Lake Shore Boulevard, Incline Village, Nevada.

FOR FURTHER INFORMATION CONTACT: Juan Palma or Sherry Hazelhurst, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: (1) Subcommittee Reports; (2) Agency Briefings; (3) Environmental Improvement Program (EIP) Review and Comment; (4) Washoe Commitments Update; (5) Basin Transportation Planning (MPO); (6) FACA Procedures for Subcommittee Meetings; (7) Future Agenda Development; and (8) Open Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: April 5, 1999.

Bradley E. Powell,

Acting Regional Forester, Pacific Southwest Region.

[FR Doc. 99–8881 Filed 4–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the NRCS National Handbook of Conservation Practices for Review and Comment

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include Conservation Crop Rotation, Pond Sealing or Lining—Flexible Membrane, Streambank and Shoreline Protection, Waste Storage Facility, Waste Treatment Lagoon, and Water Well. NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

EFFECTIVE DATES: Comments will be received on or before June 8, 1999. This series of new or revised conservation practice standards will be adopted after the close of the 60-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS–CED in Washington, DC. Submit individual inquiries in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed at Washington DC on April 2, 1999.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, DC.

[FR Doc. 99–8836 Filed 4–8–99; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 10, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Kit, Marine Corps Demolition, Advanced
1375–00–NSH–0001
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York

Services

Computer Facilities Management Services, Federal Center, Defense Reutilization & Marketing Service (DRMS), 74 North Washington, Battle Creek, Michigan
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan
Base Supply Center, Nellis Air Force Base, Nevada
NPA: Lions Club Industries, Inc., Durham, North Carolina
Base Supply Center, Holloman Air Force Base, New Mexico
NPA: San Antonio Lighthouse, San Antonio, Texas
Laundry/Dry Cleaning (all non-hospital laundry), Fort Carson, Colorado
NPA: Goodwill Industrial Services Corporation, Colorado Springs, Colorado
Operation of Individual Equipment Element Store, Nellis Air Force Base, Nevada
NPA: Lions Club Industries, Inc., Durham, North Carolina
Operation of Individual Equipment Element Store, Holloman Air Force Base, New Mexico
NPA: San Antonio Lighthouse, San Antonio, Texas
Warehouse Operation, U.S. Geological Survey, Western Region, 1020 O'Brien Drive, Menlo Park, California
NPA: VTF Services, Palo Alto, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–8898 Filed 4–8–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and services previously furnished by such agencies.

EFFECTIVE DATE: May 10, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 19 and 26, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 8291, 9469 and 9470) of proposed additions to and deletions from the Procurement List:

Additions

The following comments pertain to Grounds Maintenance, Shaw Air Force Base, South Carolina: Comments were received from the current contractor for this grounds maintenance service. The contractor stated that adding the contract to the JWOD Program would have a significantly detrimental impact on the company and its ability to be competitive. The contractor noted that the firm was a small business and said that the contract in question represented a specific amount of its annual General and Administrative dollars.

The Committee noted that the percentage of the contractor's estimated annual revenue was below the level the Committee considers to represent possible severe adverse impact. Because the contractor provided no context for the comment on its General and Administrative dollars and the amount itself was not substantial, the Committee was not persuaded that losing it would have a significant detrimental impact on the firm. The Committee also considered that although several other contracts previously held by the contractor have been placed in the JWOD Program over the past decade, the contractor's sales have risen by almost 50 percent. Even taking into account inflation, this level of increase shows that the firm has not been severely adversely impacted by past actions.

The following material pertains to all of the items being added to the Procurement List:

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current

or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Aqua Plunger Mop
M.R. 1026
Soup Spoon Ladle
M.R. 806

Services

Central Facility Management, U.S. Secret Service Headquarters, 930 H Street, NW, Washington, DC
Grounds Maintenance, Shaw Air Force Base, South Carolina
Janitorial/Custodial, Veterans Affairs Outpatient Clinic, 25 N. 32nd Street, Camp Hill, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, Fort Jackson, South Carolina

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities and services.

3. The action may result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities and services are hereby deleted from the Procurement List:

Commodities

Kit, Shaving Surgical Preparation
6530–00–676–7372
Surgical Dressing Set
6530–00–105–5826
Box, Filing
7520–00–139–3734

Services

Administrative Services, Naval Air Station, Jacksonville, Florida
Assembly, Living Kit, Basic and Supplemental, Commissary Warehousing, Homestead Air Force Base, Florida
Corrosion Control of Fuel Pipelines, Manchester Naval Fuel Department, Manchester, Washington
Disposal Support Services, Defense Reutilization and Marketing Office, Agana, Guam
Fast Pack/Carton Recycling and Pallet Repair, Sacramento Army Depot, Sacramento, California
Food Service Attendant, Naval Air Station Cecil Field, Florida
Food Service Attendant, Homestead Air Force Base, Florida,
Food Service Attendant, Naval Security Group Activity,
Homestead Air Force Base, Florida
Grounds Maintenance, Andersonville National Historic Site, Route 1, Box 85, Andersonville, Georgia
Grounds Maintenance, U.S. Postal Service, 1088 Nandino Boulevard, Lexington, Kentucky
Grounds Maintenance, Camp Bonneville, Camp Bonneville, Washington
Grounds Maintenance, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 2725 Montlake Boulevard East, Seattle, Washington
Janitorial/Custodial, Naval Station, Mobile, Alabama
Janitorial/Custodial, Riverside National Cemetery, 22495 Van Buren Blvd., Riverside, California
Janitorial/Custodial, Federal Building, 100 North Warren, Saginaw, Michigan
Janitorial/Custodial, Lewistown Flight Service Station, Lewistown, Montana
Janitorial/Custodial, BEQ Naval Station, Staten Island, New York
Janitorial/Custodial, Newark Air Force Base, Ohio,
Janitorial/Custodial, Bonneville Power Administration, 11743 NE Sumner Street, Portland, Oregon
Janitorial/Custodial, Tennessee Air National Guard, Nashville Metro Airport, Nashville, Tennessee
Janitorial/Grounds Maintenance, Naval Industrial Reserve Ordnance Plant, Rochester, New York
Laundry Service, Military Entrance Processing Station, 1222 Spruce Street, St. Louis, Missouri
Microfilm/Microfiche Reproduction, Newark Air Force Station, Ohio
Operation of Tool Crib, Kelly Air Force Base, Texas
Planting and Transplanting Horticultural Materials, USFS, Bend Pine Nursery Market, 63095 Deschutes Market Road, Bend, Oregon
Reproduction Service, Headquarters, U.S. Marine Corps, Clarendon Square Office Building, 3033 Wilson Boulevard, Arlington, Virginia
Tray Delivery Service, Department of Veterans Affairs Medical Center, 3601 South 6th Avenue, Tucson, Arizona

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–8899 Filed 4–8–99; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 12:45 p.m. and adjourn at 4:30 p.m. on May 3, 1999, at the JC Penney Government Relations Office, Suite 1015, 1156 15th Street NW, Washington, DC 20036. The purpose of the meeting is to provide new member orientation, review past civil rights monitoring activity, and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lewis Anthony, 202–483–3262, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 30, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–8892 Filed 4–8–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 7, 1998, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan. The review covers 18 manufacturers/exporters and the period September 1, 1996, through August 31, 1997. Based on our analysis of the comments received, the dumping margins have not changed from those presented in the preliminary results.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Thomas Futtner, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6320 or 482–3814, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1998).

Background

On October 7, 1998, the Department published the preliminary results (63 FR 53875) of its administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan (September 20, 1991, 56 FR 47737). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The merchandise covered by this review is one-piece and two-piece chrome-plated lug nuts, finished or unfinished, which are more than $^{11}/_{16}$ inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least $^{3}/_{4}$ inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus $^{1}/_{16}$ of an inch (1.59 mm). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not within the scope of this review. Chrome-plated lock nuts are also not within the scope of this review.

During the period of review, chrome-plated lug nuts were provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive. This review covers the following firms: Gourmet Equipment (Taiwan) Corporation ("Gourmet"), Buxton International Corporation ("Buxton"), Chu Fong Metallic Electric Co.("Chu Fong"), San Chien Industrial Works, Ltd. ("San Chien"), Anmax Industrial Co., Ltd. ("Anmax)", Hwen Hsin Enterprises Co., Ltd. ("Hwen Hsin"), San Shing Hardware Works Co. ("San Shing"), Trade Union International Inc./Top Line ("Trade Union"), Uniauto, Inc. ("Uniauto"), Wing Tang Electrical Manufacturing Company ("Wing Tang") and Multigrand Industries Inc. ("Multigrand"), and the period September 1, 1996, through August 31, 1997. Buxton, Chu Fong, San Chien, Anmax, Hwen Hsin, San Ching, Trade Union, Uniauto, Wing Tang and Multigrand failed to completely respond to the Department's questionnaire and therefore were assigned an adverse facts available rate of 10.67 percent. Questionnaires were sent to Transcend International, Kwan How Enterprises Co., Kwan Ta Enterprises Co., Ltd., Everspring Plastic Corporation, Gingen Metal Corp., Goldwanate Associates, Inc., Kuang Hong Industries Inc., but were returned as undeliverable. These firms therefore received the "all others" rate of 6.93 percent.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from one respondent, Gourmet, and rebuttal comments from petitioner, Consolidated International Automotive. Based on the comments received, we have not changed our determination with respect to Gourmet for the final results.

Comments

Respondent argues that it has cooperated fully and that the Department cannot require it to provide information that is impossible for Gourmet to provide, or in a form which Gourmet simply does not have. In such a situation, the Department must consider any other independent information which is sufficient to substantiate the sales and other data provided in Gourmet's submissions.

In this instance, because Gourmet does not have audited financial statements, Gourmet argues that the Department must rely on other forms of independent substantiation. Gourmet argues that the Department has a long-standing practice to accept whatever substantiation is available to satisfy itself that the data submitted can be relied upon. In this review, Gourmet submitted bank records as a means to independently substantiate its response. Gourmet points to the *Notice of Final Determination of Sales at less Than Fair Value: Collated Roofing Nails from Taiwan,* 62 FR 51,427 (October 1, 1997), where the Department stated that where a respondent submitted sales and cost data based on unaudited financial statements, verification may be based on the respondent's "tax return or any other independent source ."

Gourmet argues that the use of facts available is not warranted under section 776(a) of the Act [19 USC1677e(a)) because the necessary information is on the record. Gourmet has responded to all of the Department's requests for information with the exception of one document, audited financial statements, which do not exist and therefore can not be withheld. Gourmet argues that, unlike the situation in previous reviews in this review where it stated that its data was unverifiable, its submitted data can and should be verified. Gourmet points to *Borden, Inc.* v. *United States,* 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998) (*Borden*), where the court found that the Department is required to consider information submitted by a party even if that information does not precisely conform to the Department's request, as long as the party has cooperated to the best of its ability.

Gourmet acknowledges that section 776(a) of the Act may apply because the Department may take the position that Gourmet has failed to provide the requested information in the form and manner requested. However, Gourmet disagrees with its applicability for two reasons. First, while Gourmet failed to provide information in the form of audited financial statements, it provided the same information in the form of bank records. Second, the application of facts available pursuant to section 776(a)(2)(B) of the Act is conditional on an additional finding that the provisions set out in section 782(e) of the Act (19 U.S.C. 1677m(e)) have not been met. Gourmet points to *Borden*, where the court said section 782(e) of the Act requires that no matter how unsatisfactory the Department may find the information submitted, it must still use that information rather than facts available, so long as the criteria of that provision have been met.

Gourmet argues that its situation is similar to that in the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56,613 (October 22, 1998) (*Chile Mushrooms*). In that case, the Department concluded that resort to facts available was not required where independent auditors were unable to reconcile the respondent's books and records with its financial statements and were "otherwise unable to account for significant assets and liabilities," and where the respondent, like Gourmet, was not legally obligated to have audited financial statements. Gourmet states that the Department correctly concluded that the law would not permit rejection of the submitted data in its entirety because the respondent had met the five conditions of 782(e) of the Act (19 U.S.C. 1677m(e)).

Because Gourmet has provided such independent substantiation and has cooperated to the best of its ability, the Department may not decline to use Gourmet's submitted information in making its determination. Gourmet maintains that the information was submitted on time, can be verified, is complete and reliable, can be used without undue difficulty, and Gourmet has demonstrated that it has acted to the best of its ability in providing information.

Even if the Department does decline to use such information and resorts instead to "facts available," the Department must find that Gourmet has cooperated to the best of its ability and therefore that an adverse inference would be unwarranted. Gourmet claims that it has provided complete responses to all of the Department's questionnaires. Gourmet undertook extraordinary efforts to produce alternative forms of records to satisfy the Department's requirement for independent substantiation of submitted information.

Gourmet asserts that the Department incorrectly concluded that its submissions could not be reconciled to its financial statements in this review, as it did in the fourth administrative review even though the facts are different. In this review, unlike the fourth, Gourmet does not admit its submission cannot be reconciled. On the contrary, Gourmet has submitted detailed reconciliation statements to its tax return and bank statements. Furthermore, the Department's requirements for verifiable submissions as discussed in a Memorandum from Thomas Futtner to Holly Kuga, Aug. 20, 1998, does not mandate the submission of audited financial statements.

If the Department finds the information that Gourmet submitted to be unverifiable, it does not follow that Gourmet has not acted to the best of its ability. The Department has failed to articulate any basis for finding that Gourmet failed to cooperate. In *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993) (*Allied-Signal*), the court held that where a respondent "supplied as much of the requested information as it could and offered to provide the remaining information in a simplified form, . . . [i]t was unreasonable for the ITA to have characterized respondent's behavior as a refusal to cooperate." The court went on to say that "the respondent failed to provide a complete response to the requested information because it was unable to, not because it refused to." The court made a similar distinction in *Borden* where it stated "Commerce has articulated no reason for finding the respondent's failure was an unwillingness, rather than simply an inability, to cooperate, other than vague hints that respondent was cooking the books."

Petitioner disagrees. As in previous reviews, Gourmet failed to submit verifiable information that would allow Commerce to tie the company's questionnaire response with its financial data. Petitioner argues that the problem is not simply the form of information, but rather its substance. Gourmet has been subject to previous reviews and has been well aware of the deficiencies in its previous submissions, yet Gourmet has made no showing of inability to prepare the requested information. Petitioner argues that Commerce was correct to apply facts available to Gourmet when it submitted information that had already been found to be deficient.

Petitioner argues that the deficiencies in Gourmet's response justify the application of facts available under the statute. Under section 776(a)(2)(B) of the Act, Gourmet failed to provide requested information, not simply the form of the information, but the substance of the information. In terms of the statute, Gourmet's information is so incomplete that it cannot serve as a reliable basis for determining constructed value since Gourmet's financial information can not be reconciled with its questionnaire response and is, therefore, unverifiable.

Petitioner argues that Gourmet did not act to the best of its ability in providing the information and meeting the Department's requirements. Gourmet had participated in previous reviews where it provided similarly deficient information and was sanctioned for doing so. Petitioner argues that Gourmet could have corrected these deficiencies but rather chose to submit the same substantively incomplete and formally, nonconforming information.

Petitioner argues that *Borden* does not support Gourmet's position. *Borden* does not address the applicability of section 776(a)(2)(D) of the Act (19 U.S.C. 1677e(a)(2)(D)) to the deficient information provided; by contrast in this review, Commerce has found that the information submitted by Gourmet cannot be verified. *Borden* does not preclude Commerce from applying facts available to the deficient response, rather *Borden* requires Commerce to make the additional finding that the respondent failed to act to the best of its ability. This deficiency is not present in this review since Commerce expressly stated "that Gourmet has failed to cooperate by not acting to the best of its ability." In *Borden*, the court noted that the respondent had changed accounting methods and amended its questionnaire responses in attempting to respond to the questionnaires. This situation is plausible in an investigation, but not the sixth administrative review.

Petitioner also argues that *Allied-Signal* does not support Gourmet's position. Unlike the facts in *Allied-Signal*, Gourmet has not shown that it cannot provide the required information or that it would be unable to prepare the necessary information.

Department's Position

We agree with petitioner. The Department finds that the use of facts available is warranted under section 776(a) of the Act because the information in Gourmet's questionnaire

response cannot be verified. Moreover, we have used an adverse inference in applying the facts available, in accordance with section 776(b) of the Act, because Gourmet has failed to cooperate by not acting to the best of its ability in this case. For a more complete explanation of Gourmet's deficiencies (which include proprietary information) *see* Memorandum from Thomas Futtner to Holly Kuga, August 20, 1998 (Futtner Memo).

Gourmet has failed to demonstrate that the information which it placed on the record accurately reflects all of the relevant sales made by the company during the period of review and its cost of production. While Gourmet did possess relevant financial statements, it was not able to demonstrate that the information it reported to the Department agrees with those financial statements. Nor did it provide any evidence of factors beyond its control which caused such discrepancies or any reasonable basis for the Department to determine that its questionnaire response was accurate despite these discrepancies. Gourmet has been aware of, but has not corrected, deficiencies in its accounting system even though these deficiencies caused the Department to use facts available for the last several administrative reviews.

The Department does not reject questionnaire responses simply because the respondent does not have an audited financial statement. In such situations, the Department looks to other financial records, prepared for purposes independent of the antidumping proceeding, such as tax statements, which attest to the veracity of a respondent's accounting system and information submitted to the Department. (*see, e.g., Collated Roofing Nails from Taiwan*). In this case, Gourmet possesses relevant (albeit unaudited) financial statements. As Gourmet has acknowledged, however, the financial statements conflict with, and hence do not support, its questionnaire response. *See* Futtner Memo.

Borden does not support Gourmet's contention. Although in *Borden* the court noted that the Department must consider submitted information if that information meets the requirements of section 782(e) of the Act, Gourmet's information does not meet those requirements. Gourmet's submissions are not verifiable and therefore do not meet the requirements of section 782(e)(2). While these submissions are for the most part in the form requested by the Department, their content is unreliable. *See* Futtner Memo. Moreover, in *Borden*, the court approved the Department's use of adverse facts available in that case.

Further, *Allied-Signal* is not relevant to this case. In *Allied-Signal*, where the Court held that the respondent had "supplied as much of the requested information as it could and offered to provide the remaining information in a simplified form,...[i]t was unreasonable for the ITA to have characterized respondent's behavior as a refusal to cooperate." That case did not involve evidence on the record indicating a fundamental discrepancy between information in the questionnaire response and the respondent's financial statements. Although Gourmet has participated in several antidumping administrative reviews and is thoroughly familiar with the Department's requirements, it has consistently failed to comply with the Department's standards by continuing to provide unverifiable data.

In addition, Gourmet's reliance on *Chile Mushrooms* is misplaced. *Chile Mushrooms* did not involve a fundamental disagreement between the questionnaire response and the respondent's financial records. Rather certain issues were raised by the findings of an independent audit of the respondent's records. We determined that these findings were either irrelevant for our purposes or could be adequately addressed by adjustments and the use of partial FA. In this case, we are not dealing the results of an independent audit or with information that may be rendered useful by the application of partial facts available.

Gourmet is incorrect that the Department is basing its facts available decision on the findings in previous reviews, where Gourmet admitted that its submissions could not be reconciled. The Department treats each administrative review separately. Based on the information on the record in the instant review, we have determined that Gourmet's accounting system and the information submitted to the Department are unreliable. *Id.*. Reliance on the accounting system used for the preparation of the financial statements is a key and vital part of the Department's determination that a company's sales and constructed value data are credible. Section 776(a)(2)(D) of the Act states that the Department "shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title" if an interested party or any other person provides information but the information cannot be verified. Because Gourmet's submissions are not reconcilable to its financial statements and Gourmet has provided no acceptable explanation and no reasonable alternative support for its submission, it is unverifiable.

Despite the admitted discrepancies between its financial statements and its questionnaire response, Gourmet argued that its questionnaire response nonetheless could be verified using other information, such as bank records. In attempting to demonstrate this, however, it became clear that the records that it was attempting to rely on could not adequately substantiate its response without requiring the Department essentially to perform a complete audit of Gourmet's financial records. This is not the purpose of a verification, which is fundamentally a spot check of selected data—not a detailed examination of a respondent's entire accounting system. We believe that Gourmet has had sufficient notice of the Department's requirements for verifiable submissions and ample opportunity to provide information that is amenable to verification. Yet Gourmet has continued to provide unverifiable data. Therefore, we determine that Gourmet has failed to cooperate by not acting to the best of its ability, and thus we are using an adverse inference in our application of facts available.

Section 776(b) of the Act provides that, in selecting from the facts available, adverse inferences may be used when an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is described in the Statement of Administrative Action (SAA) (at 870) as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."

The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent

practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See, e.g., Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR at 971 (January 7, 1997) and *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* 62 FR 2801 (January 15,1997) (*AFBs 1997*).

As to the relevance of the margin used for adverse FA, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 47454 (September 9, 1997), that it will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin. *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record that would indicate that the 10.67 percent rate, a rate calculated from the LTFV investigation, is irrelevant or inappropriate as an adverse facts available rate for the respondent in the instant review. Therefore, we have applied, as adverse FA, the highest margin for any firm in any segment of this proceeding, 10.67 percent, as the rate for Gourmet.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period September 1, 1996, through August 31, 1997.

Manufacturer/exporter	Percent margin
Gourmet Equipment (Taiwan) Corporation	10.67
Buxton International/Uniauto	10.67
Chu Fong Metallic Electric Co.	6.93
Transcend International	6.93
San Chien Industrial Works, Ltd	10.67
Anmax Industrial Co., Ltd	10.67
Everspring Plastic Corp.	6.93
Gingen Metal Corp.	6.93
Goldwanate Associates, Inc.	6.93
Hwen Hsin Enterprises Co., Ltd.	10.67
Kwan How Enterprises Co., Ltd.	6.93
Kwan Ta Enterprises Co., Ltd.	6.93
Kuang Hong Industries Ltd.	6.93
Multigrand Industries Inc.	6.93
San Shing Hardware Works Co., Ltd.	10.67
Trade Union International Inc./Top Line	10.67
Uniauto, Inc.	10.67
Wing Tang Electrical Manufacturing Company	10.67

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

We will assess antidumping duties on the above firms' entries at the same rate as their above stated dumping margins since the margins are not calculated rates, but are rates based upon facts available pursuant to section 776 of the Act.

Further, the following cash deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firms will be the rates indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 6.93%, the all others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1)(B) and 777(i)(1)of the Act.

Dated: April 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–8922 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–844]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or John Brinkmann at (202) 482–1784 or (202) 482–5288, respectively, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise

indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from Japan is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 60402 (November 18, 1998) (preliminary determination).

Scope of Investigation

The scope of this investigation covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation (POI) is January 1, 1997, through December 31, 1997. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Facts Available

Suzuki Metal Industry Co., Ltd. (Suzuki) and Nippon Seisen Co., Ltd. (Nippon Seisen) did not respond to our questionnaires. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because these firms failed to respond to our questionnaires and because the relevant subsections of section 782 of the Act do not apply, we must use facts otherwise available to calculate the dumping margins for these companies.

Section 776(b) of the Act provides that adverse inferences may be used when an interested party fails to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, Vol.1, 103d Cong., 2d Sess. 870 (1994) (SAA). The lack of response by Suzuki and Nippon Seisen to the Department's antidumping questionnaires constitutes a failure by these respondents to act to the best of their abilities to comply with a request for information, within the meaning of section 776 of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted.

Because we were unable to calculate margins for these respondents in this investigation, we assigned these respondents the highest margin in the petition (recalculated by the Department, as appropriate). This approach is consistent with Department practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 40433 (July 29, 1998). The highest petition margin is 29.56 percent.[1]

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

During our pre-initiation analysis of the petition, we reviewed the adequacy and accuracy of the secondary information in the petition from which the margins were calculated, to the extent that appropriate information was available for this purpose. *See Initiation of Antidumping Duty Investigations: Stainless Steel Round Wire from Canada, India, Japan, the Republic of Korea, Spain, and Taiwan*, 63 FR 26150, 26151 (May 12, 1998). However, we are aware of no other independent sources of information that would enable us to corroborate the components of the margin calculation in the petition further. The implementing regulation to section 776 of the Act, 19 CFR 351.308(c), states that "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." Additionally, we note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Finally, the margins calculated for respondents in the other round wire investigations are in many instances of the same order of magnitude as the margins in the corresponding petitions, suggesting that the information contained in the round wire petitions is generally reliable.

Interested Party Comments

No parties commented on the preliminary determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel round wire from Japan that are entered, or withdrawn from warehouse, for consumption on or after November 18, 1998, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in

[1] At the time of initiation, we did not accept the U.S. and home market packing data set forth in the petition, and we revised the dumping margins in that petition so as to not reflect any adjustment for packing. In reviewing the petition margin calculations for the preliminary determination in the Japan case, we noted that the denominator for the margins was erroneously based on home market price, rather than U.S. price. We have revised the margins accordingly. *See* Memorandum from Jarrod Goldfeder to the file, dated November 19, 1998.

the chart below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Nippon Seisen	29.56
Suzuki	29.56
All Others	15.20

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. In this case, the margin assigned to the two companies investigated is based on facts available. Therefore, consistent with the SAA, at 873, we are using an alternative method. As our alternative, we have based the all-others rate on a simple average of the margins in the petition, as revised at the time of initiation of this investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8923 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–814]

Stainless Steel Round Wire From India; Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of antidumping duty investigation.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Diane Krawczun or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0198 or (202) 482–4477, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from India is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The Department issued the preliminary determination in this investigation on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 60402 (November 18, 1998) (preliminary determination). Since the preliminary determination, the following events have occurred.

In December 1998 and January 1999, we conducted on-site verifications of the questionnaire responses submitted by Raajratna Metal Industries Limited (Raajratna). We received case briefs from the petitioners [1] and the respondent on February 19, 1999, and we received rebuttal briefs from the same parties on February 26, 1999. We held a public hearing on March 11, 1999.

Scope of Investigation

The scope of this investigation covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation (POI) is January 1, 1997, through December 31, 1997. This period corresponds to the respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Fair Value Comparisons

To determine whether sales of stainless steel round wire from India were made at less than fair value, we compared the export price (EP) to the normal value (NV). Our calculations followed the methodologies described in the preliminary determination except as noted below. *See also* our analysis memorandum dated April 2, 1999, which has been placed in the file.

Export Price and Constructed Export Price

For the price to the United States, we used EP as defined in section 772 of the Act. We calculated EP based on the same methodology used in the preliminary determination, except that we calculated an amount for U.S.

[1] ACS Industries, Inc., Al Tech Specialty Steel Corp., Branford Wire & Manufacturing Company, Carpenter Technology Corp., Handy & Harman Specialty Wire Group, Industrial Alloys, Inc., Loos & Company, Inc., Sandvik Steel Company, Sumiden Wire Products Corp., and Techalloy Company, Inc.

indirect selling expenses for Raajratna's EP sales as an offset to its home-market commissions in accordance with § 351.410(e) of the Department's regulations (*see* our response to Comment 3, below).

Normal Value

We used NV as defined in section 773 of the Act. We calculated NV based on the same methodology used in the preliminary determination. We based NV on CV where there was no above-cost HM sale for comparison. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Raajratna's cost of materials, fabrication, general expenses, profit and U.S. packing costs. In general expenses, we included HM indirect selling expenses and an amount we calculated to cover expenses Raajratna incurred in its Mumbai sales office on certain sales which Raajratna had reported.

Section 776(a)(1) of the Act provides that, if necessary information is not available on the record, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Raajratna indicated in its response that it was unable to segregate and report its U.S. indirect selling expenses. In addition, Raajratna did not report its home-market (HM) indirect selling expenses. As facts available, we calculated an indirect selling expense factor as an offset for Raajratna's HM commissions which we deducted from NV. We used the same factor to deduct HM indirect selling expenses from HM price in our determination of whether HM sales were made below the cost of production (COP) and to add HM indirect selling expenses to constructed value (CV).

Also, Raajratna did not report all of its general and administrative (G&A) expenses with respect to its Mumbai (Bombay) sales office which assisted Raajratna in obtaining raw materials for the manufacture of subject merchandise and in the completion of certain sales. We calculated an amount based on Raajratna's response to cover these expenses.

Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of Raajratna's cost of materials, fabrication, general expenses, and packing costs. We relied on the COPs submitted by Raajratna except in the following instances where the submitted costs were not quantified or valued appropriately: (1) we calculated an amount for Raajratna's HM indirect selling expenses which we deducted from HM price for COP comparisons and added to CV for NV comparisons; (2) we used a revised financial expense ratio using cost of sales in the denominator; (3) we included in Raajratna's G&A expense portions of expenses incurred in Raajratna's Mumbai office; (4) we used a model-specific yield-loss rate to calculate direct materials costs; and (5) we added HM packing expenses to COP.

Currency Conversions

As in the preliminary determination, we made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Interested Party Comments

Comment 1. Export Incentive System—Adjustment to EP

Raajratna argues that the Department should add to EP amounts received as export incentives under the Indian Government's Duty Entitlement Passbook (DEPB) System. Raajratna argues that the DEPB benefits received from the Indian Government are directly related to exports and are part of Raajratna's net returns on its U.S. sales. Raajratna argues further that, alternatively, the Department should treat the DEPB benefits as a circumstance-of-sale (COS) adjustment to NV because the DEPB program is linked directly to Raajratna's U.S. sales. Raajratna cites *Fuel Ethanol From Brazil*, 51 FR 5572 (1986), and *Acetylsalicylic Acid From Turkey*, 52 FR 24492 (1987) to support its position.

The petitioners respond that Raajratna is not entitled to an adjustment for reported DEPB benefits because it failed to meet the Department's two-prong test for a duty-drawback adjustment. Specifically, the petitioners note that Raajratna was unable to provide at verification information which would link the claimed refund amount to actual imports of raw materials. The petitioners also argue that the prior determinations Raajratna cited are irrelevant and inapplicable because both cases precede the Department's two-prong test for making duty-drawback adjustments to NV. The petitioners state that, in *Fuel Ethanol From Brazil*, the Department determined that premiums received under an export credit program directly related to the export sales were COS adjustments but that, because Raajratna's reported DEPB adjustments do not qualify as COS adjustments, *Fuel Ethanol From Brazil* is inapplicable for this final determination. The petitioners argue further that Raajratna's reliance upon *Acetylsalicylic Acid From Turkey* is also misplaced because the payment at issue was not a government benefit but the result of an arm's-length contract.

Department's Position: Section 772(c)(1)(B) of the Act requires the Department to make an upward adjustment to NV for import duties rebated by reason of exportation to the United States. We interpret this requirement to apply only when the respondent meets our two-prong test *i.e.*, that (1) the import duty and rebate are directly linked to, and dependent upon, one another; and (2) there were sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product (*see e.g., Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods from Korea*, 64 FR 13169, 13172 (March 17, 1999)). We found during the sales verification that, although Raajratna demonstrated actual receipt of refund amounts under the DEPB system, it could not supply information establishing how the Government of India calculates the amount refunded to Raajratna. (*See Sales Verification Report.*) We also found that Raajratna's consumption of imported wire rod dropped significantly during the POI. *Id.* In addition, we found during the cost verification that the incentive credits received under the DEPB system are not based on the actual amount of the duty paid. (*See* Verification of Cost of Production and Constructed Value Data for Raajratna Metal Industries, Ltd., dated February 9, 1999.) Therefore, because Raajratna established neither a direct link between the import duty paid by suppliers and passed on to Raajratna, nor sufficient imports of wire rod to account for the duty it received, we are unable to adjust EP for duty drawback under section 772(c)(1)(B) of the Act.

The prior determinations cited by Raajratna are unsupportive because both cases precede the establishment of the two-prong test. *See Huffy Corp. v. U.S.*, 632 F. Supp. 50 (CIT 1986). In addition, contrary to Raajratna's assertion, benefits received under the DEPB

system do not qualify for a COS adjustment because benefits received constitute revenue to Raajratna. COS adjustments reflect selling expenses incurred by a respondent; however, we found at verification that the DEPB refunds were not tied to any selling expenses nor were they based on actual customs duties Raajratna paid to purchase raw materials for the manufacture of subject merchandise. *Cost Verification Report* at 2, 11; *Sales Verification Report* at 8. Indeed, Raajratna's DEPB benefits were based on the FOB sales prices of Raajratna's finished goods for export and exceeded substantially the amount of customs duties Raajratna paid to import raw materials directly. Thus, we have denied Raajratna a COS adjustment. (*See* section 773(a)(6)(C)(iii) of the Act and section 351.410(b) of the Department's regulations.) Raajratna's reliance upon *Fuel Ethanol From Brazil* is unsupportive here because, in this case, we find that Raajratna's DEPB benefits do not qualify for a COS adjustment since they were unrelated to differences in selling expenses. Thus, we have denied Raajratna an adjustment to EP for refund amounts under the DEPB system.

Comment 2: Export Incentive System—CV Adjustment

Raajratna argues that, if the Department does not increase U.S. prices to reflect the DEPB incentive, it should reduce Raajratna's CV by the export incentive earned on Raajratna's U.S. sales. Raajratna argues that an adjustment to CV is appropriate because the purpose of the export incentive is to reduce the cost of materials to the extent of the import duties incurred. Raajratna also argues that reducing CV by this incentive is consistent with Department precedent, citing *Stainless Steel Bar From India*, 62 FR 10540 (March 7, 1997) (*SS Bar From India I*), *Stainless Steel Bar From India*, 63 FR 13622 (March 20, 1998) (*SS Bar From India II*), *Solid Urea From the Former German Democratic Republic*, 62 FR 61271 (1997) (*Solid Urea From Germany*), *Camargo Correa Metais* v. *United States*, Slip Op. 98–152 (CIT 1998) (*Camargo Correa Metais*), and *AK Steel Corp.* v. *United States*, Slip Op. 97–152 (CIT 1997) (*AK Steel Corp.*).

The petitioners argue that the Department should not use the DEPB incentive as an offset to Raajratna's CV. The petitioners argue that no statutory provision exists which allows for such an offset. The petitioners contend that the DEPB incentive is not granted in order to offset any additional costs Raajratna incurred in purchasing raw materials. The petitioners argue that, since the Department's regulations and Antidumping Manual define CV as the costs of producing the subject merchandise exported to the United States as if it were sold in the home market, CV represents non-export sales made in the home market. Raajratna rebuts petitioners' characterization of CV, citing *Ad Hoc Committee of Florida Producers of Gray Portland Cement* v. *United States*, Slip Op. 98–131 at 23 (CIT 1998).

The petitioners argue further that, because Raajratna's claimed DEPB incentives were unrelated to (and exceeded) the actual amount of import duties paid, the Department should not use the incentive amounts to reduce Raajratna's COP or CV. Also, because Raajratna classifies the DEPB incentive as a revenue on its income statement, the petitioners argue that offsetting Raajratna's CV by the DEPB benefits constitutes a deviation from Raajratna's normal accounting practice and violates section 773(f)(1)(A) of the Act, the Statement of Administrative Action (H. Doc. 316, 103d Cong., 2d Sess. 821, 834–835 (SAA)), and Department practice.

The petitioners reject the cases cited by Raajratna as unsupportive, arguing that the respondent in *Camargo Correa Metais* received a government credit for use against future tax liability in the home market, which the Court of International Trade (CIT) determined to constitute a refund of the tax. The petitioners distinguish this case in that the import duties Raajratna paid were not refunded upon exportation because the DEPB incentives it received were not based upon import duties paid on raw materials. The petitioners also argue that *AK Steel Corp.* and *Solid Urea From Germany* are unsupportive because they demonstrate the Department's long-standing practice to base COP upon a producer's actual costs and to refuse to restate such costs to exclude government payments which are linked to specific costs.

Finally, the petitioners argue that, if the Department determines that the DEPB incentives should offset Raajratna's reported raw materials costs, the Department should cap the DEPB amount by the level of import duties and apply it only to Raajratna's CV and not to its COP. The petitioners note that Raajratna requests only that its CV material costs be adjusted for DEPB benefits. The petitioners argue further that an offset to COP for the DEPB benefits is improper because no correlation exists between the import duties paid and the DEPB benefits received upon exportation.

Department's Position: We found at verification that the DEPB refunds were unrelated to the customs duties Raajratna paid to purchase raw materials for the manufacture of subject merchandise. *Cost Verification Report* at 2, 11; *Sales Verification Report* at 8. Indeed, Raajratna's DEPB benefits were based on the FOB sales prices of Raajratna's finished goods for export and exceeded substantially the amount of customs duties Raajratna paid to import raw materials directly. Therefore, because we find no link between the revenue Raajratna received and its cost of purchasing raw materials, we are unable to decrease Raajratna's COM to reflect the DEPB benefits received.

Although Raajratna cited prior decisions and precedent in support of its position, the facts of this case indicate that an offset for raw materials costs is not warranted here. First, *AK Steel Corp.* did not address the issue of a downward adjustment to production costs to reflect government benefits, as Raajratna maintains. In *Solid Urea from Germany*, the Department agreed with the respondents that, where government payments were linked to specific costs and recorded in the respondent's financial statements, the respondent's COP should reflect government benefits received. *Solid Urea from Germany* at 61273. Here, Raajratna could not link its DEPB payments to specific costs and records the payments as revenue; thus to capture the DEPB benefits in Raajratna's COP calculation would be inconsistent with *Solid Urea from Germany*. In *Camargo Correa Metais*, the Department and the CIT found that a government tax credit, which constituted a refund, should be deducted from the respondent's CV calculation. *Id.* at 3. Here, however, we found that import duties Raajratna paid were not refunded upon exportation because the DEPB incentives were not directly based upon import duties Raajratna had paid on raw materials. Further, *SS Bar from India I* did not address an adjustment to CV for government benefits received. Finally, Raajratna cites to *SS Bar from India II*, in which the Department did not discuss the reasons justifying an adjustment to the respondent's CV costs for government credits received. *Id.* However, in the original less-than-fair-value investigation for that case, the Department explained that the facts of the case warranted an adjustment to CV for government credits received because the revenues were "directly related" to its purchases of domestic raw materials used to produce subject merchandise

and represented an appropriate offset to the respondent's raw materials costs. *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915, 66920 (December 28, 1994). Because in this case we found no link between Raajratna's DEPB credits received and its raw materials costs, we find no justification for an offset to CV for those credits. Thus, where NV is based on CV, we have made no adjustment to Raajratna's raw materials costs for DEPB credits it received.

Comment 3: COP and CV Calculation

The petitioners argue that the Department should revise Raajratna's reported G&A expense ratio to include expenses incurred in its Mumbai office. The petitioners note that Raajratna included in its G&A expense ratio only the salary of the Mumbai-office employee performing liaison functions but not the expenses incurred in performing those functions. The petitioners argue that there are other legitimate G&A costs incurred by the Mumbai office for Raajratna's operation as a whole and that these should be included in COP and CV in accordance with the Department's long-standing practice.

Department's Position: We agree with the petitioners that we should include Raajratna's Mumbai-office expenses in the COP and CV calculation. We verified that the Mumbai office is a trading office which purchases raw materials consumed in the manufacturing process of the subject merchandise and occasionally facilitates HM sales. To calculate its general expenses, Raajratna included only the salary of the employee assigned to the Mumbai office. Raajratna excluded from the calculation of its G&A rate office expenses associated with maintaining that employee at the Mumbai office. Consistent with our normal methodology, we have allocated a portion of the total expenses of the Mumbai office to the merchandise under investigation. (*See Fresh Atlantic Salmon*, 63 FR at 31433.)

Comment 4: HM Indirect Selling Expenses

The petitioners argue that Raajratna did not report HM indirect selling expenses in its calculation of COP and that the Department should deduct these expenses from net HM prices before making the comparison to COP.

Department's Position: We agree that we should deduct HM indirect selling expenses from net price in our COP calculation. We calculated a HM indirect selling expense amount for Raajratna by calculating an indirect selling expense factor and applying it to Raajratna's HM sales. We deducted this amount from net price for COP. (*See* Final Determination Analysis Memorandum: Stainless Steel Round Wire From India, dated April 2, 1999.) We also added HM indirect selling expenses to our CV calculations.

Comment 5: Packing Expenses

The petitioners argue that the Department should add packing expenses to the calculation of Raajratna's COP or deduct packing expenses from the "net price COP" calculation.

Department's Position: We agree that we must deduct packing costs from net price for COP, which we compare to the cost of manufacturing, in order to achieve an apples-to-apples comparison. Therefore, we have deducted packing expenses from net price for COP for the final determination. This is consistent with the methodology we employed for all other SSRW investigations (*see, e.g.*, Preliminary Determination Analysis Memorandum—SSRW from Canada, Central Wire, dated November 12, 1998).

Comment 6: Commission Offset

The petitioners argue that the Department should use facts available for Raajratna's commission offset because Raajratna reported HM commissions but not U.S. commissions or U.S. indirect selling expenses. The petitioners argue that the Department should either omit the deduction for HM commissions from its calculation of HM prices or set the U.S. offset to the value of the HM commission.

Department's Position: We agree that Raajratna reported no U.S. commissions or U.S. indirect selling expenses. However, rather than omit the deduction for HM commissions or set the U.S. offset to the value of the HM commission, we have calculated an indirect selling expense amount by allocating all indirect selling expenses incurred by Raajratna over all sales in both markets. We then offset HM commissions by this amount for the final determination in accordance with section 351.410(e) of the Department's regulations. (*See Final Determination Analysis Memorandum: Stainless Steel Round Wire From India*, dated April 2, 1999.)

Comment 7: Financial Expense Ratio

Raajratna noted that the Department should revise its financial expense ratio based on the Department's verification findings.

Department's Position: We agree with Raajratna that we should revise the financial expense ratio according to our findings at verification and have made this adjustment for the final determination based on a company-wide cost-of-sales amount.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel round wire from India that are entered, or withdrawn from warehouse, for consumption on or after November 18, 1998, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Raajratna	18.64
All Others	18.64

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8924 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–808]

Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Robin Gray, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4852 or (202) 482–4023, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce ("the Department") regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from Spain is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 60402 (November 18, 1998) (preliminary determination).

Scope of Investigation

The scope of this investigation covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation (POI) is January 1, 1997, through December 31, 1997. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Facts Available

Inoxfil did not respond to our questionnaire. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because this firm did not respond to our questionnaire and because the relevant subsections of section 782 of the Act do not apply, we must use facts otherwise available to calculate the dumping margins for this company.

Section 776(b) of the Act provides that adverse inferences may be used when an interested party fails to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, Vol.1, 103d Cong., 2d Sess. 870 (1994) (SAA). The lack of response by Inoxfil to the Department's antidumping questionnaire constitutes a failure by this respondent to act to the best of its ability to comply with a request for information, within the meaning of section 776 of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted.

Because we were unable to calculate margins for this respondent in this investigation, we assigned this respondent the highest margin in the petition (recalculated by the Department, as appropriate). This approach is consistent with Department practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 40433 (July 29, 1998) (*Stainless Steel Wire Rod From Germany*). The highest petition margin is 35.80 percent.[1]

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

During our pre-initiation analysis of the petition, we reviewed the adequacy and accuracy of the secondary information in the petition from which the margins were calculated, to the extent that appropriate information was available for this purpose. *See Initiation of Antidumping Duty Investigations: Stainless Steel Round Wire from Canada, India, Japan, the Republic of Korea, Spain, and Taiwan*, 63 FR 26150, 26151 (May 12, 1998). However, we are aware of no other independent sources of information that would enable us to corroborate the components of the margin calculation in the petition further. The implementing regulation to section 776 of the Act, 19 CFR 351.308(c), states that "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question."

[1] At the time of initiation, we revised petition margins based on price-to-price comparisons because the petitioners had not provided sufficient support for the home market freight figures used in their calculations. We made no additional revisions to the petition margins.

Additionally, we note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Finally, the margins calculated for respondents in the other round-wire investigations are in many instances of the same order of magnitude as the margins in the corresponding petitions, suggesting that the information contained in the round-wire petitions is generally reliable.

Interested Party Comments

No parties commented on the preliminary determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel round wire from Spain that are entered, or withdrawn from warehouse, for consumption on or after November 18, 1998, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Inoxfil	35.80
All Others	24.40

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. In this case, the margin assigned to the only company investigated is based on facts available. Therefore, consistent with the SAA, at 873, we are using an alternative method. As our alternative, we have based the all-others rate on a simple average of the margins in the petition, as revised at the time of initiation of this investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8925 Filed 4–8–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–829]

Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Robin Gray, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4852 or (202) 482–4023, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to Department of Commerce ("the Department") regulations refer to the regulations codified at 19 C.F.R. Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from Canada is being sold, or is likely to be sold, in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 60402 (November 18, 1998) ("preliminary determination"). Since the preliminary determination, the following events have occurred.

In January 1999, we conducted on-site verifications of the questionnaire responses submitted by Central Wire Industries Ltd. ("Central Wire") and Greening Donald Co. Ltd. ("Greening Donald") (collectively "the respondents").

We received case briefs from the petitioners [1] and both respondents on February 23, 1999, and we received rebuttal briefs from the same parties on March 2, 1999. We held a public hearing and a proprietary hearing on March 11, 1999.

Scope of Investigation

The scope of this investigation covers stainless steel round wire ("SSRW"). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under

[1] ACS Industries, Inc., Al Tech Specialty Steel Corp., Branford Wire & Manufacturing Company, Carpenter Technology Corp., Handy & Harman Specialty Wire Group, Industrial Alloys, Inc., Loos & Company, Inc., Sandvik Steel Company, Sumiden Wire Products Corporation, and Techalloy Company, Inc.

subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation ("POI") is January 1, 1997, through December 31, 1997. This period corresponds to each respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Fair Value Comparisons

To determine whether sales of stainless steel round wire from Canada to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP"), as appropriate, to the normal value. Our calculations followed the methodologies described in the preliminary determination except as noted below. *See* also the company-specific analysis memoranda dated March 31, 1999, which have been placed in the file.

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in section 772 of the Act. We calculated EP and CEP based on the same methodology we used in the preliminary determination, with the following exceptions:

1. We calculated and deducted U.S. duties from EP for certain sales for which Central Wire did not report the duties. *See* comment 11, below.
2. We recalculated Central Wire's indirect selling expenses to account for the fact that Central Wire's sales were made in mixed currencies. *See* comment 4, below.
3. We excluded Greening Donald's U.S. consignment sales from our analysis. *See* comment 12, below.

Normal Value

We used normal value as defined in section 773 of the Act. As in the preliminary determination, we excluded certain sales for both respondents pursuant to section 773(b) of the Act because we found that these sales were made below the cost of production within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time. We calculated normal value based on the same methodology we used in the preliminary determination, with the following exceptions:

1. We revised the list of Central Wire's home-market sales which we determined to have been made outside the ordinary course of trade. *See* comment 2, below.
2. We recalculated Central Wire's indirect selling expenses to account for the fact that Central Wire's sales were made in mixed currencies. *See* comment 4, below.

Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average cost of production ("COP"), by model, based on the sum of each respondent's cost of materials, fabrication, general expenses, and packing costs. We relied on the submitted COP data except in the following specific instances where Greening Donald's submitted costs were not quantified or valued appropriately:

1. We included certain costs which Greening Donald did not report in its submitted costs. *See* comment 13, below.
2. We calculated Greening Donald's general and administrative expenses ("G&A") in accordance with our normal methodology which is based on the producing company as a whole. *See* comment 14, below.
3. We calculated Greening Donald's financial expenses based on the total operations of the consolidated corporation (*i.e.*, the Thyssen Group). *See* comment 16, below.
4. We included foreign-exchange gains and losses related to Greening Donald's cash accounts and accounts payable accounts in the COP and constructed value ("CV"). *See* comment 16, below.
5. We relied on Greening Donald's normal books and records kept in accordance with Canadian generally accepted accounting principles, and we included the year-end depreciation adjustment in the calculation of Greening Donald's costs. *See* comment 20, below.
6. During the POI, Greening Donald purchased certain major inputs from an affiliated supplier and from unaffiliated suppliers. In order to follow our normal practice of using the highest of transfer price, market price, or the affiliate's cost of production to calculate the cost of affiliated-party inputs, we calculated an adjustment which we applied to the per-unit direct material cost of all products incorporating this input. *See* comment 18, below.
7. Greening Donald asserted that its reported variances represented the weighted-average cost of fiscal year 1997 and the first quarter of fiscal year 1998. It also stated that the denominator it used in the calculation of the reported variance rates was based on cost-of-sales information rather than cost-of-manufacturing information. For the final determination, we used the variance rates based on the POI cost of manufacturing to calculate COP and CV.

Currency Conversions

As in the preliminary determination, we made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Interested Party Comments

Comment 1: *Substantial Transformation.* The respondents argue that the Department's preliminary determination that wire rod is substantially transformed in the production of round wire yields a fundamentally unfair result. The respondents contend that they must pay both "non-NAFTA" tariff duties and estimated dumping duties on the same wire used to produce stainless steel round wire because this wire is classified both as "Canadian" and as "foreign" under essentially identical Customs and Department of Commerce substantial-transformation tests. The respondents contend that the rod imported (into Canada) is not physically or chemically substantially transformed in Canada such that it merits classification as a Canadian product subject to dumping duties. The respondents observe that the Court of International Trade ("CIT") has ruled that wire rod is not substantially transformed into round wire in the context of a Customs case, citing *Superior Wire* v. *United States*, 669 F. Supp. 472 (CIT 1987) ("*Superior Wire*"), affirmed 867 F. 2d 1409 (Fed. Cir. 1989). The respondents contend that the CIT, in *Superior Wire*, noted that the end use of wire is determined by the rod input.

The respondents also contend that wire rod constitutes an essential active component which defines the key chemical and physical parameters of the finished wire and that the level of accuracy required for accurate model

matching in a dumping analysis is not necessary in a substantial-transformation analysis. The respondents contend that the substantial-transformation test requires a substantial change in the physical and chemical properties, not small differences which may be implicated in applying the model-matching criteria.

The respondents contend further that the Department's analysis of the end-uses of stainless steel wire is too specific. Citing *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea*, 63 FR 8934 (February 23, 1998), the respondents argue that the Department rarely considers changes in specific end-uses as opposed to general end-use categories sufficient to qualify as substantial transformation.

In addition, the respondents contend that the Department, lacking contrary evidence from the petitioners, should base its determination of relative investment for rod production versus wire drawing on uncontested evidence provided by the respondents. Citing *Brass Sheet and Strip from Canada*, 58 FR 6615, 6617 (February 1, 1993), *Granular Polyetrafluoroethylene Resin from Italy*, 58 FR 26100, 26102 (April 30, 1993), and section 351.402(c)(2) of the Department's regulations, the respondents contend that the value added in the wire-drawing process is insignificant and, according to Departmental policy, it does not qualify as a substantial transformation of the product. Alternatively, the respondents suggest, the Department should classify those wire products found to have particularly low value-added transformations as a product of the country from which the rod was purchased and, therefore, not subject to this investigation.

The respondents argue further that the substantial-transformation test the Department applied constitutes an "administrative determination of general application," as defined by Article 1 of the World Trade Organization ("WTO") Agreement on the rules of origin and, therefore, subject to that agreement. The respondents request that the Department explain its rationale behind its belief that Article 2 of the WTO Agreement on Rules of Origin does not require the Department to apply the country-of-origin determinations made by Customs. Considering the totality of the factors on the record in this case, the respondents request that the Department reverse its decision and terminate the investigation of SSRW from Canada.

The petitioners agree with the Department's preliminary determination that stainless steel wire rod is substantially transformed into round wire. According to the petitioners, the respondents have not made any significantly different arguments than they did prior to the preliminary determination and, moreover, the information they have submitted in support of their arguments only serves to confirm that the Department's preliminary determination is correct.

The petitioners argue that the scope of an antidumping investigation is not based on Customs rules of origin nor on the WTO rules of origin. The petitioners assert that there is nothing in the current rules that requires the Department to apply Customs country-of-origin determinations for purposes of antidumping or countervailing duty proceedings. The petitioners, citing the WTO Agreement on Rules of Origin, Article 1 n.1, contend that the respondents ignore the plain language of the WTO Rules of Origin Agreement that says its provisions do not apply to "those determinations made for purposes of defining 'domestic like product' or 'like products of the domestic industry' or similar terms wherever they apply." Moreover, the petitioners argue, even if the WTO Agreement on Rules of Origin were applicable to antidumping proceedings, there is no existing agreement on the actual origin for specific products.

The petitioners also argue that Customs Service determinations on classification or origin of a product are not binding on the Department. The petitioners assert that there are important policy reasons why the Department should not be bound by Customs Service rulings, claiming that, because of the difficult standards that have been established regarding claims of circumvention, industries that rely on a single major raw material input might not be able to obtain any relief from dumping or unfair subsidization of the downstream product.

The petitioners assert further that the respondents are not disproportionately affected by the Department's substantial-transformation ruling. The petitioners observe that both respondents use U.S.-origin wire rod to make wire that they import to the United States and that this wire qualifies for a NAFTA tariff. Furthermore, the petitioners claim that, even when the respondents use wire rod imported from countries other than the United States, they are not any different than the respondents in the other stainless steel round wire investigations.

The petitioners also assert that the respondents' reliance on *Superior Wire* is misplaced. The petitioners observe that *Superior Wire* concerned carbon steel wire, which is a different product than the one covered in this investigation. Citing *The Making, Shaping and Treating of Steel*, a standard industry reference, the petitioners claim that carbon steel and stainless steel products are quite different. The petitioners also observe that the *Superior Wire* ruling was made in the context of a voluntary restraint agreement, which is completely different from the context of an antidumping investigation. The petitioners conclude that the factual analysis of *Superior Wire* is limited to the facts of that case alone and is of no precedential value in this case. The petitioners also note that, for its preliminary determination in this investigation, the Department determined that the characteristics of stainless steel round wire are not predetermined by the rod input but, rather, that the wire rod is altered in the process of making it into round wire. The petitioners also observe that, although the respondents argue that the Department's end-use analysis is too specific, they do not suggest any alternatives.

Finally, the petitioners argue that the respondents' reliance on the data they presented regarding the value added to wire rod by the cold-drawing process is misplaced. Since these data are unverified estimates. The petitioners also assert that, based on the Greening Donald's cost data, the record indicates that the value added to wire rod by the cold-drawing process is significant.

Department's Position: We continue to find, as we stated in the Memorandum to Richard W. Moreland dated November 12, 1998 ("November 12 memorandum"), that stainless steel wire rod cold-drawn in Canada to produce stainless steel round wire is substantially transformed into a Canadian product and is within the scope of this investigation, regardless of the origin of the stainless steel wire rod input. The cold-drawing process results in a product with physical properties and end-uses that are distinct from those of the stainless steel wire rod input, thus transforming the rod into a new and different article. The stainless steel round wire industry is distinct from the stainless steel wire rod industry and the value added by the cold-drawing process is significant.

Furthermore, the respondents' reliance on *Superior Wire* is misplaced. *Superior Wire* was a ruling on carbon steel wire, not stainless steel wire.

Superior Wire, at 479, held that "the wire rod dictates the final form of the finished wire." Regardless of what circumstances may apply in the carbon steel wire industry, this statement is demonstrably not true here, as is described in detail in the November 12 memorandum.

Although the respondents argue that our substantial-transformation analysis is too specific by incorporating model-matching criteria, their argument that we should only take into account the "overall parameters" and not "small model-matching criteria" in our analysis is unconvincing. First, it is not clear why model-matching criteria such as size and tensile strength would not be part of the "parameters" of round wire. Second, it is unclear why we should not consider a change in wire rod such that the finished product (round wire) is, for example, one-third of the diameter of the rod input to be substantial. The analysis in the November 12 memorandum, at pages 4–5, demonstrates that the chemical composition, or grade, of the wire is not the only physical characteristic of the round wire. We use additional characteristics to define two products that are identical, and all those characteristics are changed by the drawing process.

Moreover, we disagree with the respondents' assertion that the end-use of wire is determined by the rod input. Again, the respondents' reliance on *Superior Wire* is misplaced. As we stated in the November 12 memorandum, at page 5, the cold-drawing process results in a product with end-uses that are distinct from those of the wire-rod input. Whatever the circumstances may be in the carbon steel wire industry, it is clear that the end-uses of stainless steel wire are dependent on factors other than the grade of the wire-rod input. The respondents have not cited any evidence on the record of this investigation or to any industry reference that suggests otherwise. Given these circumstances, we conclude that the circumstances examined in *Superior Wire* simply do not apply here.

Furthermore, we disagree with to the respondents' argument that our end-use analysis is too specific. In their case brief, quoting from Greening Donald's December 29, 1998, submission, the respondents state that "the Department is correct in noting that, within each set of general end-uses, there may be more specific end-uses. The drawing process may make SSRW more suitable for one rather than another specific end-use: nevertheless, the grade of the wire rod has pre-determined the general set of end-uses for which the wire may be used. Thus, for example, neither AISI 304 nor AISI 316 could provide the high temperature resistance required to produce a high temperature conveyor belt. By contrast, AISI 314 would provide the necessary "high temperature resistance." Thus, the respondents consider "high temperature conveyor belts" to be a general end-use. "Spring wire," that is, wire used to produce springs, which we used in an example in the November 12 memorandum, at page 5, is no less general an end-use than the example cited by the respondents. Moreover, the respondents' citation to *Semiconductors from the Republic of Korea* is inapposite. In that case, we determined that "[p]rocessed wafers produced in Korea, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Korea are not included in the scope." Thus, it is the processed wafers that are the subject merchandise, not the packaging or memory modules. In this case, it is the stainless steel round wire that is subject to this investigation. How it is packaged is not relevant to our substantial transformation analysis.

With regard to the respondents' argument that the investment required to draw wire is less than the investment required to produce rod, we agree that this can be a factor in our determination as to whether a product is substantially transformed. We do not agree that it is a controlling factor. Our review of the record indicates that "[t]he facilities, machinery and expertise needed to cold-draw stainless rod into stainless wire are distinct from those needed to produce stainless rod." *See* November 12 memorandum, at page 5. The respondents have not cited any evidence to contradict this. Thus, we find that the stainless steel round wire industry is separate and distinct from the stainless steel wire rod industry, and the two industries are not interchangeable. For this reason, we do not consider the relative levels of investment required in the industries to be as relevant in this proceeding as the fact that stainless steel round wire is a product with physical properties, that end-uses are distinct from those of stainless steel wire rod, and that the industries are distinct.

We also disagree with the respondents' assertion that the value added by the drawing process is insignificant. The cost data submitted by the respondents indicates that, on average, the value added by the drawing process is greater than the threshold suggested by the cases they cite. Furthermore, section 351.402(c)(2) of our regulations establishes whether we should apply the special rule in section 772(e) of the Act and is inapposite to a substantial-transformation determination. Section 772(e) of the Act directs that the Department may calculate the margins on further-manufactured merchandise in instances where the value added by an affiliated party is likely to exceed substantially the value of the subject merchandise. Neither section 772(e) of the Act nor 19 C.F.R. 351.402(c)(2) affect the Department's determination of whether a product is substantially transformed.

Finally, we reiterate that the disciplines of the WTO Agreement on Rules of Origin that are currently in effect under Article 2 of the Agreement simply do not require us to apply the country-of-origin determinations made by the Customs Service when making determinations in AD or CVD proceedings. Therefore, we have not altered our preliminary determination regarding our substantial transformation decision for this final determination.

Central Wire Comments

Comment 2: Ordinary Course of Trade. Central Wire argues that the Department should exclude all of the sales that it claimed were made outside the ordinary course of trade from the home-market sales used to calculate normal value. Central Wire contends that the statute directs the Department to base normal value only on sales that are made in commercial quantities and that are made in the ordinary course of trade and that the Department will consider the totality of circumstances in examining this issue, citing *Murata Mfg. Co.* v. *United States,* 820 F. Supp. 603, 607 (CIT 1993).

Central Wire notes that the Department excluded some of its claimed outside-the-ordinary-course-of-trade sales from the calculation of normal value because the Department found that some of the sales had aberrational pricing. Central Wire contends, however, that the standard the Department applied was too restrictive and argues that it would be more appropriate to use a 25-percent price difference between the sale and other sales of similar products made within the ordinary course of trade, rather than the 50-percent price difference the Department used, to determine whether an individual sale is outside the ordinary course of trade.

Central Wire also notes that the Department excluded some of its claimed outside-the-ordinary-course-of-trade sales from the calculation of

normal value because the Department found, based on Central Wire's descriptions in its responses, that the circumstances of the sales demonstrated that they were made outside the ordinary course of trade. However, Central Wire claims, there were some sales that it reported as outside the ordinary course of trade which the Department did not exclude and for which the Department did not explain why it had not excluded the sales. With regard to these sales, Central Wire contends that the Department's findings at verification demonstrate that all of its claimed outside-the-ordinary-course-of-trade sales were, in fact, made outside the ordinary course of trade and should be excluded from the Department's dumping calculations.

The petitioners contend that the information on the record does not provide a sufficient basis to support Central Wire's claims. The petitioners argue that Central Wire essentially claimed sales it made to new customers or sales of products with different specifications to existing customers as outside the ordinary course of trade. The petitioners argue that this does not demonstrate that a sale is outside the ordinary course of trade and observe that Central Wire had a number of "one-time" sales to customers that it did not claim were made outside the ordinary course of trade. The petitioners contend that, to do business in a competitive market, a producer has to accommodate its customers' needs, to sell to new customers, even to solicit new customers, and that it should not be a commercial irregularity that Central Wire sometimes sells to less-desirable customers or that it could sometimes take advantage of the market situation and charge a higher-than-normal price for identical or similar merchandise to other customers. The petitioners also argue that the nature of the customer, such as whether it was a supplier to Central Wire, should not be a factor in determining whether a sale was made outside the ordinary course of trade.

Central Wire rebuts that the Department should not accept the petitioners' argument regarding Central Wire's claimed outside-the-ordinary-course-of-trade sales on procedural grounds because, according to Central Wire, the petitioners never raised the issue of its claimed outside-the-ordinary-course-of-trade sales previously in this investigation. Central Wire argues that, if the Department accepts the petitioners arguments, it will leave respondents unable to respond adequately to allegations made by petitioners adequately. Moreover, Central Wire contends that it conservatively identified its sales as being outside the ordinary course of trade and that, perhaps, additional sales may have been able to be similarly identified.

Department's Position: We agree with the petitioners in part. A company may well obtain new customers or sell different products to existing customers, and it may even seek such business actively. In addition, the record shows that Central Wire had a number of apparent "one-time" sales which it did not claim as outside the ordinary course of trade. Thus, the fact that Central Wire has some sales to customers to which it does not normally sell or sells products that the customer does not normally buy does not demonstrate, in itself, that a sale is outside the ordinary course of trade. However, this fact, in conjunction with other circumstances, such as aberrational pricing, may lead us to conclude that a sale is outside the ordinary course of trade. In this case, we have reconsidered our analysis of Central Wire's claimed outside-the-ordinary-course-of-trade sales. We have accepted portions of Central Wire's claim that certain sales were made outside the ordinary course of trade and excluded those sales from our normal value calculation. We determined that one-time, small-quantity sales that had unusual circumstances, such as aberrational pricing, were outside the ordinary course of trade. Due to the business-proprietary nature of the information, please see the Memorandum from Thomas Schauer to Richard W. Moreland dated April 2, 1999, for a complete description of the sales we excluded and the circumstances which led us to conclude that they were outside the ordinary course of trade.

Furthermore, we disagree with Central Wire's assertion that we should use a threshold of 25 percent to determine aberrational prices instead of the 50-percent threshold we used for the preliminary determination. Central Wire argues that the lower threshold is more appropriate on the theory that the threshold we used was too "restrictive," given the nature of SSRW sales and the frequent presence of a market price for a particular product. However, Central Wire did not explain how the nature of SSRW sales renders a 25-percent threshold more appropriate, nor did it point to any evidence in support of its claim. In addition, Central Wire did not explain how the frequent presence of a market price for particular products suggests that a lower threshold would be more appropriate. We must ensure that our consideration is tailored in a manner that does not result in excluding sales that, while different from the majority of sales, are not outside the ordinary course of trade. Therefore, the standard for determining whether a sale is outside of the ordinary course of trade needs to be high in order to prevent potential manipulation of a sales database that would result in excluding sales not outside the ordinary course of trade. Central Wire has presented no convincing argument to support its claim that the threshold we used in our analysis was inappropriate. Therefore, we have not changed our threshold for this case in our analysis.

Finally, we disagree with Central Wire that we should reject the petitioners' arguments on procedural grounds. Central Wire should read the record more carefully. The petitioners have voiced their concern about Central Wire's claimed outside-the-ordinary-course-of-trade sales in a number of submissions prior to its case brief at various stages of this investigation. Further, when we receive comments in a case brief, we consider all issues raised in the context of the record as it stands at that time. Thus, there is no reason to reject the petitioners' arguments as a procedural matter.

Comment 3: Quantity-Band Matching. Central Wire argues that the Department should account for variations in prices due to quantities sold. Central Wire claims that section 773(a)(1) of the Act directs the Department to compare U.S. sales only to home-market sales made in the usual commercial quantities. Central Wire claims further that section 773(a)(6) of the Act, as well as the Department's regulations at 19 C.F.R. 351.409, directs the Department to adjust its price comparisons if there is a difference in price due wholly or in part to differences in the quantities of the normal value sale and the EP sale being compared.

Central Wire contends that, though the Department has historically been reluctant to make quantity adjustments pursuant to 19 C.F.R. 351.409, there is no reason why the Department should not make a quantity adjustment in Central Wire's case. Central Wire acknowledges that the quantity-adjustment regulation does not appear to be tailored for, nor does it account for, Central Wire's circumstances because Central Wire does not grant quantity discounts, *per se,* although it does effectively impose a surcharge for low-quantity sales.

Central Wire suggests that the Department compare U.S. sales to home-market sales made within the same "quantity band" which Central Wire suggested prior to the preliminary determination. By matching within the

same quantity bands, Central Wire argues, the Department would minimize the need for a quantity adjustment. Citing *Framing Stock from the United Kingdom,* 61 FR 51411, 51420 (October 2, 1996) ("*Framing Stock*"), Central Wire contends that the Department has used the quantity-band concept for matching purposes in prior cases. Central Wire also claims that an examination of prices within each of the quantity bands demonstrates that the average prices at each quantity band differ from each other in both the U.S. and home markets. Finally, Central Wire suggests, if the Department can not match the identical or most similar product within the same quantity band, that the Department make an adjustment based on the difference in the weighted-average prices across quantity bands.

The petitioners assert that, section 771(16) of the Act requires the Department to compare the subject merchandise based on the products' physical characteristics. The petitioners argue that, because the quantity of the product has nothing to do with the physical characteristics of round wire, quantity bands should not be used as a matching criterion. The petitioners, citing *United Eng'g & Forging* v. *United States,* 779 F. Supp. 1375, 1381–82 (CIT 1991), also argue that the courts have upheld the Department's practice of not using volume as a criterion for selecting the most similar merchandise.

The petitioners argue further that because Central Wire has not demonstrated that during the POI it granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for that country or the discounts reflect savings specifically attributable to the production of different quantities, criteria required in the Department's regulations, it is not eligible for a quantity discount.

In addition, the petitioners assert that the circumstances in *Framing Stock* are different from the instant situation. In that case, according to the petitioners, the respondent asked for a quantity adjustment for its products and the Department determined that a quantity adjustment was warranted in certain instances but not in others. In any event, the petitioners contend, the respondent in that case was seeking a quantity adjustment and not a new product-matching criterion based on sales quantities.

Finally, the petitioners argue that, even if there were not clear statutory and case precedents against comparing products on the basis of quantities, Central Wire has not provided convincing evidence to attribute price differences between its sales to differences in quantities. The petitioners argue that, in its price analysis, Central Wire did not control for certain differences, such as differences in merchandise sold among the claimed quantity bands or differences in expenses such as freight or packing for each sale. The petitioners also contend that price differences could also be caused by a number of other reasons such as the timing of the sale, customers' relationships with the supplier, and market conditions for finished products and raw materials. The petitioners conclude that it would be inappropriate to make any quantity adjustment or compare across quantity bands without taking these other factors into account.

Department's Position: Central Wire did not demonstrate that the difference in prices among its claimed quantity bands were wholly or partly due to the differences in quantities. Central Wire's price analysis did not account for many factors that might more reasonably be said to cause the differences in prices. For example, Central Wire presumably has different product mixes within the different claimed quantity bands. If one claimed quantity band consists mainly of sales of fine wire and another claimed quantity band consists mainly of sales of wire that has undergone only one draw, then that, in our view, would be a more likely explanation of any difference in prices. Also, Cental Wire's analysis reflected gross prices, and did not take other factors, such as differences in packing or freight expenses, into account. Thus, because Central Wire has not demonstrated that any differences in price among its claimed quantity bands is wholly or partly due to the differences in quantities, it would be inappropriate to attempt to match products using Central Wire's claimed quantity bands as a matching criterion. Therefore, we have not attempted to match products by quantity bands.

With respect to making an adjustment if we make comparisons of products sold at different quantities, our regulation at 19 C.F.R. 351.409 states that "the Secretary will make a reasonable allowance for any difference in quantities to the extent the Secretary is satisfied that the amount of any price differential * * * is wholly or partly due to that difference in quantities." The regulation identifies the standards we use to determine whether any price differential is wholly or partly due to that difference in quantities: "[t]he Secretary normally will calculate normal value based on sales with quantity discounts only if * * * the exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product" or "the exporter or producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities." Central Wire did not grant quantity discounts nor did it demonstrate that any difference in prices were specifically attributable to the production of the different quantities. In addition, Central Wire did not demonstrate how any evidence on the record, such as price lists, supported its claim that prices varied by quantity. Therefore, we have not made any quantity adjustments.

Comment 4: *Allocation of Indirect Selling Expenses.* Central Wire disagrees with the Department's re-allocation of its reported U.S. and home-market indirect selling expense adjustments. Claiming that there is no evidence on the record that it incurred indirect selling expenses on a value basis rather than a weight basis, Central Wire argues that there is no conceptual, accounting, or economic justification for the Department's preference for a value-based allocation.

Central Wire argues further that, in the event that the Department continues to re-allocate its indirect selling expenses on a value basis, the Department should adjust its re-allocation methodology to reflect the fact that some of the sales values in the Department's calculation are in U.S. dollars while other values are in Canadian dollars.

The petitioners agree with the Department's reallocation of Central Wire's indirect selling expenses, contending that the Department's normal practice is to require that a respondent allocate indirect selling expenses based on sales value rather than on sales quantity. The petitioners also observe that a volume allocation would likely allocate a smaller portion of the expenses to small-sized, more expensive wire than to relatively inexpensive larger wire.

Department's Position: In the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Belgium,* 64 FR 15476 (March 31, 1999), we stated that, in calculating indirect selling expenses, "the Department should use a value-based allocation rather than a quantity-based one," and that "the Department's normal practice is to base calculations of [selling, general, and administrative expenses] based on value [or cost]." While Central Wire claims that there is no evidence on the record that it incurred indirect selling expenses on a

value basis rather than a weight basis, neither is there any evidence to support a conclusion that Central Wire incurred these expenses on a weight rather than value basis. Because there is no evidence on the record demonstrating the need to deviate from our normal practice, we have reallocated Central Wire's indirect selling expenses on a value basis. Moreover, based on our findings at verification, we have revised our calculation for varying currencies in our re-allocation worksheet. *See* Central Wire Final Determination Analysis Memorandum dated March 31, 1999.

Comment 5: Post-Verification Cost Submission. The petitioners argue that the Department should not accept the cost data which Central Wire submitted after verification because the changes Central Wire made to its data were more extensive than necessary as indicated by the Department's verification report. Although Central Wire presented corrections to the verifiers at the beginning of verification, the petitioners contend that certain changes, such as production quantities and the number of products sold, should not have been affected by those corrections. The petitioners also claim that Central Wire reported its costs based on the products sold during the POI, whereas the Department asked for respondents to report costs based on the products produced during the POI.

The petitioners also contend that Central Wire did not reconcile its reported costs for subject merchandise to its normal accounting records, thereby preventing the Department from performing certain verification procedures.

Finally, the petitioners argue that Central Wire should not be allowed to use verification as an opportunity to make substantial revisions to its submitted responses. The petitioners conclude that, in light of these facts, the Department should not use the cost databases submitted by Central Wire after verification and instead use the databases Central Wire submitted prior to verification.

Central Wire argues that the Department should use the databases that Central Wire submitted subsequent to verification. Central Wire contends that its revised costs correct inaccuracies in its previous submissions, the Department verified these revised costs, and it did not in any way modify the total cost of goods sold it used to calculate costs of production. Central Wire argues further that the Department is required by law and practice to accept its new information as it is demonstrably more accurate than its earlier information and was submitted in a timely manner. Central Wire contends that the number of products and the production quantities changed because of corrections presented at the start of the sales verification. Finally, citing *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part,* 64 FR 2173 (January 13, 1999), Central Wire argues that the fact that its data is based on sales quantities rather than production quantities is not a basis for rejecting Central Wire's costs. Central Wire contends that, because it does not maintain production records which would allow it to calculate model-specific costs on the basis of production quantities, it acted to the best of its ability in reporting its costs.

Department's Position: The cost data Central Wire submitted after verification is accurate. By applying the cost variances in Exhibit 8 of the cost-verification report dated February 8, 1999, to the model-specific standard costs in Exhibit 7 of the cost-verification report dated February 8, 1999, we obtained the same cost figures that Central Wire submitted after verification. Because we verified the data in Exhibits 7 and 8 of the cost-verification report by tying the data to Central Wire's audited financial statements, we are satisfied that the cost-of-production data in Central Wire's submission is accurate. With regard to the number of control numbers and production quantities, we agree with Central Wire that the cause of the difference is due to corrections presented at the start of verification.

Although the petitioners are correct that Central Wire reported its revised costs based on the products sold during the POI, this is the manner in which Central Wire reported its original costs. In addition, we never asked Central Wire to revise its methodology for calculating costs nor is there any evidence on the record suggesting that Central Wire's methodology is distortive. In light of these facts and because the revised database contains data which we verified to be accurate, it would be inappropriate to reject Central Wire's revised database in favor of its original database.

Furthermore, while we normally would share the petitioners' concerns regarding the accuracy of post-verification revisions, in this case we requested that Central Wire revise and resubmit its databases pursuant to our findings at verification. Because we requested the data and because Central Wire met the deadline we imposed upon it for submitting the revised data, we determine that Central Wire's revisions were filed in a timely manner. Thus, because Central Wire's information is timely filed and verified to be accurate, we have used the revised databases Central Wire submitted.

Comment 6: General and Administrative Expenses. The petitioners argue that the Department should recalculate Central Wire's reported general and administrative expense ratio to include certain expenses which Central Wire did not include in its general and administrative expense calculation.

Central Wire contends that it did include the expenses to which the petitioners refer in its general and administrative expense calculation.

Department's Position: Exhibit 4 of the cost-verification report dated February 8, 1999, demonstrates that Central Wire included these expenses in its general and administrative expense calculation. Therefore, no adjustment is necessary.

Comment 7: Alleged Consignment Sales. The petitioners contend that the Department found that Central Wire did not report certain sales in its home-market database and that the Department should include these sales in its margin calculation for Central Wire for the final determination. The petitioners argue further that, to the extent that the data the Department collected are not sufficient, the Department should resort to partial facts available to fill in the blanks for information not on the record.

Central Wire argues that it reported these sales properly. Central Wire contends that, during the period of time in which these sales occurred, the consignment agreement with the consignee had not been concluded and thus Central Wire prepared an invoice at the time of shipment. Central Wire asserts that it did not begin issuing usage invoices for shipments to the consignee until after reaching a consignment agreement. According to Central Wire, the existence of the consignment agreement therefore explains why merchandise was shipped in 1996 but had sales dates in 1997.

Department's Position: We disagree with the petitioners. The record shows that Central Wire did not enter into a consignment agreement with the consignee until October 1996. Furthermore, according to the Department's Central Wire Sales Verification Report dated February 8, 1999, at page 7, for shipments to the consignee "prior to the signing of the consignment agreement, [Central Wire]

invoiced the consignment sales at the time of delivery to the consignee rather than the time of usage." Thus, these sales can be distinguished from the shipments to the consignee after the agreement was made. In the case of sales Central Wire made prior to the agreement, the date that the price and quantity were set was the date of shipment and the customer was responsible for payment at that time. In the case of sales after the agreement, the price and quantity were not set until the customer actually used the merchandise, at which time Central Wire issued a usage invoice for the merchandise. In this case, the customer was not responsible for payment until Central Wire issued the usage invoice. Therefore, we conclude that Central Wire excluded the sales made prior to the agreement from its home-market sales database properly because they occurred prior to the POI. *See* Memorandum from Thomas Schauer to Richard W. Moreland dated April 2, 1999 for further discussion of this issue.

Comment 8: Inventory Carrying Costs. The petitioners argue that the Department should not consider certain inventory carrying costs as direct expenses as Central Wire claimed. The petitioners contend that Central Wire is the owner of the merchandise during the inventory carrying period in question and thus these expenses should be treated as any other inventory carrying expense. The petitioners contend further that the facts were different in *Stainless Steel Wire Rod From France*, 58 FR 68865 (December 29, 1993), which Central Wire cited to support its claim. The petitioners state that Central Wire reported the date that the consignee *used* the merchandise as the date of sale rather than the date when Central Wire *shipped* the merchandise to the consignee.

Central Wire asserts that the petitioners do not demonstrate that the Department's decisions applicable to these circumstances are wrong, nor do they distinguish this situation with the situation in the case it cited in claiming these expenses as direct. Central Wire contends that, because it is the Department's practice to treat consignment inventory carrying costs as direct expenses, the Department deducted them from normal value in the preliminary determination as direct expenses appropriately. Central Wire cites *Stainless Steel Wire Rod From France*, 58 FR 68865, 68870 (December 29, 1993), and *Flat-Rolled Steel From France*, 58 FR 37125, 37133 (July 9, 1993), in support of its contention.

Department's Position: Central Wire's situation is similar to that of Usinor, a respondent in *Flat-Rolled Steel From France*, in which we treated the expense of holding inventory at the customer's warehouse as a direct expense. In that case, the "merchandise [was] shipped to a warehouse selected by the customer and the customer assumes the warehousing expense. Usinor [did] not invoice the customer until it [was] notified that the customer has withdrawn the material from the warehouse." *See* Concurrence Memorandum (public version), dated June 17, 1993 for *Final Determinations in Antidumping Duty Investigations of Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France* (Investigations A–427–806 through 809), at pp. 10–11. Similarly, in this case, because the so-called "consignee" is itself the customer for this merchandise and this "consignment" arrangement is a term of sale, these expenses are direct in nature. Therefore, we have not changed our treatment of these expenses for the final determination.

Comment 9: Freight Expense. The petitioners argue that the Department should restate Central Wire's reported freight expense for CEP sales. The petitioners observe that, in instances in which Wire Industries, Central Wire's U.S. affiliate, included goods on more than one invoice in a shipment, Central Wire calculated the per-unit inland freight by dividing the freight expense by the gross weight of the shipment rather than the net weight, thereby understating the expense. The petitioners argue that, because Central Wire did not revise its reported inland freight expense in the CEP sales listing based on the Department's verification findings, the Department should revise the expense for the final determination. Because it is not possible to determine from the record which sales are affected by this understatement, the petitioners argue that the Department should adjust the freight expense for all CEP sales.

Central Wire argues that the Department should accept its reported inland freight. Citing the sales-verification report, Central Wire contends that this type of calculation was infrequent and only has a minimal effect on the actual adjustment. Given the infrequent nature of this calculation and the minuscule impact of this calculation, Central Wire concludes that it would be inappropriate for the Department to make an upward adjustment to freight for all of its CEP sales.

Department's Position: We found at verification that this calculation affected only a small proportion of its CEP sales. *See* the Department's Central Wire sales-verification report dated February 8, 1999, at page 9. Section 777A(a)(2) of the Act directs that "[f]or purposes of determining the export price (or constructed export price) * * * the administering authority may * * * decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise." Section 351.413 of our regulations defines "insignificant adjustments" as any individual adjustment having an *ad valorem* effect of less that 0.33 percent of the export price, constructed export price, or normal value. The sales-verification report demonstrates that the effect of Central Wire's calculation was less than 0.33 percent of price. *Ibid.* We conclude from the facts on the record that Central Wire's calculation for these few sales will not affect the margin significantly. It would be inappropriate to increase the freight expense for all of Central Wire's CEP sales because the verification report demonstrates that this allocation affected a minority of these sales. Therefore, we have not revised Central Wire's reported freight expense.

Comment 10: Fuel Surcharge. The petitioners argue that, because the Department found that Central Wire did not include a fuel surcharge for one CEP transaction in its inland-freight calculation for one product, the Department should adjust the freight expense for all CEP sales of that product for the final determination.

Central Wire argues that the Department should not make an adjustment because the effect is minuscule and that it only affected one sale. Central Wire argues further that, in the event that the Department does make the change the petitioners suggest, the Department should not rely on the petitioners' formula because it is mathematically incorrect.

Department's Position: We found at verification that Central Wire inadvertently did not include a fuel surcharge incurred on one shipment in its reported freight expense. It is clear from Exhibit 12a of the Department's Central Wire sales-verification report dated February 8, 1999, that the fuel surcharge affects several different products. However, in examining the data on the record, we conclude that it is not possible for us to include the fuel surcharge except for the individual product we verified. To correct this error for the one product accurately, we allocated the freight surcharge to that product in the same manner as Central

Wire calculated the freight expense and recalculated the total freight accordingly.

With regard to the rest of the products affected, we do not have the data on the record to include the fuel surcharge in Central Wire's freight expenses. Because it is clear from Exhibit 12a of Central Wire's sales-verification report dated February 8, 1999, that the effect is substantially less than 0.33 percent of the price of the sale we verified, correction of this error will not affect the margin significantly. Therefore, because it is impossible for us to correct the error except for the one product and because the effect of the error is insignificant, we have restated Central Wire's reported freight expense only for the one product.

Comment 11: U.S. Customs Duties. The petitioners contend that Central Wire did not report U.S. duties for certain EP sales with "delivered" terms of sale. The petitioners claim there is no reason why Central Wire would not incur U.S. duties for such sales and argue that the Department should use the higher of the duty rates which the Department verified for EP sales to calculate the duties for these sales.

Central Wire argues that it reported U.S. duties correctly, which the Department verified. Central Wire also asserts that it was incumbent on the petitioners to raise this issue prior to verification so that the Department could address it at verification.

Department's Position: We requested that Central Wire report the unit amount of any customs duty paid on the subject merchandise in our questionnaire. Although Central Wire stated in its narrative questionnaire response that it reported duties on all sales for which they were incurred, the EP sales database did not reflect these duties for certain sales. There is no explanation on the record showing why these specific EP sales would not have U.S. duty expenses related to them nor is there any evidence that Central Wire did not incur these expenses for these sales. Because these were "delivered" sales, which means that Central Wire was responsible for all shipping costs to the customer, we assume that Central Wire did, in fact, incur these expenses. In determining the amount of duties paid on the subject merchandise and in accordance with section 776(e) of the Act, we have used the average U.S. duty rate for other EP sales with the same sales terms to calculate the U.S. duties for these sales.

Greening Donald Comments

Comment 12: U.S. Consignment Sales. The petitioners argue that the Department should treat Greening Donald's U.S. consignment sales as CEP sales because the merchandise was sold by or for Greening Donald's account after importation into the United States and because the consignee is substantially involved in selling in the United States on behalf of Greening Donald.

The respondent argues that the Department should continue to treat its consignment sales as EP sales because the title of goods remains with Greening Donald and that the consignee acts independently of Greening Donald in terms of sales, pricing, and region, as the Department confirmed at verification. The respondent argues that these facts do not meet the Department's test for distinguishing between EP and CEP sales and thus the Department should consider these sales to be EP sales.

Department's Position: Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States *before or after* the date of importation by or for the account of the producer or exporter of the subject merchandise" (emphasis added). Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) *before* the date of importation by the producer or exporter of the subject merchandise" (emphasis added). The record is clear that Greening Donald did not make a sale prior to the time that the subject merchandise was imported into the United States. Therefore, we agree with the petitioners that Greening Donald's consignment sales are CEP sales. However, because we did not request Greening Donald to report the consignee's sales to the unaffiliated customer in the United States and because we do not otherwise have the prices of those sales, we cannot treat these sales as required by the statute and the regulations. Furthermore, these sales represent less than five percent of Greening Donald's total sales to the United States. Therefore, we have disregarded these U.S. sales for purposes of calculating Greening Donald's margin for the final determination.

Comment 13: Certain Supplies. Greening Donald argues that, in its preliminary determination, the Department erred by including in its manufacturing costs the cost for certain supplies purchased during the POI but not used until after the POI. Greening Donald claims that these costs should be excluded from the calculation of COP and CV because the expenses cannot properly be matched to the merchandise that was sold during the POI, citing *AK Steel Corporation* v. *United States*, No 96–05–01312, Slip. Op. 97–152 (CIT 1997). Greening Donald asserts that, because the supplies were purchased during the POI but they were not used until after the POI, inclusion of the cost of these supplies in the COP and CV calculations would distort the reported costs. The respondent also cites *Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy*, 60 FR 31981, 31991 (June 19, 1995), in which the Department refused to include the respondent's reported cost reversals that were recorded during the POI but that related to operational expenses of a prior period, in support of its position.

Greening Donald asserts that its normal books and records distort costs because they do not reflect the cost associated with the production and sale of the merchandise. Greening Donald claims that in such instances the Department allows or makes adjustments to the respondent's costs as reported in the normal books and records, citing *Static Random Access Memory Semiconductors from The Republic of Korea*, 63 FR 8934, 8937 (February 23, 1998), and *Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8920 (February 23, 1998). Therefore, Greening Donald argues that such an adjustment should be made in this instance to conform to the Statement of Administrative Action, H. Doc, 316, 103d Cong., 2d Sess. 821 (1994) ("SAA") which states that "costs will be allocated using a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the product under investigation" and *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295–27379, 27362 (May 19, 1997).

The petitioners agree with the Department's denial of Greening Donald's claim to exclude the cost of certain supplies from its COP. The petitioners point out that, during verification, Greening Donald was unable to substantiate the quantity and value of the supplies in question that it consumed during the POI. The petitioners also observe that Greening Donald recorded the cost of the supplies in question in its financial statements, which were in accordance with Canadian generally accepted accounting principles ("GAAP"). Thus, the petitioners argue that the Department should continue to include these costs in Greening Donald's COP for its final analysis.

Department's Position: We have not accepted Greening Donald's claim that

we should exclude from the calculation of COP and CV the expense that the respondent recognized for certain supplies during the POI. Section 773(f) of the Act directs the Department to calculate costs based upon the respondent's records, provided that such records are kept in accordance with respondent's home-country GAAP and reasonably reflect the costs associated with the production of the merchandise. In this case, Greening Donald's independent auditors accepted the company's treatment of these supplies (*i.e.*, written-off or expensed fully during the period).

We disagree with Greening Donald's contention that we should depart from the costs that it calculates in the ordinary course of business and exclude the portion of the costs that relate to supplies that it may have not consumed during the POI. First, the amount the company wishes to capitalize is merely an approximation because the company does not maintain inventory or movement records that identify the actual quantity and the value of the supplies in question. *See* Greening Donald Cost Verification Report at page 15. Thus, Greening Donald's proposed adjustment could not be substantiated with production or accounting records. In circumstances where there is an absence of verifiable information supporting a party's claim, our practice is to rely on the amounts recorded in the books and records of the respondent. *See Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy*, 60 FR 31981 (June 19, 1995). Second, it is also likely that Greening Donald actually consumed some supplies during the POI which it purchased and expensed in prior periods. If we were to adopt Greening Donald's proposed methodology, we would not only exclude some of the current purchases, we would also include a portion of purchases from prior periods. Since this information is not on the record and the company's normal method of recognizing the full expense when purchased is acceptable under Canadian GAAP, we have not excluded these costs for the final determination.

Comment 14: General and Administrative Expenses. Greening Donald argues that the Department should accept the method the company used to calculate its reported general and administrative (G&A) expense ratio. Greening Donald asserts that its reported G&A expense ratio was based on the company's historic allocations and is the appropriate methodology and consistent with past practice. Greening Donald states that it first allocated the company's G&A expenses to its separate operating divisions using historic allocations which it uses in the ordinary course of business. It argues that it based these allocations on the operating realities of the company's business. Greening Donald states that it allocated each division's portion of the G&A expense to its merchandise over its cost-of-sales figures. If it simply computed G&A expenses on a company-wide basis as a percentage of cost of sales, Greening Donald argues that the result would over-allocate G&A expenses to the subject merchandise. Moreover, Greening Donald states that the Department does not always use the company-wide cost-of-sales figure as the allocation base when the results are distortive. To support this assertion, Greening Donald cites *Dynamic Random Access Memory Semiconductors of One Megabit of Above from the Republic of Korea*, 61 FR 20216, 20217 (May 6, 1996).

If the Department does revise its G&A expense ratio based on the company-wide cost-of-sales figure, Greening Donald argues that it should use the company's unconsolidated cost-of-sales figure based on the sum of its divisional profit and loss ("P&L") statements. Greening Donald claims that this step is necessary because the cost-of-sales figure on the company-wide financial statements represents a consolidated figure of the three divisions which excludes inter-divisional transfer amounts. According to Greening Donald, the Department's normal practice is to calculate the G&A expense rate based on a respondent company's unconsolidated statements and cites *Stainless Steel Wire Rod from Japan*, 63 FR 40434 (Comment 8) (July 29, 1998), to support this assertion.

The petitioners argue that the Department should calculate Greening Donald's G&A ratio in accordance with the Department's normal methodology. According to the petitioners, the respondent did not follow the instructions in the Department's questionnaire which requires respondents to calculate the G&A expense ratio based on the company's audited financial statements. Instead, the petitioners comment, Greening Donald reported a G&A expense ratio for its wire division that was based on allocations of its total company G&A expenses to each division. The petitioners argue that this method is inappropriate because it is based on historic allocations that Greening Donald could not substantiate with source records. The petitioners also disagree with Greening Donald's concern that the Department should use an unconsolidated cost-of-sales figure if the Department does decide to revise its G&A expense ratio. According to the petitioners, Greening Donald is using an incorrect reference to the term "consolidation." The petitioners note that the three operating divisions of the company are not independent companies so their internal P&L statements do not represent unconsolidated financial statements. The petitioners also contend that Greening Donald's cost-of-sales figure is not on the same basis as the reported cost of manufacturing ("COM") because the reported cost-of-sales figure includes packing expenses, freight, and certain adjustments not included in COM.

Department's Position: Normally, we calculate G&A based on the producing company as a whole and not on a divisional or product-specific basis. *See Fresh Atlantic Salmon from Chile*, 63 FR 31412, 31433 (Comment 29) (June 9, 1998). This approach recognizes the general nature of these expenses and the fact that they relate to the company as a whole. The Department's methodology also avoids any distortions that may result if greater amounts of company-wide general expenses are allocated disproportionally between products. In this instance, Greening Donald deviated from the Department's normal methodology and calculated its G&A expenses using an internal accounting methodology, under which the company charged some G&A expenses directly to each of its production divisions.

Both parties agree that it is our normal practice to calculate the G&A expense rate based on the respondent's unconsolidated operations (plus a portion of G&A expenses incurred by affiliated companies on behalf of the respondent). *See Stainless Steel Wire Rod from Japan*, 63 FR 40434 (comment 8) (July 29, 1998). However, Greening Donald's divisions are not separate entities that require consolidation but merely separate business units that make up a single corporation. Thus, we agree with the petitioners that we can not consider the divisional P&L statements as "unconsolidated" financial statements. As for Greening Donald's concern that the corporate-wide cost-of-sales figure is understated because it excludes inter-divisional transfer amounts, we disagree. It would be inappropriate to allocate G&A expense to inter-company transactions since the amount would normally be eliminated when preparing the company-wide financial statements. Even in the cases where two separate but affiliated companies are collapsed

into one entity for the purposes of an antidumping analysis, the Department eliminates inter-company transactions from the calculation of cost of sales, in effect treating them as a single company. *See Certain Cut-to-Length Carbon Steel Plate from Brazil*, 63 FR 12744, 12749 (Comment 8) (March 16, 1998).

As for Greening Donald's citation to *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea*, 61 FR 20216, 20217 (May 6, 1996), the Department's position addressed the basis of allocating indirect selling expenses and not general expenses. Thus, the circumstances were different and not related to the calculation of the G&A expense ratio. For the reasons stated above, we have calculated Greening Donald's G&A expense ratio in accordance with our normal methodology using a cost-of-sales figure that was on the same basis as the reported COM.

Comment 15: Financial Expenses. The petitioners contend that Greening Donald did not use the financial statements at the highest level of consolidation to calculate its financial-expense ratio. Thus, the petitioners recommend that the Department revise the company's financial expenses accordingly.

Greening Donald claims that it calculated its financial expense ratio in accordance with the Department's instructions and, thus, should not be revised. According to Greening Donald, there is no requirement in the Department's questionnaire that the level of consolidation must be the highest level of consolidation. Greening Donald believes that the calculation of financial expense should be based on the level of consolidation that excludes operations unrelated to the production of subject merchandise.

Department's Position: We agree with the petitioners that Greening Donald did not calculate its financial expenses using information from the consolidated financial statements of the highest level. Specifically, Greening Donald used Thyssen Industrie's consolidated financial statements. However, Thyssen Industrie's financial statement data is consolidated into the Thyssen Group's financial statements. As we have stated repeatedly and the CIT has upheld, we recognize the fungible nature of a corporation's invested capital resources. We allocate the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation (*i.e.*, Thyssen Group). More important, our established practice of requiring the use of consolidated financial statements recognizes the fungible nature of invested capital resources such as debt and equity of the controlling entity within a consolidated group of companies and that the controlling entity within a consolidated group has the power to determine the capital structure of each member company (*e.g.*, Thyssen Industrie) within its group. *See E.I. Du Pont de Nemours & Co.* v. *U.S.*, Slip. Op. 98–7 (CIT 1998), *Camargo Correa Metals, S.A.* v. *U.S.*, 17 CIT 897 (CIT August 13, 1993), and *Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review*, 62 FR 38059, 38060 (July 16, 1997).

Comment 16: Foreign-Exchange Losses. The petitioners state that the Department should follow its normal practice and include Greening Donald's foreign-exchange losses generated from accounts payable in the calculation of COP and CV. As support for their position, the petitioners cite several Department determinations in which the Department included this expense in respondent's cost.

Greening Donald recognizes that it is the Department's practice to include foreign-exchange gains and losses related to all accounts except accounts receivable accounts. Thus, if the Department decides to include these amounts, Greening Donald contends that it should include both the gains and losses generated from accounts payable and cash accounts. Greening Donald requests further that the Department reconsider its policy in regards to foreign-exchange gains and losses related to accounts receivable. The respondent argues that the Department should treat these gains and losses the same way it treats gains and losses from short-term investments which are used to adjust financing costs.

Department's Position: To calculate its reported costs, Greening Donald excluded foreign-exchange gains and losses. However, our normal practice is to include a portion of these foreign-exchange gains and losses in the calculation of COP and CV. Specifically, it is our normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago*, 63 FR 9177, 9181 (February 24, 1998) (*"Steel Wire Rod from Trinidad and Tobago"*). We normally include in the calculation of COP and CV the foreign-exchange gains and losses that result from transactions related to a company's manufacturing activities. We do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company. *See, e.g., Steel Wire Rod from Trinidad and Tobago* and *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411, 31430 (June 9, 1998). Accordingly, for purposes of the final determination, we have included only the foreign-exchange gains and losses that relate to maintaining accounts payable and cash accounts. We disallowed foreign-exchange gains and losses arising from sales transactions in the COP and CV calculation.

Comment 17: Inventory Write-Downs. The petitioners argue that the Department should revise Greening Donald's reported costs to include losses for inventory adjustments. Citing *Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29571 (June 5, 1995), the petitioners claim that it is the Department's practice to include inventory write-downs and write-offs in the cost of production.

According to Greening Donald, the write-down portion of its inventory adjustment is associated with finished-goods inventory and, as such, it should not be included in cost of production. To support its assertion, Greening Donald cites *Stainless Steel Wire Rod from Italy*, 63 FR 40422, 40430 (July 29, 1998), in which the Department excluded this type of expense.

Greening Donald claims that the other component of its inventory adjustment is due to changes in the price of wire rod which affect the cost of production. However, Greening Donald contends, because wire rod prices increased, not decreased, during the POI, the net amount of inventory was a gain or a write-up to materials inventory. Thus, Greening Donald asserts, the net effect on the cost of production, were the Department to adjust for this, would be to reduce its costs of production. Greening Donald observes that, in any event, the amount of these adjustments would have no material effect on the reported cost.

Department's Position: We agree with the respondent that inventory write-downs which are made to value finished-goods inventory at the lower of cost or market should not be considered a part of COM. We derive the product-specific costs during the POI from the cost of products manufactured, not sold. Thus the value of beginning and ending finished-goods inventory does not affect the calculation. Therefore, consistent with our most recent determinations, we have excluded this expense from the calculation of COP and CV. *See, e.g., Stainless Steel Wire Rod from Italy*, 63

FR 40422, 40429 (July 29, 1998). We disagree that *Canned Pineapple Fruit from Thailand* is relevant because of facts specific to that case. In *Canned Pineapple Fruit from Thailand*, we found that "inventory write-downs are a normal, recurring period adjustment made annually by (the respondent)."

We agree with the respondent that its adjustment to its wire-rod prices held in inventory is minor. Specifically, Greening Donald normally records a variance to reflect the gain or loss that occurs when its wire-rod standard costs are updated. During the fiscal year, Greening Donald experienced a favorable variance (reduction in costs) while during the POI it experienced an unfavorable variance (increase in costs). Because the variance relates to the value of raw materials, which are a component of COM, we consider it more appropriate to include the variance related to the POI rather than the fiscal year. However, we have not made this adjustment for the final determination due to the immaterial impact the variance has on the reported costs.

Comment 18: Affiliated-Party Inputs. The petitioners state that the Department should value major inputs between affiliated companies at the higher of transfer price, market price, or the cost to the affiliated supplier. Therefore, the petitioners suggest that, in order to reflect properly the value of certain wire rod Greening Donald purchased from an affiliated party, the Department should use the average price Greening Donald paid to unaffiliated suppliers for the same input during the POI.

The respondent, citing section 773(f)(3) of the Act, argues that the major-input rule would be applicable if the affiliated suppliers were the producers of the wire rod sold to Greening Donald and the Department had reason to believe or suspect that the price of the major input between affiliated parties was below the cost of production. With regard to the first condition, the respondent states that this affiliated supplier did not produce the input but purchased it from an unaffiliated supplier. As to the second condition, the respondent claims that the price this affiliated supplier paid for the input was lower than the price it charged to Greening Donald. Therefore, according to the respondent, the Department has no reason to believe that the transfer price is below the cost of production. In addition, the respondent argues, even if the Department determines to make the adjustment the petitioners suggest, it should use a weighted-average price based on home-market purchases from unaffiliated suppliers.

Department's Position: We agree with the petitioners that the major-input rule should be applied to Greening Donald's purchases of certain wire rod obtained from an affiliated party. As a result, we disagree with the respondent's narrow definition of the term "producer" as it is used in section 773(f)(3) of the Act. The intent of this section and the related regulations is to account for the possibility of shifting costs to an affiliated party. This possibility arises when an input passes to the responding company through the hands of an affiliated supplier, regardless of the value added to the product by the affiliated supplier.

Sections 773(f)(2) and (3) of the Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (for use in determining both COP and CV) to the Department. Section 773(f)(2) of the Act indicates that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration. Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties. Section 773(f)(3) of the Act indicates that, if transactions between affiliated parties involve a major input, then the Department may value the major input based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under section 773(f)(2) of the Act. Therefore, for the final determination, we have made an adjustment to increase the transfer price to a market price using the adjustment factor Greening Donald suggests.

Comment 19: Miscellaneous Taxes and Expenses. The petitioners contend that the Department should revise Greening Donald's COP to include the Ontario capital tax, large-corporation tax, bad-debt expenses, miscellaneous income and expense, and discount income. According to the petitioners, Greening Donald inadvertently omitted these expenses.

The respondent states that it has already corrected this omission. According to Greening Donald, it provided a revised submission on December 29, 1998, that included these items in the calculation of COP and CV. Therefore, the respondent claims no further adjustment is needed to include them. However, Greening Donald does believe that the Department should now make an adjustment to remove the large-corporation tax and the Ontario capital tax included in the calculation of COP and CV because they relate to taxes paid on capital stock and, as such, they should not be included in the calculation of COP and CV.

Department's Position: We agree with the respondent that it included these expenses included in the calculation of COP and CV. *See* the Department's Greening Donald Cost Verification Report at page 4, step I.A. Thus, no further adjustment is necessary to include these expenses.

With regard to the respondent's claim that we should not include the large-corporation tax and the Ontario capital tax in Greening Donald's reported COP, we have stated our position on this issue in several previous cases. In those cases, we included payments to governments, other than income taxes, that are periodic general taxes levied on the company and which are not based on revenues. Thus, it is appropriate to include them in the calculation of the company's general expense. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 62 FR 18448, 18465 (April 15, 1997).

Comment 20: Auditor's Adjustment. The petitioners argue that the Department should revise Greening Donald's reported cost to include an adjustment the company's independent auditors made. The petitioners point out that this adjustment is included in Greening Donald's financial statements which are prepared in accordance with Canadian GAAP. As such, the petitioners claim that the expense should be included in the calculation of COP and CV.

The respondent argues that this adjustment was made by the outside accountants only for the purposes of calculating Greening Donald's tax liability. According to the respondent, the adjustment is not included in the company's internal books and records which are maintained in accordance with Canadian GAAP.

Department's Position: We agree with the petitioners that it is appropriate to include this year-end adjustment in the calculation of COP and CV. Specifically, Greening Donald excluded from its reported costs a year-end adjustment that reconciles the depreciation expense reported in its cost accounting systems with the depreciation expense reported in the audited financial statements. As a result, there is a difference between the actual manufacturing costs in the financial statements and the manufacturing costs Greening Donald submitted. We do not find relevant Greening Donald's claim that the

outside accountants made this adjustment merely for tax purposes. First, Greening Donald's audited financial statements, which were prepared in accordance with Canadian GAAP, include this adjustment. Moreover, Greening Donald provided no explanation as to why recognition of this adjustment distorts costs. Consistent with our normal practice, we rely on the respondent's normal books and records kept in accordance with the respondent's home country's generally accepted accounting principles. Thus, we have included this adjustment in the calculation of COP and CV.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel round wire from Canada that are entered, or withdrawn from warehouse, for consumption on or after November 18, 1998, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Central Wire	11.79
Greening Donald	11.18
All Others	11.64

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8926 Filed 4–8–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–829]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell at (202) 482–1442 or (202) 482–3813, respectively, Group 1, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from Taiwan is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 64042 (November 18, 1998) (preliminary determination). Since the preliminary determination, the following events have occurred:

In January and February 1999, we conducted on-site verifications of the questionnaire responses submitted by respondent Tien Tai Electrode Co., Ltd. (Tien Tai) and its affiliate [1] Kuang Tai Metal Industry Co., Ltd. (Kuang Tai).[2]

The petitioners [3], Tien Tai/Kuang Tai, and Rodex submitted case briefs on February 23, 1999, and rebuttal briefs on March 2, 1999. We held a public hearing on March 11, 1999.

Scope of Investigation

The scope of this investigation covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation (POI) is January 1, 1997, through December 31, 1997. This period corresponds to each respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

[1] As explained in the preliminary determination, for purposes of this investigation we are treating Tien Tai and Kuang Tai as a single entity.

[2] Verification of respondent Rodex Fasteners Corp. (Rodex) was conducted in September and October 1998, prior to the issuance of the preliminary determination.

[3] The petitioners are ACS Industries, Inc., Al Tech Specialty Steel Corp., Branford Wire & Manufacturing Company, Carpenter Technology Corp., Handy & Harman Specialty Wire Group, Industrial Alloys, Inc., Loos & Company, Inc., Sandvik Steel Company, Sumiden Wire Products Corporation, and Techalloy Company, Inc.

Fair Value Comparisons

To determine whether sales of stainless steel round wire from Taiwan to the United States were made at LTFV, we compared the export price (EP) to the normal value. Our calculations followed the methodologies described in the preliminary determination, except as noted below and in company-specific analysis memoranda dated April 2, 1999, which have been placed in the file.

Export Price

We used the same methodology to calculate EP as that described in the preliminary determination.

Normal Value

We used the same methodology to calculate normal value as that described in the preliminary determination, except that for Tien Tai, we revised the reported credit expenses to correct an error in the credit period.

Cost of Production

We used the same methodology to calculate cost of production (COP) as that described in the preliminary determination, except in the following specific instances:

1. Rodex

We corrected two errors made in the preliminary determination with respect to a year-end auditor's adjustment to the reported labor and overhead costs. *See* Rodex comment 3.

2. Tien Tai

We made an adjustment for wire rod input costs. We included in general expenses (1) the value of stock bonuses made to employees and directors, (2) R&D expenses, (3) certain foreign exchange gains and losses, and excluded from general expenses certain non-operating income. Further, we reduced the cost of sales of the companies by the verified inter-company transactions. Finally, we eliminated the double-counting of packing expenses of Kuang Tai.

Unit of Weight for Tien Tai

We corrected a clerical error in the margin program for Tien Tai involving the unit of weight used to calculate the total amount of dumping.

Currency Conversions

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, in accordance with section 773A of the Act. We relied on exchange rates certified by the Federal Reserve Bank.

Interested Party Comments

A. Tien Tai/Kuang Tai

Comment 1: Costs for Inter-Company Raw Material Purchases. The petitioners argue that the extent of Tien Tai's purchases of wire rod from Kuang Tai was understated, and not disclosed until verification. The petitioners also contend that because Tien Tai and Kuang Tai are a single entity for purposes of this investigation, they should have reported their respective acquisition cost of the wire rod in question rather than the inter-company transfer price. Finally, the petitioners argue that there were also critical flaws in the reporting of costs for wire rod Kuang Tai obtained from Walsin, an affiliated supplier. Specifically, they argue that: (1) the reported costs of manufacturing of certain grades of rod supplied by Walsin were understated relative to the costs on Walsin's books; (2) Walsin's reported selling, selling, general and administrative (SG&A) expenses did not include miscellaneous general expenses and contained errors in the allocation of selling expenses, and (3) Walsin's reported interest expense did not include amounts for long-term interest expense. According to the petitioners, these omissions warrant the rejection of the submitted cost data in its entirety and the application of adverse facts available. In the alternative, the petitioners request application of partial facts available with respect to the COP and constructed value (CV) data.

The respondents argue that the application of adverse facts available is not warranted. According to the respondents, the Department has verified the correct quantity and value of transfers of wire rod among Tien Tai and Kuang Tai, as well as the wire rod obtained by Kuang Tai from Walsin, and has all the necessary data to value these inputs.

DOC Position: We disagree with the petitioners that the application of total facts available is warranted. While the Department found discrepancies between the questionnaire responses and the companies' records with respect to the transfers of stainless steel wire rod between Tien Tai and Kuang Tai, the discrepancies were minor.

With respect to the valuation of these inputs, we note that section 773(f) of the Act and section 351.407 of the Department's regulations provide that we will normally determine the value of a major input obtained from an affiliate based on the higher of transfer price, market price or cost of production. However, in cases where the transfer of inputs occurs between companies that the Department has collapsed (*i.e.*, has determined to treat as a single entity for purposes of an antidumping proceeding), the Department does not consider the transfer price or market value in the valuation of the inputs. Rather, the valuation of transactions between the collapsed companies is based on the actual cost to the group as a whole. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 18404, 18429–18431 (April 15, 1997).[4] Under the above standard, and because neither Tien Tai nor Kuang Tai is a producer of wire rod, the Department's preference in this case would have been to rely on the affiliate's acquisition cost of the wire rod inputs. Although we discovered at verification that the respondents had not submitted these costs, we also determined, by examining purchases of several different grades of wire rod, that the reported transfer price was consistently greater than or equal to the acquisition cost. *See* Tien Tai/Kuang Tai cost verification report, dated February 12, 1999, at exhibits 20, 22, 37, and 38. Therefore, as facts available, we have relied on the reported transfer price to value the inputs in question.

With respect to Walsin, we find that the omissions noted do not warrant the use of adverse facts available. These are relatively minor errors that are easily corrected based on verified data on the record. *See* memorandum from Peter Scholl to Neal Halper, dated April 2, 1999, which has been placed on the record.

Comment 2: Adjustments to G&A. The petitioners make the following arguments with respect to adjusting the respondents' general and administrative (G&A) expenses and G&A ratio.

First, the petitioners argue that Tien Tai has not established which foreign exchange gains were associated with manufacturing activities. According to the petitioners, the Department's practice is to disallow sales-related exchange rate gains from the calculation of G&A expenses when these are not shown to be related to manufacturing activities, and therefore the Department should disallow the exchange gains reported by the respondents. The petitioners add that Tien Tai's exchange losses, as well as Kuang Tai's exchange gains and losses, should be accounted for as part of total interest expenses.

Next, the petitioners contend that the Department should disallow various claimed offsets to G&A expenses. According to the petitioners: (1) an offset for repair income should be rejected because the income does not

[4] We note that our determination was also upheld by the Court of International Trade. *See AK Steel Corp. v. United States,* Slip Op. 98–159, 1998 Ct. Intl. Trade LEXIS 182, at *28–32 (Ct. Int'l Trade, Nov. 23, 1998).

stem from the company's core business; (2) Kuang Tai double counted the offset for scrap sales by reducing both the cost of manufacturing and G&A expenses by the same amount; and (3) miscellaneous other offsets are unrelated to production, and should be rejected.

The petitioners also argue that the respondents failed to include certain items in the reported G&A expenses, namely: (1) cash and stock bonuses to employees, directors and supervisors, (2) research and development (R&D) expenditures, and (3) bad debt. Further, the petitioners argue that the Department should reduce the cost of sales denominator in the G&A calculation to eliminate the effect of inter-company transactions. Finally, the petitioners argue that the Department should revise the cost of goods sold denominator used to calculate the G&A ratio to exclude any packing costs not otherwise included in the cost of manufacturing.

The respondents address some, but not all, of the petitioners' points regarding G&A. First, the respondents argue that their reporting of scrap revenue is correct, and that no adjustment is necessary to the G&A ratio in this regard. Next, the respondents claim that the Department verified all income offsets to G&A, and should not reject these offsets. The respondents also claim that bad debts are associated with third country sales, and should therefore not be allocated to subject merchandise. Further, the respondents claim that the Department verified the proper classification of reported G&A expenses, including R&D expenses.

With respect to the elimination of inter-company transactions from the cost of goods sold denominator used in the calculation of the G&A ratio, the respondents argue that the Department should eliminate the transactions based on the price paid by Tien Tai and Kuang Tai to unaffiliated suppliers for the inputs in question, rather than the resale price for those inputs charged by Tien Tai and Kuang Tai to each other.

DOC Position: We address the petitioners' various points in turn. First, we agree with the petitioners with respect to foreign exchange gains and losses. It is the Department's practice to distinguish between exchange gains and losses generated by sales transactions and those generated by loans payable and the purchases of production inputs. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey,* 63 FR 35190, 35198 (June 29, 1998). The Department typically excludes from the COP and CV calculation those foreign exchange gains and losses generated by sales transactions because we do not consider them to relate to the manufacturing activities of the company. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago,* 63 FR 9177, 9182 (February 24, 1998). Even though it was requested by the Department in its supplemental Section D questionnaire dated September 30, 1998, Tien Tai failed to segregate foreign exchange gains between those generated by sales transactions, purchase transactions, and loans payable. We have therefore excluded all of Tien Tai's foreign exchange gains from the calculation of COP and CV. We further agree that Tien Tai's foreign exchange losses and Kuang Tai's foreign exchange gains and losses should be included in the COP and CV calculations because none of these amounts were shown to relate to sales transactions.

We agree with the petitioners in part concerning their arguments on G&A. We agree that machinery repair income is not part of the general operations of the company and therefore should be excluded from the calculation of G&A expenses. We agree that Kuang Tai double counted the offset for scrap sales by both reducing the cost of manufacturing and G&A expenses by the same amount. Therefore, we have excluded scrap income from the G&A expense calculation. We disagree with the petitioners' argument regarding the other items listed as non-operating income and expense in the G&A expense calculation, because we find that they are related to the company's general operations. *See Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy,* 64 FR 6615, 6627 (February 10, 1999) ("G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process").

We agree with the petitioners that it is appropriate to include cash and stock bonuses to employees, directors and supervisors. The amounts distributed, whether in the form of stock or cash, represent compensation for services that the individual has provided to the company. Therefore, in accordance with section 773(f)(1)(A) of the Act, we have determined that it is appropriate to include these amounts in the calculation of COP and CV. We acknowledge that the respondents' treatment of these distributions as reductions to equity is in accordance with Taiwan GAAP. However, we find that this treatment is contrary to the requirements of section 773(f)(1)(A) of the Act, as it does not reasonably reflect the respondents' cost of production because the stock transferred to employees in exchange for their labor is a cost to the company. *See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8921–8922 (February 23, 1998)("amounts distributed * * * whether in the form of stock or cash, represent compensation for services which the individual has provided to the company").

Also, we agree with the petitioners that it is appropriate to include R&D expenditures in the COP. R&D are the planned efforts of a company to discover new information that will help create a new product, process or technique. The R&D projects listed by the respondents could benefit subject merchandise and are properly treated as period expenses since their future benefit is undetermined.

We do not agree with the petitioners that Tien Tai's bad debt expense should be included in the G&A expense calculation. Bad debt expense results from the inability to collect payment from customers for sales, and is appropriately accounted for as a selling expense. *See Final Results of Antidumping Duty Administrative Review: Porcelain-On-Steel Cookware from Mexico,* 63 FR 38373, 38381 (July 16, 1998).

We agree with the petitioners that it is correct to reduce the cost of sales denominator in the G&A calculation to eliminate the effect of inter-company transactions. It would be inappropriate to combine the cost of goods sold of Kuang Tai and Tien Tai without adjustment, because this would in effect double count cost of sales for those transactions between the two companies (i.e., inputs sold to one company which are used to produce another product would be included as cost of sales at the input level and at the level of the final product sold). For the final determination, we have eliminated from the cost of goods sold denominator the value of sales between Tien Tai and Kuang Tai based on the prices charged between the affiliates. *See Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Brazil,* 63 FR 12744, 12749 (March 16, 1998).

Finally, we agree with the petitioners that it is appropriate to revise the cost of goods sold denominator used to calculate the G&A ratio to exclude any packing costs not otherwise included in the cost of manufacturing, to which the G&A ratio is applied. We have adjusted

the cost of goods sold determination accordingly.

Comment 3: Interest Expenses. The petitioners argue that the Department should make the following revisions to the submitted interest expense ratio: (1) reduce the cost of goods sold denominator by the amount of revenue on the sale of scrap, since the reported cost of manufacturing is also net of that revenue; (2) eliminate inter-company transactions; and (3) revise the cost of goods sold denominator to exclude any packing costs not otherwise included in the cost of manufacturing.

The respondents contend that no adjustment is appropriate with respect to scrap revenue. With respect to the elimination of inter-company transfers, the respondents argue that the Department should rely on the prices they paid for the inputs in question, rather than the transfer prices paid to each other. The respondents do not address the petitioners' argument with respect to packing costs.

DOC Position: We agree with the petitioners that the cost of goods sold denominator should be reduced by the amount of revenue on the sale of scrap, since the reported cost of manufacturing is also net of that revenue. With respect to the elimination of inter-company transactions, we also agree with the petitioners, and have eliminated the value of sales between Tien Tai and Kuang Tai based on the prices charged between the affiliates, for the same reasons explained with respect to the calculation of G&A expenses in comment 2 above. Finally, we agree with the petitioners that it is appropriate to revise the cost of goods sold denominator used to calculate the interest ratio to exclude any packing costs not otherwise included in the cost of manufacturing to which the interest expense ratio is applied. We have adjusted the cost of production denominator accordingly.

Comment 4: Product/Packing Form. The petitioners argue that the Department should incorporate the "product form" into the model matching hierarchy.[5] According to the petitioners, the pricing data submitted by Tien Tai and Kuang Tai indicate significant price differences in otherwise identical products that are sold in different product forms. In particular, the petitioners cite instances of individual invoices with multiple transactions, where Tien Tai charges consistently higher per-pound prices for small spools of a given product than for larger spools of the identical product. The petitioners further argue that, across the POI, comparison of weighted-average prices also show price differences according to variations in packing form and size. The petitioners contend that, given these price differences, the Department can only achieve "apples-to-apples" product comparisons by taking product form into consideration in its model matching.

The respondents argue that, with rare exceptions, the "product form" is generally not taken into consideration in the pricing of them, and should therefore not be incorporated as a criterion in the Department's model match. According to the respondents, the Department confirmed at verification through examination of numerous invoices that identical products packed in different forms and sizes had identical gross unit prices. The respondents further contend that it is not appropriate to infer a form/price relationship from a comparison of weighted-average prices since prices can be significantly affected by independent variables such as date of sale, customer, and quantity of sale.

DOC Position: Based on the record of this case, we disagree with the petitioners that it is appropriate to incorporate the "product form" into the model matching characteristics.

At the outset of this case, interested parties were provided with an opportunity to comment on significant product characteristics to be incorporated into model matching. Neither the petitioners nor the respondents made any mention of "product form" in their otherwise detailed comments. (Nor, for that matter, did the respondents in the companion investigations of round wire from Korea, India, or Canada make any reference of product form as a possible matching criterion.) Upon receipt and analysis of Tien Tai/Kuang Tai's sales data, the petitioners filed a submission noting that for certain U.S. sales of identical models on a given invoice there was an unexplained variance in unit price, and surmised that the price variance might be due to differences in product form. The petitioners did not provide any evidence that product form is a pricing consideration in the wire industry generally, instead focusing entirely on Tien Tai/Kuang Tai's data.

The Department has sought, through supplemental questionnaires to Tien Tai/Kuang Tai on this issue, as well as through extensive examination of randomly selected sales documentation at verification, to determine whether there was a distinct correlation between product form and pricing contained in the sales data submitted by Tien Tai and Kuang Tai. With respect to the first two elements of product form (packing form and packing material), we have found no clear evidence of a correlation with price in either the U.S. or home market.[6] With respect to packing size, we have found that, on some invoices for U.S. sales, Tien Tai charged its sole U.S. customer a premium for wire sold in small spools relative to wire sold in larger spools. However, Tien Tai/Kuang Tai has argued that this pricing pattern is unique to the transactions in question, and the record does not suggest otherwise. Indeed, counsel for the petitioners themselves conceded at the case hearing that there was no conclusive evidence of a relationship between packing form and pricing with respect to Tien Tai/Kuang Tai's home market sales. *See* Case Hearing Transcript at 132. Given the above, we do not believe the record supports the incorporation of product form as a matching criterion.

Comment 5: Reporting of Packing Costs. The petitioners allege that the respondents' claim for a home market packing adjustment should be denied because Tien Tai/Kuang Tai did not take into account that certain packing materials were reused, thus overstating packing costs. The petitioners further allege that there were several discrepancies in the reported home market and U.S. packing costs.

The respondents argue that their packing costs were correctly reported and verified, and should be relied upon in the final determination.

DOC Position: We disagree with the petitioners' assertion that the cost of reusable packing materials in the home market was overstated. As noted at verification, Kuang Tai recycled metal bobbins used in home market sales. *See* Tien Tai/Kuang Tai Cost Verification Report at 7 (referring to Kuang Tai's use of "metal spools", *i.e.*, metal bobbins). Kuang Tai did not include any cost for the metal bobbins in the reporting of home market packing costs. *See* Sales Verification Exhibit KT–15. Thus, if anything, the cost of the Kuang Tai's recycled metal bobbins was conservatively understated by the respondents.

[5] As the petitioners define it, the "product form" is composed of three elements: packing form (*e.g.*, a spool or a coil); the packing material (*e.g.*, in the case of a spool, metal or wood), and packing size (e.g., in the case of a spool, the weight of the spool plus wire).

[6] The comparisons provided by the petitioners do not account for a number of factors, most notably differences in customers and time. Moreover, there are numerous examples on the record, including many found through random search at verification, of identical products packed in different forms/materials that have the same unit price.

With respect to the other miscellaneous discrepancies alleged by the petitioners, we note that at verification we found evidence of only a single error, which involved the over-reporting of home market packing costs for KW 25KG products. We have corrected this error for the final determination.

Comment 6: U.S. and Home Market Credit Expenses. The petitioners argue that the respondents misreported their U.S. and home market credit expenses. According to the petitioners, the Department should, as facts available, disregard Tien Tai/Kuang Tai's claim for a credit expense adjustment for its home market sales, and rely on the highest reported credit expense as facts available for the respondents' U.S. sales.

The respondents argue that there is no basis for applying facts available to their credit expenses. They contend that they revised their U.S. credit expenses in a timely manner at the outset of verification, and that the mistakes with respect to home market credit expenses were minor and correctable based on verification findings.

DOC Position: We disagree with the petitioners that the application of facts available is appropriate. The respondents identified an error with respect to U.S. credit expenses at the outset of verification, and provided verifiable corrections. An error with respect to home market credit expenses was identified at verification, but it can be easily corrected based on revised data obtained and examined during the verification. For a detailed explanation of the correction of these errors, *see* the Tien Tai/Kuang Tai sales analysis memo from Sanjay Mullick to Kris Campbell, dated April 2, 1999.

Comment 7: Double-Counting of Packing Costs. Kuang Tai argues that it inadvertently included packing costs in the pool of manufacturing costs allocated to all of its products, such that packing costs have been reported both in the cost of manufacturing and as a separate packing adjustment. According to the respondent, the error was not detected at the cost verification, but the exhibits taken during the verification establish that packing is in fact double counted. Kuang Tai requests that the Department remedy this double counting by removing packing from the cost of manufacturing.

The petitioners argue that the verification exhibits do not establish the error claimed by the respondent, and moreover, that any such error would call into question the general reliability of the submitted cost data. Further, the petitioners argue that Kuang Tai's claim reveals that the respondent did not allocate any overhead to packing costs. According to the petitioners, the Department should reject the respondent's request, and apply total adverse facts available. In the alternative, the petitioners propose that the Department apply partial facts available with respect to packing overhead.

DOC Position: We agree with Kuang Tai that the verification record establishes that packing was double-counted. (For an explanation of our analysis of the record in this regard, please *see* the Tien Tai/Kuang Tai cost analysis memorandum, from Peter Scholl to Neal Halper, dated April 2, 1999). Therefore, we have eliminated packing expenses from Kuang Tai's reported cost of manufacturing. As for the petitioners' argument with respect to packing overhead, we note that Kuang Tai was unable to allocate any overhead specifically to packing, but did allocate total overhead to cost of manufacturing, such that the overhead expenses were nonetheless included in the reported costs.

B. Rodex

Comment 1: Facts Available. The petitioners argue that the Department should apply facts available for certain omissions and errors found at verification, namely (1) unreported U.S. and home market sales; (2) U.S. sales of wire for which no coating had been reported, but which were coated with Apex, a lubricant; (3) packing expenses, the reporting of which was found to contain errors; and (4) duty drawback, the calculation of which contained errors. The petitioners contend that the Department should not simply correct these errors by relying on data collected at verification, but rather apply adverse facts available.

Rodex argues that use of adverse facts available is unwarranted, as the omissions and errors cited by the petitioners were minor in nature and corrected at the preliminary determination through use of verified data on the record.

DOC Position: We agree with Rodex that the application of adverse facts available is not warranted. Unlike the cases cited by the petitioners in which the Department applied best information available (the precursor to facts available under the pre-URAA antidumping statute), the omissions and errors referenced by the petitioners in this case were, both individually and in the aggregate, minor in scope and immaterial. While the general purpose of verification is not to gather new information, but rather to verify the information already submitted, it is the Department's practice to correct minor errors found at verification. *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8929 (February 23, 1998). Moreover, to the extent that Rodex identified several of the minor errors in question at the outset of verification, it did so at the Department's specific instruction to identify any clerical errors at that point. *See* letter from the Department of Commerce to Rodex, dated November 15, 1998, (transmitting sales verification agenda), at 1.

With respect to the first point raised by the petitioners, the Department noted at verification that the respondent had not reported a relatively small number of sales, which had dates of sale in the POI but date of invoice after the POI.[7] Because the sales in question were few in number, the Department collected and verified the sales data for these transactions. We have continued to rely on the sales data in question for this final determination.

The Department also found at verification that four U.S. sales reported as having no coating had in fact been coated with Apex. We verified that no other U.S. sales, and no home market sales, were coated with Apex. *See* Rodex Sales Verification Report at 4. Because the omission in question was minor and remedied through verified data, there is no need for the application of adverse facts available.

With respect to packing costs, we found at verification that a few home market sales had been shipped in reusable containers. In the preliminary determination, we set the packing cost for such sales to zero and increased the reallocated total packing costs to the other sales, which resulted in a small increase to packing costs. Again, to the limited extent that the error created any distortion in the margin calculation, that distortion was fully corrected.

As for duty drawback, the calculation errors in question were also very minor (accounting for a discrepancy of less than one-tenth of one percent), and were identified by the respondent at the outset of verification as a clerical error.

[7] The error was due to a misunderstanding arising from the Department's supplemental instruction to Rodex to change the basis for date of sale. In its first questionnaire response, Rodex based the date of sale on the date of invoice. After determining that the date of sales confirmation was a more appropriate basis for the date of sale, the Department instructed Rodex to revise its sales databases accordingly. Although Rodex complied with this request by reporting the date of sales confirmation for all previously reported sales, it did not additionally report certain sales with date of sales confirmation within the POI and invoice date outside of the POI.

We have therefore relied on the corrected duty drawback expense calculation provided by Rodex at verification.

Comment 2: Potential Reimbursement of Antidumping Duties. The petitioners contend that Rodex agreed to reimburse its customers for payment of potential antidumping duties. According to the petitioners, the Department should deduct the amount of calculated duties from the export price to determine the cash deposit rate to be applied to Rodex's entries.

Rodex argues that it has not to date reimbursed any customer for antidumping duties, since there has never been an antidumping duty order on round wire. Rodex contends that it was unaware of the Department's regulations at the time that it expressed a willingness to reimburse its customers for potential antidumping duties, and that in the event that an antidumping order is imposed, it will not reimburse any duties.

DOC Position: We disagree with the petitioners that the Department should adjust the export price for potential reimbursement of antidumping duties. Section 351.402(f)(1)(i)(B) of the Department's regulations provides that the Department will deduct the amount of any antidumping duty which the producer reimbursed to the importer. For that provision to be triggered, an antidumping duty order must have been imposed, and antidumping duties levied. Since neither of those events has occurred to date, the provision is not applicable in this case. In the event that an antidumping order is imposed pursuant to this final determination, and administrative reviews of that order are requested, the Department will closely examine whether Rodex has reimbursed, or agreed to reimburse, its customers for antidumping duties in the relevant period of review.

Comment 3: Year-End Auditor's Adjustment. Rodex argues that the Department made two errors in the allocation of net foreign exchange losses to wire products. First, Rodex alleges that the Department transposed the amounts to be allocated with respect to direct labor and overhead. Second, Rodex alleges that the Department inadvertently allocated the full amount of the losses to wire products, even though the company produced other products.

The petitioners do not dispute Rodex's allegation of a transposition error. However, the petitioners contend that since the auditor's adjustment had not been reported to the Department and was found at verification, the Department should make an adverse inference and allocate the adjustment fully to wire products.

DOC Position: We agree with Rodex. We have corrected the transposition error, and, since the adjustment in question applies equally to all of Rodex's products, have reallocated the adjustment to both wire and Rodex's other product lines.

Comment 4: Net Foreign Exchange Losses.

Rodex argues that the Department incorrectly allocated net foreign exchange losses only to wire products, rather than to all of Rodex's products, which include fasteners. Rodex also argues that the Department erred by applying the amount of foreign exchange losses as an upward adjustment to raw material cost, rather to G&A expenses, since the expenses are classified as non-operating general expenses in the company's records.

The petitioners respond that the Department correctly adjusted for net foreign exchange losses, and that it is the Department's normal practice to include foreign exchange gains and losses relating to raw materials in the calculation of total raw material costs.

DOC Position: We agree with the petitioners. All of Rodex's products, including both wire and fasteners, are made from wire rod. Since Rodex suffered net foreign exchange losses in connection with purchases of rod, we allocated those net losses to all wire rod purchases, thus increasing equally the material costs of both wire and fasteners. With respect to the classification of these expenses, we note that the losses arise directly from purchases of materials, and it is the Department's practice to adjust material costs for exchange losses related to purchases of materials. *See, e.g., Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 37014, 37026 (July 10, 1997). Therefore, we have adjusted material costs, rather than G&A expenses, for the exchange losses.

Suspension of Liquidation

In accordance with section 735(c)(1)(C) of the Act, we are directing the Customs Service to suspend liquidation of all entries of stainless steel round wire from Taiwan produced and exported by Tien Tai/Kuang Tai that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination in the **Federal Register**. Also, in accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel round wire from Taiwan from all other producers and exporters that are entered, or withdrawn from warehouse, on or after November 18, 1998, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Rodex	3.94
Tien Tai/Kuang Tai	4.75
All Others	4.47

Section 735(c)(5)(A) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely under facts available under section 776 of the Act, from the calculation of the "all others" rate. Since neither of the calculated margins in this investigation are zero, *de minimis*, or based entirely under facts available, we have included both margins in the calculation of the all others rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8927 Filed 4–8–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–830]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell at (202) 482–1442 or (202) 482–3813, respectively, Group 1, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Final Determination

We determine that stainless steel round wire from Korea is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on November 12, 1998. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea*, 63 FR 64042 (November 18, 1998) (preliminary determination). Since the preliminary determination, the following events have occurred:

In January and February 1999, we conducted on-site verifications of the questionnaire responses submitted by respondent Korea Sangsa Co., Ltd. (Korea Sangsa) and its affiliate Korea Sangsa America, Inc. (KOSA).

The petitioners [1] and the respondent submitted case briefs on February 26, 1999, and rebuttal briefs on March 5, 1999. We held a public hearing on March 11, 1999.

Scope of Investigation

The scope of this investigation covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to this investigation is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of the investigation (POI) is January 1, 1997, through December 31, 1997. This period corresponds to the respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Fair Value Comparisons

To determine whether sales of stainless steel round wire from Korea to the United States were made at LTFV, we compared the export price (EP) or constructed export price (CEP), as appropriate, to the normal value (NV). Our calculations followed the methodologies described in the preliminary determination, except as noted below and in the sales analysis memorandum from Valerie Ellis to Kris Campbell, dated April 2, 1999, which has been placed in the file.

[1] The petitioners are ACS Industries, Inc., Al Tech Specialty Steel Corp., Branford Wire & Manufacturing Company, Carpenter Technology Corp., Handy & Harman Specialty Wire Group, Industrial Alloys, Inc., Loos & Company, Inc., Sandvik Steel Company, Sumiden Wire Products Corporation, and Techalloy Company, Inc.

Export Price and Constructed Export Price

We used the same methodology to calculate EP and CEP as that described in the preliminary determination, except in the following specific instances:

1. We established two separate averaging periods to account for the precipitous drop of the Korean won at the end of the POI. *See* comment 1.
2. We reallocated indirect selling expenses incurred by Korea Sangsa's U.S. affiliate entirely to CEP sales. *See* comment 3.
3. We disallowed the CEP offset that was granted at the preliminary determination. *See* comment 4.

Normal Value

We used the same methodology to calculate normal value (NV) as that described in the preliminary determination, with the exception that we averaged normal value for two separate periods to account for the precipitous drop of the Korean won at the end of the POI. *See* comment 1.

Cost of Production

We used the same methodology to calculate cost of production (COP) as that described in the preliminary determination, except in the following specific instances:

1. We recalculated the G&A expense ratio to include expenses of affiliates involved in the production of subject merchandise, and to exclude certain non-operating income. *See* comment 11.
2. We reduced the cost of manufacturing by the sale of scrap. *See* comment 12.
3. We reduced the cost of manufacturing by the rental income. *See* comment 12.
4. The interest expense ratio was recalculated to create a combined ratio including all affiliates. *See* comment 13.
5. We recalculated the net cost of goods sold used in the G&A and interest expense ratio calculation to include the sales value of inter-company sales. *See* comment 13.

Currency Conversions

As explained in the preliminary determination, our analysis of Federal Reserve data on the U.S. dollar-Korean won exchange rate showed that the won declined rapidly at the end of 1997, losing over 40 percent of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have considered the won's decline at the end of 1997 as nothing more than a sudden but only momentary drop, despite the magnitude

of that drop. As it was, however, there was no significant rebound. Therefore, we have not changed our preliminary determination that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. As a result, in making this final determination, the Department has continued to use daily rates exclusively for currency-conversion purposes for home market sales matched to U.S. sales occurring between November 1, 1997, and December 31, 1997. Further, as discussed in Comment 1, below, we have considered these two months as a separate averaging period from the first ten months of the POI.

Interested Party Comments

A. Sales Issues

Comment 1: Averaging Periods. The petitioners argue that the Department should account for the effect of the severe depreciation of the Korean won toward the end of the POI by relying on separate averaging periods corresponding to the pre-and post-depreciation periods. According to the petitioners, the Department's regulations provide that average-to-average price comparisons may be performed over periods shorter than the POI where the normal values, export prices, or constructed export prices for sales in an averaging group differ significantly over the POI. The petitioners contend that if the Department does not rely on two separate averaging periods in this case, the respondent's dumping throughout the majority of the POI will be masked by the effect of the devalued Korean currency in the last few months of the period. The petitioners request that the averaging periods be divided using fiscal quarters (*i.e.*, the first period corresponding to the first three quarters of 1997, the second period corresponding to the last quarter).

Korea Sangsa argues that the Department's established currency conversion policy fully accounts for the effects of the devaluation of the Korean won, and that there is no legal basis or rational need for any additional adjustment. According to the respondent, its pricing behavior and selling activities in the U.S. and home markets did not change throughout the POI, and the company should not be penalized for currency movements outside of its control.

DOC Position: We agree with the petitioners that separate averaging periods should be used. Under section 777A(d)(1)(A) of the Act , the Department has wide latitude in calculating the average prices used to determine whether sales at less than fair value exist. More specifically, under 19 CFR 351.414(d)(3), the Department may use shorter averaging periods where normal value varies significantly over the POI. In the instant case, NV (in dollars) in the last two months of the POI differs significantly from NV earlier in the POI due primarily to a significant change in the underlying dollar value of the won. This significant change is evidenced by the precipitous drop in the won's value that began in November 1997 and continued through the end of the POI, without a quick, significant rebound. In the span of two months, the won's value decreased by more than 40 percent in relation to the dollar. Consequently, it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. Moreover, we disagree with respondent's claim that the use of averaging periods is dependent upon a change in a respondent's selling practices. We note that in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia*, 63 FR 72268, 72272 (December 31, 1998), the Department stated that "in addition to changes in selling practices, we believe that we should also consider other factors, such as prolonged large changes in exchange rates, in determining whether it is appropriate to use more than one averaging period." Therefore, we have used two averaging periods for the final determination, and calculated a weighted average of the resulting margins. Because the rapid devaluation of the Korean won began in November 1997, we have defined the first period to extend from January through October, and the second period from November through December.

We note that, as explained above in *Currency Conversions*, we have continued to use daily exchange rates for the period November through December 1997.

Comment 2: Correction of Errors at Verification. The petitioners allege that the errors identified by Korea Sangsa at the outset of verification were so extensive that the Department should not accept these corrections without penalty. Korea Sangsa claims that the Department found no significant errors at verification and should continue to rely on the company's verified data.

DOC Position: We do not agree that Korea Sangsa's errors were so pervasive as to warrant the application of adverse facts available. It is standard Department practice to accept corrections of minor errors identified by a respondent at the outset of verification. *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8929 (February 23, 1998). The errors identified by Korea Sangsa affected only a few variables (*e.g.*, invoice number, credit expenses) with respect to a small percentage of sales. *See* Korea Sangsa sales verification report, dated February 19, 1999, at 2. Based on established verification procedures, we are satisfied that the revised information presented at the outset of verification was correct, and have relied on this information for this final determination.

Comment 3: Allocation of Indirect Selling Expenses to CEP Sales. The petitioners argue that the Department should allocate U.S. indirect selling expenses incurred by the respondent's U.S. affiliate (KOSA) entirely to CEP sales, and not EP sales, since KOSA performs negligible activities in connection with EP sales.

Korea Sangsa asserts that while KOSA plays a limited role with respect to EP sales, at least a portion of the indirect selling expenses are properly allocable to these sales, and provided separate EP and CEP ratios to support its proposed allocation.

DOC Position: We agree with the petitioners that U.S. indirect selling expenses should be allocated only to CEP sales. The record indicates that KOSA's role with respect to EP sales is limited to the transmittal of purchase orders to its parent company in Korea and the occasional receipt of payment, whereas KOSA plays a much more active role with respect to CEP sales. The methodology advanced by the respondent allocates slightly more expenses to CEP sales than to EP sales, but this result reflects merely that the company's reported sales had a higher ratio of CEP to EP sales than did the company's total sales, and does not capture the fact that, in terms of selling activities, KOSA also plays a significantly more active role with respect to CEP sales. Since the respondent has not isolated the expenses associated with the negligible role played by the affiliate with respect to the EP sales, we have allocated the expenses in question entirely to CEP sales.

Comment 4: CEP Offset. The petitioners argue that Korea Sangsa should not be granted a CEP offset, given findings at verification confirming that there is no difference in selling functions in the home and U.S. markets.

Korea Sangsa asserts that the Department should continue to grant the CEP offset. The respondent claims that normal value in this case includes several selling functions not found in the adjusted CEP, including the arrangement of freight and warehousing, as well as direct selling expenses such as the arranging of bank transactions for local letter of credit sales.

DOC Position: We agree with the petitioners that a CEP offset is not appropriate given the facts of this case. The record indicates that the respondent's selling functions in the home market are very limited, and do not extend significantly beyond those performed with respect to its U.S. affiliate. Although Korea Sangsa arranges for movement of the merchandise on behalf of its home market customers, it also arranges for movement of the merchandise to its U.S. affiliate. Korea Sangsa does arrange banking transactions for local letter of credit sales as well as cutting services, but such functions were performed for only a small percentage of all home market sales during the POI. Given that the selling functions performed with respect to home market customers do not differ significantly from those performed with respect to the U.S. affiliate, we find that sales to both home market and U.S. customers are made at the same level of trade, so that a CEP offset is not necessary. This is consistent with similar determinations in recent cases. *See, e.g., Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6609, 6614 (Feb. 10, 1999).

Comment 5: U.S. Credit. The petitioners argue that the Department should impute a credit expense for all sales in which reported payment date occurred after the reported ship date.

Korea Sangsa asserts that for a number of sales involving letters of credit, it presented the sales documents to its bank upon shipment and immediately obtained from the bank the invoice value of the transaction. The respondent further claims that the bank levied a discount charge for the period between shipment and estimated customer payment to the bank, which Korea Sangsa reported as a bank charge. Korea Sangsa contends that the Department should not impute an additional credit expense for these sales. The respondent also contends that it reported imputed credit expenses for all other sales.

DOC Position: We agree with Korea Sangsa that, for EP sales where the respondent receives payment from its bank immediately upon shipment, there is no need to impute a credit expense. For such sales, as in the preliminary determination, we have made an adjustment for the charges levied by the bank, which constitute actual interest expenses arising from the lag between the date of shipment and the date of customer payment. For all other sales, to the extent that the date of payment follows the date of shipment, we have made adjustments for imputed credit expenses.

Comment 6: Clarification of Matching Methodology. The petitioners request that the Department clarify its policy with respect to situations where there are two equally similar home market products (in terms of physical characteristics) that could serve as comparison merchandise for a given U.S. product. The petitioners note that the Department has in the past either (1) relied on an average of the prices of the two products, or (2) selected the home market product with the more similar variable cost. The petitioners note that the Department followed the latter approach in the preliminary determination, and contend that the former approach is more sensible.

Korea Sangsa argues that the Department should continue to find the most similar home market match as in the preliminary determination.

DOC Position: In situations where, based on the reported product characteristics, there are two or more "equally similar" home market products, we have in the past relied on the home market product with the closest variable cost of manufacture to that of the U.S. product. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From India; Final Results of Antidumping Duty Administrative,* 63 FR 32825 (June 16, 1998). We have followed this methodology for the final determination.

Comment 7: Packing Form/Model Matching. The petitioners suggest that the Department may want to consider the appropriateness of including packing form in the model matching criteria for the purpose of making price to price comparisons.

Korea Sangsa claims that, given the lack of any findings at verification suggesting that form affects price comparability, the Department should not incorporate packing form into the model match methodology.

DOC Position: We agree with Korea Sangsa that packing form should not be incorporated into the model match methodology. The petitioners have not provided evidence that packing form is a consideration in pricing in the wire industry generally, and our analysis of the respondent's pricing data suggests no clear correlation between wire prices and packing form. Therefore, the Department has determined that there is no basis for including these criteria in our model matching.

Comment 8: Grade Comparisons. Korea Sangsa argues that the Department erred in comparing U.S. sales of grade 302 wire to home market sales of grade 303 wire, rather than to sales of more similar grade 304 wire. According to Korea Sangsa, it is commonly accepted in the wire industry that grade 302 and 304 wire are generally interchangeable and used in non-free-machining applications, whereas the grade 303 wire sold by Korea Sangsa contains significant amounts of copper, sulfur, and other chemical elements (which the other two grades lack), and is used for free-machining applications. Korea Sangsa suggests that the Department can correct this error with a revision to the results of the program used to determine similarity of grades, by modifying the values assigned to the specific grades in question.

According to the petitioners, the Department should consider general comments on matching methodologies, and not consider requests for *ad hoc* revisions to the results of those methodologies. The petitioners argue that the respondent's objection to the Department's model matching is based on a limited comparison of two specific grades, and does not advance a comprehensive approach to matching of grades.

DOC Position: We agree with the petitioners. Although Korea Sangsa has provided evidence that in certain respects grade 302 wire is more similar to grade 304 wire than to grade 303 wire (for instance, that grades 302 and 304 contain little or no copper or sulfur, while grade 303 contains significant amounts of those elements), the respondent has not addressed the methodology used in the preliminary determination for purposes of determining grade similarity. This methodology relied on the standard chemical composition of each grade, and ranked four chemical elements (nickel, molybdenum, chromium, and carbon) in a hierarchy. Rather than propose a systematic revision to this hierarchy with respect to copper, sulfur, and other elements, the respondent has identified a specific unfavorable result of the Department's methodology, and proposed an *ad hoc* change to this result. Absent comments from interested parties on the relative importance of copper, sulfur, and other elements, we have no way of gauging what other grade comparisons might be affected by consideration of those elements.

Therefore, we have continued to rely on the methodology for determination of grade similarity that was used in the preliminary determination.

Comment 9: Overdraft Rates. Korea Sangsa asserts that the Department should include the company's overdraft rate in the calculation of short-term lending rates during the POI. According to Korea Sangsa, in the preliminary determination the Department deviated from its practice of basing the interest rate for the calculation of imputed credit on all short-term borrowing, including overdraft loans. The respondent cites to two determinations in which the Department relied on overdraft rates: *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Plate in Coils From Italy,* 63 FR 47246 (Sept. 4, 1998), and *Extruded Rubber Thread From Malaysia: Final Results of Countervailing Duty Administrative Review,* 62 FR 48985 (Sept. 18, 1997).

The petitioners do not specifically address the issue of overdraft rates, stating that the Department has discretion to determine the appropriate basis for calculating the respondent's home market borrowing rate. However, the petitioners note that the rate reported by Korea Sangsa appears to be overstated. The petitioners point out that the interest rate reported by the respondent is above the range of rates listed in the company's audited financial statements.

DOC Position: We disagree with Korea Sangsa that the reported overdraft rates should be included in the calculation of imputed credit. For purposes of calculating imputed credit expenses, it is the Department's policy to use a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction. *See* Policy Statement 98–2. In this case, the overdraft rate in question is several times higher than the respondent's regular short-term borrowing rate, and does not appear to bear any relation to normal commercial borrowing by the respondent (the total POI amount of overdraft borrowing, when compared to the total amount of regular short-term borrowing, indicates that overdraft borrowing is exceptionally rare).

The countervailing duty cases cited by the respondent are inapposite, in that they did not involve the calculation of imputed credit. (For example, in *Stainless Steel Plate in Coils from Italy,* we used overdraft rates to calculate benchmarks on long-term (rather than short-term) loans, in connection with the valuation of subsidies in Italy.) The respondent has not identified any precedent establishing that the Department's practice is to include overdraft rates (especially aberrationally high overdraft rates) in the calculation of short-term interest rates for purposes of calculating imputed credit. Given this, we have continued to exclude these rates from the calculation of the home market short-term interest rate. Regarding the petitioners' claim that the reported interest rate is inconsistent with the range of rates in the notes to the financial statements, we found at verification that the reported rate was consistent with the respondent's books and records.

B. Cost Issues

Comment 10: Inflation/Cost Averaging. The petitioners argue that there was significant inflation in Korea during the POI, as evidenced by the increase in Korea Sangsa's cost in won for one grade of wire rod, the principal input used in the production of round wire. The petitioners contend that, given such inflation, the Department should index Korea Sangsa's monthly costs and perform monthly cost and price comparisons.

Korea Sangsa claims that Korea did not suffer significant inflation during the POI. The respondent contends that neither the Korean consumer price index nor the producer price index for the period indicate a rate of inflation even approaching the level at which the Department will normally consider making an adjustment. The respondent also asserts that the petitioners' allegations regarding Korea Sangsa's wire rod purchases are misleading, and that in fact, the price of at least one grade of wire rod actually decreased for some months of the POI. Finally, while the respondent concedes that there may have been some inflationary pressure on the company in the final month of the POI, the respondent asserts that such pressure could not have been reflected in the costs of production of merchandise sold during the POI.

DOC Position: We disagree with the petitioners that monthly costs should be indexed for inflation and that we should perform monthly cost and price comparisons. Based on our assessment of information on the record, we find that the inflation rate in Korea during the POI was not significant enough to warrant any adjustment to our calculation methodology. The Department uses a different calculation methodology for economies experiencing high inflation. This is because money can lose purchasing power at such a rate that comparison of transactions that have occurred at different times, even within the same POI, are misleading. The annualized inflation rate during the POI did not reach such levels in this case. Therefore, we have continued to rely on the methodology for price and cost comparisons that was used in the preliminary determination.

Comment 11: Calculation of G&A Expenses. The petitioners claim that the Department should revise its calculation of G&A expenses to reflect findings at verification, namely to include: (1) exchange losses experienced by collapsed affiliate Korea Welding Electrode Co., Ltd. (Koweld) in connection with accounts payable, (2) amounts for actual payments of severance indemnities, and (3) amounts for "special" and extraordinary depreciation.

Korea Sangsa contends that, to the extent that the Department finds it necessary to include Koweld's exchange losses in the G&A ratio, the Department should also adjust the G&A ratio to reflect Koweld's offsetting exchange gains. With respect to severance payments and depreciation, the respondent claims that all such costs were correctly reported and verified, and therefore, no revisions are necessary for the final determination.

DOC Position: We agree with petitioner that the foreign exchange losses realized in connection with loans and accounts payable should be included in the COP and CV calculations. It is the Department's practice to distinguish between exchange gains and losses generated by sales transactions and those generated by loans payable and the purchases of production inputs. *See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey,* 63 FR 35190, 35198 (June 29, 1998). The Department typically excludes from the COP and CV calculation those foreign exchange gains and losses generated by sales transactions because we do not consider them to relate to the manufacturing activities of the company. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago,* 63 FR 9177, 99182 (February 24, 1998). We also agree with respondents that the offsetting foreign exchange gains realized in connection with accounts payable and loans should be included in the COP and CV calculations. Thus, we

have included both exchange gains and losses in our calculation of COP and CV.

We disagree with the petitioners that the actual payments for severance indemnities should be included in the calculation of G&A expenses. Annually, the respondent accrues in its accounting books and records amounts for severance indemnities. The actual severance payments to employees are not recorded as expenses to Korea Sangsa. Rather, the annual accrual is recorded as an expense in the books and records of the company. We agree with Korea Sangsa that it correctly reported the provision for severance payments in its reported costs. Accordingly, we made no adjustment for actual severance payments in Korea Sangsa's G&A expense calculation.

We disagree with the petitioners that respondents have not included "special and extraordinary" depreciation expenses in the reported costs. We note from our verification that Korea Sangsa included regular and special depreciation in its calculation of the cost of manufacturing. In addition, depreciation expense related to assets used in the general operations of the company were included in the reported G&A expenses. *See* cost verification exhibit 9. Thus, we made no adjustment to Korea Sangsa's reported costs.

Comment 12: Offset to Costs for Rental Income and Scrap Revenues. Korea Sangsa asserts that the Department should allow an offset to reported costs for income from the rental of machinery to affiliated parties, as well as from revenues from the sale of scrap.

The petitioners contend that Korea Sangsa has not shown that the machinery in question was related to production activities, and therefore no offset should be granted in connection with the rental of that machinery. The petitioners also assert that to the extent that the Department allows an offset for revenue from the sale of scrap, it should also reduce the respondent's cost of sales by any revenue from the sale of scrap in order to ensure that the interest and G&A expense ratios are calculated on the same basis as the cost of manufacture figure to which they are applied.

DOC Position: We agree with Korea Sangsa that in this instance the rental income that represents amounts paid by collapsed affiliate Myung Jin. Co. (MJC) to Korea Sangsa should be allowed as an offset to the cost of manufacture. It has been determined for this proceeding that MJC and Korea Sangsa should be collapsed into a single entity for cost and sales reporting purposes. Thus, if the income from the rental of the equipment is not used to offset the cost incurred by Korea Sangsa, costs would be double counted, first as maintenance and depreciation costs to Korea Sangsa, and second as a rental expense included in factory overhead for MJC's Daesong Factory. Therefore, for the final determination, we have reduced the cost of manufacture for the rental income.

With respect to the issue of scrap, we also agree with Korea Sangsa. It is Department practice to allow an offset to cost of manufacturing by revenue generated from sales of scrap. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan*, 63 FR 40461, 40472 (July 29, 1998). In keeping with this practice, we will allow this offset for the final determination. Further, we agree with the petitioners that the interest and G&A ratios should be calculated on the same basis as the cost of manufacturing figure to which they are applied. Therefore, since we have reduced cost of manufacturing by the revenue generated from the sales of scrap and rental income, we have also reduced the denominator used in the G&A and interest expense calculation.

Comment 13: Elimination of Inter-Company Sales. Korea Sangsa asserts that it has correctly eliminated inter-company sales from the cost-of-goods sold (COGS) denominator used to calculate the G&A and interest ratios. The respondent contends that it is appropriate to reduce that denominator by the *cost* of those sales (*i.e.*, the price paid by the respondent to an unaffiliated supplier for merchandise that the respondent resold to an affiliate), rather than by the *sales value* of those transactions (*i.e.*, the price paid by the affiliate to the respondent for that merchandise).

The petitioners claim that COGS denominator should be reduced by the cost of the inter-company sales to the respondent's affiliate, which is based on the sales value realized by Korea Sangsa.

DOC Position: We agree with the petitioner that the COGS denominator should be reduced by the transfer price between affiliates. If the Department reduced the denominator by only the amount paid by the respondent to an unaffiliated supplier for the purchase of the merchandise in question, it would leave in that denominator an element of profit or loss realized by the respondent upon resale of the merchandise to its affiliate, thus not fully eliminating the effect of the inter-company sales. Therefore, we have used the sales value of the inter-company sales to calculate net COGS used in the G&A and interest ratio calculations.

Comment 14: Allocation of Packing Labor Costs. The petitioners contend that the Department determined that packing for the U.S. and home markets was identical, but that at verification the Department found that packing labor had been allocated disproportionately to U.S. products. According to the petitioners, this discrepancy calls into question the general reliability of the reported packing costs, warranting the application of facts available.

Korea Sangsa asserts that it has correctly allocated packing labor costs to home market and U.S. products, and that no adjustment to this allocation is necessary for the final determination.

DOC Position: We disagree with the petitioners that the application of facts available is appropriate. At verification, we confirmed that the pool of packing costs allocated to round wire sold in the U.S. and home markets included all appropriate costs. We also observed that labor involved in packing merchandise for both the U.S. and home markets did not appear to vary, and noted that the respondent appeared to have slightly over-allocated packing labor cost to U.S. products. Upon review, we have determined that the allocation of packing labor costs appears reasonable. Accordingly, no adjustment was necessary.

Suspension of Liquidation

In accordance with section 735(c)(1)(C) of the Act, we are directing the Customs Service to suspend liquidation of all entries of stainless steel round wire from Korea, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Korea Sangsa	3.07
All Others	3.07

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC

will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: April 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–8928 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032399A]

Regulations Governing the Taking and Importing of Marine Mammals; Endangered and Threatened Fish and Wildlife; Cook Inlet Beluga Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of petitions.

SUMMARY: NMFS announces the receipt of two petitions to list the Cook Inlet population of beluga whales under the Endangered Species Act (ESA) and one petition to designate the population as depleted under the Marine Mammal Protection Act (MMPA). NMFS also announces that it has determined that the petitioned actions may be warranted.

ADDRESSES: Requests for copies of the petitions should be addressed to Chief, Marine Mammal Division (PR2), Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Division Chief, Protected Resources Management Division, Alaska Region, NMFS, (907) 586–7235; Brad Smith/Barbara Mahoney, Protected Resources Management Division, Alaska Region, NMFS, (907) 271–5006; or Margot Bohan/Dean Wilkinson, Office of Protected Resources, NMFS, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

The MMPA (16 U.S.C. 1361–1407) contains provisions for interested parties to petition for a species or stock to be designated as "depleted" (16 U.S.C. 1383(b)). Section 4 of the ESA (16 U.S.C. 1531–1543) and 50 CFR part 424 contain provisions allowing interested parties to petition for a species (including any subspecies or, in the case of vertebrates, a distinct population segment which interbreeds when mature) to be listed as threatened or endangered. If a petition presents substantial information, a review is conducted to determine if a species should be designated as depleted or listed as endangered or threatened. Determinations are made based on the best available scientific data.

Petitions Received

On January 21, 1999, NMFS received a petition from the State of Alaska to designate the Cook Inlet beluga stock as depleted. On March 3, 1999, NMFS received a petition, on behalf of Joel Blatchford, a Native Alaskan beluga hunter, the Alaska Center for the Environment, the Alaska Community Action on Toxics, the Alaska Wildlife Alliance, the Center of Biological Diversity, the Center for Marine Conservation, the National Audubon Society, and the Trustees for Alaska to list Cook Inlet belugas as endangered under the ESA on an emergency basis. On March 10, 1999, NMFS received another petition from the Animal Welfare Institute to change the status of Cook Inlet beluga whales to depleted under the MMPA and endangered under the ESA.

Presentation of Substantial Information

NMFS has determined that each of these petitions presents substantial information indicating that the petitioned action may be warranted. A copy of the petitions and information submitted with the petitions is available upon request (see **ADDRESSES**).

NMFS recently commenced a review of the status of the Cook Inlet population of beluga whales, in collaboration with the Alaska Beluga Whale Committee and the Cook Inlet Marine Mammal Council. The agency solicited information and public comments in conjunction with the status review to ensure that the review is complete and is based on the best available information. Completion of the status review is expected in early April. NMFS will evaluate the merits of listing of the Cook Inlet beluga whale as threatened or endangered under the ESA based on the findings of this status review. NMFS will also evaluate the merits of designating the Cook Inlet beluga whale as depleted under the MMPA based on this review.

Dated: April 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8905 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032499A]

Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Oil and Gas Activities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request for panel nominations.

SUMMARY: The Marine Mammal Protection Act (MMPA) requires Incidental Harassment Authorizations (IHAs) issued thereunder, to prescribe, where applicable, the requirements for an independent peer review of research and monitoring plans for those activities that take marine mammals incidental to the activity and where the activity may affect the availability of a species/stock of marine mammal for taking for subsistence uses in Arctic waters. In addition, NMFS regulations require similar review for Letters of Authorization (LOAs) issued under the MMPA for activities in Arctic waters. Because of increasing activities and potential MMPA authorizations in Arctic waters, NMFS wishes to expand its present list of peer review participants. NMFS is therefore accepting nominations from the public for consideration as potential reviewers of monitoring and research plans in the Arctic.

DATES: Nominations must be received no later than May 24, 1999.

ADDRESSES: Nominations should be addressed to Donna Wieting, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Additional information may be obtained by writing to this address or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing LOAs under section 101(a)(5)(A) and IHAs under section 101(a)(5)(D) of the MMPA.

Section 101(a)(5)(D)(ii)(III) of the MMPA requires authorizations to prescribe, where applicable, the requirements for the "independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses..." This requirement was codified at 50 CFR 216.107. However, due to time constraints, it is often necessary for the peer review process to be substantially completed prior to issuance of the authorization.

Procedure

If an activity, taking place in Arctic waters, has the potential to cause an adverse impact on those marine mammals taken in subsistence harvests, applicants are required to submit to NMFS a complete draft Monitoring Plan (Plan) for assessing impacts to marine mammals, either with an IHA application but no later than 120 days prior to the date an IHA is expected to be issued. The timing of the submission minimizes potential conflicts among user groups over whether a proposed Plan is adequate for determining the effects of the proposed activity on stocks of marine mammals needed for subsistence purposes.

Upon receipt of a small take application and draft Plan, NMFS reviews the documents and makes a preliminary determination on whether the activity has the potential to adversely affect the availability of a species or stock for subsistence uses. If NMFS makes a preliminary determination that the activity has the potential to adversely affect the availability of a species or stock for subsistence uses, NMFS will (1) establish an independent peer-review panel to critique the Plan and provide comments and recommendations on improving monitoring, (2) convene a peer review workshop to discuss and evaluate the Plan prior to requesting independent peer review, or (3) consult with the Marine Mammal Commission (MMC), the Alaska Eskimo Whaling Commission (AEWC), and either the North Slope Borough (NSB), or another Native Alaskan Interest Group as appropriate to determine the level of review appropriate for the activity. The Plan, and NMFS' preliminary determination on the level of peer review, is also made available to the public at the time of publication in the **Federal Register** of a notice of receipt of an IHA or LOA application. If a peer review workshop is convened, independent peer review is requested on the Plan after incorporation of any workshop recommendations. Peer review usually is also conducted on the results of any monitoring program that has previously undergone peer review.

As an example of a peer-review process, applicants involved in oil and gas exploration and development activities in the U.S. Beaufort Sea coordinate activities with NMFS and NSB residents and provide a Plan several months prior to an activity's commencement. In most years, a peer-review workshop is scheduled to review the Plan. That procedure is likely to continue into the future. For this type of activity, the workshop normally includes 6 to 10 experts in the fields of population ecology, survey design, acoustics, and marine mammal behavior. Workshop participants are selected by NMFS, in consultation with the MMC, the AEWC, the NSB and the applicant, all of whom may have scientific representation. Normally, the workshop is chaired by NMFS and minutes from the workshop are prepared within 2 weeks by a rapporteur assigned to assist the Chair, and made available to the general public upon request. Often, the Plan is modified subsequent to the workshop and submitted to NMFS for acceptance and submission to the independent peer review panel. Selected independent peer reviewers (usually 3 to 4) are experts in one or more of the previously mentioned scientific areas who are not currently employed or contracted by either the affected Alaskan native organization, or NMFS. To avoid a potential conflict of interest, marine mammal scientists who are currently employed or contracted by potential applicants may be selected for the peer review panel, but would not be requested to peer review the Plans of their employer.

Nominations Solicited

NMFS requests interested persons to submit recommendations, comments, information, and suggestions concerning potential peer-reviewers (see **ADDRESSES**). Nominators should ensure that the potential applicant is a biological scientist, familiar either with monitoring techniques for assessing marine mammal populations, and/or knowledgeable on life history parameters of Arctic marine mammals and willing to review a maximum of 1 monitoring plan and resulting research report per year without compensation. Upon receipt of an interest in participating as an independent peer reviewer, NMFS may solicit additional information, including, where necessary, curriculum vitae of the interested individual. Applicants who are currently employed or contracted by NMFS, the NSB, or the AEWC cannot be selected.

Dated: April 5, 1999.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–8906 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040599B]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council, its Executive Committee, and its Surf Clam and Ocean Quahog, Comprehensive Management, Information and Education, Tilefish, and Squid,

Mackerel and Butterfish Committees will hold public meetings.

DATES: The meetings will be held from April 27–29, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Atlantic City West, 6821 Black Horse Pike, Atlantic City, NJ; telephone: 609–272–0200.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

On Tuesday, April 27 the Surf Clam and Ocean Quahog Committee will meet from 9:00 a.m. until noon. The Comprehensive Management Committee will meet from 1:00 p.m. until 5:00 p.m. There will be a Tilefish Committee scoping meeting from 7:00 p.m. until 8:00 p.m.

On Wednesday, April 28 the Executive Committee will meet from 8:00 a.m. until 10:00 a.m. The Information and Education Committee will meet from 10:00 a.m. until 11:00 a.m. The Tilefish Committee will meet from 10:00 a.m. until noon. The Squid, Mackerel and Butterfish Committee will meet from 1:00 p.m. until 5:00 p.m.

On Thursday, April 29 the Council will meet from 8:00 a.m. until noon.

Agenda items for the meetings include discussion of preliminary results of economic models for surf clams and ocean quahogs; convening of workshop on scup to discuss ways to reduce bycatch in small mesh fisheries; discussion of Information and Education Committee plans for 1999; review of results of March 31–April 1 meetings on tilefish, and discussion of possible tilefish management measures; review of 1999 quota specifications for *Illex*; review of the status of Amendment 8 to squid, mackerel, and butterfish fishery management plan, and potential for framework actions for squid, mackerel and butterfish; review of quota setting procedures and other management measures for the year 2000 *Illex* fishing season, including seasonal restrictions and in-season quota adjustments based on outcome of pending stock assessment; discussion of Amendment 9 management measures, including real-time management of the *Illex* fishery and limited entry for the Atlantic mackerel fishery; approve staff reorganization and address Executive Committee and industry advisory appointment policy.

Although other issues not contained in this agenda may come before the Council/Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, such issues may not be the subject of formal Council/Committee action during these meetings. Council/Committee actions will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least five days prior to the meeting dates.

Dated: April 5, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–8908 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

In a departure from our regular third-Thursday-of-the-month meetings, the next meeting of the Commission of Fine Arts is scheduled for Wednesday, April 21, 1999 at 10:00 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001. Items of discussion will include designs for projects affecting the appearance of Washington, DC, including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Copies of the meeting's draft agenda are usually available one week before the meeting. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 1 April 1999.

Charles H. Atherton,

Secretary.

[FR Doc. 99–8891 Filed 4–8–99; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

April 2, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward applied to the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 2, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1,

1999 and extends through December 31, 1999.

Effective on April 13, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
338/339	2,201,081 dozen.
345	174,595 dozen.
347/348	2,054,024 dozen.
361	1,952,374 numbers.
433	3,206 dozen.
443	38,768 numbers.
634	468,714 dozen.
638/639	2,261,110 dozen.
647/648	1,239,377 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–8929 Filed 4–8–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received June 8, 1999.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TRICARE Management Activity—Aurora, Office of Program Requirements, 16401 E. Centretech Parkway, ATTN: Graham Kolb, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call TRICARE Management Activity, Program Requirements Branch at (303) 676–3580.

Title, Associated Form, and OMB Number: CHAMPUS Claim Patient's Request for Medical Payment, DD Form 2642, OMB Number 0720–0006.

Needs and Uses: This form is used solely by beneficiaries claiming reimbursement for medical expenses under the TRICARE Program [formerly the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS)]. The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and reimbursement for the medical services received.

Affected Public: Individual or households.

Annual Burden Hours: 239,000.

Number of Respondents: 956,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by beneficiaries under the TRICARE Program [formerly the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS)]. TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty Uniform Services members and deceased sponsors, retirees and their dependents, dependents of Department of Transportation (Coast Guard) sponsors, and certain North Atlantic Treaty Organizations, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. DD Form 2642 is used solely by TRICARE/CHAMPUS beneficiaries to file for reimbursement of costs paid to provider and suppliers for authorized health care services or supplies.

Dated: April 5, 1999.

L.M. Bynum,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–8799 Filed 4–8–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Group of Advisors to the National Security Education Board Meeting

AGENCY: National Defense University, Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Group of Advisors to the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

DATES: April 19–20, 1999.

ADDRESSES: Montana State University, Museum of the Rockies, 600 West Kagy Boulevard, Bozeman, MT 59717–2730.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: colliere@ndu.edu

SUPPLEMENTARY INFORMATION: The Group of Advisors meeting is open to the public.

Dated: April 5, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 99–8800 Filed 4–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Closed Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is to conduct the mid-term briefing of the Naval Warfare Innovation Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to the organization and operation of the Naval War College,

Navy Warfare Development Command, and Strategic Studies Group.

DATES: The meeting will be held on April 29, 1999 from 1:30 p.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, telephone (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute information that relates solely to the internal rules and practices of the agency. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552(b)(2).

Dated: March 31, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 99–8893 Filed 4–8–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.334]

Office of Postsecondary Education; Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP); Notice Announcing a Two-Tier Review Process for Applications Received Under the Fiscal Year (FY) 1999 Competition

SUMMARY: The Secretary announces the use of a two-tier review process to evaluate applications submitted for new awards under the FY 1999 GEAR UP program for Partnership grants. The Secretary takes this action to ensure a thorough review and assessment of the large number of applications expected to be received under the FY 1999 competition. This competition was announced previously in a notice published in the **Federal Register** on March 2, 1999 (64 FR 10190). That notice, however, did not explain that a two-tier review process is to be used in the evaluation of GEAR UP Partnership applications. Because the announcement of a two-tier review process does not affect the contents of the applications in this competition, the date by which applications must be received remains as originally announced, April 30, 1999.

SUPPLEMENTARY INFORMATION: The Department will follow the procedures in the Education Department General Administrative Regulations (EDGAR), 34 CFR part 75, except as indicated below.

Application Review Procedures

The Secretary will use a two-tier process for reviewing applications for Partnership grants in this competition. At each tier of the review process, panels of experts will read the applications under consideration to determine which applications are most deserving of further consideration in light of the published selection criteria. Reviewers will forward recommended applications and applications recommended with reservations to Tier II for further consideration. The same evaluation criteria and procedures will be used in Tier II as in Tier I with the goal of funding the highest quality applications until available funds are exhausted. If all applications of comparable merit cannot be funded, the Secretary will use the competitive priority already published. If applications are still of comparable merit after the competitive priority has been applied, the Secretary will determine which application contributes most to the mission of GEAR UP.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since this notice merely establishes procedural requirements for review of applications and does not create substantive policy, proposed rulemaking is not required under 5 U.S.C. 553(b)(A).

FOR FURTHER INFORMATION CONTACT: Sylvia Ross, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 6248, Portals Building, Washington, DC 20202. Telephone (202) 708–4650, e-mail Sylvia_Ross@ed.gov, or fax (202) 260–4269. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of a document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 1070a–21

Dated: April 6, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–8909 Filed 4–8–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[FE Docket No. PP–11–2]

Application To Amend Presidential Permit Fraser Papers Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Fraser Papers Inc. (Fraser) has applied to amend Presidential Permit PP–11–1 authorizing it to construct, connect, operate and maintain electric transmission facilities across the U.S. border with Canada.

DATES: Comments, protests, or requests to intervene must be submitted on or before May 10, 1999.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States

for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On March 29, 1999, Fraser filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) to amend Presidential Permit PP–11–1 issue by DOE on July 31, 1996. Fraser is a Delaware corporation and the owner and operator of a paper mill in Madawaska, Maine. Presidential Permit PP–11–1 authorized Fraser to operate and maintain one, three-phase, 6.6-kilovolt (kV) transmission line and one, three-phase, 69–kV transmission line at the U.S.-Canada border. Each of these transmission lines is approximately one mile in length (approximately 1/10-mile within the United States) and they connect Fraser's paper mill located in Madawaska, Maine, to a pulp mill located in Edmundston, New Brunswick, Canada, and owned by Fraser's affiliate, Fraser Papers Inc. (Canada).

Fraser proposes to reconductor the 69–kV transmission line to allow for eventual operation at 138–kV. However, the reconductored facilities would continue to be operated at 69–kV. Fraser asserts that it will make no change to transmission towers located within the United States or in the St. John River, the United States border with Canada.

Fraser's U.S. paper mill and its Canadian pulp mill each have on-site electric generating facilities to produce electric energy for internal use. The facilities authorized by Presidential Permit PP–11–1 are used to transmit electric energy between Fraser's U.S. and Canadian facilities depending upon the need and availability of electrical supply at each location. Fraser's international transmission facilities do not connect with any part of the U.S. electric power system, thereby precluding third party use of these transmission facilities.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: John P. Borgwardt, General Counsel, Fraser Papers Inc., 70 Seaview Avenue, PO Box 10055, Stamford, CT 06904.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (i.e., granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to NEPA. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory" and then "Electricity" from the options menu.

Issued in Washington, D. C., on April 5, 1999.

Anthony J. Como,

Manager, Electric Power Regulation Office of Coal & Power Im/Ex, Office of Fossil Energy.

[FR Doc. 99–8884 Filed 4–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–284–000]

Koch Gateway Pipeline Company; Notice of Application

April 5, 1999.

Take notice that on April 1, 1999, Koch Gateway Pipeline Company (Koch Gateway), P. O. Box 1478, Houston, Texas 77521–1478, filed, in Docket No. CP99–284–000, an application pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment in place of the western portion of its Latex-Fort Worth Mainline facilities (West Index 1 line) located in Tarrant, Dallas, and Kaufman Counties, Texas, as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http:/// www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Koch Gateway requests authorization to abandon in place approximately 102.08 miles of its West Index 1 line and associated laterals of the facilities. Koch Gateway describes the facilities as consisting of various diameter-sized pipe from 4-inch to 20-inch. Additionally, Koch Gateway requests permission to abandon the service it provides on these facilities to its single firm customer, Lone Star Gas Company (Lone Star). Koch Gateway contends that it has not been able to attract or maintain substantial gas markets in the Dallas/Forth Worth area along West Index 1. Therefore, Koch Gateway maintains it cannot compete in this market due to shifts in supplies, increased competition, low current demand for transportation, increasing operating costs, and the lack of economic benefits.

Koch Gateway has requested an abandonment date of June 1, 1999, but will not abandon the facilities and services until the last customer served by Lone Star has been converted to an alternative form of energy service.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Koch Gateway to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–8853 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1567–000, etc]

Rockingham Power, L.L.C., et al.; Notice of Issuance of Order

April 5, 1999.

In the matter of: Rockingham Power, L.L.C., Docket Nos. ER99–1567–000; Elwood Energy LLC, ER99–1695–000; Somerset Power LLC, ER99–1712–000; Lake Road Generating Company, L.P., ER99–1714–000; CinCap VI, LLC, ER99–1727–000; Empire District Electric Company, ER99–1757–000; Duke Energy South Bay LLC, ER99–1785–000; New Energy Partners, L.L.C., ER99–1812–000; (Not consolidated); Notice of Issuance of Order.

Rockingham Power, L.L.C., Elwood Energy, LLC, Somerset Power LLC, Lake Road Generating Company, L.P., CinCap VI, LLC, Empire District Electric Company, Duke Energy South Bay LLC, and New Energy Partners, L.L.C. (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances and securities and assumptions of liabilities by the Applicants. On March 31, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's March 31, 1999 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any persons desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions or liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants; compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities.* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 30, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David R. Boergers,

Secretary.

[FR Doc. 99–8854 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–278–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

April 5, 1999.

Take notice that on March 31, 1999, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP99–278–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct a delivery point for Rockingham Power L.L.C. (RP), a provider of electricity and energy services in North Carolina, under Transco's blanket certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Transco states that the delivery point will consist of two sixteen-inch (16″) valve tap assemblies, a meter station with one eight-inch (8″) orifice meter tube and two twelve-inch (12″) orifice meter tubes, and other appurtenant facilities. The proposed delivery point will be installed at or near milepost 1368.36 on Transco's mainline in Rockingham County, North Carolina. Transco states that RP will construct, or cause to be constructed, appurtenant facilities to enable it to receive gas from Transco at such point and move the gas to a new RP winter/summer peaking power facility.

Transco states the new delivery point will be used by RP to receive up to 221.8 MMcf (at 500 psig) of gas per day from Transco on a capacity release, secondary firm or interruptible basis. The gas delivered through the new delivery point will be used by RP as fuel for its peaking power facility. Transco states that RP is not currently a transportation customer of Transco. Upon completion of the delivery point, Transco will commence transportation service to RP or its suppliers pursuant to Transco's Rate Schedules FT, FT–R or IT and part 284(G) of the Commission regulations. The addition of the delivery point will have no significant impact on Transco's peak day or annual deliveries, and is not prohibited by Transco's FERC Gas Tariff.

Transco has estimated the total costs of Transco's proposed facilities to be approximately $1,158,000.00. RP will reimburse Transco for all costs associated with such facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 99–8852 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1336–001, et al.]

Central Vermont Public Service, et al.; Electric Rate and Corporate Regulation Filings

April 2, 1999.

Take notice that the following filings have been made with the Commission:

1. Central Vermont Public Service

[Docket No. ER99–1336–001]

Take notice that on March 29, 1999, Central Vermont Public Service Corporation (Central Vermont) filed its compliance filing pursuant to the Commission's March 12, 1999 order in North American Electric Reliability Council, et al., 86 FERC ¶ 61,275 (1999). Central Vermont notified the Commission that the ISO-New England, Inc. (ISO-New England) and the New England Power Pool (NEPOOL) are responsible for transmission loading relief procedures referred to in that proceeding. Central Vermont concurs with the ISO-New England and NEPOOL's compliance filing in this proceeding.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER99–1337–001]

Take notice that on March 29, 1999, Boston Edison Company (Boston Edison) filed its compliance filing pursuant to the Commission's March 12, 1999 order in North American Electric Reliability Council, et al., 86 FERC ¶ 61,275 (1999). Boston Edison notified the Commission that it agrees to adopt NERC TLR procedures. Also, Boston Edison notified the Commission that the ISO-New England, Inc. (ISO-New England) and the New England Power Pool (NEPOOL) are responsible for transmission loading relief procedures referred to in that proceeding. Boston Edison concurs with the ISO-New England and NEPOOL's compliance filing in this proceeding.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Vermont Electric Power Company

[Docket No. ER99–1339–001]

Take notice that on March 29, 1999, Vermont Electric Power Company, Inc. (VELCO) submitted for filing, in compliance with the Commission's December 16, 1998 and March 12, 1999 orders in Docket Nos. EL98–52–000, *et al.*: (1) interim procedures for transmission loading relief to address parallel flows associated with native load transactions and network service, and (2) interim procedures for redispatch solutions to congestion management problems. VELCO requests an effective date coincident with its filing, and therefore respectfully requests waiver of any otherwise applicable Commission requirements as necessary to permit such an effective date.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER99–1414–002]

Take notice that on March 29, 1999, Montaup Electric Company (Montaup) filed its compliance filing pursuant to the Commission's March 12, 1999 order in North American Electric Reliability Council, et al., 86 FERC ¶ 61,275 (1999). Montaup notified the Commission that the ISO-New England, Inc. (ISO-New England) and the New England Power Pool (NEPOOL) are responsible for transmission loading relief procedures referred to in that proceeding. Montaup concurs with the ISO-New England and NEPOOL's compliance filing in this proceeding.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99–2296–000]

Take notice that on March 29, 1999, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies) tendered for filing a service agreement for short-term sales establishing LG&E Energy Marketing, Inc. (LG&E Energy) as a customer under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of March 1, 1999 for the agreement with LG&E Energy and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on LG&E Energy.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER99–2297–000]

Take notice that on March 29, 1999, Florida Power & Light Company (FPL) tendered for filing an Exhibit A for the Crawley Delivery Point to the unexecuted Network Service Agreement Among Florida Power & Light Company, Seminole Electric Cooperative, Inc., Clay Electric Cooperative, Inc., Glades Electric Cooperative, Inc., Lee County Electric Cooperative, Inc., Peace River Electric Cooperative, Inc., and Suwannee Valley Electric Cooperative, Inc., (NSA), and the Amendment No. 1 to the Agreement For Connection Of Facilities Between FPL, SECI and Peace River Electric Cooperative, Inc.

FPL requests that the Exhibit A for the Crawley Delivery Point and the Amendment No. 1 to the Agreement For Connection Of Facilities be permitted to become effective on March 1, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER99–2298–000]

Take notice that on March 29, 1999, Cinergy Services, Inc. (Cinergy) tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and DukeSolutions, Inc. (DSI).

Cinergy and DSI are requesting an effective date of March 15, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER99–2299–000]

Take notice that on March 29, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

A copy of the filing was served upon the parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Cleco Trading & Marketing LLC

[Docket No. ER99–2300–000]

Take notice that on March 29, 1999, Cleco Trading & Marketing LLC (Cleco Trading) petitioned the Commission for acceptance of Cleco Trading & Marketing LLC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Cleco Trading intends to engage in wholesale electric power and energy purchases and sales as a marketer. Cleco Trading is not in the business of generating or transmitting electric power. Cleco Trading is an affiliate of Cleco Corporation, a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. § 791a, *et seq.*

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER99–2301–000]

Take notice that on March 15, 1999, Cinergy Services, Inc. (Cinergy) tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and DukeSolutions, Inc. (DSI).

Cinergy and DSI are requesting an effective date of March 15, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER99–2302–000]

Take notice that on March 29, 1999 Florida Power & Light Company (FPL) tendered for filing proposed service agreements with PP&L, Inc. for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on March 25, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. New Century Services, Inc.

[Docket No. ER99–2303–000]

Take notice that on March 29, 1999, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and American Electric Power Service Corporation.

The Companies request that the Agreement be made effective on March 2, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc.

[Docket No. ER99–2304–000]

Take notice that on March 29, 1999, PP&L, Inc. (PP&L) filed a Service Agreement dated March 9, 1999 with West Penn Power Company d/b/a Allegheny Energy (AE) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds AE as an eligible customer under the Tariff.

PP&L requests an effective date of March 29, 1999 for the Service Agreement.

PP&L states that copies of this filing have been supplied to AE and to the Pennsylvania Public Utility Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. PP&L, Inc.

[Docket No. ER99–2305–000]

Take Notice that on March 29, 1999, PP&L, Inc. (PP&L) filed a Service Agreement dated March 3, 1999, with Niagara Mohawk Energy Marketing, Inc. (Niagara) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Original Revised Volume No. 5. The Service Agreement adds Niagara as an eligible customer under the Tariff.

PP&L requests an effective date of March 29, 1999 for the Service Agreement.

PP&L states that copies of this filing have been supplied to Niagara and to the Pennsylvania Public Utility Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of New Mexico

[Docket No. ER99–2306–000]

Take notice that on March 29, 1999, Public Service Company of New Mexico (PNM) tendered for filing, a Mutual Netting/Close-out Agreement between PNM and Reliant Energy Services, Inc. (Reliant).

PNM requested waiver of the Commission's notice requirement so that service under the PNM/Reliant netting agreement may be effective as of April 1, 1999.

Copies of the filing were served on Southern and the New Mexico Public Regulation Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER99–2319–000]

Take notice that on March 29, 1999, Illinois Power Company submitted for filing an amendment to its unexecuted Network Operating Agreement for service to Southern Illinois Power Cooperative, Inc. The amendment is filed in compliance with the Commission's order issued in Docket No. ER99–1331–000 on March 12, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8867 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–103–000, et al.]

LG&E Capital Corporation, et al.; Electric Rate and Corporate Regulation Filings

March 31, 1999.

Take notice that the following filings have been made with the Commission:

1. LG&E Capital Corporation

[Docket No. EG99–103–000]

On March 25, 1999, LG&E Capital Corporation (Capital Corp.), a Kentucky corporation with its principal place of business at 220 West Main Street, Louisville, Kentucky 40202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Capital Corp. proposes to construct, own and operate two 164 megawatt combustion turbine electric generating units in Mercer County, Kentucky. The units are scheduled to be completed in July 1999 and to be in service by August 1, 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. PDI Canada, Inc.

[Docket No. EG99–104–000]

Take notice that on March 29, 1999, PDI Canada, Inc., a Wisconsin corporation with its headquarters at 677 Baeten Road, Green Bay, WI 54304, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PDI Canada, Inc. is a wholly-owned subsidiary of WPS Power Development, Inc., which in turn is a wholly-owned, indirect subsidiary of WPS Resources Corporation, headquartered in Green Bay, Wisconsin. WPS Resources Corporation is an exempt public utility holding company. Its subsidiaries include Wisconsin Public Service Corporation, an electric and natural gas public utility serving portions of northeastern Wisconsin and the upper peninsula of Michigan. PDI Canada, Inc. will be taking title to and operating the assets located in Canada being divested by Maine & New Brunswick Electrical Power Company, Limited, a wholly owned subsidiary of Maine Public Service Company. These assets include a 34.4 MW generating facility and appurtenant transmission facilities located in the province of New Brunswick, Canada. The Maine Public Utilities Commission, in its Docket 98–584, is considering among other things whether allowing PDI Canada, Inc. to be an eligible facility will benefit consumers, is in the public interest, and does not violate State law.

Comment date: April 21, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. United States Department of Energy, Bonneville Power Administration

[Docket No. EL99–49–000]

Take notice that on March 23, 1999, Bonneville Power Administration filed a Petition for Expedited Declaratory Order Approving an Amendment to Bonneville Power Administration's Open Access Transmission Tariff and for Exemption in Lieu of Filing Fee.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Enron Power Marketing, Inc. versus United States Department of Energy—Bonneville Power Administration

[Docket No. EL99–51–000]

Take notice that on March 26, 1999, Enron Power Marketing, Inc. (EPMI) filed its complaint against the Bonneville Power Administration (BPA) pursuant to 16 U.S.C. 824e, h (1994) and 18 CFR 385.206.

Comment date: April 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company; Connecticut Light & Power Company and Western Massachusetts Electric Company

[Docket Nos. ER90–373–008 and ER90–390–008; Docket No. EL90–39–005]

Take notice that on March 29, 1999, Northeast Utilities Service Company (NUSCO) tendered for filing a refund report in compliance with the Commission's order in *Northeast Utilities Service Company, et al.*, 86 FERC ¶61,161 (1999).

Comment date: April 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Harbor Cogeneration Company

[Docket No. ER99–1248–001]

Take notice that on April 5, 1999, Harbor Cogeneration Company tendered for filing amendments to its rate schedule and code of conduct in the above-referenced docket.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER99–1308–000]

Take notice that on March 26, 1999, Carolina Power & Light Company amended the original filing made in this Docket on January 15, 1999.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool Inc., ISO New England Inc.

[Docket No. ER99–1414–001]

Take notice that on March 26, 1999, the New England Power Pool (NEPOOL) and ISO New England Inc. (the ISO), tendered for filing a notice that they have adopted, to the extent necessary, the Transmission Loading Relief procedures, including those relating to native load transactions and network service in other control areas, promulgated by the North American Electric Reliability Council, and that the Restated NEPOOL Open Access Transmission Tariff should be considered modified to effect the adoption of those procedures. This notice was filed in compliance with the Commission's orders in *North American Electric Reliability Council, et al.*, 86 FERC ¶ 61,275 (1999) and *North American Electric Reliability Council*, 85 FERC ¶ 61,353 (1998).

NEPOOL and the ISO state that copies of these materials were sent to all entities on the service list in the captioned docket, to the participants in the New England Power Pool, and to the New England state governors and regulatory commissions.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. CMS Generation Michigan Power, L.L.C.

[Docket No. ER99–1970–000]

Take notice that on March 26, 1999, CMS Generation Michigan Power, L.L.C. (Michigan Power), tendered for filing a request for a change in the effective date of a wholesale power sales tariff

previously tendered for filing on March 1, 1999, to permit Michigan Power to make wholesale electric generation sales to eligible customers at up to cost-based ceiling rates.

Michigan Power requests an effective date of April 12, 1999.

Copies of this filing were served upon the Michigan Public Service Commission.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER99–1980–000]

Take notice that on March 1, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR part 35, a service agreement (the Service Agreement), under which NYSEG provide capacity and/or energy to Electric Clearinghouse, Inc. (ECI), in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the Service Agreement with ECI becomes effective as of March 2, 1999.

NYSEG has served copies of the filing upon the New York State Public Service Commission and ECI.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER99–2268–000]

Take notice that on March 26, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system west of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of March 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER99–2269–000]

Take notice that on March 26, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of March 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Cambridge Electric Light Company

[Docket No. ER99–2271–000]

Take notice that on March 26, 1999, Cambridge Electric Light Company (Cambridge), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between Cambridge and Merchant Energy Group of the Americas, Inc., (MEGA). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to MEGA under Cambridge's open access transmission tariff accepted for filing in Docket No. ER97–1337–000, subject to refund and issuance of further orders.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Delmarva Power & Light Company

[Docket No. ER99–2272–000]

Take notice that on March 26, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a 3rd Revised Supplement to its FERC Rate Schedule No. 99, with respect to Delmarva's partial requirements service agreement with the City of Seaford. The proposed change would decrease base demand and energy rates by 0.222520% or about $1,869.00 annually (based on actual billing data for calendar year 1995).

Delmarva proposes an effective date of March 1, 1999. Delmarva asserts that the decrease and the proposed effective date is in accord with the service agreement with the City of Seaford as accepted for filing as Rate Schedule No. 99 and eight supplements in Docket No. ER95–1039–000, which service agreement provides for changes in rates that correspond to the level of changes in rates approved by the Delaware Public Service Commission for Delmarva's non-residential retail customers.

Copies of the filing were served on the City of Seaford and the Delaware Public Service Commission.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Penobscot Hydro, LLC

[Docket No. ER99–2273–000]

Take notice that on March 26, 1999, Penobscot Hydro, LLC (Penobscot), tendered for filing the Transitional Power Sales Agreement under which Penobscot will sell capacity and energy at negotiated rates to Bangor Hydro-Electric Company under Penobscot's pending Market-Based Rate Tariff in Docket No. ER99–1940–000.

Penobscot has requested that the Commission waive its notice requirements to permit the agreement to become effective April 30, 1999.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Carolina Power & Light Company

[Docket No. ER99–2274–0000]

Take notice that on March 26, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with DukeSolutions, Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

CP&L is requesting an effective date of March 1, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Carolina Power & Light Company

[Docket No. ER99–2275–000]

Take notice that on March 26, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light—Wholesale Power Department. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of April 1, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER99–2276–000]

Take notice that on March 26, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Soyland Power Cooperative, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1999.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Southern California Edison Company

[Docket No. ER99–2277–000]

Take notice that on March 26, 1999, Southern California Edison Company (SCE), tendered for filing notice of cancellation of Service Agreement No. 7, under FERC Electric Tariff, Original No. 5, effective April 1, 1998, and filed with the Federal Energy Regulatory Commission by Southern California Edison Company is to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and Southern California Edison Company—Generation Business Unit.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Illinois Power Company

[Docket No. ER99–2278–000]

Take notice that on March 26, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Ottertail Power will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1999.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Indiana Gas and Electric Company

[Docket No. ER99–2279–000]

Take notice that on March 26, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing service agreements for firm and non-firm transmission service under Part II of its Transmission Services Tariff with DukeSolutions, Inc.

SIGECO has entered into service agreements for firm and non-firm transmission service with DukeSolutions, Inc., dated March 23, 1999.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Electric Company

[Docket No. ER99–2280–000]

Take notice that on March 26, 1999, Commonwealth Electric Company (Commonwealth), tendered for filing a Non-Firm Point-to-Point Service Agreement between Commonwealth and Merchant Energy Group of the Americas, Inc., (MEGA). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide Non-Firm Point-to-Point Transmission Service to MEGA under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341-000, subject to refund and issuance of further orders.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Southern California Edison Company

[Docket No. ER99–2281–000]

Take notice that on March 26, 1999, Southern California Edison Company (SCE) tendered for filing notice that effective March 27, 1999, Rate Schedule FERC Nos. 251, 252, 253, 254, 255, effective August 1, 1990, and Rate Schedule FERC Nos. 251.4, 252.4, 253.4, 254.5, 255.4 effective April 1, 1998, filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon City of Anaheim, City of Azusa, City of Banning, City of Colton, City of Riverside, and the Public Utilities Commission of the State of California.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER99–2282–000]

Take notice that on March 26, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which OGE Energy Resources, Inc., will take transmission service pursuant to its open access transmission tariff.

The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1999.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Northwestern Wisconsin Electric Company

[Docket No. ER99–2283–000]

Take notice that on March 26, 1999, Northwestern Wisconsin Electric Company, tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. The proposed changes would increase revenues from jurisdictional sales by $19,197.91 based on the 12 month period ending April 30, 1999. Northwestern Wisconsin Electric Company is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. The service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1.

Northwestern Wisconsin Electric Company requests this Rate Schedule Change become effective May 1, 1999.

Copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. AEE 2, L.L.C.

[Docket No. ER99–2284–000]

Take notice that on March 26, 1999, AEE 2, L.L.C. (AEE 2), c/o Mr. Henry Aszklar, 1001 North 19th Street, Arlington, Virginia 22209, tendered for filing with the Federal Energy Regulatory Commission an application for authority to charge market-based rates for wholesale sales of energy, capacity and ancillary services.

AEE 2 respectfully requests expedited action on this application by April 6, 1999, and waiver of advance notice for the rates to become effective upon the transfer of the New York Assets.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Duke Energy Corporation

[Docket No. ER99–2286–000]

Take notice that on March 26, 1999, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Service Agreement for Market Rate Sales under Rate Schedule MR, FERC Electric Tariff First Revised Volume No. 3 (the MRSAs), between Duke and Cargill-Alliant, LLC, and between Duke and PP&L Energy Plus Co.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Black Hills Corporation

[Docket No. ER99–2287–000]

Take notice that on March 26, 1999, Black Hills Corporation (Black Hills), tendered for filing an application for an order authorizing Black Hills to make wholesale sales of electric power at market-based rates.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Services, Inc.

[Docket No. ER99–2288–000]

Take notice that on March 26, 1999, Cinergy Services, Inc. (Cinergy), as agent for and on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), tendered for filing its revised list of retail customers having the option to receive firm point-to-point buy-through transmission service under the Cinergy Operating Companies' Open Access Transmission Tariff.

Cinergy states that it has served copies of its filing on the customers currently affected as well as the regulatory commissions of Indiana, Ohio and Kentucky.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Midwest Energy, Inc.

[Docket No. ER99–2289–000]

Take notice that on March 26, 1999, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission two executed Transaction Service Agreements (TSA) entered into between Midwest and Kansas City & Light and Midwest and Western Resources. These TSA's govern the sale of power under Midwest's Wholesale Service Tariff.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Commonwealth Chesapeake Company, LLC

[Docket No. TX99–1–000]

Take notice that on March 23. 1999, Commonwealth Chesapeake Company, LLC (CCC) filed with the Federal Energy Regulatory Commission an application requesting the Commission order Delmarva Power & Light Company to provide transmission service pursuant to Section 211 of the Federal Power Act.

CCC has requested firm transmission service. Copies of CCC's Application have been served on all affected parties.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8835 Filed 4–8–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–58–000, et al.]

Niagara Mohawk Power Corporation and Moreau Manufacturing Corporation, et al.; Electric Rate and Corporate Regulation Filings

April 1, 1999.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation and Moreau Manufacturing Corporation

[Docket No. EC99–58–000]

Take notice that on March 29, 1999, Niagara Mohawk Power Corporation and Moreau Manufacturing Corporation (collectively, the Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the transfer from Moreau to Niagara Mohawk of Moreau's hydroelectric generating station. The Applicants also tendered for filing an application pursuant to Section 8 of the Federal Power Act for authorization to transfer to Niagara Mohawk the license for the hydroelectric generating station, and to substitute Niagara Mohawk for Moreau as applicant for a new license for the station.

Comment date: April 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. SCC–L2 L.L.C.

[Docket No. EG99–82–000]

Take notice that on March 31, 1999, SCC–L2, L.L.C. (SCC–L2), a Delaware limited liability company with its principal place of business at Chicago, Illinois, filed with the Federal Energy Regulatory Commission an Amendment to Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

The Facility that will be leased by SCC–L2 would consist of a 440 MW natural gas-fired simple cycle power plant in Lowndes County, Mississippi and related equipment. The proposed power plant is expected to commence commercial operation during the second, or early in the third, quarter 1999. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice. The

Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. PDI New England, Inc.

[Docket No. EG99–105–000]

Take notice that on March 29, 1999, PDI New England, Inc., d/b/a WPS New England Generation, Inc., a Wisconsin corporation with its headquarters at 677 Baeten Road, Green Bay, WI 54304, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PDI New England, Inc. is a wholly-owned subsidiary of WPS Power Development, Inc., which in turn is a wholly-owned, indirect subsidiary of WPS Resources Corporation, headquartered in Green Bay, Wisconsin. WPS Resources Corporation is an exempt public utility holding company. lts subsidiaries include Wisconsin Public Service Corporation, an electric and natural gas public utility serving portions of northeastern Wisconsin and the upper peninsula of Michigan. PDI New England, Inc. will be taking title to and operating certain assets located in Maine being divested by Maine Public Service Company (MPS). These assets include a generating facilities with total capacity of approximately 36 MW and related assets located in the northern Maine, and a 3.3455% interest in the Wyman No. 4 Unit, a generating facility in southern Maine. The Maine Public Utilities Commission, in its Docket 98–584, is considering among other things whether allowing PDI New England, Inc. to be an eligible facility will benefit consumers, is in the public interest, and does not violate State law.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of those that concern the adequacy or accuracy of the application.

4. Monroe Power Company

[Docket No. EG99–106–000]

Take notice that on March 30, 1999, Monroe Power Company (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations. Applicant will own and operate a single gas combustion turbine located in Monroe, Georgia. Applicant will sell energy and capacity associated with the facility exclusively at wholesale.

Comment date: April 22, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Central Maine Power Company

[Docket No. ER99–1413–001]

Take notice that on March 29, 1999, the Central Maine Power Company submitted a notice that they have adopted, to the extent necessary, the Transmission Loading Relief procedures, including those relating to native load transactions and network service in other control areas, promulgated by the North American Electric Reliability Council, and that the Central Maine Power Company Open Access Transmission Tariff should be considered modified to effect the adoption of those procedures. This notice was filed in compliance with the Commission's order in *North American Electric Reliability Council, et al.* 86 FERC ¶ 61,275 (1999) and *North American Electricity Council,* 86 FERC ¶ 61,353 (1998).

Copies of this filing were sent to all parties on the service list in the captioned docket, as well as all parties on the service list in Docket No. EL98–52–000.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER99–1459–001]

Take notice that on March 29, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a notice adopting the North American Electric Reliability Council Transmission Loading Relief Procedures in compliance with the Commission's order in *North American Electric Reliability Council, et al.*, 86 FERC ¶ 61,275 (1999).

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company

[Docket No. ER99–1476–001]

Take notice that on March 29, 1999, New England Power Company submitted for filing notice that it has adopted the Transmission Loading Relief procedures proposed by the North American Electric Reliability Council and that its open access transmission tariff—New England Power Company, FERC Electric Tariff, Original Volume No. 9—should be considered so modified. This notice was submitted in compliance with the Commission's March 12, 1999 order in North American Electric Reliability Council, 86 FERC ¶ 61,275 (1999).

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Electric Power Company

[Docket No. ER99–1690–001]

Take notice that on March 29, 1999, the Maine Electric Power Company submitted a notice that they have adopted, to the extent necessary, the Transmission Loading Relief procedures, including those relating to native load transactions and network service in other control areas, promulgated by the North American Electric Reliability Council, and that the Maine Electric Power Company Open Access Transmission Tariff should be considered modified to effect the adoption of those procedures. This notice was filed in compliance with the Commission's order in *North American Electric Reliability Council, et al.*, 86 FERC ¶61,275 (1999) and *North American Electricity Council,* 86 FERC ¶61,353 (1998).

Copies of this filing were sent to all parties on the service list in the captioned docket, as well as all parties on the service list in Docket No. EL98–52–000.

Comment date: April 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Electric Transmission, a division of Duke Energy Corporation

[Docket No. ER99–2285–000]

Take notice that on March 26, 1999, Duke Electric Transmission, a division of Duke Energy Corporation (Duke) tendered for filing Firm Point-to-Point Transmission Service Agreements between Duke and Carolina Power & Light Company, dated February 12, 1999, and Duke and Duke Power, a division of Duke Energy Corporation, dated February 12, 1999.

Duke requests that the Transmission Service Agreements become effective March 1, 1999.

Comment date: April 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Southwest Power Pool

[Docket No. ER99–2290–000]

Take notice that on March 29, 1999, Southwest Power Pool (SPP) tendered for filing seven executed service agreements for loss compensation service under the SPP Tariff.

SPP requests an effective date of March 1, 1999 for each of these agreements.

Copies of this filing were served upon all signatories.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool

[Docket No. ER99–2291–000]

Take notice that on March 29, 1999, Southwest Power Pool (SPP) tendered for filing executed service agreements for short-term firm point-to-point and non-firm point-to-point transmission service under the SPP Tariff with Energy Transfer Group (Energy Transfer), L.L.C. and LG&E Energy Marketing, Inc. (LG&E Energy).

Copies of this filing were served upon all signatories.

SPP requests an effective date of March 5, 1999 for the agreements with Energy Transfer, and an effective date of February 25, 1999 for the agreements with LG&E Energy.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PJM Interconnection, L.L.C.

[Docket No. ER99–2292–000]

Take notice that on March 29, 1999, PJM Interconnection, L.L.C. (PJM) submitted for filing a supplement to the Emergency Reliability Service Agreement between PJM and the New England Power Pool (NEPOOL) to implement the Commission-approved locational marginal price pricing methodology set forth in the PJM Open Access Transmission Tariff.

Copies of this filing were served upon all PJM members and all state regulatory commissions in the PJM and NEPOOL control areas.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. New York State Electric & Gas Corporation

[Docket No. ER99–2293–000]

Take notice that on March 29, 1999, New York State Electric & Gas Corporation (NYSEG) filed executed Network Service and Network Operating Agreements between NYSEG and Energy Cooperative of Western New York, Inc. These Agreements specify that the Transmission Customer has agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff and other revisions to the OATT applicable to all customers who take service under its retail access program.

NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customer.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER99–2294–000]

Take notice that on March 29, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short-term Firm Transmission Service Agreement between itself and Minnesota Power, Inc. (MPEX). The Transmission Service Agreement allows MPEX to receive firm transmission service under Wisconsin Energy Corporation Operating Companies FERC Electric tariff, Volume No. 1.

Also included in Wisconsin Electric's submittal is an assignment of Service Agreement Nos. 57 and 57.1 from National Gas & Electric L.P. to PanCanadian Energy Services L.P. (PCES L.P.).

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on MPEX, PCES L.P., the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Indiana Gas and Electric Company

[Docket No. ER99–2295–000]

Take notice that on March 29, 1999, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing the Wholesale Energy Service Agreement dated February 26, 1999 by and between Southern Indiana Gas and Electric Company and Delmarva Power and Light Company concerning the provision of electric service to Delmarva Power and Light Company, as an umbrella service agreement under its market-based Wholesale Power Sales Tariff.

SIGECO requests that the agreement become effective March 1, 1999.

Comment date: April 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR part 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–8834 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Recreation Plan Amendment and Soliciting Comments, Motions to Intervene, and Protests

April 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment of Recreation Plan.

b. Project No.: 2113–106.

c. Date Filed: March 11,1999.

d. Applicant: Wisconsin Valley Improvement Company.

e. Name of Project: Wisconsin Valley Project.

f. Location: This amendment will affect project lands on the shore of Rice Lake, in Oneida and Lincoln Counties, Wisconsin. The project utilizes U.S. Forest Service lands within the Nicolet and Ottawa National Forests, and lands of the Lac Vieux Desert Band of Chippewa Indians.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Robert W. Gall, Wisconsin Valley Improvement Company, 2301 N. Third Street, Wausau, WI 54403, (715) 848–2976.

i. FERC Contact: Any questions on this notice should be addressed to Patti Pakkala, by e-mail at patti.pakkala@ferc.fed.us, or telephone at (202) 219–0025.

j. Deadline for filing comments and or motions: May 13, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC HL–11.1, 888 First Street, NE., Washington, DC 20426.

Please include the project number (2113–106) on any comments or motions filed.

k. Description of Amendment: The amendment will involve recreation site numbers 1, 2, and 7, as previously approved by the Commission on January 8, 1999. Specifically, the application requests Commission approval of the following changes: (1) delete new Site 7 from the recreation plan; (2) accelerate the development of Site 2 as an alternative to constructing new Site 7; and (3) close Site 1 when Site 2 is completed.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. This notice also consists of the following standard paragraphs: B, C1 and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 285.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–8855 Filed 4–8–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140279; FRL–6071–5]

Access to Confidential Business Information by Battelle Memorial Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Battelle Memorial Institute (BMI), of Columbus, Ohio, access to information which has been submitted to EPA under sections 4, 5, 6, 8(a), 11, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data by BMI occurred as a result of an approved waiver dated March 4, 1999, which requested granting BMI immediate access to TSCA CBI. This waiver was necessary to allow BMI to provide statistical, mathematical, field data collection and technical analysis support and planning for the Office of Pollution Prevention and Toxics (OPPT) programs.

FOR FURTHER INFORMATION CONTACT: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W9–9033, contractor BMI of 505 King Avenue, Columbus, OH, will assist OPPT by providing statistical, mathematical, field data collection and technical analysis support and planning for OPPT programs.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W9–9033, BMI will require access to CBI submitted to EPA under sections 4, 5, 6, 8(a), 11 and 21 of TSCA to perform successfully the duties specified under the contract. BMI personnel will be given access to information submitted to EPA under sections 4, 5, 6, 8(a), 11, and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8(a), 11, and 21 of TSCA that EPA may provide BMI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and BMI's Columbus, OH facility.

BMI will be authorized access to TSCA CBI at their facility under the EPA *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at BMI's site, EPA will perform the required inspection of its facility and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, BMI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until March 2, 2004.

BMI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: April 2, 1999.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–8831 Filed 4–8–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 15, 1999 Through March 19, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act

and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7167.

Summary of Rating Definitions
Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.

On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D–AFS–J65290–UT Rating EC2, Snowbird Ski and Summer Resort Master Development Plan, Implementation, Special-Use-Permit and COE Section 404 Permit, Salt Lake and Lake Counties, Salt Lake City, UT.

Summary: EPA expressed environmental concerns over potential adverse impacts to water quality, especially increased metal concentrations, and to air quality from the proposed action.

ERP No. D–AFS–J65292–WY Rating EC2, Cold Springs Ecosystem Management Project, Implementation, Enhancement of Tree Harvesting and Sale, Medicine Bow-Routt National Forests, Douglas Ranger District, Converse and Albany Counties, WY.

Summary: EPA expressed environmental concerns over potential adverse impacts to water quality.

ERP No. D–BLM–K65204–AZ Rating EC2, Hualapai Mountain Land Exchange/Plan Amendment, Implementation, Kingman and Dutch Flat, Mohave County, AZ.

Summary: EPA expressed environmental concerns regarding potential impacts to wildlife, air quality, and water resources from future development.

ERP No. D–NPS–B65007–VT Rating LO1, Marsh-Billings National Historical Park, General Management Plan, Implementation, Woodstock, VT.

Summary: EPA had no objections to the proposed project.

ERP No. D–NPS–D61050–MD Rating EO2, National Harbor Project, Construction and Operation along the Potomac River on a 534 acre site adjacent to the Capital Beltway and Oxon Hill Manor, COE Section 10 and 404 Permits, Prince George's County, MD.

Summary: EPA expressed environmental objections about potential adverse impacts to aquatic resources, especially fin fish and aquatic plants and wetlands. EPA suggests that the final EIS include a broader range of alterative.

ERP No. D–NPS–J61101–MT Rating EC2, Glacier National Park, General Management Plan, Implementation, Waterton Glacier International Peace Park, Lake National Park, Flathead and Glacier, MT.

Summary: EPA expressed environmental concerns about adverse impacts to water quality and wetland and requested a full air quality impact analysis be included in the final EIS.

ERP No. D–NPS–K61221–CA Rating LO, Fort Baker Site, Golden Gate National Recreation Area, Comprehensive Management Plan, Implementation, Marin County, CA.

Summary: EPA expressed a lack of objection for the proposed action.

Final EISs

ERP No. F–AFS–B65006–VT Sugarbush Ski Resort Project, Improvements and Development, Special-Use-Permit, Green Mountain National Forest, Rochester Range District, Fayston and Warren, Washington County, VT.

Summary: EPA's concerns about impacts to water quality and wildlife habitate were adequately addressed.

ERP No. F–NOA–A91065–00 Atlantic Tunas, Swordfish and Sharks, Highly Migratory Species Fishery Management Plan.

Summary: Review of the Final EIS/Regulation was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: April 06, 1999.
William D. Dickerson,
Office of Federal Activities.
[FR Doc. 99–8935 Filed 4–8–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed March 29, 1999 Through April 02, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990099, Draft EIS, COE, CA, Arroyo Pasajero Watershed Feasibility Investigation, Implementation, Flood Damage Reduction Plan, San Joaquin River Basin, City of Huron, Fresno County, CA, Due: May 24, 1999, Contact: Jerry Fuentes (916) 557–7490.

EIS No. 990100, Draft Supplement, COE, MO, St. Johns Bayou and New Madrid Floodway, Channel Enlargement and Improvement, Flood Control, National Economic Development (NED) Mississippi River & Tributaries, MO, Due: May 24, 1999, Contact: John Rumancik (901) 544–3975.

EIS No. 990101, Draft EIS, COE, IL, WI, Upper Des Plaines River Flood Damage Reduction Project, Recommended Plan to Construction a Lateral Storage Area, National Economic Development (NED), Lake County, IL and Kenosha and Racine Counties, WI, Due: May 24, 1999, Contact: Keith Ryder (312) 353–6400.

EIS No. 990102, Draft Supplement, FHW, CA, Devil's Slide Bypass Improvements, CA–1 To Half Moon Bay Airport to Linda Mar Boulevard, Updated Information, Funding and COE Section 404 Permit, Pacifica and San Mateo Counties, CA, Due: May 24, 1999, Contact: Robert F. Tally (916) 498–5020.

EIS No. 990103, Draft Supplement, FHW, CA, CA–125 South Route Location, Adoption and Construction, between CA–905 on Otay Mesa to CA–54 in Spring Valley, Updated and Additional Information, Funding and COE Section 404 Permit, San Diego County, CA, Due: May 10, 1999, Contact: C. Glenn Clinton (916) 498–5037.

EIS No. 990104, Draft EIS, AFS, AL, Longleaf Restoration Project, Implement a Systematic Five-Year Program for Restoration of the Native Longleaf Pine, Conecuh National Forest, Conecuh Ranger District, Covington and Escambia Counties, AL, Due: May 24, 1999, Contact: Robert Taylor (334) 222–2555.

EIS No. 990105, Draft EIS, FHW, NY, Stewart Airport Access Transportation Improvement Project, A New Interchange on I–84 at Drury Lane, Reconstruction of Drury Lane and a new East-West Connector Road from Drury Lane to Stewart International Airport, Funding, Towns of Montgomery, Newburgh and New Windsor, Orange County, NY, Due: June 01, 1999, Contact: Harold J. Brown (518) 431–4157.

EIS No. 990106, Final Supplement, NOA, Comprehensive Amendment Addressing Essential Fish Habitat in Fishery Management Plans for the South Atlantic Region for Shrimp, Red Drum, Coral, Coral Reefs and Live/Hard Bottom Habitat, Spiny Lobster Snapper-Grouper, Coastal Migratory Pelagics and Golden Crab, South Atlantic Region, Due: May 10, 1999, Contact: Michael Burnette (727) 570–5305.

EIS No. 990107, Final EIS, FRC, MI, IN, IL, Vector Pipeline Project, Natural Gas Pipeline and Associated above ground Facilities Construction and Operation, Approval, Joliet, IL to Vector Canada at the International Border near St. Clair, MI, several counties, MI, IN, and IL, Due: May 10, 1999, Contact: Paul McKee (202) 208–2222.

EIS No. 990108, Draft Supplement, AFS, ID, Grade-Dukes Timber Sale, Proposal to Harvest and Regenerate Timber, Implementation, Cuddy Mountain Roadless Area, Payette National Forest, Weiser Ranger District, Washington County, Idaho, Due: May 24, 1999, Contact: Dautis Pearson (208) 253–0134.

EIS No. 990109, Draft EIS, USN, GU, Agana Naval Air Station Disposal and Reuse, Implementation, Guam, Due: May 24, 1999, Contact: John Bigay (808) 471–9338.

EIS No. 990110, Final Supplement, COE, CA, Napa River and Napa Creek Flood Protection Project, New and Refined Information, City of Napa, Napa County, CA, Due: May 10, 1999, Contact: Karen Shaffer (916) 557–6734.

EIS No. 990111, Final EIS, COE, OR, Coos Bay-North Bend Water Board Water Supply Expansion Project, (Formerly Known as Joe Ney and Upper Pony Creek Reservoirs Expansion Project), COE Section 10 and 404 Permits, Coos County, OR, Due: May 27, 1999, Contact: David Kurkoski (503) 808–4377.

Dated: April 6, 1999.
William D. Dickerson,
Director, Office of Federal Activities.
[FR Doc. 99–8936 Filed 4–8–99; 8:45 am]
BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–641]

Request for Waiver by Sacramento County, California, to Obtain a License to Obtain a License for a Frequency Allocated for Exclusive Paging Operations (929.0125 MHz)

AGENCY: Federal Communications Commission.

ACTION: Notice; comments requested.

SUMMARY: This document seeks comment on a request by Sacramento County California, for waiver of the Commission's rules to permit it to use the frequency 929.0125 MHz for a local alert paging system that would support public safety services provided in Sacramento and Yolo Counties, California. Sacramento also seeks waiver of a licensing freeze that currently governs frequencies in the 929–930 MHz band allocated for exclusive paging operations.

DATES: Comments are due on or before April 12, 1999, and reply comments are due on or before April 19, 1999.[1]

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW–325, Washington, D.C. 20554. SW, Washington, D.C. 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800, and John Fernandez, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, S.W., Room 4–C400, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John Fernandez at the Public Safety and Private Wireless Division, Policy and Rules Branch (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice,* DA 99–641, released on April 1, 1999 (DA 99–641). The full text of the *Public Notice* is available for inspection and copying during normal business

[1] Editorial Note: This document was received at the Office of the Federal Register on April 7, 1999.

hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 4–C207, Washington, D.C. 20554. The complete text of this *Public Notice* may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, 202–857–3800. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

1. On December 16, 1998, the County of Sacramento, California ("Sacramento County" or "the County") filed a Request for Waiver ("Waiver Request") of a licensing freeze that currently governs frequencies in the 929–930 MHz band allocated for exclusive paging operations. Sacramento County requests a waiver of the licensing freeze to permit it to use the frequency 929.0125 MHz for a local alert paging system that would support public safety services provided in Sacramento and Yolo Counties, California. The frequency is currently unassigned in the Sacramento, California, area, according to the County, except for co-channel licensee Stanford University Hospital. The County states that Stanford University Hospital concurs with the County's request to use the channel together on a shared basis.

2. The County filed the instant Waiver Request as part of its previously pending application (Application File No. D103979). The County now requests waiver of the licensing freeze and any other Commission rules necessary to grant its application, pursuant to Section 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. 337(c). Section 337(c) states that the Commission shall grant an application by an entity seeking to provide public safety services to the extent necessary to permit the use of unassigned frequencies, if the Commission makes five specific findings: (1) no other spectrum allocated for public safety use is immediately available; (2) there will be no harmful interference to other spectrum users entitled to protection; (3) public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area in question; (4) the unassigned frequencies were allocated for their present use not less than two years prior to the grant of the application at issue; and (5) the grant of the application is consistent with the public interest. "Public safety services" are defined by 47 U.S.C. 337(f)(1) as services, the sole or principal purpose of which is to protect the safety of life, health, or property, that are provided by state or local governmental entities or by non-governmental entities authorized by the governmental entity whose primary mission is the provision of such services, and that are not made commercially available to the public by the provider.

3. Sacramento County avers that the record developed in pending Application File No. D103979, together with the instant Waiver Request, demonstrates that the County has satisfied all of the statutory requirements for a grant pursuant to Section 337(c)(1).

4. Interested parties may file comments on the Waiver Request on or before April 12, 1999. Parties interested in submitting reply comments must do so on or before April 19, 1999. All comments should reference the subject Waiver Request by Sacramento County, California, DA 99–641, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–325, Washington, D.C. 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800, and John Fernandez, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, S.W., Room 4–C400, Washington, D.C. 20554.

5. The full text of the Waiver Request, comments, and reply comments will be available for inspection and duplication during regular business hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 4–C207, Washington, D.C. 20554. Copies also may be obtained from ITS.

6. Unless otherwise provided, requests for waiver of the Commission's rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under section 1.1208 of the Commission's rules, 47 CFR 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. *See* sections 1.1200(a) and 1.1206 of the Commission's rules, 47 CFR 1.1200(a), 1.1206. Therefore, subsequent to the release of this Public Notice, *ex parte* presentations that are made with respect to the issues involved in the subject Waiver Request will be allowed but must be disclosed in accordance with the requirements of section 1.1206(b) of the Commission's rules, 47 CFR 1206(b).

Federal Communications Commission.

Herbert W. Zeiler,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–9017 Filed 4–8–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–632]

Request for Waiver by San Mateo County, California, To Obtain a License for Thirty-one Frequencies Allocated for Paging Control Operations

AGENCY: Federal Communications Commission.

ACTION: Notice; extension of time for filing reply comments.

SUMMARY: This document extends the time for filing reply comments on a waiver request by San Mateo County, California, to permit it to use thirty-one frequencies for public safety purposes that are now allocated for point-to-multipoint paging control operation in the San Francisco, California, area.

DATES: Reply comments are due on or before April 12, 1999.[1]

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW–325, Washington, D.C. 20554. SW, Washington, D.C. 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800, and Peter J. Daronco, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, S.W., Room 4–C431, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Peter J. Daronco at the Public Safety and Private Wireless Division, Policy and Rules Branch (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, DA 99–632, released on March 31, 1999 (DA 99–632). The full text of the Order is available for inspection and copying

[1] Editorial Note: This document was received at the Office of the Federal Register on April 7, 1999.

during normal business hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 4–C207, Washington, D.C. 20554. The complete text of this *Order* may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, 202–857–3800. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

1. On January 28, 1999, San Mateo County, California (the County), filed the captioned application and request for waiver of the Commission's Rules ("Waiver Request") pursuant to Section 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. 337(c). On March 18, 1999, the Commission released a *Public Notice* seeking comment on the County's Waiver Request under the following deadline dates: March 29, 1999, for filing comments, and April 5, 1999, for filing reply comments. *See* Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by San Mateo County, California, to Obtain a License for Thirty-one Frequencies Allocated for Paging Control Operations, *Public Notice,* DA 99–537 (rel. March 18, 1999), 64 FR 14915 (March 29, 1999).

2. On March 19, 1999, the County filed a Motion for Extension of Time (*Motion*) to extend the deadline date for filing reply comments to April 12, 1999. The County states that the specific comment schedule adopted in the *Public Notice* imposes severe constraints on the County because its counsel will be traveling and unable to address this matter from March 26 to April 5, 1999. The County avers that these circumstances will make it nearly impossible for it to provide full and complete reply comments by April 5, 1999, and it requests a seven (7) day extension of deadline date for reply comments.

3. It is the policy of the Commission that extensions of time are not routinely granted. 47 CFR 1.46(b). Upon review, however, we agree that an extension will afford parties the necessary time to coordinate and file reply comments that will facilitate the compilation of a more complete record in this proceeding. We believe that a seven (7) day extension of time for filing reply comments should provide an adequate opportunity for all parties to prepare and file responsive and complete reply comments in this proceeding without causing undue delay to the Commission's consideration of this proceeding.

4. Accordingly, pursuant to the authority of Section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), and section 1.46 of the Commission's Rules, 47 CFR 1.46, *It Is Ordered* that the Motion for Extension of Time filed by the County of San Mateo, California, on March 19, 1999, is granted. Interested parties shall file reply comments in the captioned proceeding no later than April 12, 1999.

5. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

John J. Borkowski,

Chief, Policy and Rules Branch, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–9018 Filed 4–8–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–494]

Broadwave Albany, L.L.C., et al. Requests for Waiver of Fixed Microwave Service Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On March 11, 1999, the Public Safety and Private Wireless Division released a public notice seeking comment on requests made by Broadwave Albany, L.L.C., *et al.,* (Broadwave), for waiver of various part 101 rules. Broadwave submitted the waiver requests in order to provide multichannel video programming, including the retransmission of local television broadcast signals, to approximately 212 markets throughout the United States. Broadwave also proposes to provide internet services to consumers in these various markets.

DATES: Comments are due no later than April 12, 1999 and reply comments are due no later than April 22, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Pollak or Shellie Blakeney of the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. On January 8, 1999, Broadwave filed requests for waiver of sections 101.105, 101.107, 101.109, 101.111, 101.115, 101.139 and 101.603 of the Commission's rules, 47 CFR 101.105, 101.107, 101.109, 101.111, 101.115, 101.139, 101.603, as well as any other fixed microwave radio service rules necessary to permit the processing of its applications pertaining to deployment of service in the 12.2–12.7 GHz band. Broadwave seeks authority to provide multichannel video programming, including the retransmission of local television broadcast signals, to approximately 212 markets throughout the United States. Broadwave also proposes to provide internet services to consumers in these various markets.

2. In its waiver requests, Broadwave argues that compliance with the technical limitations contained in sections 101.105, 101.107, 101.109, 101.111 and 101.115 of the Commission's rules would inhibit its proposed operations by impeding the introduction of a service that would directly compete with cable television. Broadwave further argues that the additional requested waivers (such as exceptions to sections 101.39 and 101.603) are necessary in order to ensure the expeditious deployment of its proposed services.

3. We note that the 12.2–12.7 GHz band is the subject of an ongoing rulemaking proceeding and was one of the bands listed in the International Bureau's Public Notice No. SPB–141, released on November 2, 1998, establishing a final cut-off date to file applications for non-geostationary satellite orbit fixed satellite service in the 12.2–12.7 GHz frequency band that may be mutually exclusive with previously filed applications of Skybridge, L.L.C. (Skybridge). *See* Amendment of parts 2 and 25 of the Commission's rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range and Amendment of the Commission's rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates, *Notice of Proposed Rulemaking,* ET Docket No. 98–206, FCC 98–310 (rel. November 24, 1998). Broadwave filed applications for use of the 12.2–12.7 GHz frequency band, proposing to use technology developed by Northpoint Technology to enable sharing of this spectrum with existing direct broadcast satellite, geostationary satellite and other fixed microwave systems. Broadwave asserts that its proposed service will be on a secondary,

non-interfering basis to direct broadcast satellite services and on a co-primary basis with any new fixed satellite services, such as that proposed by Skybridge.

4. Requests for waiver of the Commission's rules are subject, unless otherwise provided, to treatment by the Commission as restricted proceedings for *ex parte* purposes under section 1.1208 of the Commission's rules, 47 CFR 1.1208. Because of the policy implications and the potential impact of this proceeding on other proceedings, as well as, persons not parties to the waiver requests, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. *See* sections 1.1200(a) and 1.1206 of the Commission's rules, 47 CFR 1.1200(a), 1.1206. Therefore, any *ex parte* presentations that are made with respect to the issues involved in the subject waivers, subsequent to the release of this Public Notice, will be permissible but must be disclosed in accordance with the requirements of section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

5. The full text of the Requests for Waivers, comments, and reply comments are available for public inspection and duplication during regular business hours in the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 Twelfth Street, S.W., 4–C207, Washington, DC 20554. Copies also may be obtained from ITS, 1231 20th Street, N.W., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–8937 Filed 4–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Thursday, April 8, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider (1) reports from the Office of Inspector General, and (2) matters relating to the Corporation's supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 7, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–8995 Filed 4–7–99; 11:16 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of an expired information collection. The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by April 5, 1999, for use through October 1999.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of concerning the continuing collection of information, which is necessary for individuals to apply for disaster assistance benefits. The forms serve as a basic screening and referral document for a number of other Federal and State disaster aid programs by identifying applicant's disaster related needs and, in some cases, determining whether applicants meet the basic eligibility requirements of these other programs.

SUPPLEMENTARY INFORMATION: This collection is in accordance with FEMA's responsibilities under 44 CFR section 206.3 to provide an orderly and continuing means of assistance by the Federal Government to State and local governments. The assistance provided helps to alleviate the suffering and damage that result from major disasters and emergencies. Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, FEMA may provide assistance to meet immediate threats to life and property or provide for temporary housing resulting from a major disaster. Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, FEMA determines eligibility for disaster assistance through verification of citizenship or qualified alien status.

Collection of Information:

Title: Disaster Assistance Registration, Applicant Statement/Authorization, Declaration of Applicant.

Type of Information Collection: Reinstatement with change of a previously approved collection.

OMB Number: 3067–0009.

Form Numbers: FEMA Forms 90–69, 90–69A (Spanish version) Disaster Assistance Registration; 90–69B, 90–69C (Spanish version) Applicant Statement/ Authorization; 90–69 D, 90–69 E (Spanish version) Declaration of Applicant.

Abstract: The information serves as the application for FEMA's Disaster Housing Program and the Individual and Family Grant Program and is relayed to other Federal and State agencies administering disaster relief programs appropriate to the applicant's needs. Without this information, eligibility for disaster assistance cannot be determined. The information is obtained by telephone calls to the Teleregistration Center or from a face-to-face interview. Applicants are provided a statement regarding the Privacy Act and they sign a statement certifying the accuracy of their information. They also sign a statement reflecting their United States citizenship or qualified alien status.

Affected Public: The forms are used only in Presidentially declared major disasters or emergencies to allow individuals, farmers, small business owners, private non-profit organizations to apply for Federal disaster assistance and to be referred to other appropriate State and local agencies.

Estimated Total Annual Burden Hours:

FEMA forms	No. of respondents	Frequency of response	Hours per response	Annual burden hours (rounded)
90–69	540,000	1 time	15 minutes or .25	135,000
90–69A				
90–69B				
90–69C				
90–69D	345,600	1 time	2 minutes or .03333	11,520
90–69E				
Total				146,520

Estimated Cost: All costs are part of customary and usual business practices.

Comments

Written comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and, (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 30 days of the date of this notice.

Addresses: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for FEMA, 725 17th Street, NW, Room 10102, Washington, DC 20503.

For Further Information Contact: For additional information, contact Kathy Fields, Operations Officer, National Processing Service Center, Denton, TX (940) 591–7109. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 29, 1999.

Reginald Trujillo,

Director, Progrom Services Division, Operotions Support Directorote.

[FR Doc. 99–8904 Filed 4–8–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1255–DR]

Washington; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1255–DR), dated October 16, 1998, and related determinations.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 16, 1998:

Residential properties located at 205 and 330 Highland Park Drive, within the City of Kelso (Cowlitz County) for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response ond Recovery Directorote.

[FR Doc. 99–8900 Filed 4–8–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–4]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (FHLBank) members it has selected for the 1998–99 fifth quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which FHLBank members selected for review must submit Community Support Statements to the Finance Board.

DATES: FHLBank members selected for the 1998–99 fifth quarter review cycle must submit completed Community Support Statements to the Finance Board on or before May 31, 1999.

ADDRESSES: FHLBank members selected for the 1998–99 fifth quarter review cycle must submit completed Community Support Statements to the Finance Board either by regular mail: Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006; or by electronic mail: BATESP@FHFB.GOV.

FOR FURTHER INFORMATION CONTACT: Penny S. Bates, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2574, by electronic mail at BATESP@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the

Finance Board to promulgate regulations establishing standards of community investment or service that FHLBank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), *id.* 2901 et seq., and record of lending to first-time homebuyers. *Id.* 1430(g)(2).

Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a FHLBank member must meet in order to maintain access to long-term advances and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 936. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. *Id.* § 936.3. Only members subject to the CRA must meet the CRA standard. *Id.* § 936.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. *Id.* § 936.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each FHLBank district for community support review each calendar quarter. *Id.* § 936.2(a). The Finance Board will not review an institution's community support performance until it has been a FHLBank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each FHLBank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the May 31, 1999 deadline prescribed in this notice. *Id.* § 936.2(b)(1)(ii) and (c). On or before May 1, 1999, each FHLBank will notify the members in its district that have been selected for the 1998–99 fifth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. *Id.* § 936.2(b)(2)(i). The member's FHLBank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site at WWW.FHFB.GOV. Upon request, the member's FHLBank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 1998–99 fifth quarter community support review cycle:

FEDERAL HOME LOAN BANK OF BOSTON—DISTRICT 1

People's Bank	Bridgeport, CT
Maritime Bank and Trust Company	Essex, CT
Farmington Savings Bank	Farmington, CT
Glastonbury Bank & Trust	Glastonbury, CT
Savings Bank of Manchester	Manchester, CT
Liberty Bank	Middletown, CT
Naugatuck Savings Bank	Naugatuck, CT
Citizens National Bank	Putnam, CT
The Equity Bank	Wethersfield, CT
Windsor Federal S&LA	Windsor, CT
Windsor Locks S&LA	Windsor Locks, CT
Co-operative Bank of Concord	Acton, MA
University Credit Union	Boston, MA
Brockton Credit Union	Brockton, MA
Dedham Cooperative Bank	Dedham, MA
Everett Credit Union	Everett, MA
Framingham Co-operative Bank	Framingham, MA
Benjamin Franklin Savings Bank	Franklin, MA
Dean Cooperative Bank	Franklin, MA
Greenfield Savings Bank	Greenfield, MA
Hanscom Federal Credit Union	Hanscom AFB, MA
Economy Co-operative Bank	Merrimac, MA
Mayflower Cooperative Bank	Middleborough, MA
Pacific National Bank of Nantucket	Nantucket, MA
Compass Bank	New Bedford, MA
First Citizens' Federal Credit Union	New Bedford, MA
North Shore Bank	Peabody, MA
Berkshire Bank	Pittsfield, MA
Pittsfield Cooperative Bank	Pittsfield, MA
Sharon Co-operative Bank	Sharon, MA
Slade's Ferry Trust Company	Somerset, MA
Central Co-operative Bank	Somerville, MA
Savers Co-operative Bank	Southbridge, MA
Springfield Institution for Savings	Springfield, MA
Stoneham Co-operative Bank	Stoneham, MA
Martha's Vineyard Co-operative Bank	Vineyard Haven, MA
Ware Co-operative Bank	Ware, MA
United Co-operative Bank	West Springfield, MA
Westfield Savings Bank	Westfield, MA
Flagship Bank and Trust Company	Worcester, MA
Cushnoc Bank and Trust Company	Augusta, ME
United Bank	Bangor, ME
First National Bank of Damariscotta	Damariscotta, ME
Gardiner Savings Institution, FSB	Gardiner, ME
Machias Savings Bank	Machias, ME
Katahdin Federal Credit Union	Millinocket, ME

Centerpoint Bank	Bedford, NH
Connecticut River Bank, N.A.	Charleston, NH
Claremont Savings Bank	Claremont, NH
Peoples Bank of Littleton	Littleton, NH
Triangle Credit Union	Nashua, NH
Lake Sunapee Bank, F.S.B.	Newport, NH
Sugar River Savings Bank	Newport, NH
Olde Port Bank and Trust Company	Portsmouth, NH
Piscataqua Savings Bank	Portsmouth, NH
Service Credit Union	Portsmouth, NH
Domestic Bank	Cranston, RI
Rhode Island Hospital Trust National Bank	Providence, RI
Warwick Credit Union	Warwick, RI
Washington Trust Company	Westerly, RI
Bennington Co-operative S&LA, Inc.	Bennington, VT
Factory Point National Bank	Manchester Cen., VT
Heritage Family Credit Union	Rutland, VT
Passumpsic Savings Bank	St. Johnsbury, VT

FEDERAL HOME LOAN BANK OF NEW YORK—DISTRICT 2

Ocwen Federal Bank FSB	West Palm Beach, FL
First Savings Bank of New Jersey, SLA	Bayonne, NJ
American Savings Bank of New Jersey	Bloomfield, NJ
Clifton Savings Bank, S.L.A.	Clifton, NJ
Sussex County Bank	Franklin, NJ
The First National Bank of Hope	Hope, NJ
Little Falls Bank	Little Falls, NJ
Metropolitan State Bank	Montville, NJ
Magyar Savings Bank	New Brunswick, NJ
Lusitania Savings Bank, fsb	Newark, NJ
Roebling Savings Bank	Roebling, NJ
Franklin Savings Bank, S.L.A.	Salem, NJ
Pulaski Savings Bank	Springfield, NJ
Monroe Savings Bank, SLA	Williamstown, NJ
Cayuga Bank	Auburn, NY
BSB Bank & Trust Company	Binghampton, NY
Ponce de Leon Federal Bank	Bronx, NY
Atlantic Liberty Savings, F.A.	Brooklyn, NY
Community Capital Bank	Brooklyn, NY
Olympian Bank	Brooklyn, NY
Bank of Castile	Castile, NY
Catskill Savings Bank	Catskill, NY
Cohoes Savings Bank	Cohoes, NY
Fulton Savings Bank	Fulton, NY
Astoria Federal Savings and Loan	Lake Success, NY
First Federal Savings of Middletown	Middletown, NY
Amalgamated Bank of New York	New York, NY
United Orient Bank	New York, NY
Pittsford Federal Credit Union	Pittsford, NY
Northfield Savings Bank	Staten Island, NY
Empire Federal Credit Union	Syracuse, NY
Tarrytowns Bank, FSB	Tarrytown, NY
CFS Bank	Westbury, NY
Bank & Trust of Puerto Rico	Hato Rey, PR

FEDERAL HOME LOAN BANK OF PITTSBURGH—DISTRICT 3

The Travelers Bank	Newark, DE
Delaware First Bank, FSB	Wilmington, DE
Wilmington Savings Fund Society	Wilmington, DE
C&G Savings Bank	Altoona, PA
Ambler S&LA	Ambler, PA
First Star Savings Bank	Bethlehem, PA
First FS&LA of Bucks County	Bristol, PA
Greater Delaware Valley Savings Bank	Broomall, PA
Sharon Savings Bank	Darby, PA
ESB Bank, F.S.B.	Ellwood City, PA
County Savings Association	Essington, PA
Bank of Hanover and Trust Company	Hanover, PA
Hatboro Federal Savings	Hatboro, PA
First FS&LA of Hazleton	Hazleton, PA
Security Savings Association of Hazleton	Hazleton, PA
William Penn Savings and Loan Association	Levittown, PA
Willow Grove Bank	Maple Glen, PA
First Keystone Federal Savings Bank	Media, PA

Morton Savings and Loan Association	Morton, PA
Nesquehoning Savings Bank	Nesquehoning, PA
Third Federal Savings Bank	Newtown, PA
Malvern Federal Savings Bank	Paoli, PA
First Savings Bank of Perkasie	Perkasie, PA
Crusader Savings Bank, fsb	Philadelphia, PA
Fox Chase Federal Savings Bank	Philadelphia, PA
Second FS&LA of Philadelphia	Philadelphia, PA
Washington Savings Association	Philadelphia, PA
Bell FS&LA of Bellevue	Pittsburgh, PA
Great American FS&LA	Pittsburgh, PA
Mellon Bank, F.S.B.	Pittsburgh, PA
National City Bank of Pennsylvania	Pittsburgh, PA
Progressive Home FS&LA	Pittsburgh, PA
Patriot Bank	Pottstown, PA
Mercer County State Bank	Sandy Lake, PA
North Penn S&LA	Scranton, PA
Pennview Savings Bank	Souderton, PA
Slovenian S&LA of Canonsburg	Strabane, PA
First National Bank of West Chester	West Chester, PA
Bank of Iaeger	Iaeger, WV
Bank of Mount Hope, Inc.	Mount Hope, WV
Community Bank of Parkersburg	Parkersburg, WV
Poca Valley Bank	Walton, WV
AmeriBank	Welch, WV

FEDERAL HOME LOAN BANK OF ATLANTA—DISTRICT 4

Covington County Bank	Andalusia, AL
United Bank	Atmore, AL
AmSouth Bank	Birmingham, AL
Peoples Bank of North Alabama	Cullman, AL
First American Bank	Decatur, AL
The Citizens Bank	Enterprise, AL
Eufala Bank & Trust Company	Eufala, AL
First Commercial Bank	Good Hope, AL
Merchants Bank	Jackson, AL
Farmers and Merchants Bank	Lafayette, AL
Bank of Mobile	Mobile, AL
Colonial Bank	Montgomery, AL
Eagle Bank of Alabama	Opelika, AL
Community Spirit Bank	Red Bay, AL
Peoples Bank & Trust Company	Selma, AL
First Federal of the South	Sylacauga, AL
First National Bank	Talladega, AL
United Security Bank	Thomasville, AL
Century National Bank	Washington, DC
Citrus and Chemical Bank	Bartow, FL
Mackinac Savings Bank	Boynton Beach, FL
First Bank of Clewiston	Clewiston, FL
Regent Bank	Davie, FL
Dunnellon State Bank	Dunnellon, FL
Gateway American Bank of Florida	Ft. Lauderdale, FL
Desjardins Federal Savings Bank	Hallandale, FL
Bank of Inverness	Inverness, FL
Educational Community Credit Union	Jacksonville, FL
Monticello Bank	Jacksonville Bch., FL
First Federal Savings Bank of Florida	Live Oak, FL
Helm Bank	Miami, FL
Tropical Federal Credit Union	Miami, FL
Eastern Financial Credit Union	Miramar, FL
SunTrust Bank	Ocala, FL
Bank at Ormond By-the-Sea	Ormond Beach, FL
First Community Bank of Palm Beach County	Pahokee, FL
Peoples First Community Bank	Panama City, FL
Century Bank, F.S.B.	Sarasota, FL
Highlands Independent Bank	Sebring, FL
Raymond James Bank, FSB	St. Petersb. Bch., FL
Southern Exchange Bank	Tampa, FL
United Southern Bank	Umatilla, FL
Federal Employees Credit Union	West Palm Beach, FL
Sterling Bank	West Palm Beach, FL
Bank of Adairsville	Adairsville, GA
Farmers and Merchants Bank	Adel, GA
Montgomery County Bank	Ailey, GA
AGE Federal Credit Union	Albany, GA

First Colony Bank	Alpharetta, GA
Citizens Trust Bank	Atlanta, GA
First Union National—Georgia	Atlanta, GA
Union County Bank	Blairsville, GA
Peoples Bank of Fannin County	Blue Ridge, GA
First National Bank of Haralson County	Buchanan, GA
Bank of Chickamauga	Chickamauga, GA
SunTrust Bank, West Georgia, N.A.	Columbus, GA
Bank of Dahlonega	Dahlonega, GA
The Peoples Bank	Eatonton, GA
Gainesville Bank and Trust	Gainesville, GA
First Citizens Bank	Glennville, GA
South Georgia Bank, FSB	Glennville, GA
SunMark Community Bank	Hawkinsville, GA
Community Trust Bank	Hiram, GA
Northeast Georgia Bank	Lavonia, GA
The Peoples Bank	Lithonia, GA
The Community Bank	Loganville, GA
Westside Bank & Trust Company	Marietta, GA
Metter Banking Company	Metter, GA
First Security National Bank	Norcross, GA
Family Federal Savings Bank	Pelham, GA
Crossroads Bank of Georgia	Perry, GA
Independent Bank and Trust Company	Powder Springs, GA
Citizens First Bank	Rome, GA
Farmers and Merchants Bank	Summerville, GA
Bank of Thomas County	Thomasville, GA
Citizens Bank and Trust	Trenton, GA
Farmers and Merchants Bank	Washington, GA
Back and Middle River FS&LA	Baltimore, MD
Bay-Vanguard Federal Savings Bank	Baltimore, MD
Hull Federal Savings Bank	Baltimore, MD
Ideal Federal Savings Bank	Baltimore, MD
Northfield Federal Savings	Baltimore, MD
Provident Bank of Maryland	Baltimore, MD
Susquehanna Bank	Baltimore, MD
Vigilant Federal S&LA	Baltimore, MD
F&M Bank—Allegiance	Bethesda, MD
TMB Federal Credit Union	Cabin John, MD
Cecil Federal Savings Bank	Elkton, MD
IR Federal Credit Union	Riverdale, MD
GrandBank	Rockville, MD
State Employees' Credit Union	Towson, MD
Randolph Bank and Trust Company	Asheboro, NC
Rowan Savings Bank, SSB	China Grove, NC
Cabarrus Bank of North Carolina	Concord, NC
Central Carolina Bank and Trust Company	Durham, NC
Mechanics & Farmers Bank	Durham, NC
Macon Savings Bank, Inc., SSB	Franklin, NC
Hertford Savings Bank, SSB	Hertford, NC
Bank of Carolinas	Landis, NC
Industrial Federal Savings Bank	Lexington, NC
Lexington State Bank	Lexington, NC
Liberty Savings and Loan Association	Liberty, NC
First Savings and Loan Association	Mebane, NC
Mount Gilead Savings and Loan Association	Mount Gilead, NC
State Employees' Credit Union	Raleigh, NC
Taylorsville Savings Bank, SSB	Taylorsville, NC
Anson Savings Bank, SSB	Wadesboro, NC
Cooperative Bank for Savings, Inc., SSB	Wilmington, NC
Branch Banking and Trust Company	Wilson, NC
Home Federal S&LA	Bamberg, SC
Bank of Greeleyville	Greeleyville, SC
The County Bank	Greenwood, SC
Greer State Bank	Greer, SC
Kingstree Federal S&LA	Kingstree, SC
Bank of Clarendon	Manning, SC
Anderson Brothers Bank	Mullins, SC
Pickens S&LA	Pickens, SC
Bank of Travelers Rest	Travelers Rest, SC
Napus Federal Credit Union	Alexandria, VA
Bank of Southside Virginia	Carson, VA
Apple Federal Credit Union	Fairfax, VA
Dominion Savings Bank	Front Royal, VA
Farmers and Merchants Bank	Harrisonburg, VA
First Colonial Bank, F.S.B.	Hopewell, VA

Imperial Savings and Loan Association	Martinsville, VA
Lee Bank and Trust Company	Pennington Gap, VA
Bank of Rockbridge	Raphine, VA
Marathon Bank	Winchester, VA

FEDERAL HOME LOAN BANK OF CINCINNATI—DISTRICT 5

Farmers Bank and Trust Company	Bardstown, KY
Wilson and Muir Bank and Trust Company	Bardstown, KY
Bank of Marshall County	Benton, KY
Bank of Cadiz and Trust Company	Cadiz, KY
Bank of Columbia	Columbia, KY
First Federal Savings Bank	Cynthiana, KY
Harrison Deposit Bank and Trust Company	Cynthiana, KY
Ft. Thomas Savings Bank	Ft. Thomas, KY
Fulton Bank	Fulton, KY
New Farmers National Bank of Glasgow	Glasgow, KY
First State Bank of Greenville	Greenville, KY
Farmers Bank	Hardinsburg, KY
Peoples Bank and Trust Company	Hazard, KY
Hopkinsville Federal Savings Bank	Hopkinsville, KY
Planters Bank, Inc.	Hopkinsville, KY
THE BANK—Oldham County	LaGrange, KY
Leitchfield Deposit Bank & Trust Company	Leitchfield, KY
Central Bank and Trust Company	Lexington, KY
L&N Federal Credit Union	Louisville, KY
Citizens Bank of Kentucky	Madisonville, KY
Farmers Bank and Trust Company	Madisonville, KY
Farmers Bank & Trust Company	Marion, KY
United Community Bank	Marrowbone, KY
Exchange Bank	Mayfield, KY
Monticello Banking Company	Monticello, KY
Pioneer Bank	Munfordville, KY
South Central Bank of Daviess County	Owensboro, KY
Salt Lick Deposit Bank	Owingsville, KY
Blue Grass Federal S&LA	Paris, KY
First Commonwealth Bank	Prestonburg, KY
Commerce Exchange Bank	Beachwood, OH
Belpre Savings Bank	Belpre, OH
The First Bremen Bank	Bremen, OH
Farmers Citizens Bank	Bucyrus, OH
Cambridge Savings Bank	Cambridge, OH
Centennial Savings Bank	Cincinnati, OH
Eagle Savings Bank	Cincinnati, OH
Findlay Savings Bank	Cincinnati, OH
Guardian Savings Bank, F.S.B.	Cincinnati, OH
Mercantile Savings Bank	Cincinnati, OH
Oakley Improved Building and Loan Company	Cincinnati, OH
Union Savings Bank	Cincinnati, OH
Westwood Homestead Savings Bank	Cincinnati, OH
Winton Savings and Loan Company	Cincinnati, OH
County Savings Bank	Columbus, OH
First Community Bank	Columbus, OH
Conneaut Savings & Loan Company	Conneaut, OH
Commercial Bank	Delphos, OH
Fort Jennings State Bank	Fort Jennings, OH
Lincoln Savings and Loan Association	Ironton, OH
People's Building Loan and Savings Company	Lebanon, OH
Lower Salem Commercial Bank	Lower Salem, OH
First Bank of Marietta	Marietta, OH
Marietta Savings Bank	Marietta, OH
Great Lakes Bank	Mentor, OH
American Savings and Loan Association	Middletown, OH
Farmers State Bank	New Washington, OH
First National Bank	Orrville, OH
Chippewa Valley Bank	Rittman, OH
Mutual Federal Savings Bank	Sidney, OH
Strongsville Savings Bank	Strongsville, OH
Central Federal Savings and Loan Association	Wellsville, OH
Peoples Savings and Loan Company	West Liberty, OH
Farmers State Bank	West Salem, OH
Wilmington Savings Bank	Wilmington, OH
Brighton Bank	Brighton, TN
Twin City Federal Savings Bank	Bristol, TN
Cumberland Bank	Carthage, TN
Highland Federal Savings and Loan Association	Crossville, TN

Security Federal Savings Bank	Elizabethton, TN
Lauderdale County Bank	Halls, TN
Carroll Bank and Trust	Huntingdon, TN
First National Bank of Manchester	Manchester, TN
The Home Bank of Tennessee	Maryville, TN
Home Banking Company	Selmer, TN

FEDERAL HOME LOAN BANK OF INDIANAPOLIS—DISTRICT 6

Bedford Federal Savings Bank	Bedford, IN
FCN Bank, NA	Brookville, IN
Montgomery SA, FA	Crawfordsville, IN
Decatur Bank and Trust Company	Decatur, IN
United Fidelity Bank	Evansville, IN
Springs Valley Bank and Trust Company	French Lick, IN
Pacesetter Bank	Hartford City, IN
First Federal Savings Bank	Huntington, IN
Campbell and Fetter Bank	Kendallville, IN
Progressive Federal Savings Bank	Lawrenceburg, IN
River Valley Financial Bank	Madison, IN
Fidelity Federal Savings Bank	Marion, IN
State Bank of Markle	Markle, IN
First State Bank of Middlebury	Middlebury, IN
Citizens Financial Services, FSB	Munster, IN
Community Bank of Southern Indiana	New Albany, IN
Regional Federal Savings Bank	New Albany, IN
Ameriana Bank of Indiana, FSB	New Castle, IN
AmericanTrust FSB	Peru, IN
Spencer County Bank	Santa Claus, IN
Jackson County Bank	Seymour, IN
Shelby County Bank	Shelbyville, IN
Sobieski FS & LA of South Bend	South Bend, IN
Security Federal Bank, F.S.B.	St. John, IN
Terre Haute Savings Bank	Terre Haute, IN
Frances Slocum Bank and Trust Company	Wabash, IN
Ann Arbor Commerce Bank	Ann Arbor, MI
Flagstar Bank	Bloomfield Hills, MI
Charlevoix State Bank	Charlevoix, MI
Dearborn Federal Savings Bank	Dearborn, MI
MFC First National Bank	Escanaba, MI
Michigan National Bank	Farmington Hills, MI
Bank West, FSB	Grand Rapids, MI
AmeriBank, FSB	Holland, MI
Bank of Lakeview	Lakeview, MI
Financial Health Credit Union	Lansing, MI
State Employees Credit Union	Lansing, MI
Independent Bank-South Michigan	Leslie, MI
State Savings Bank	Manistique, MI
Mason State Bank	Mason, MI
Community Federal Credit Union	Plymouth, MI
Team One Credit Union	Saginaw, MI
Sidney State Bank	Sidney, MI
Research Federal Credit Union	Warren, MI
First Bank	West Branch, MI

FEDERAL HOME LOAN BANK OF CHICAGO—DISTRICT 7

Oxford Bank and Trust	Addison, IL
Heartland Bank and Trust Company	Bloomington, IL
Peoples Bank of Kankakee County	Bourbonnais, IL
Bridgeview Bank and Trust Company	Bridgeview, IL
First American Bank	Carpentersville, IL
United Community Bank	Chatham, IL
Amalgamated Bank of Chicago	Chicago, IL
Austin Bank of Chicago	Chicago, IL
Community Bank of Lawndale	Chicago, IL
First Savings Bank of Hegewisch	Chicago, IL
St. Paul Federal Bank for Savings	Chicago, IL
First Savings Bank of Danville	Danville, IL
First Mutual Bank, S.B.	Decatur, IL
Clover Leaf Bank, SB	Edwardsville, IL
Illinois Community Bank	Effingham, IL
Washington Savings Bank	Effingham, IL
Elgin Financial Savings Bank	Elgin, IL
Harris Bank Frankfort	Frankfort, IL
Union Savings Bank	Freeport, IL

Central Trust & Savings Bank	Geneseo, IL
UnionBank/Northwest	Hanover, IL
Bank of Homewood	Homewood, IL
Farmers State Bank and Trust Company	Jacksonville, IL
Commonwealth Credit Union	Kankakee, IL
First FS&LA of Kewanee	Kewanee, IL
Johnson Bank Illinois	Lake Forest, IL
Logan County Bank	Lincoln, IL
Twin Oaks Savings Bank	Marseilles, IL
Okaw Building and Loan, s.b.	Mattoon, IL
Blackhawk State Bank	Milan, IL
BankPlus	Morton, IL
George Washington Savings Bank	Oak Lawn, IL
Bank of Palmyra	Palmyra, IL
Edgar County Bank & Trust Company	Paris, IL
First FS&LA of Pekin	Pekin, IL
First National Bank	Pinckneyville, IL
Mercantile Trust and Savings Bank	Quincy, IL
State Street Bank and Trust Company	Quincy, IL
North County Savings Bank	Red Bud, IL
American Bank of Rock Island	Rock Island, IL
First Savanna Savings Bank	Savanna, IL
First State Bank of Shannon-Polo	Shannon, IL
First S&LA of South Holland	South Holland, IL
Charter Bank, S.B.	Sparta, IL
Security Bank, s.b.	Springfield, IL
Stillman BancCorp, NA	Stillman Valley, IL
Argo Federal Savings Bank, F.S.B.	Summit, IL
Villa Park Trust and Savings Bank	Villa Park, IL
Citizens First State Bank	Walnut, IL
Hill-Dodge Banking Company	Warsaw, IL
Alpha Community Bank	Washburn, IL
State Bank of Waterloo	Waterloo, IL
Cardunal Savings Bank, FSB	West Dundee, IL
F&M Bank—Algoma	Algoma, WI
First American Credit Union	Beloit, WI
Jackson County Bank	Black River Falls, WI
Marine Bank and Savings	Cedarburg, WI
State Bank of Cross Plains	Cross Plains, WI
Community Bank of Elkhorn	Elkhorn, WI
AM Community Credit Union	Kenosha, WI
Time Federal Savings Bank	Medford, WI
M&I Marshall & Isley Bank	Milwaukee, WI
Community Bank Spring Green	Spring Green, WI
Tomahawk Community Bank, S.S.B.	Tomahawk, WI
West Allis Savings Bank	West Allis, WI

FEDERAL HOME LOAN BANK OF DES MOINES—DISTRICT 8

Security State Bank	Anamosa, IA
State Savings Bank	Baxter, IA
Linn Area Credit Union	Cedar Rapids, IA
United Security Savings Bank, F.S.B.	Cedar Rapids, IA
Citizens State Bank	Clarinda, IA
Cresco Union Savings Bank	Cresco, IA
DeWitt Bank and Trust Company	DeWitt, IA
Denver Savings Bank	Denver, IA
Hardin County Savings Bank	Eldora, IA
Peoples State Bank	Elkader, IA
Peoples Trust and Savings Bank	Grand Junction, IA
Midstates Bank, N.A.	Harlan, IA
Hills Bank and Trust Company	Hills, IA
First State Bank	Huxley, IA
Iowa Falls State Bank	Iowa Falls, IA
Citizens Bank	Leon, IA
Libertyville Savings Bank	Libertyville, IA
Maquoketa State Bank	Maquoketa, IA
Union State Bank	Monona, IA
Citizens State Bank	Monticello, IA
Mount Vernon Bank and Trust Company	Mount Vernon, IA
Community Bank of Muscatine	Muscatine, IA
Iowa State Bank	Orange City, IA
Horizon Federal Savings Bank	Oskaloosa, IA
Iowa Trust and Savings Bank	Oskaloosa, IA
Peoples Bank and Trust	Rock Valley, IA
Union State Bank	Rockwell City, IA

Security State Bank	Sheldon, IA
Fremont County Savings Bank	Sidney, IA
Bank Plus	Swea City, IA
Washington State Bank	Washington, IA
Guidant Life Insurance Company	West Des Moines, IA
Guidant Mutual Insurance Company	West Des Moines, IA
Guidant Specialty Mutual Insurance Company	West Des Moines, IA
Sterling State Bank	Austin, MN
Currie State Bank	Currie, MN
State Bank of Delano	Delano, MN
Inter Savings Bank, fsb	Edina, MN
Stearns Bank of Evansville	Evansville, MN
1st United Bank	Faribault, MN
Fortress Bank	Houston, MN
Lake City Federal S&LA	Lake City, MN
Lake Area Bank	Lindstrom, MN
Voyager Bank	Mankato, MN
Norwest Bank Minnesota, N.A.	Minneapolis, MN
Bayside Bank	Minnetonka, MN
The American Bank of Nashwauk	Nashwauk, MN
State Bank of New Prague	New Prague, MN
Nicollet State Bank	Nicollet, MN
Reliastar Bank (fka Citizens Savings Bank)	St. Cloud, MN
St. James Federal S&LA	St. James, MN
RoundBank	Waseca, MN
Community Bank Winsted	Winsted, MN
Citizens Bank	Amsterdam, MO
Bank of Jacomo	Blue Springs, MO
Boonslick Bank	Boonville, MO
Community State Bank of Bowling Green	Bowling Green, MO
Mississippi County S&LA	Charleston, MO
Clayco State Bank	Claycomo, MO
Union State Bank and Trust of Clinton	Clinton, MO
First National Bank and Trust Company	Columbia, MO
Meramec Valley Bank	Ellisville, MO
New Era Bank	Fredericktown, MO
Bank Star One	Fulton, MO
American Loan and Savings Association	Hannibal, MO
Central Trust Bank	Jefferson City, MO
Pony Express Bank	Kearney, MO
Lafayette County Bank of Lexington/Wellington	Lexington, MO
Peoples Security Bank	Licking, MO
Regional Missouri Bank	Marceline, MO
Nodaway Valley Bank	Maryville, MO
Independent Farmers Bank	Maysville, MO
Heritage State Bank	Nevada, MO
Palmyra Saving & Building Association, F.A.	Palmyra, MO
Perry County Savings Bank, FSB	Perryville, MO
The Citizens Bank of Pilot Grove, Missouri	Pilot Grove, MO
Farmers Bank of Portageville	Portageville, MO
Pulaski Bank, a Federal Savings Bank	Saint Louis, MO
The Merchants and Farmers Bank of Salisbury	Salisbury, MO
Community Bank of Pettis County	Sedalia, MO
Empire Bank	Springfield, MO
Bank of the BootHeel	Steele, MO
Bank of Washington	Washington, MO
West Plains Savings and Loan Association	West Plains, MO
First and Farmers Bank	Portland, ND
First International Bank & Trust	Watford City, ND
Norwest Bank South Dakota, N.A.	Sioux Falls, SD

FEDERAL HOME LOAN BANK OF DALLAS—DISTRICT 9

Community Bank	Cabot, AR
Farmers Bank and Trust Company	Clarksville, AR
First Arkansas Valley Bank	Dardanelle, AR
Bank of Eureka Springs	Eureka Springs, AR
Community Bank FSB	Fayetteville, AR
McIlroy Bank and Trust	Fayetteville, AR
First National Bank of Fort Smith	Fort Smith, AR
Bank of the Ozarks, nwa	Jasper, AR
Simmons First Bank	Kenset, AR
Bank of Lake Village	Lake Village, AR
First State Bank	Lonoke, AR
Union Bank of Mena	Mena, AR
First Bank of Montgomery County	Mount Ida, AR

Bank of the Ozarks, wca	Ozark, AR
First State Bank	Parkin, AR
Bank of Salem	Salem, AR
First Security Bank	Searcy, AR
Springdale Bank and Trust	Springdale, AR
UNICO Bank F.S.B.	Trumann, AR
Bank of Yellville	Yellville, AR
Fidelity Bank and Trust Company	Baton Rouge, LA
First National Bank	Gonzales, LA
Schwegmann Bank and Trust Company	Harvey, LA
Washington Life Insurance Company	Lafayette, LA
Globe Homestead Federal Savings Association	Metairie, LA
State-Investors Savings and Loan, FSA	Metairie, LA
City Bank and Trust of Shreveport	Shreveport, LA
First Federal Savings Bank	Shreveport, LA
Home FS&LA of Shreveport	Shreveport, LA
Citizens Bank and Trust Company of Vivian	Vivian, LA
Cleveland Community Bank, s.s.b.	Cleveland, MS
First National Bank of Bolivar County	Cleveland, MS
First Federal Bank for Savings	Columbia, MS
SOUTHBank, a FSB	Corinth, MS
Quitman County Federal Credit Union	Marks, MS
Community First National Bank	Las Cruces, NM
Pioneer Savings Bank	Roswell, NM
First National Bank of Santa Fe	Santa Fe, NM
Liberty Bank, SSB	Austin, TX
International Bank of Commerce—Brownsville	Brownsville, TX
First American Bank Texas, S.S.B.	Bryan, TX
American Bank, N.A.	Corpus Christi, TX
Pacific Southwest Bank	Corpus Christi, TX
Bank of the Southwest	Dallas, TX
Bluebonnet Savings Bank, FSB	Dallas, TX
Guaranty Federal Bank, F.S.B.	Dallas, TX
State Bank and Trust Company, Dallas	Dallas, TX
Del Rio Bank & Trust Company	Del Rio, TX
Western Bank and Trust	Duncanville, TX
Mid-Coast Savings Bank, S.S.B.	Edna, TX
Bank of the West	El Paso, TX
Houston Savings Bank, fsb	Houston, TX
New Era Life Insurance Company	Houston, TX
OmniBank, N.A.	Houston, TX
Southwest Bank of Texas, N.A.	Houston, TX
First National Bank of Hughes Springs	Hughes Springs, TX
Brazos Bank, N.A.	Joshua, TX
International Bank of Commerce	Laredo, TX
East Texas National Bank of Marshall	Marshall, TX
Interstate Bank, ssb	Perryton, TX
Cypress Bank, FSB	Pittsburg, TX
Benchmark Bank	Quinlan, TX
Peoples State Bank	Rocksprings, TX
Texas State Bank	San Angelo, TX
State Bank & Trust of Seguin, Texas	Seguin, TX
Cedar Creek Bank	Seven Points, TX
Citizens Bank of Lubbock County	Slaton, TX
Southside Bank	Tyler, TX
First Victoria National Bank	Victoria, TX
Texas Bank	Weatherford, TX
International Bank of Commerce	Zapata, TX

FEDERAL HOME LOAN BANK OF TOPEKA—DISTRICT 10

Gateway Credit Union	Aurora, CO
FirstBank of Avon	Avon, CO
Canon National Bank	Canon City, CO
Ent Federal Credit Union	Colorado Springs, CO
First State Bank, Colorado Springs	Colorado Springs, CO
Citizens State Bank of Cortez	Cortez, CO
Guaranty Bank and Trust Company	Denver, CO
1st Choice Bank	Greeley, CO
Commercial Bank of Leadville	Leadville, CO
The State Bank	Rocky Ford, CO
FirstBank of Vail	Vail, CO
Community State Bank	Coffeyville, KS
First National Bank	Conway Springs, KS
City State Bank	Fort Scott, KS
Liberty Savings Association, FSA	Fort Scott, KS

First FS&LA of Independence	Independence, KS
First National Bank	Independence, KS
Iola Bank and Trust Company	Iola, KS
MidAmerican Bank & Trust Company, N.A.	Leavenworth, KS
Kansas State Bank of Manhattan	Manhattan, KS
Kansas State Bank	Overbrook, KS
Rose Hill State Bank	Rose Hill, KS
Bennington State Bank	Salina, KS
Security State Bank	Scott City, KS
First Federal Savings & Loan	WaKeeney, KS
Kaw Valley State Bank and Trust Company	Wamego, KS
Fidelity Bank	Wichita, KS
Columbus Federal Savings Bank	Columbus, NE
Crete State Bank	Crete, NE
Equitable Building and Loan Association, FSB	Grand Island, NE
Home FS&LA of Grand Island	Grand Island, NE
Hershey State Bank	Hershey, NE
Nebraska National Bank	Kearney, NE
Home FS&LA of Nebraska	Lexington, NE
Lincoln Federal Savings Bank of Nebraska	Lincoln, NE
Security Federal Savings	Lincoln, NE
Sherman County Bank	Loup City, NE
First National Bank Northeast	Lyons, NE
Madison County Bank	Madison, NE
Pinnacle Bank	Mitchell, NE
Bank of Norfolk	Norfolk, NE
First American Savings Bank, FSB	Omaha, NE
Sidney Federal Savings and Loan Association	Sidney, NE
Dakota County State Bank	S. Sioux City, NE
Tecumseh Building and Loan Association	Tecumseh, NE
Farmers State Bank	Wallace, NE
Bank of Commerce	Adair, OK
Federal Credit Union	Bartlesville, OK
Bank of Cordell	Cordell, OK
Grand Lake Bank	Grove, OK
Bank of Hydro	Hydro, OK
Citizens State Bank	Okemah, OK
First Enterprise Bank	Oklahoma City, OK
Union Bank and Trust Company	Oklahoma City, OK
Will Rogers Bank	Oklahoma City, OK
Community Bank and Trust Company	Tulsa, OK
ONECU Federal Credit Union	Tulsa, OK

FEDERAL HOME LOAN BANK OF SAN FRANCISCO—DISTRICT 11

Fremont Investment and Loan	Anaheim, CA
Vista Federal Credit Union	Burbank, CA
Palomar Savings and Loan	Escondido, CA
First Bank and Trust	Huntington Bch., CA
La Jolla Bank, F.S.B.	La Jolla, CA
Eastern International Bank	Los Angeles, CA
People's Bank of California	Los Angeles, CA
Napa National Bank	Napa, CA
Wescom Credit Union	Pasadena, CA
San Diego County Credit Union	San Diego, CA
Chevron Federal Credit Union	San Francisco, CA
United Commercial Bank	San Francisco, CA
Bank USA	Santa Cruz, CA
Luther Burbank Savings	Santa Rosa, CA
Sentinel Community Bank	Sonora, CA
Tracy Federal Bank, F.S.B.	Tracy, CA

FEDERAL HOME LOAN BANK OF SEATTLE—DISTRICT 12

National Bank of Alaska	Anchorage, AK
First Bank	Ketchikan, AK
First S&LA of America	Dededo, GU
Realty Finance, Inc.	Hilo, HI
Central Pacific Bank	Honolulu, HI
Territorial Savings and Loan Association	Honolulu, HI
Farmers and Merchants State Bank	Boise, ID
Home FS&LA of Nampa, Idaho	Nampa, ID
Valley Bank of Helena	Helena, MT
American Bank of Montana	Livington, MT
Centennial Bank	Eugene, OR
Liberty Federal Bank, A S.B.	Eugene, OR

Chetco Federal Credit Union	Harbor, OR
Bank of Southern Oregon	Medford, OR
West Coast Bank	Newport, OR
Pioneer Trust Bank, N.A.	Salem, OR
Wood Products Credit Union	Springfield, OR
Draper Bank and Trust	Draper, UT
McKay Dee Hospital Credit Union	Ogden, UT
American Investment Bank, N.A.	Salt Lake City, UT
Mountain America Credit Union	Salt Lake City, UT
Zions First National Bank of Utah	Salt Lake City, UT
Kitsap Community Federal Credit Union	Bremerton, WA
The Wheatland Bank	Davenport, WA
Washington State Bank NA	Federal Way, WA
Issaquah Bank	Issaquah, WA
First Community Bank of Washington	Lacey, WA
Cowlitz Bank	Longview, WA
Pacific Northwest Bank	Seattle, WA
United Savings and Loan Bank	Seattle, WA
Viking Community Bank	Seattle, WA
Spokane Teachers Credit Union	Spokane, WA
Sound Banking Company	Tacoma, WA
TAPCO Credit Union	Tacoma, WA
First Savings Bank of Washington	Walla Walla, WA
Equality State Bank	Cheyenne, WY
Security First Bank	Cheyenne, WY
Ranchester State Bank	Sheridan, WY

II. Public Comments

To encourage the submission of public comments on the community support performance of FHLBank members, on or before May 1, 1999, each FHLBank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 1998–99 fifth quarter review cycle. 12 CFR 936.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. *Id.* 936.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 1998–99 fifth quarter review cycle must be delivered to the Finance Board on or before the May 31, 1999 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–8934 Filed 4–8–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–006190–089

Title: Venezuelan American Maritime Association

Parties:

APL Co. Pte. Ltd.
Consorcio Naviero de Occidente C.A.
Crowley American Transport, Inc.
King Ocean Services de Venezuela
Seaboard Marine of Florida, Inc.

Synopsis: The proposed modification would authorize the parties to discuss and agree upon the terms of their respective individual service contracts, to exchange information concerning these contracts, and agree on voluntary service contract guidelines. The modification also makes other conforming and administrative changes.

Agreement No.: 202–009648–107

Title: Inter-American Freight Conference D/B/A/ East Coast South America Association

Parties:

Alianca Transportes Maritimos S.A.
APL Co. Pte. Ltd.
Columbus Line
Crowley American Transport
Ivaran Lines Limited
Libra Navegacao SA
Mexican Line Limited
P&O Nedlloyd B.V.

Synopsis: The proposed amendment modifies Article 6(d) to authorize the agreement counsel to act as agent for the parties in executing and filing amendments to the Agreement. It also modifies Article 14(a) to authorize the parties to discuss the terms and procedures of their individual service contracts and adopt voluntary guidelines.

By Order of the Federal Maritime Commission.

Dated: April 5, 1999.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–8830 Filed 4–8–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Future Freight Systems Inc.; 48 Third Street, South Kearny, NY 07032, Officers: Joseph Sade, President, Owen Colin Stewart, Vice President.

Dated: April 5, 1999.
Ronald D. Murphy,
Assistant Secretary.
[FR Doc. 99–8829 Filed 4–8–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency information collection activities: Announcement of Board approval under delegated authority and submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY

Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section--Mary M. West--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Notification of Foreign Branch Status
Agency form number: FR 2058
OMB Control number: 7100-0069
Frequency: On occasion
Reporters: State member banks, national banks, bank holding companies, Edge and agreement corporations.
Annual reporting hours: 20 hours.
Estimated average hours per response: 15 minutes.
Number of respondents: 80
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 321, 601, 602, 615, and 1844(c)) and is not given confidential treatment.
Abstract: Member banks, bank holding companies, and Edge and agreement corporations are required to notify the Federal Reserve System of the opening, closing, or relocation of an approved foreign branch. The notice requests information on the location and extent of service provided by the branch, and is filed within thirty days of the change in status. The Federal Reserve System needs the information requested on the FR 2058 form to fulfill supervisory responsibilities specified in Regulation K including the supervision of foreign branches of U.S. banking organizations.

Regulation K, "International Banking Operations," sets forth the conditions under which a foreign branch may be established. For their initial establishment of foreign branches, organizations must request prior Federal Reserve approval as directed in Attachment A of the FR K-1, "International Applications and Prior Notifications Under Subparts A and C of Regulation K" (OMB No. 7100-0107). For subsequent branch establishments into additional foreign countries, organizations must give the Federal Reserve System forty-five days prior written notice using Attachment B of FR K-1. Organizations use the FR 2058 notification to notify the Federal Reserve when any of these branches has been opened, closed, or relocated.

2. *Report title:* International Applications and Prior Notifications under Subparts A and C of Regulation K.
Agency form number: FR K-1
OMB control number: 7100-0107
Effective date: May 10, 1999.
Frequency: On occasion
Reporters: State member banks, national banks, bank holding companies, Edge and agreement corporations, and certain foreign banking organizations.
Annual reporting hours: 636 hours.
Estimated average hours per response: Attachments A - G: 10; Attachments H, I: 15; and Attachment J: 20.
Number of respondents: 36
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 601-604(a), 611-631, 1843(c)(13), 1843(c)(14), and 1844(c)) and is not given confidential treatment. The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.
Abstract: The FR K-1 comprises a set of applications and notifications that govern the formation of Edge or agreement corporations and the international and foreign activities of U.S. banking organizations. The applications and notifications collect information on projected financial data, purpose, location, activities, and management. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956.
Regulatory Flexibility Act Statement: The Board certifies that the extension of the above applications and notifications is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. *Report title:* Reports Related to Public Welfare Investments of State Member Banks.
Agency form number: FR H-6
OMB control number: 7100-0278
Effective date: May 10, 1999.
Frequency: Event-generated
Reporters: State member banks.
Annual reporting hours: 78 hours.
Estimated average hours per response: Investment Notice: 2; Application: 2.75; Extension of divestiture period: 5
Number of respondents: 35
Small businesses are not affected.
General description of report: This information collection is required to obtain a benefit (12 U.S.C. 338a) and is generally not given confidential treatment. However, if the information collected contains an examination rating (or other supervisory information), that information would be exempt from disclosure (5 U.S.C. 552(b)(4)).
Abstract: The FR H-6 comprises of an investment notice, application for Board approval of an investment, and request for extension of the divestiture period of an investment. The state member banks may make certain public welfare investments without prior Board approval, they need only notify the Federal Reserve. Certain other public welfare investments require prior approval and the request must be submitted to the Board. If an investment ceases to conform to certain requirements the state member bank must divest itself of the investment. In some cases the bank must submit a

request for extension of the divestiture period. The proposed revisions for the FR H-6 would conform the information collection with the recently revised Regulation H. The Board is eliminating the requirement that, to avoid applying for Board approval, the investment must be smaller than 2 percent of capital and surplus. This should result in fewer applications and more notices of investments not requiring Board approval. Additionally, a requirement has been added to the application for Board approval: if the bank is not permitted to make the investment without Board approval, the institution must explain the reason(s) why the investment is ineligible.

Regulatory Flexibility Act Analysis: Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)) the Federal Reserve hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

2. Report title: Application for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company

Agency form number: FR Y-3

OMB control number: 7100-0121

Frequency: Event-generated

Reporters: Corporations seeking to become bank holding companies, or bank holding companies and state chartered banks that are members of the Federal Reserve System

Annual reporting hours: 30,443 hours.

Estimated average hours per response: Section 3(a)(1): 49 hours; Section 3(a)(3) and 3(a)(5): 59.5 hours

Number of respondents: Pursuant to Section 3(a)(1): 274; Pursuant to Section 3(a)(3) and 3(a)(5): 286

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. sections 1842(a)(1), (a)(3), and (a)(5) and 12 U.S.C. section 1844(c)). Individual respondent data are available to the public except any portions which have been granted confidential treatment at the applicant's request (5 U.S.C. 552 (b)(4) and (b)(8)).

Abstract: This application collects information concerning proposed bank holding company formations, acquisitions, and mergers between banks and bank holding companies for review by the Federal Reserve. The application collects financial and managerial information and data on competitive and public convenience factors.

Current Actions: Tier 3 capital is now included in the information requested for question 4.d of the FR Y-3 due to changes in the international risk-based capital standards. Information on debt servicing has been added to the FR Y-3 to conform the report with revisions to sections 225.24 and 225.17 of Regulation Y.

Clarifications have been made to the "Competition and Convenience and Needs" section of the application to remove certain outdated references. Question 11 of this section has been clarified and question 12 of this section has been revised to conform with proposed changes to the Interagency Bank Merger Act Application (FR 2070; OMB No. 7100-0171). In addition, clarifications were made to the publication requirements for this application.

3. Report title: Application for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities.

Agency form number: FR Y-4

OMB control number: 7100-0121

Frequency: Event-generated

Reporters: Bank holding companies

Annual reporting hours: 4,147 hours.

Estimated average hours per response: Post-consummation: 0.50 hours; Expedited notification: 5 hours; Complete notification: 12 hours.

Number of respondents: Post-consummation: 29; Expedited notification: 92; Complete notification: 306.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. § 1843 and 1844 (c)). Individual respondent data are available to the public except any portions granted confidential treatment at the applicant's request (5 U.S.C. § 552(b)(4) and (8)).

Abstract: This form is completed by a bank holding company seeking prior approval (1) to acquire or retain the assets or shares of a nonbank company or (2) to engage *de novo* in nonbank activities. Most applications require information on the proposed transaction, information on competition and public benefits, and financial and managerial information. For applications to engage *de novo* in nonbank activities permissible under Regulation Y, less detailed information is required.

Current Actions: The Federal Reserve has revised the FR Y-4 to reflect changes to Regulation Y that provide for two separate streamlined procedures for certain nonbanking proposals that are intended to reduce significantly regulatory burden and to improve the ability of well-run bank holding companies to respond quickly to changes in the market place. The FR Y-4 has become a notification form instead of an application.

Final approval under OMB delegated authority the implementation of the following report:

1. Report title: Notice for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company

Agency form number: FR Y-3N

OMB control number: 7100-0121

Frequency: Event-generated

Reporters: Corporations seeking to become bank holding companies, or bank holding companies and state chartered banks that are members of the Federal Reserve System.

Annual reporting hours: 945 hours.

Estimated average hours per response: 5 hours.

Number of respondents: 189

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. § 1844(c)). Individual respondent data are available to the public except any portions which have been granted confidential treatment at the applicant's request (5 U.S.C. 552 (b)(4) and (b)(8)).

Abstract: The Federal Reserve is implementing the FR Y-3N due to Regulation Y revisions that provide for streamlined processes for reviewing applications and notifications from respondents meeting certain qualifying criteria. The FR Y-3N requests substantially less information than the previous FR Y-3 for respondents that meet the qualifying criteria.

Current Actions: The FR Y-3N reporting form is used for: (1) notifications filed using the abbreviated notice procedures for certain BHC formations, as described in section 225.17 of Regulation Y; (2) notifications filed to acquire shares, assets, or control of a bank, or a merger or consolidation between BHCs, filed under the streamlined procedures described in section 225.14 of Regulation Y, and (3) notifications filed to acquire a nonbank insured depository institution that require approval under section 4 of the BHC Act, if the BHC and the proposal would meet all of the criteria for expedited action under section 225.14 if the nonbank insured depository institution were a bank.

Board of Governors of the Federal Reserve System, April 5, 1999.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 99–8824 Filed 4–8–99; 8:45am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Agency information collection activities: Announcement of Board approval under delegated authority and submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY

Background. Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section--Mary M. West--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation.

Agency form number: FR H-5

OMB Control number: 7100-0261

Effective Date: May 10, 1999.

Frequency: Aggregate report: Quarterly; Policy Statement: On occasion.

Reporters: State Member Banks.

Annual reporting hours: 20,100 hours.

Estimated average hours per response: Aggregate Report: 5 hours; Policy Statement: 20 hours.

Number of respondents: Aggregate Report: 989; Policy Statement: 16. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1828(o)). Since this is a recordkeeping requirement the Federal Reserve does not collect this information and confidentiality under the Freedom of Information Act (FOIA) is not generally an issue.

Abstract: This information collection is a recordkeeping requirement contained in the Board's Regulation H (12 CFR 208.51) that implements section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). It requires state member banks to adopt and maintain a written real estate lending policy. Also, banks must identify their loans in excess of the supervisory loan-to-value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Regulatory Flexibility Act Statement: Pursuant to section 605(b) of the Regulation Flexibility Act (RFA) (5 U.S.C. 605(b)) the Federal Reserve hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Board of Governors of the Federal Reserve System, April 5, 1999.

Jennifer J. Johnson.

Secretary of the Board.

[FR Doc. 99–8825 Filed 4–8–99; 8:45am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 23, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Michael E. Golden, and Steven D. Schwartz, both of Boca Raton, Florida; to acquire voting shares of Southern Security Bank Corporation, Hollywood, Florida, and thereby indirectly acquire voting shares of Southern Security Bank, Hollywood, Florida.

Board of Governors of the Federal Reserve System, April 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8827 Filed 4–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 3, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Citizens Bancshares of Southwest Florida, Naples, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Southwest Florida, Naples, Florida (in organization).

Board of Governors of the Federal Reserve System, April 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8826 Filed 4–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Southern Security Bank Corporation, Hollywood, Florida; to acquire First Colonial Securities Group, Inc., Boca Raton, Florida, and thereby engage in providing financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y; and in investment transactions as principal, pursuant to § 225.28(b)(8) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa; to engage *de novo* through their subsidiary, New England Home Loans, LLC, Hamden, Connecticut, through a joint venture with Beazley Mortgage LLC, New Haven, Connecticut, in mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, April 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–8828 Filed 4–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, April 14, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–8986 Filed 4–7–99; 10:53 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Annual publication of revisions to HHS Privacy Act system notices.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) is publishing this notice in accordance with the Office of Management and Budget Circular No. A–130, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals, which requires that agencies review each system of records annually and publish any minor changes in the **Federal Register**.

AHCPR has completed the annual review of its systems of records and is publishing below (1) the table of contents which lists all active systems of records in AHCPR, and (2) those minor changes which an individual needs to know to obtain his or her records, such as changes in the system location of records or the address of system managers.

Dated: March 29, 1999.

John M. Eisenberg,

Administrator.

Table of Contents

09–35–0001

SYSTEM NAME:

Grants Information and Tracking System With Contracts Component (GIAnT), HHS/AHCPR/OM.

Minor changes have been made to this system notice. The following category is hereby revised:

SYSTEM MANAGER(S) AND ADDRESS:

GIAnT Policy-Coordinating Official, GIAnT Administrator, Office of Management, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, Rockville, Maryland 20852, (301) 594–1439.

Director, Division of Grants Management, Office of Management, AHCPR, Executive Office Center, Suite 601, 2101 E. Jefferson Street, Rockville, Maryland 20852.

09–35–0002

SYSTEM NAME:

Medical Expenditure Panel Survey (MEPS) and National Medical Expenditure Survey 2 (NMES 2), HHS/AHCPR/CCFS.

Minor changes have been made to this system notice. The following category is hereby revised:

SYSTEM MANAGER(S) AND ADDRESS:

Director, Survey Operations Team, CCFS/AHCPR, Executive Office Center, Suite 501, 2101 East Jefferson Street, Rockville, Maryland 20852.

[FR Doc. 99–8823 Filed 4–8–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[INFO–99–14]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. An Evaluation Study of Tuberculosis Control and Prevention Measures Implemented in Large City and County Jails—New—The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, TB Prevention (NCHSTP), Division of TB Elimination, Field Services proposes to conduct a survey to determine the extent that jails have implemented the 1996 recommendations of the Advisory Council for the Elimination of Tuberculosis, Prevention and Control of Tuberculosis in Correctional Facilities [MMWR 1996:45 (No. RR–8)]. The purpose of this evaluation is to determine to what extent the recommendations have been implemented and to identify barriers for implementation of the recommendations. The objectives are to define the knowledge of the recommendations among correctional staff, to identify barriers for the adoption and implementation of the recommendations, and to initiate a dialogue between public health and correctional officials on how to utilize the study results for improving TB control and prevention in the jails.

This project will assess the types and adequacy of the TB control measures that are in place in jails. The first component of this project is a survey of the largest jails to define the size of the TB problem in their populations, to review the infection control procedures that are in place, and determine the tracking mechanisms for information concerning skin test results and completion of therapy. The second component consists of on-site observation of the infection control process to observe the processing and evaluation of inmates and the infection control infrastructure (e.g., isolation procedures).

The evaluation project will be voluntary and only correctional staff will participate; no prisoners will be interviewed or asked to complete a written survey. The total cost to respondents is $0.00.

Respondents	Number of respondents	Responses per respondent	Hours per response (in hrs.)	Total burden hours
Mail survey including initial contact	50	1	2	100
Site visits	10	1	12	120
Total				220

2. Gene-Environment Interactions in Beryllium Sensitization and Disease Among Current and Former Beryllium Industry Workers—NEW National Institute for Occupational Safety and Health (NIOSH) Beryllium is a light weight metal with wide application in modern technology. The size of the USA workforce at risk of beryllium exposure is estimated at approximately 30,000, with exposed workers in primary production, nuclear power and weapons, aerospace, scrap metal reclaiming, specialty ceramics, and electronics industries. Demand for beryllium is growing worldwide, which means that increasing numbers of workers are likely to be exposed. An acute pneumonitis due to occupational exposure to beryllium was common in the 1940s and 1950s, but has virtually disappeared with improvements in work-site control measures. Even with the improved controls, as many as 5% of currently-exposed workers will develop chronic beryllium disease (CBD).

CBD is a chronic granulomatous lung disease mediated through a poorly understood immunologic mechanism in workers who become sensitized. Sensitization can be detected using a blood test, that is used by the industry as a screening tool. The screening test for sensitization was first reported in 1989, but many questions remain about the natural history of sensitization and disease, as well as exposure risk factors. Sensitized workers, identified through workplace screening programs, undergo clinical diagnostic tests to determine whether they have CBD. The proportion of sensitized workers who have beryllium disease at initial clinical evaluation has varied from 41–100% in different workplaces. Sensitized workers often develop CBD with follow-up, but whether all sensitized workers will eventually develop beryllium disease is unknown. Early diagnosis at the subclinical stage and careful follow-up seems prudent in that CBD usually responds to corticosteroid treatment. However, the efficacy of screening in

preventing adverse outcomes of the disease has not yet been evaluated. While recent research has suggested that a genetic determinant of the immune response could be a susceptibility factor, this has not been well characterized.

The National Institute of Occupational Safety and Health (NIOSH) wants to determine how beryllium workers and former workers develop beryllium disease and how to prevent it. Through the proposed study, NIOSH has the opportunity to contribute to the scientific understanding of this disease in the context of environmental and genetic etiologic factors. The goals of this investigation are to: (1) Determine the incidence of beryllium sensitization or disease over a 6-year period; (2) seek an association with exposure measurements; (3) identify a genetic determinant of susceptibility to CBD; and (4) characterize that genetic determinant to ascertain if it is associated with clinical impairment or progression of disease. Through a greater understanding of the environmental and genetic risk factors associated with the onset and progression of CBD, NIOSH will be able to develop strategies for both primary and secondary prevention applicable to beryllium-exposed workers. The total cost to respondents is $0.00.

Respondents	Number of respondents	Responses per respondent	Hours per response (in hrs.)	Total burden hours
Former Workers	175	1	0.5	87.5

3. Health Message Development and Pretesting System—NEW—Office of the Director, Office of Communications (OC). The Centers for Disease Control and Prevention (CDC) is the federal government's principal agency for research on preventable causes of death and disease, including dissemination of information for the prevention and control of certain diseases and injuries. The CDC provides communication between the agency and a variety of audiences, including Congress, other executive agencies, state and local governments, scientific and medical communities and institutions, academic institutions, voluntary organizations, the press, the general public, and members of the public diagnosed with certain diseases. Because CDC is mandated to communicate with these audiences about disease prevention and control, and because CDC programs are based on solid science, a science-based data collection system for developing and pretesting audience messages is necessary. Special circumstance surround the timeliness of this data collection system.

First of all, CDC receives mandates from Congress to provide the public with certain health information within a specified time frame. Secondly, CDC may need to act quickly in response to media interest in specific health-related subjects. The media can quickly escalate health issues in the public's mind and indeed, they often drive communication efforts on health issues that are acute, controversial, or threatening. In these situations, CDC will need to quickly conduct research to learn the best way to counteract misinformation or reinforce correct information through a health communication campaign. Thirdly, CDC prevention and control recommendations are often part of consensus conferences with multiple sister agencies and private and public sector partners. Because we need to translate the scientific messages that may be released from a consensus conference or alliance meeting, CDC is often in need of fast and effective ways of testing these message translations for the public and the media on a very short timeline. Finally, many CDC programs are working with private or public sector partners who can provide paid placement for CDC messages. CDC needs an empirically-driven system of comparing messages across audience groups and across disease problems to assist partners with selecting the most effective messages for partnerships. Partners look to CDC to provide this leadership in communication science and research. This means that CDC needs a database system that can house the aggregate data from all message pretesting and allow researchers to compare messages to each other and to standardized effectiveness scores.

It is critical to CDC's mission and mandates to provide credible and effective messages to the many audiences we serve. Formative evaluation provides CDC with the most accepted and powerful tool available to make health messages as useful as possible for the audiences we serve. Without formative evaluation, CDC staff and experts will be unable to empirically predict the effectiveness of health materials and messages, and CDC would not be able to predict when messages are insensitive, offensive, or create unintended negative effects.

CDC needs a system that can not *only* test program messages using an empirical and accepted methodology, but *also* provides access to a system that is fast and effective at reaching a wide variety of audiences *and* provides comparison data for decision-making. The proposed system will allow CDC to provide audiences with the best scientific health information, in ways that are relevant to the audience, based on empirical communication research, and in a timely fashion.

This OMB submission is for message development and pretesting research of 130 messages per year for each of three years. The testing system will provide message development and pretesting research for 15 Centers, Institutes and Offices at CDC and across a wide range of program areas.

Response burden for each type of formative research method are summarized below. The estimated annual total burden hours are 6,945 across 130 different studies (CDC-wide). The total cost to respondents is $0.00.

Formative research method	Number of studies conducted across CDC	Number of respondents per study	Response per respondent	Hours per response (in hrs.)	Total burden hours
Focus Groups [1]	59	48	1	1.5	4,248
Central Location Intercept Interviews [2]	22	125	1	0.25	687
In-depth Interviews	34	15	1	1.0	510
Omnibus Surveys [3]	15	1,000	1	.10	1,500

Formative research method	Number of studies conducted across CDC	Number of respondents per study	Response per respondent	Hours per response (in hrs.)	Total burden hours
Total	130	1,188			6,945

[1] Based on the average number of 6 focus groups conducted by CDC and other organizations for each specific health program with 8 people per group.
[2] Based on the industry average of 125 people per pretest session.
[3] Based on the industry average of 1,000 people per omnibus poll and 6 minutes of telephone interview time.

Dated: April 2, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8725 Filed 4–8–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99041]

Grants for Education Programs in Occupational Safety and Health; Notice of Availability of Funds for Fiscal Year 2000

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for training grants in occupational safety and health. This program addresses the "Healthy People 2000" priority area of occupational safety and health. The purpose of the program is to provide an adequate supply of qualified personnel to carry out the purposes of the Occupational Safety and Health Act. The objective of the program is to award funds to eligible institutions or agencies to assist in providing an adequate supply of qualified professional occupational safety and health personnel. Funds are awarded for Occupational Safety and Health Education and Research Center Training Grants (ERCs) and for Long-Term Training Project Grants (TPGs). (See "D. Program Guidelines and Requirements".)

B. Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, or U.S. Territory is eligible to apply for a training grant.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds and Types of Training Awards

In total, approximately $12,700,000 is expected to be available in FY 2000 to fund ERC and TPG programs.

1. For ERCs

Approximately $10,450,000 of the total funds available will be utilized as follows:

a. Approximately $8,000,000 is available to award eleven non-competing continuation and four competing continuations or new ERCs. Awards will range from $400,000 to $800,000 with the average award being $530,000.

b. Approximately $1,200,000 is available to award nine supplemental non-competing and three competing continuation or new training grants to support the development and presentation of continuing education and short courses and academic curricula for trainees and professionals engaged in the management of hazardous substances. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances.

c. Approximately $250,000 is available to award four supplemental non-competing continuation grants. These awards will support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety.

d. Approximately $1,000,000 is available to award fifteen supplemental non-competing continuation grants to support the enhancement of the ERCs research training mission through the support of pilot project research training programs.

2. For TPGs

Approximately $2,250,000 of the total funds available will be utilized as follows:

a. To award approximately twenty-four, non-competing continuation and fifteen competing continuation or new TPG programs. Awards will range from approximately $10,000 to $500,000, with the average award being $58,000. These awards will support academic programs in the core disciplines (i.e., industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety and ergonomics) and relevant components (e.g., occupational injury prevention, industrial toxicology, ergonomics). These awards are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations.

3. It is expected that awards will begin on or about 7/1/00 and will be made for a 12-month budget period within a project period of up to five years. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Guidelines and Requirements

The following are intended to serve as applicant guidelines and requirements:

1. An ERC shall be an identifiable organizational unit within the sponsoring organization. Applicants must meet the following characteristics in order to be considered responsive. If the characteristics are not met, the application will be considered non-responsive and will not be reviewed.

a. Cooperative arrangements with a medical school or teaching hospital (with an established program in preventive or occupational medicine); with a school of nursing or its equivalent; with a school of public health or its equivalent; or with a school of engineering or its equivalent. It is expected that other schools or departments with relevant disciplines and resources shall be represented and shall contribute as appropriate to the

conduct of the total program, e.g., epidemiology, toxicology, biostatistics, environmental health, law, business administration, and education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, etc., shall be demonstrated in order to assure that the intended multidisciplinary training and education will be engendered.

b. An ERC Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director shall oversee the general operation of the ERC Program and shall, to the extent possible, directly participate in training activities. A Deputy Director shall be responsible for managing the daily administrative duties of the ERC and to increase the ERC Director's availability to ERC staff and to the public.

c. Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the ERC. Each academic program, as well as the continuing education and outreach program shall have a Program Director.

d. Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

e. A program for conducting education and training in four core disciplines: occupational physicians, occupational health nurses, industrial hygienists, and occupational safety personnel. There shall be a minimum of five full-time students in each of the core programs, with a goal of a minimum of 30 full-time students (total in all of core programs together). ERCs are encouraged to recruit and train minority students to help address the under-representation of minorities among the occupational safety and health professional workforce. Although it is desirable for an ERC to have the full range of core programs, an ERC with a minimum of three components of which two are in the core disciplines is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. In order to maximize the unique strengths and capabilities of institutions, consideration will be given to the development of: new and innovative academic programs that are relevant to the occupational safety and health field, e.g., ergonomics, industrial toxicology, occupational injury prevention, and occupational epidemiology; and to innovative technological approaches to training and education. ERCs must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches. ERCs should address the importance of providing training and education content related to special populations at risk, including minority workers and other sub-populations specified in the National Occupational Research Agenda (NORA) special populations at risk category.

f. A specific plan describing how trainees will be exposed to the principles of all other occupational safety and health core and allied disciplines. Consortium ERCs generally have geographic, policy and other barriers to achieving this ERC characteristic and, therefore, must give special, if not innovative, attention to thoroughly describing the approach for fulfilling the multidisciplinary interaction between students.

g. Demonstrated impact of the ERC on the curriculum taught by relevant medical specialties, including family practice, internal medicine, dermatology, orthopedics, pathology, radiology, neurology, perinatal medicine, psychiatry, etc., and on the curriculum of undergraduate, graduate and continuing education of primary core disciplines as well as relevant medical specialities and the curriculum of other schools such as engineering, business, and law.

h. An outreach program to interact with and help other institutions or agencies located within the region. Programs shall be designed to address regional needs and implement innovative strategies for meeting those needs. Partnerships and collaborative relationships shall be encouraged between ERCs and TPGs. Programs to address the under-representation of minorities among occupational safety and health professionals shall be encouraged. Specific efforts should be made to conduct outreach activities to develop collaborative training programs with academic institutions serving minority and other special populations, such as Tribal Colleges and Universities. Examples of outreach activities might include activities such as: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (e.g., Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary educational institutions (e.g., high school science fairs and career days) as well as to labor, management and community associations.

i. A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the ERC is located. The goal shall be that the training be made available to a minimum of 400 trainees per year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Priority shall be given to establishing new and innovative training technologies, including distance learning programs and to short-term programs designed to prepare a cadre of practitioners in occupational safety and health. Where appropriate, it shall be professionally acceptable that Continuing Education Units (as approved by appropriate professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety

personnel working in the workplace. Further, the ERC shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated capability for implementing such training directly and through other institutions or agencies in the region. The ERC should establish and maintain cooperative efforts with labor unions, government agencies, and industry trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

j. A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the ERC. The Board should meet at least annually to advise an ERC Executive Committee and to provide periodic evaluation of ERC activities. The Executive Committee shall be composed of the ERC Director and Deputy Director, academic Program Directors, the Directors for Continuing Education and Outreach and others whom the ERC Director may appoint to assist in governing the internal affairs of the ERC.

k. A plan to incorporate research training into all aspects of training and, in research institutions, as documented by on-going funded research and faculty publications, a defined research training plan for training doctoral-level researchers in the occupational safety and health field. The plan will include how the ERC intends to strengthen existing research training efforts, how it will integrate research training activities into the curriculum, field and clinical experiences, how it will expand these research activities to have an impact on other primarily clinically-oriented disciplines, such as nursing and medicine, and how it will build on and utilize existing research opportunities in the institution. Each ERC is required to identify or develop a minimum of one, preferably more, areas of research focus related to work environment problems. Consideration shall be given to the CDC/NIOSH priority research areas identified in the National Occupational Health Research Agenda (NORA). (This publication may be obtained from NIOSH). The research training plan will address how students will be instructed and instilled with critical research perspectives and skills. This training will emphasize the importance of developing and working on interdisciplinary teams appropriate for addressing a research issue. It should also prepare students with the skill necessary for developing research protocols, pilot studies, outreach efforts to transfer research findings into practice, and successful research proposals. Such components of research training will require the ERCs to strive toward developing the faculty composition and administrative infrastructure essential to being Centers of Excellence in Occupational Safety and Health Research Training that are required to train research leaders of the future. The plan should address the incremental growth of such elements and evaluation of the plan commensurate with funds available. In addition to the research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for acquiring equipment, if appropriate, and a plan for developing research-oriented faculty.

l. Evidence in obtaining support from other sources, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

2. TPG applicants must document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. There shall be a minimum of three full-time students in each academic program. Applicants should address the importance of providing training and education content related to special populations at risk, including minority and disadvantaged workers. The types of training currently eligible for support are:

a. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas of greatest occupational safety and health need. Strong consideration will be given to the establishment of innovative training technologies including distance learning programs.

b. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

c. Special technical or other programs for long-term training of occupational safety and health technicians or specialists.

d. Special programs for development of occupational safety and health training curricula and educational materials, including mechanisms for effectiveness testing and implementation.

E. Application Content

Competing Applications

Use the information in the Program Guidelines and Requirements and Other Requirements sections to develop the application content. Your application will be evaluated on the basis of the Program Guidelines and Requirements, Other Requirements, and Evaluation Criteria sections listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 15 single-spaced pages per program, printed on one side, with one inch margins, and unreduced font.

Note: Please consult the detailed Recommended Outline for Preparation of Competing New/Renewal Training Grant Applications provided in each application kit (CDC 2.145 A).

Noncompeting Continuation Applications

For noncompeting continuation applications submitted within the approved project period, include:

1. Brief progress report describing the accomplishments of the preceding budget period;

2. New or significantly revised items or information (objectives, scope of activities, operational methods, evaluation), that is not in the initial application; and

3. Annual budget and justification.

Note: Please consult the detailed Recommended Outline for Preparation of Non-competing Renewal (Continuation) Training Grant Applications (CDC 2.145 B) provided in each application kit.

F. Submission and Deadline

Applications should be clearly identified as an application for an ERC Training Grant or TPG grant.

Application

Deadline for New, Competing Continuation, and Supplemental Applications (CDC 2.145 A ERC or TPG): July 1, 1999

Deadline for Non-competing Continuation Applications (CDC 2.145 B ERC or TPG): November 15, 1999

Submit the original and two copies of CDC 2.145 A or B (OMB Number 0920–00261). Forms are in the application kit. Submit the application to:

Anne Foglesong, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99041

Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

In reviewing ERC grant applications, consideration will be given to:

1. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. Special consideration should be given to the development of programs addressing the under-representation of minorities among occupational safety and health professionals. Indicators of regional need should include measures utilized by the ERC such as previous record of training and placement of graduates. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

2. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the Characteristics of an Education and Research Center.

3. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration shall be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

4. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

5. Academic training including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed methods for evaluating the effectiveness of training and outreach including the use of placement services and feedback mechanisms from graduates as well as employers, innovative strategies for meeting regional needs, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. Competence, experience and training of the ERC Director, the Deputy ERC Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to ERC goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of the integration of research experience into the curriculum, field and clinical experiences. In institutions seeking funds for doctoral and post-doctoral (physician training) level research training, evidence of a plan describing the research and research training the ERC proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

13. Evidence of a strategy to evaluate the impact that the ERC and its programs have had on the DHHS Region. Examples could include a continuing education needs assessment, a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, the impact on primary care practice and training, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

14. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

In reviewing supplements to ERC projects, consideration will be given to:

1. Hazardous Substance Training Program in ERCs—The evaluation criteria are as follows:

a. Relevance of the proposed project to each element of the characteristics of a hazardous substance training program.

b. Comprehensiveness and soundness of the training plan developed to carry out the proposed activities. This is based on a documented need for the training and evidence to support the approach used to provide the required training. It includes descriptions of the scope and magnitude of the hazardous substance problem in the applicable DHHS Region and current activities and training efforts.

c. Education and experience of the Project Director, faculty, and staff assigned to this project with respect to handling, managing or evaluating hazardous substance sites and to the training of professionals in this field.

d. Creativity and innovation of the project leadership with respect to marketing the courses, structure in attracting trainees and/or providing incentives for training.

e. Extent to which the applicant considered the work of relevant agencies involved in hazardous substance activities and cooperated with these agencies in developing and implementing this training program.

f. Suitability of facilities and equipment available for this project.

g. Appropriateness of the budget to carry out the planned activities.

2. Agricultural Safety and Health Education Programs in ERCs—The evaluation criteria are as follows:

a. Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for

outreach, continuing education, information dissemination and special industrial or community training needs that may be peculiar to the region.

b. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including protected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

c. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve characteristics of an ERC.

d. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

e. Previous record of academic training in agricultural safety and health including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous record of continuing education training in agricultural safety and health and record of outreach activity and assistance to agricultural groups within the ERC region.

f. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

g. The competence, experience and training of the Center Director, the Deputy Center director, the Program directors and other professional staff in relation to the type and scope of training and education involved.

h. Institutional commitment to Center goals.

i. Academic and physical environment in which the training will be conducted, including access to appropriate occupational agricultural settings.

j. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

k. Evidence of a plan describing the agricultural safety and health training the Center proposes. This shall include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

l. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

3. Hazardous Substance Academic Training Program in ERCs—The evaluation criteria are as follows:

a. Evidence of a needs assessment directed to the overall contribution of the proposed training program toward meeting the job market, especially within the applicant's region, for qualified state, local and other qualified professional personnel. The needs assessment should consider the regional requirements for hazardous substance training, information dissemination and special industrial, labor or community training needs that may be peculiar to the region.

b. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations.

c. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve characteristics of an ERC.

d. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve a degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

e. Previous record of academic training in hazardous substances including the number and type of students trained. Previous record of continuing education training in hazardous substances, outreach activity and assistance to hazardous substance groups within the ERC's region.

f. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

g. The competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

h. Institutional commitment to Center goals.

i. Academic and physical environment in which the training will be conducted.

j. Appropriateness of the budget required to support the training courses developed, including accounting for the academic staff's time.

k. Evidence of a plan describing the hazardous substances training the Center proposes. This shall include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

l. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

4. ERC Supplemental Pilot Project Research Training Programs—The evaluation criteria are as follows:

a. Relevance of the proposed program, including objectives that are specific and consistent.

b. Adequacy of the plan proposed to conduct the pilot projects program, including procedures for reviewing and funding projects, the scientific review mechanism, program quality assurance. Human Subjects—Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Are all procedures in compliance with applicable published regulations?

c. Extent to which the applicant demonstrates collaboration with other research training institutions in the region, including NIOSH Training Project Grantees.

d. Education and experience of the proposed Research Training Program Director and faculty in the occupational safety and health field, including the utilization of pilot projects as a research training mechanism.

e. Appropriateness of the proposed budget to carry out the planned activities.

f. Adequacy of the plan to evaluate the effectiveness of the proposed pilot projects program.

g. Gender and minority issues—Are plans to include both sexes and minorities and their subgroups adequately developed (as appropriate for the scientific goals of the project)? Are strategies included for the recruitment and retention of human subjects?

In reviewing TPG applications, consideration will be given to:

1. Need for training in the program area outlined by the application. This should include documentation of a plan for student recruitment, projected enrollment, job opportunities, regional need both in quality and quantity, and for programs addressing the under-representation of minorities in the profession of occupational safety and health.

2. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches. There should also be evidence of integration of research experience into the curriculum, field and clinical experiences.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved. The program director must be a full-time faculty member.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee: Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need.

11. Evidence of a strategy to evaluate the impact that the program has had on the region. Examples could include a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

12. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

H. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of

1. progress reports (annual and may be incorporated as component of non-competing continuation applications);

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to:

Anne Foglesong, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1* ..	Human Subjects Requirements.
AR–2* ..	Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–3* ..	Animal Subjects Requirements.
AR–10 ..	Smoke-Free Workplace Requirements.
AR–11 ..	Healthy People 2000.
AR–12 ..	Lobbying Restrictions.

*= Applies to ERC Supplemental Pilot Project Research Training Program applications only.

Data collection initiated under this training grant program has been approved by the Office of Management and Budget under Number 0920–0261. "Training Grants, Application and Regulations—42 CFR Part 86," Expiration Date 11/30/2000.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 21(a) of the Occupational Safety and Health Act [29 U.S.C. 670 (a)]. The Catalog of Federal Domestic Assistance number is 93.263.

J. Where to Obtain Additional Information

Please refer to Program Announcement 99041 and specify ERC or TPG when you request information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Anne Foglesong, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99041, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2724, Email address: anf3@cdc.gov

For program technical assistance, contact: John T. Talty, Principal Engineer, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–7, Cincinnati, OH 45226–1998, telephone (513) 533–8241, Email address: jtt2@cdc.gov.

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC home page is: <http://www.cdc.gov>.

Dated: April 2, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8822 Filed 4–8–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99064]

National Institute for Occupational Safety and Health; Research on Young Worker Safety and Health Risks in Construction; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for researching safety and health risks to young workers associated with specific jobs or tasks in the construction industry. This program addresses the "Healthy People 2000" priority area(s) of Occupational Safety and Health. The purpose of the program is to provide empirical data that can guide efforts to prevent deaths and injuries of youth less than 18 years of age working in construction in the United States, with a focus on data needed to determine if changes are needed in existing regulations that prohibit youth less than 18 years of age from working in particularly hazardous activities (29 CFR Part 570, Subpart E—Hazardous Orders).

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $550,000 is available in FY 1999 to fund approximately three to five awards. It is expected that the average award will be $145,000, ranging from $90,000 to $180,000. It is expected that the awards will begin on or about September 1, 1999, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Funding preferences may be given to applications covering differing types of construction work to obtain information on a wide spectrum of construction activities and minimize duplicative efforts.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop and implement a study protocol.
2. Analyze data and interpret findings.
3. Disseminate study results to the occupational safety and health community.
4. Publish study findings.

B. CDC/NIOSH Activities

1. Provide scientific and technical collaboration in the development of the study design, protocol, and data analysis.
2. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.
3. Assist awardees on data analysis, and interpretation of findings.

E. Application Content

Use the information in the Cooperative Activities, Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double-spaced pages. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½" by 11" paper, with at least 1" margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets. Appendices should have indexes and include (1) Support letters (2) information on key personnel (3) other supporting documentation.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should include the following information. The letter of intent must be submitted on or before May 28, 1999, to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99064, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before June 30, 1999, submit the application to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99064, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (20 points total)

The extent to which the applicant understands the general objectives of the proposed agreement:

(a) describing available data on youth employment and occupational injuries and hazardous exposures in construction work (5 points);

(b) identifying gaps in information on safety and health risks for youth working in construction (5 points); and,

(c) illustrating how the research results could be used to guide decisions about revisions to existing Hazardous Orders (work activities prohibited for youth less than 18 years of age because they are considered especially hazardous) and/or identifying new areas for consideration as potential Hazardous Orders. 10 points

2. Study Design (20 points)

The extent to which specific research questions and/or hypotheses are described. The extent to which the applicant provides a detailed description of overall design and methods selected for the study. The extent to which the applicant describes the theory and rationale for the study, and if relevant, how factors such as limited employment of youth less than 18 years in specific occupations or tasks (e.g. because of existing Hazardous Orders or Human Subject concerns) are factored into the study design. The extent to which the applicant demonstrates that the study population and/or setting can be generalized to other work settings doing similar work.

3. Study Population and Methods (15 points total)

The extent to which the proposed study will meet study objectives. Extent to which the applicant describes the study population, including information on the ages and work experience of the study population. The extent to which the study population and/or setting in which the study or analyses are undertaken are adequate for achieving the desired objectives. The extent to which the applicants demonstrate the ability to address modifying factors that may vary across work sites, such as characteristics of equipment, training and supervision, and job experience of workers. (10 points)

The extent to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; including anticipated levels of representation of these groups in the sampling plan; (b) the proposed justification when representation is limited or absent; (c) a statement as to whether the design of the study is adequate to measure differences when warranted; d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Goals and Objectives (15 points)

The extent to which the applicant has included goals and objectives that are specific, measurable, time-phased, feasible to be accomplished during the project period, and which address all activities necessary to accomplish the purpose of the application. The extent to which the applicant clearly states the evaluation method for evaluating the accomplishments. The extent to which a qualified plan is proposed that will help achieve the goals stated in the application.

5. Staffing, Facilities and Resources (15 points)

The extent to which job descriptions, proposed staffing, staff qualifications and experience, and curricula vitae for both the proposed and current staff indicate the applicant's ability to carry out the objectives of the program. Adequacy of the applicant's facilities, equipment, and other resources available for performance of the project.

6. Collaboration (15 points)

The extent to which concurrence with the applicant's plans by all other involved parties is specific and documented, e.g. support for proposed activities as well as commitment to participate (e.g. letters of support and/or memorandum of understanding). The extent to which the partners are clearly described and their qualifications for their component of the proposed work are explicitly stated. The extent to which the applicants demonstrate access to work sites or datasets that are critical to study completion.

7. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with limited use of funds.

8. Human Subjects (Not Scored)

If human subjects will be involved, the extent to which the applicant describes how will they be protected, i.e., describe the review process which will govern their participation.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Sheryl Heard, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I (included in the application package).

AR–1 .... Human Subjects Requirements.
AR–2 .... Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–9 .... Paperwork Reduction Act Requirements.
AR–10 .. Smoke-Free Workplace Requirements.
AR–11 .. Healthy People 2000.
AR–12 .. Lobbying Restrictions.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 20 (a) and 22 (e)(7) of the Occupational Safety and Health Act of 1970, [29 U.S.C. 669 (a) and 671 (e)(7)]. The Catalog of Federal Domestic Assistance number is 93.262.

J. Where to Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sheryl Heard, Grants Management Specialist, Procurement and Grants Office, Announcement 99064, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30305–2209, telephone (770) 488–2723, Email address SLH3@cdc.gov.

For program technical assistance, contact: Dawn N. Castillo, M.P.H., Telephone: (304) 285–6012, Email: dnc0@cdc.gov, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Division of Safety Research, 1095 Willowdale Road, Mailstop P–180, Morgantown, WV 26505.

See also the CDC home page on the Internet: http://www.cdc.gov.

Special Hazard Review: Child Labor Research Needs: Recommendations from the NIOSH Child Labor Working Team. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No.

97–143, 1997. 59 FR 26164. Department of Labor: Child Labor Regulations, Orders and Statements of Interpretation; Proposed Rules, May 13, 1994.

Dated: April 2, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8821 Filed 4–8–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99029]

Cooperative Agreement for Promoting Prevention in Managed Care Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Promoting Prevention in Managed Care. This announcement relates to all of the priority areas of "Healthy People 2000." Its purpose is to promote the attainment of the objectives outlined in "Healthy People 2000" through strengthening the infrastructure supporting the science and practice of prevention in managed care.

B. Eligible Applicants

Applications may be submitted by private sector, nonprofit, managed care membership organizations who: (1) Provide an array of services and products (e.g., technical support, publications, training and continuing education, communication and information sharing, etc.) to member plans in at least 20 States; and (2) whose member plans and affiliated entities can demonstrate past and current experience conducting public domain, prevention research (i.e., research in the areas of health promotion, disease prevention, and chronic disease management) in the managed care environment.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $400,000 is available in FY 1999 for approximately 2–3 awards. It is expected that the average award will range from approximately $133,000 to $200,000 per award. It is expected that awards will begin on or about September 1, 1999, for a 12 month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by the successful completion of required activities and reports, and by the availability of funds.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under Recipient Activities, and CDC will be responsible for the activities under CDC Activities.

Recipient Activities

1. Develop and strengthen mechanisms, programs, and initiatives which further the purpose, goals and objectives of this cooperative agreement.
2. Facilitate the timely, bi-directional flow of information between the public health and managed care communities.
3. Facilitate communication, information sharing, and collaboration among the public, private and academic research communities.
4. Develop conferences, meetings, seminars and symposia which explore and expand areas of commonality around prevention between the public health and managed care sectors.
5. Initiate and/or coordinate multiplan and network managed care, prevention research initiatives.

CDC Activities

1. Provide technical assistance and monitor the progress of this cooperative agreement.
2. Foster the formation and growth of national and regional public-private partnerships which support prevention research and evidence-based prevention practice.
3. Assist with the development of conferences, meetings, seminars, and symposia which explore and expand areas of commonality around prevention between the public health and managed care sectors.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925-0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before June 7, 1999, submit the application to: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341, Announcement 99029.

Deadline: Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for objective review. (Applicants must request a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of time and date of mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Organizational Description (15 percent)

The extent to which the applicant's existing organizational structure, mission, goals, objectives, activities, functions and membership are consistent with the purpose of this Program Announcement.

2. Goals and Objectives (35 percent)

The extent to which the applicant's proposed goals and objectives meet the required activities specified under the "Recipient Activities" section of this announcement, and are measurable, specific, time-phased and realistic.

3. Methods (35 percent)

The extent to which the applicant's plan for conducting the required activities is realistic and appropriate to the stated goals and objectives, acceptable to the communities it seeks to serve, and feasible within existing programmatic and fiscal restrictions.

4. Evaluation (15 percent)

The extent to which the applicant has developing mechanisms for evaluating and reevaluating progress toward stated goals which include end-user feedback.

The extent to which the applicant builds in the capacity for mid-course correction(s) based on those evaluations.

5. Budget (Not scored)

The extent to which the budget is reasonable in the amount(s) requested, justified by the application content, and consistent with the intentions of this announcement.

H. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of:

1. An annual progress report
2. A financial status report, no more than 90 days after the end of the budget period; and
3. A final financial status and performance report, no more than 90 days after the end of the project period.

Send all reports to: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Grants Management Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–7	Executive Order 12372 Review.
AR–8	Public Health System Reporting Requirements.
AR–9	Paperwork Reduction Act Requirements.
AR–10 ..	Smoke-Free Workplace Requirements.
AR–11 ..	Healthy People 2000.
AR–12 ..	Lobbying Restrictions.
AR–15 ..	Proof of Non-Profit Status.
AR–20 ..	Conference Activities within Grants/Cooperative Agreement.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act (42 U.S.C. 301 and 317(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

Please refer to Program Announcement Number 99029 when requesting information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, Telephone: (770) 488–2716, Email address: spo2@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov

For program technical assistance, contact: Deborah Rogers Mercy, Centers for Disease Control and Prevention (CDC), Office of Managed Care/OPPE, Room 2035, 1600 Clifton Road, M/S D33, Atlanta, GA 30333, Telephone: (404) 639–4943, Email address: dem2@cdc.gov.

Dated: April 5, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8882 Filed 4–8–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99108]

Cooperative Agreement for Promoting Investigator-Initiated Prevention Research in Managed Care; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) Epidemiology Program Office, Division of Prevention Research and Analytic Methods in cooperation with the Office of Prevention Research, announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for investigator-initiated prevention research in managed care settings. Despite spending significantly more money per capita on health than any other country in the world, recommended and effective preventive services are not routinely delivered in the United States.

The primary purpose of this program is to fund research designed to increase the utilization of priority preventive services in the United States. Desirable secondary outcomes include: (1) Improvements in surveillance and information systems, (2) furthering the science of performance measurement, (3) novel public-private partnerships for health, and (4) interventions which reduce racial and ethnic disparities in the receipt of priority preventive services.

This program relates to the following priority areas of "Healthy People 2000": Immunization and infectious disease, sexually transmitted diseases, tobacco, heart disease and stroke, cancer, and clinical preventive services.

B. Eligible Applicants

Applications are invited from non-profit and for-profit managed care plans and their affiliated research entities and membership organizations.

Applicant Requirements:

1. A principal investigator (PI) who has conducted research in managed care settings, published findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.
2. Demonstrated experience (on the applicant's project team) in conducting, evaluating, and publishing prevention or health services research in peer reviewed journals.
3. Effective and well-defined working relationships within the performing organization and with outside entities to ensure successful implementation of proposed activities.
4. A match between the applicant's proposed theme and research objectives and the program interests described in this notice.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $750,000 will be available in FY 1999 to award 3–5 projects. Funding will range from approximately $150,000 to $250,000 per award. Awards are expected to begin on or about September 1, 1999, for 12-month budget period within a project period of up to two years. Proposals for one year projects are encouraged. Funding estimates may change.

Continuation awards for projects with approved two year project periods will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under Recipient Activities, and CDC will be responsible for the activities under CDC Activities.

Recipient Activities

1. Design and conduct a prevention research project addressing one or more of the following questions:

a. Evaluating the ability of health plans to monitor the delivery of one or more priority preventive services;

b. Estimating the delivery of one or more priority preventive services, particularly those not measurable via available administrative data, and assessing the validity of such estimates;

c. Evaluating health plan structural, environmental, and organizational factors associated with the delivery of one or more priority preventive services;

d. Evaluating interventions designed to increase the use of one or more priority preventive services.

2. Collect, analyze, interpret, present and publish research project results.

CDC Activities

1. Provide technical assistance, advice and coordination; and assure that CDC guidelines regarding conflict of interest, Institutional Review Boards (IRBs), etc., are followed.

2. Assist in the monitoring of field data collection, helping to ensure standardization in methods; and assist in the interpretation and reporting of the collected information.

3. Assist by providing advice in the management and technical performance of the investigation.

4. Assist in promoting project findings to the scientific community at large.

E. Application Content

Your application should include:

1. A narrative description of the project's focus that justifies the need and presents the scientific basis for the proposed research. This focus should be grounded in the information provided in this program announcement and in applicable sections of "Healthy People 2000."

2. A description of the expected outcome(s) and their relevance to reducing morbidity, mortality, disability and economic loss.

3. Specific, measurable, time-phased objectives.

4. A detailed plan describing the methods by which the objectives will be achieved, including their sequence.

5. A comprehensive evaluation plan.

6. A description of the principal investigator's role and responsibilities.

7. A description of the proposed project staff regardless of funding source. It should include: Title, qualifications, experience, percentage of time which will be devoted to the project, project responsibilities, and the portion of salary which will be paid for under this proposal.

8. A description of other activities which are related to, but will not be supported by the grant.

9. When applicable, a description of the involvement of other participating organizations/groups and their relationship to the proposed project. Include a clear statement of roles and commitments including letters of support.

10. A detailed one year budget and, when applicable, a projected second year budget.

An applicant organization has the option of having specific employee salary and fringe benefit figures omitted from copies of the application which will be made available to outside review groups. To exercise this option, the applicant must use asterisks, on the original and five copies of the application, to indicate those individuals for whom salaries and fringe benefits are not shown. Subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with salary and fringe amounts shown. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before June 7, 1999 submit the application to: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine, Room 3000, Atlanta, Georgia 30341, Announcement 99108.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for objective review. (Applicants must request a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of date and time of mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under Eligible Applicants, subtitle, Applicant Requirements (Items 1–4). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications that are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority score ranking by the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP) appointed by CDC, programmatic priorities and needs as determined by a secondary review committee, and the availability of funds.

The first review in the dual review process will be the peer review of all competitive applications by the SEP. Reviewers will comment on the following aspects of the application (significance, approach, innovation, investigators, and environment) in their written critiques in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of program goals. Each of these criteria will be addressed and considered by the reviewers in assigning the overall score, weighing them as appropriate for each application. Note that the application does not have to be strong in all categories to be judged likely to have a major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative but is essential to move a field forward.

The SEP will also evaluate the appropriateness of the proposed project budget; the adequacy of plans to include racial and ethnic minorities and their subgroups, children and both genders as appropriate to the scientific goals of the research; the provisions for the protection of human subjects; and the safety of the research environment.

1. Significance: Does the study address a significant issue or problem affecting the monitoring, delivery, and/or evaluation of priority preventive services? If the aims of this application are achieved how will scientific knowledge be advanced? How will the public's health be advanced?

2. Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Are

there plans to regularly evaluate progress toward the stated objective(s)? Is an appropriate work plan included?

Has the applicant met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Innovation: Does the project employ novel concepts, approaches, or methods? Are its aims innovative? Does it challenge existing paradigms? Will it test the efficacy of new methodologies or technologies?

4. Investigator(s): Is the principal investigator an experienced researcher? Have any of the investigators conducted research in the area of proposed study?

5. Environment: Will the proposed research setting contribute to the probability of success? Does the proposed study take advantage of any unique features of research setting? Are there any collaborative agreements? Is there evidence of institutional/organizational support? Is there evidence of appropriate interest, commitment, and cooperation among the investigators and other interested parties as evidenced by letters detailing the nature and extent of involvement?

6. Human Subjects: Does the application adequately address the requirements of 45 CFR Part 46 for the protection of human subjects?

7. Biohazards: Are any hazards procedures proposed which would affect the safety and well-being of the research subjects and/or investigators?

8. Budget: Does the proposed budget seem appropriate? Does the proposed study length seem reasonable? Would you propose any modifications?

The secondary review committee, in the course of its review, will consider the following factors:

a. The results of the peer review (SEP).

b. The significance of the proposed activities in relation to the priorities and objectives stated in Healthy People 2000 and this program announcement.

c. National needs.

d. Program balance including currently funded research and organizational considerations.

e. Budgetary considerations.

H. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of:

1. An annual progress report;

2. A financial status report, no more than 90 days after the end of the budget period; and

3. A final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Sharron Orum, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine, Room 3000, Atlanta, GA 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–1	Human Subjects Requirements.
AR–2	Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–8	Public Health System Reporting Requirements.
AR–9	Paperwork Reduction Act Requirements.
AR–10	Smoke-Free Workplace Requirements.
AR–11	Healthy People 2000.
AR–12	Lobbying Restrictions.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act [42 U.S.C. sections 301 and 317(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

Please refer to Program Announcement Number 99108 when requesting information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine, Room 3000, Atlanta, GA 30341, Telephone: (770) 488–2716, Email address: spo2@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance, contact: Betsy L. Thompson, Centers for Disease Control and Prevention (CDC), Epidemiology Program Office, Div. of Prevention Research and Analytic Methods, Rm 1050B, 1600 Clifton Road, M/S D01, Atlanta, GA 30333, Telephone: (404) 639–3806, Email address: bst0@cdc.gov.

Dated: April 5, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–8848 Filed 4–8–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0391]

International Standard-Setting Activities; Codex Alimentarius Commission; Committee on Nutrition and Foods for Special Dietary Uses; Background Paper to Identify Perspectives and Issues Pertaining to International Guidelines on Vitamin and Mineral Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is asking interested persons to submit comments that will be used by the U.S. delegate to the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) to prepare a background paper to be considered by the CCNFSDU prior to its considering the appropriateness of establishing guidelines for vitamin and mineral supplements for the purposes of international trade. The background paper will discuss the range of concerns and the differences in rationales on this topic. The United States, which has indicated its opposition to the development of such guidelines, has been asked to participate in the development of this background paper along with other governments. FDA is accepting this request in its role as the agency representing the United States in the CCNFSDU.

DATES: Submit written comments by June 8, 1999.

ADDRESSES: Submit written comments and recommendations to the Dockets Management Branch (HFA–305), Food

and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4605.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Codex Alimentarius Commission (Codex) is the joint food standards program of the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). This program was established in 1962 and develops food standards, codes of practice, and other guidelines to help protect the health and economic interests of consumers and to facilitate and encourage fair international trade in food. The Codex accomplishes these actions through the use of subordinate committees that develop food standards, codes of practice, and other guidelines for consideration and adoption by the Codex and member countries.

In the United States, the U.S. Department of Agriculture (USDA), FDA, and other agencies manage and carry out U.S. Codex activities. Executive direction of this effort comes from the U.S. manager for Codex, a responsibility of the Food Safety and Inspection Service (FSIS) of USDA. For more information on U.S. Codex activities and the responsibilities of the U.S. delegates to Codex committees, see the **Federal Registers** of May 27, 1998 (63 FR 28966), and February 12, 1998 (63 FR 7118), respectively. Under section 491 of the Trade Agreements Act of 1979 (19 U.S.C. 2578), as amended, and the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809, FSIS must inform the public of the sanitary and phytosanitary standard setting activities of international standard-setting organizations, such as Codex. The most recent annual notice was published in the May 27, 1998, **Federal Register**. That notice identified FDA as the responsible agency for the United States with respect to the activities of the CCNFSDU (63 FR 28966 at 28973). Accordingly, the U.S. delegate to the CCNFSDU is from FDA.

This notice solicits information and comments relative to the content of a background document that is intended to identify the nature of and basis for differences in perspectives on establishing guidelines for vitamin and mineral supplements in international trade. This document is a component of the sanitary and phytosanitary standard-setting activities of the CCNFSDU with regard to its consideration of guidelines for vitamin and mineral supplements (Ref. 1).

II. Background

Germany proposed a process to consider the development of guidelines for vitamin and mineral supplements at the October 1995 meeting of the CCNFSDU. Germany submitted the draft proposed guidelines (Ref. 2), which were intended to address such issues as the composition and labeling of vitamin and mineral supplements, including lists of allowable vitamins and minerals and their sources, minimum and maximum levels, permissible additives, packaging, labeling requirements, and permissible claims. Codex circulated the proposal to member governments for comment, and it was considered at the October 7 to 11, 1996, CCNFSDU committee meeting (Ref. 3).

At that meeting, the United States, through its delegate, indicated its opposition to the development of the guidelines. Such guidelines would not affect dietary supplements within the United States, whose sale and marketing is regulated under the Federal Food, Drug, and Cosmetic Act, as amended by the Dietary Supplement Health and Education Act of 1994. However, such guidelines, were they developed and adopted by other countries, could affect international trade in vitamin and mineral supplements. In particular, such guidelines could have ramifications for those U.S. manufacturers of dietary supplements that export their products to countries that adopt such guidelines.

CCNFSDU did not reach consensus on many aspects of the draft proposed guidelines, but nonetheless, they forwarded the draft proposed guidelines to Codex and recommended that the draft proposed guidelines be advanced to the next level of consideration. Codex considered the recommendation of the committee at its June 23 to 28, 1998, meeting in Rome, Italy (Ref. 4). The United States, through its delegate, again indicated its opposition to the advancement of the guidelines during the Codex meeting.

Codex did not advance the draft proposed guidelines to the next level of consideration, but instead Codex returned them to the CCNFSDU for further discussion and consideration. Codex also advised the CCNFSDU to reconsider whether there was a need to proceed with the development of the guidelines.

The CCNFSDU considered the draft proposed guidelines again at its September 21 to 25, 1998, meeting (Ref. 1). A copy of this document may be downloaded from the internet at "www.fao.org/es%2A/esn/codex/reports.htm". The CCNFSDU discussed the draft proposed guidelines and decided that while it was premature to stop work on the draft proposed guidelines, there was not enough agreement to advance the proposed draft guidelines for vitamin and mineral supplements to the next level of consideration. Consequently, the draft proposed guidelines remained at their current level of consideration. Because there was no consensus on the need for the proposed guidelines or what they should contain, the CCNFSDU decided that it would be useful to reconsider the basis for continuing work on the draft proposed guidelines. The CCNFSDU believed that it would facilitate its work if it could prepare a background paper that would: (1) Provide "a neutral and objective presentation on the issues that should be considered on this subject", (2) "help understand the rationale behind the different approaches", and (3) "be useful to study in depth the principles justifying each particular position in order to find a common ground for discussion" (Ref. 1).

The CCNFSDU chair asked the U.S. Government to contribute to this background paper, which will be considered at the next meeting of the CCNFSDU in the year 2000. The U.S. delegate agreed to this request. The U.S. delegate concluded that there is value in assisting with the development of an objective background paper that addresses the various perspectives, approaches, and difficulties associated with developing guidelines for international trade in vitamin and mineral supplements. This activity is consistent with the U.S. interests in this matter and will facilitate the decisionmaking process of the CCNFSDU.

III. Request for Comments

Interested persons may, on or before June 8, 1999, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Based on the interest of the CCNFSDU in identifying the pros and cons of developing guidelines for vitamin and mineral supplements and in identifying

the various factors and principles pertaining to international guidelines for vitamin and mineral supplements, FDA is asking for comments that identify the range of perspectives associated with the manufacture, use, and regulation of such products, as well as the specific issues that the paper should address. Moreover, the CCNFSDU intends to develop a paper that considers only issues relevant to vitamin and mineral supplements. The CCNFSDU does not intend that the paper will consider the addition of vitamins and minerals to conventional foods nor products containing other ingredients or substances, for example herbs or other botanicals. Accordingly, comments on such matters will not assist the U.S. delegate to contribute to the CCNFSDU paper.

For the purposes of international trade, FDA has identified topics that should be addressed in the background paper. The topics identified for comment are as follows: (1) Topic 1 focuses on terminology, such as the use of the terms "food supplements" or "dietary supplements," as compared to "vitamin and mineral supplements;" (2) topic 2 focuses on the purpose and role of vitamin and mineral supplements; (3) topic 3 focuses on the concept of "approved nutrients" (i.e., a positive or negative list of nutrients for use in the supplements of issue); (4) topic 4 focuses on setting maximum levels for vitamins and minerals in supplement form; (5) topic 5 focuses on setting minimal limits for vitamins and minerals in such products; (6) topic 6 focuses on purity and good manufacturing practices; (7) topic 7 focuses on labeling, warning statements, and claims; and (8) topic 8 focuses on packaging and marketing.

For each topic, specific comments would be most helpful if they addressed the following: (1) Is there a need for the topic? (2) What are the various perspectives on the topic and what the difficulties in addressing these perspectives? and (3) What are the options for making decisions about the topic?

We also welcome comments on the inclusion of additional topics. It would be most helpful if the additional topic(s) could be addressed in a fashion so as to respond to the three basic questions identified for the other topics listed previously.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Codex Alimentarius Commission, "Report of the Twenty-First Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses," ALINORM 99/26, FAO/WHO, Rome, 1998.

2. Codex Alimentarius Commission, "Report of the Twentieth Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses," ALINORM 97/26, FAO/WHO, Rome, 1996.

3. Codex Alimentarius Commission, "Report of the Nineteenth Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses," ALINORM 95/26, FAO/WHO, Rome, 1995.

4. Codex Alimentarius Commission, "Report of the Twenty-Second Session of the Codex Alimentarius Commission," ALINORM 97/4, FAO/WHO, Rome, 1997.

Dated: April 2, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–8796 Filed 4–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Advisory Board to the National Center for Toxicological Research; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Science Advisory Board to the National Center for Toxicological Research (NCTR).

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 26, 1999, 12 noon to 5:30 p.m., and April 27, 1999, 8:30 a.m. to 1 p.m.

Location: NCTR, Bldg. #12, Conference Center, Jefferson, AR.

Contact Person: Ronald F. Coene, NCTR (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12559. Please call the Information Line for up-to-date information on this meeting.

Agenda: The board will be presented with draft reports on evaluations of three of NCTR's programs in Biochemical Toxicology, Genetic Toxicology, and Molecular Epidemiology, for their review, discussion, and approval. The draft reports are the products of three site visit teams who conducted on-site reviews over the last year. The staff from these programs will provide a preliminary response to the issues raised and recommendations made. Two progress reports will be presented to the board on the recommendations it made at its last meeting on NCTR's Neurotoxicology Program and Biometry and Risk Assessment Program. The NCTR Director will also provide a center update.

Procedure: On April 26, 1999, from 12 noon to 5:30 p.m., and April 27, 1999, from 8:30 a.m. to 12 noon, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Written submissions may be made to the contact person by April 15, 1999. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon on April 27, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 15, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On April 27, 1999, from 12 noon to 1 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

The Commissioner approves the scheduling of meetings at locations outside the Washington, DC area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 1, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–8938 Filed 4–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Nomination of Chronic Fatigue Syndrome Coordinating Committee

The Office of Public Health and Science (OPHS) requests nominations for a representative to serve on the Chronic Fatigue Syndrome Coordinating Committee (CFSCC). Nominations are solicited for a representative of a voluntary organization concerned with the problems of individuals with chronic fatigue syndrome (CFS).

Information Required

Each nomination shall consist of a package that at a minimum includes:

A. A letter of nomination that clearly states the name and affiliation of the nominee, the nominator's basis for the nomination, and the category for which the person is nominated;

B. The name, return address, and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to contact information.

C. A copy of the nominee's curriculum vitae.

All nomination information for a nominee must be provided in a complete single package. Incomplete nominations cannot be considered. Nomination materials must bear original signatures and facsimile transmissions or copies are not acceptable.

Dates: All nominations must be received at the address below by no later than 4 p.m. EDT on May 3, 1999.

Addresses: All nomination packages shall be submitted to Lillian Abbey, Executive Secretary, National Institutes of Health, National Institute of Allergy and Infectious Diseases, Division of Microbiology and Infectious Diseases, Solar Building, Room 3A–26, 6003, Executive Boulevard, Bethesda, Maryland 20892.

For Further Information Contact: Lillian Abbey at the above address or at 301–496–1884 between 9 a.m. and 3 p.m. EDST.

Dated: April 1, 1999.

Anthony S. Fauci,

Director, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

[FR Doc. 99–8874 Filed 4–8–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Electroacoustic Imaging Methods and Apparatus

Han Wen, Robert S. Balaban (NHLBI)
Serial No. 60/104,823 filed 30 Dec 98
Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; jf36z@nih.gov

Recently, an electroacoustic imaging apparatus and two electroacoustic imaging methods have been developed. The two methods are "forward" and "reverse" electroacoustic imaging which requires the application of a probing signal, and the detection and measurement of an induced signal to produce images. The electroacoustic apparatus offers the advantage of generating 2D and 3D images non-invasively. It can simultaneously image several contrast mechanisms, including the Hall effect, the thermoacoustic effect, and the electroaccoustic effect. Although this device uses a Piezoelectric transducer, fiberoptic acoustic sensors can also be substituted to take advantage of advances in acoustic wave detection technology. This technology is available for licensing opportunities.

Ultrasound Array and Electrode Array for Hall Effect Imaging

Han Wen, Robert S. Balaban (NHLBI)
Serial No. 60/102,478 filed 30 Sep 98
Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; jf36z@nih.gov

Recent developments in ultrasound probe design and ultrasound detector array technology have provided means for optimal ultrasound signal detection and 2D/3D image reconstruction in Hall Effect Imaging (HEI). The new developments include an electrode array, and an ultrasound array configured and controlled to provide rapid image acquisition with high contrast and definition. The electrode array contains split electrodes that control the direction of the electrical currents responsible for 2D/3D image generation. The ultrasound array contains shielded ultrasound sensors which overcome the problem of electromagnetically induced ultrasonic noise that interferes with data acquisition. In this design each element of the ultrasound array is connected to a commercially-available preamplifier which can be coupled to a separate channel of data acquisition circuitry, or digitizer that allows for digital data acquisition. This technology is available for licensing opportunities.

Human Cancer Antigen TRP2

M Parkhurst, Sa Rosenberg, Y Kawakami (NCI)
Serial No. 60/105,577 filed 26 Oct 98
Licensing Contact: Elaine Gese; 301/496–7056 ext. 282; e-mail: eg46t2nih.gov

The current invention embodies the identification of a nine amino acid peptide derived from the melanoma antigen known as tyrosinase-related protein 2 (TRP2). The TRP2 peptide is capable of stimulating cytotoxic T lymphocytes which specifically react with, and lyse, melanoma cells in the context of HLA–A0201. HLA–A0201 is the most common subtype of HLA–A2, which is the most commonly expressed family of Class I MHC molecules in melanoma patients in the U.S. It therefore is believed that the TRP2 peptide, along or in combination with HLA–A2-specific peptides from other melanoma antigens, could be used as an immunotherpeutic vaccine for the prevention and treatment of melanoma in a large percentage of patients having that form of cancer. In addition, the peptide could prove useful as a diagnostic reagent for evaluating the efficacy of immunization in these patients.

Spectral Cloning—An Innovative Technical and Conceptual Approach to the Cloning and Characterization of Every Chromosomal Aberration in Cancer Samples

Ilan R. Kirsch (NCI)
DHHS Reference No. E–216–97/1 filed 29 Jun 98; PCT/US98/13557
Licensing Contact: Manja Blazer; 301/496–7056 ext. 224; e-mail: mb379e@nih.gov

The invention described in this application provides methods and related apparatus permitting the detection and characterization of all chromosomal abnormalities found in a biological sample such as leukemia, carcinoma or sarcoma.

Cancer is a disease caused by genetic instability. Genetic Instability is revealed as the DNA point mutations, insertions, deletions, amplifications, and translocations that distinguish a tumor from the normal tissue from which it arose. Identification of these DNA alterations associated with tumor development provides insight into: (a) the process by which the DNA was altered; and (b) the genes themselves whose alteration contributes to malignant transformation. Thus, cloning and characterizing chromosomal translocations (one particularly dramatic example of genetic instability) gives insight into:

- Cancer etiology
- Interaction of a gene with the environment and therefore preventive strategies
- Structural reconfigurations of DNA that accompany malignant transformation and therefore potential utility for early diagnosis
- Cellular functions and pathways that are targets for malignant transformation and therefore identify potential candidates for anti-cancer therapies.

Novel Thioesters and Uses Thereof

Jim A. Turpin, Yongsheng Song, John K. Inman, Mingjun Huang, Anders Wallqvist, Andrew Maynard, David G. Covell, William G. Rice, Ettore Appella (NCI & NIAID)
Serial No. 60/089, 842 filed 19 Jun 1998
Licensing Contact: J. Peter Kim; 301/496–7056 ext. 264; e-mail: jk141n@nih.gov

The human immunodeficiency virus (HIV) is the causative agent of acquired immunodeficiency syndrome (AIDS). Drug-resistance is a critical factor contributing to the gradual loss of clinical benefit to treatments for HIV infection. Accordingly, combination therapies have further evolved to address the mutating resistance of HIV. However, there has been great concern regarding the apparent growing resistance of HIV strains to current therapies.

The present invention provides for a novel family of thioesters and uses thereof. These thioesters are capable of inactivating viruses by a variety of mechanisms, particularly by complexing with metal ion-complexing zinc fingers. The invention further provides for methods for inactivating a virus, such as the human immunodeficiency virus (HIV), using these compounds, and thereby also inhibiting transmission of the virus.

Methods and Compositions for Making Dendritic Cells From Expanded Populations of Monocytes and for Activating T Cells

EL Nelson, SL Strobl (NCI)
DHHS Reference No. E–181–97/1 filed 20 May 98 (PCT Application PCT/US98/10311), based upon U.S. Provisional Patent Application 60/047, 348
Licensing Contact: Elaine Gese; 301/496–7056 ext. 282; e-mail: eg46t@nih.gov

The current invention embodies methods for easily generating large numbers of dendritic cells from IL–3 cultured populations of monocytes. Dendritic cells are potent antigen presenting cells which are capable of mediating a variety of cell-mediated (T cell) immune responses, and therefore are clearly of value for use in immunotherapy. In addition, dendritic cells are quite rare in peripheral blood and therefore cannot be isolated in sufficient numbers of use in therapeutic applications. This method significantly enhances the generation of human dendritic cells from peripheral blood monocytes making possible more extensive use and study of this unique cell population and thereby clearly serving to overcome these difficulties. In addition to the methods embodied in the invention, *ex vivo* therapeutic applications, pharmaceutical compositions and diagnostic methods are claimed, as are cell cultures for making the dendritic cells.

Method and Composition for Detecting Dihydropyrimidine Dehydrogenase Splicing Mutations

Frank J. Gonzalez, Pedro Fernandez-Salguero (NCI)
DHHS Reference No. E–157–94/1 filed 20 Mar 96
Licensing Contact: Girish Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

Dihydropyrimidine dehydrogenase (DPD) is the first and rate limiting enzyme in the three step metabolic pathway of the catabolism of thymidine and uracil. In mammals, this pathway is the route for synthesis of beta-alanine. DPD can be considered an enzyme that is expressed in most cells, but has been studied extensively in liver, lymphocytes, and the CNS. DPD is responsible for the metabolism of fluoropyrimidine drugs, such as the much used chemotherapeutic agent 5-fluorouracil.

The invention covers isolated nucleic acids that code for DP. It also includes nucleic acids that code for a DPD polypeptide that specifically binds to an antibody generated against an immunogen consisting of DPD polypeptide and its amino acid sequence. Also claimed are methods for determining whether a cancer patient is at risk of a toxic reaction to 5-fluorouracil. The methods involve analyzing DPD DNA or mRNA a sample from the patient to determine the amount of intact DPD nucleic acid.

Peptidomimetic Inhibitors of Cathepsin D and Plasmepsins I and II

Pavel Majer, Jack Collins, Sergei V. Gulnik, John W. Erickson (NCI)
Serial No. 08/603,737 filed 20 Feb 96; U.S. Patent 5,849,691 issued 15 Dec 98
Licensing Contact: Girish Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

The invention relates to the design and synthesis of linear and cyclic inhibitors of cathepsin D and plasmepsins I and II. The present invention also relates to the uses of these inhibitors for inhibiting invasion and metastasis of cancerous cells. It also covers the use of cathepsin D and plasmepsin I and II inhibitors for the prevention and treatment of Alzheimer's disease and malaria.

Transframe Peptide Inhibitor of Viral Protease

John Louis Medabalimi (NIDDK)
Serial No. 08/539,432 filed 05 Oct 95; U.S. Patent No. 5,872,210, issued 16 Feb 99
Licensing Contact: J. Peter Kim; 301/496–7056 ext. 264; e-mail: jk141n@nih.gov

The present invention is directed to small, water-soluble peptides isolated from a native virus inhibitory sequence. The native peptide is involved in the step-wise autocatalytic maturation of the virally encoded protease in a pH dependent manner. the isolated peptide and its derivatives also inhibit the mature protease. The peptides and its derivatives may be used to treat virally

infected cells, in preparing vaccine formulations, in generating clinically relevant antibodies and anti-idiotypic antibodies, and generating a screening assay or a kit that can be used to identify other similarly acting protease inhibitors.

Dated: April 1, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–8875 Filed 4–8–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports.

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee on May 21, 1999, in the Rodbell Auditorium, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:45 a.m. on May 21 and is open to the public. The agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on May 21 are draft Technical Reports of four two-year studies, listed alphabetically, along with supporting information in the attached table. All studies were done using Fischer 344 rats and B6C3F_1 mice. The order of review is given in the far right column of the table. By April 21, 1999, full copies of these draft reports will be available for free on the Internet for public review and comment through the Environmental Health Information Service (EHIS) at *http://ehis.niehs.nih.gov*. Printed copies can be obtained, as available, from: Central Data Management, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419), FAC (919/541–3687), email: *CDM@niehs.nih.gov*.

Public comment on any of the Technical Reports is welcome. Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone at 919/541–3971, by FAX at 919/541–0295, by mail, or by email at hart@niehs.nih.gov, by no later than May 18, 1999, and, if possible, provide a written copy in advance of the meeting so copies can be made and distributed to all Subcommittee members and staff, and made available at the meeting for public.Written statements could supplement and may expand on the oral presentation. Oral presentations should be limited to no more than five minutes.

The Program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709, will furnish agenda and a roster of Subcommittee members prior to the meeting, Summary minutes subsequent to the meeting will be available upon request to Central Data Management.

Dated: April 2, 1999.

Samuel. H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

SUMMARY DATA FOR TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELOR'S TECHNICAL REPORTS REVIEW SUBCOMMITTEE MAY 21, 1999

Chemical CAS No.	Technical report No.	Primary uses	Route/exposure levels	Review order
Anthraquinone 84–65–1	TR–94	Intermediate in the manufacture of dyes and other organics. Organic inhibitor. Catalyst. Accelerator in nickel electroplating. Improving adhesion and heat stability of tire cord..	Feed: ..... Rats: 0, 469, 938, 1875, or 3750 ppm Mice: 0, 833, 2500, or 7500 ppm	3
Emodin 518–82–1	TR–493	Major component of natural laxative drugs of plant origin. Medicine, natural plant dye..	Feed: ..... Rats: 0, 280, 830, or 2500 ppm; ..... Mice: 0, 160, 312, 625, or 1250 pp, (60/sex/species/group).	2
Fumonisin B_1 116355–83–0.	TR–496	Mycotoxin produced by certain strains of fusarium moniliforme, a commonly occurring fungi on U.S. agricultural products, especially corn. No known uses..	Feed: ..... Rats & Mice: 0, 15, 50,100, or 150 ppm.	4
Gallium Arsenide 1303–00–0.	TR–492	Semiconductors. Magnetoresistance devices. Light-emitting diodes. Microwave generation..	Inhalation ..... Rats: 0, 0.01, 0.1, or 1.0 mg/m^3; ..... Mice: 0, 0.1, 0.5, or 1.0 mg/m^3, (50/group).	1

[FR Doc. 99–8876 Filed 4–8–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Board of Scientific Counselors' Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Rodbell Auditorium, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina, on May 20, 1999.

Agenda

The meeting will be open to the public from 8:45 a.m. to adjournment with attendance limited only by space available. The primary agenda topic will be an initial evaluation and review of the direction and priorities of the recently established NTP Center for the Evaluation of Risks to Human Reproduction (CERHR). There will be a presentation on the background, purpose, status, and current activities of the Center. In addition, there will be presentations by representatives of regulatory agencies on the value of the Center to public health issues and health regulatory issues, on the evaluative process employed by the Center, on the initial chemicals considered and selected for evaluation, and there will be a demonstration of the Center's website. In the afternoon, there will be a discussion of the process for development of a Year 2000 White Paper on Toxicology and the NTP. Additionally, there will be updates presented on the NIEHS Investigations of Causes of Amphibian Malformations, on the Center for the Evaluation of Alternative Toxicological Methods, and on recent or upcoming activities of the Report on Carcinogens and Technical Reports Review Subcommittees. Finally, the Board will review concept proposals on (1) rodent disease diagnostic laboratories, and (2) genetic monitoring of inbred rodents.

Public Input Encouraged

To facilitate planning for the meeting, persons interested in providing formal written or oral input on the directions, priorities, and operations of the NTP Center for the Evaluation of Risks to Human Reproduction must notify the Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone 919/541–3971; FAX 919/541–0295; or email at hart@niehs.nih.gov). Written comments for consideration by the Board and the NTP must be received by May 12, 1999. Individuals wanting to make a formal presentation during the Board's public comment session must notify the Executive Secretary by no later than May 17, 1999, and, if possible, provide a written copy in advance of the meeting, so copies can be made for distribution to Board members, staff, and the public. Formal presentations should be limited to no more than five minutes. Background information on the Center and Center operations were described in a **Federal Register** notice (pg. 68782, vol. 63, No. 239). Copies of the notice and additional information on the Center are available on the NTP website (*http://ntp-server.niehs.nih.gov*) or the CHRHR website (http://cerhr.niehs.nih.gov). Copies of this background information may be requested from Dr. Larry Hart at the address and phone number listed above.

The Executive Secretary will furnish an agenda and a roster of Board members and ad hoc expert reviewers prior to the meeting. Summary minutes subsequent to the meeting will be available upon request to Central Data Management, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419), FAX (919/541–3687), email: *CDM@niehs.nih.gov*.

Dated: April 2, 1999.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 99–8877 Filed 4–8–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired, (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 1, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–8511 Filed 4–8–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–88, "Travel." The revisions will update the name of the system and the address of the system location and system manager.

EFFECTIVE DATE: These actions will be effective April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Financial Management Services, Department of the Interior, 1849 C Street NW., MS–1313 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OS–88, "Travel," to update the name of the system and the address of the system location and system manager. Accordingly, the Department of the Interior proposes to amend the "Travel," OS–88, system notice in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–88

SYSTEM NAME:

Travel Management Records—Interior, OS–88.

SYSTEM LOCATION:

Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW., MS–1313 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Employees of the Office of the Secretary.

(2) Employees of independent agencies, councils, and commissions

(which are supported, administratively, by the Office of the Secretary).

(3) Persons serving the Department in other capacities, without compensation, to the extent authorized under 5 U.S.C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address and Social Security number of traveler; destination, travel itinerary, mode and purpose of travel, date(s) of travel, expenses incurred, advances received, claims, reimbursements, and authorizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

The primary purpose of the system is to process travel authorizations and claims. Disclosures outside the Department of the Interior may be made:

(1) To the U.S. Treasury for payment of claims.

(2) To the State Department for passports.

(3) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department or when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(4) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing, implementing or administering a statute, rule, regulation, order, license, contract, grant or other agreement, when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, regulation, rule, order, license, contract, grant or other agreement.

(5) To a Federal agency which has requested information relevant or necessary to the hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit.

(6) To Federal, State, local agencies or commercial businesses where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

(7) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual and automated form.

RETRIEVABILITY:

Records are retrieved by name and/or account number of traveler.

SAFEGUARDS:

Manual records are stored in a locked room when not in active use. Automated records are maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized records.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 9, Item No. 3.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Financial Management Services, National Business Center, U.S. Department of the Interior, 1848 C Street NW., MS–1313 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Travelers, employing offices of travelers, and standard travel management sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8844 Filed 4–8–99; 8:45 am]
BILLING CODE 4310–RM–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to the Existing Systems of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–51, "Property Accountability and Control System." The revisions will update the address of the system location and system manager and the categories of individuals covered by the system and categories of records in the system statements.

EFFECTIVE DATE: These actions will be effective April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Property Management Section, Division of Logistic Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1731 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OS–51, "Property Accountability and Control System," to update the address of the system location and system manager, and to clarify the description of individuals covered by the system and categories of records in the system statements. Accordingly, the Department of the Interior proposes to amend the "Property Accountability and Control System," OS–51 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–51.

SYSTEM NAME:

Property Accountability and Control System—Interior, OS–51

SYSTEM LOCATION:

Property Management Section, Division of Logistic Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1731 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals designated as Custodial Officers in the Office of the Secretary.

(2) Individuals in independent agencies, councils, and commissions (which are supported, administratively, by the Office of the Secretary) who are charged with the management of property assigned to their agency, council, or commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and identification code assigned to individual Custodial Officer or property manager. Data describing each piece of property assigned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 483.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary purpose of the system is to manage property assigned to offices, agencies, councils and commissions.

Disclosure outside the Department of the Interior may be made:

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body with jurisdiction when (a) the United States, the Department of Interior, a component of the Department or when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(2) The appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing, implementing or administering a statute, rule, regulation, order, license, contract, grant or other agreement, when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, regulation, rule, order, license, contract, grant or other agreement.

(3) To the General Accounting Office, in response to audits.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in computer data files.

RETRIEVABILITY:

Records are retrieved by Custodial Officer (or property manager) codes, and by codes describing and identifying property managed.

SAFEGUARDS:

Records are accessible only by authorized persons and are maintained in accordance with safeguards meeting the Computer Security Act of 1987.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 3, Item No. 10a.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property Management Section, Division of Logistic Services, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–1731 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of records shall be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Custodial Officer or property manager.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–8845 Filed 4–8–99; 8:45 am]
BILLING CODE 4310–RF–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–009472

Applicant: Oregon Zoo (formerly Metro Washington Park Zoo).

The applicant requests a permit to import one female wild-caught Asian Elephant (*Elephas maximus*) from Sabah Wildlife Department, Malaysia for the purpose of enhancement of the survival of the species though captive breeding.

PRT–009127

Applicant: Charles Meryman, Riverview, FL.

The applicant requests a permit to import the sport-hunted trophy of a straight horned markhor (*Capra falconeri jerdoni*) or a Kabul markhor (*Capra f. megaceros*) from the Northwest Frontier Province of Pakistan for the purpose of enhancement of the survival of the species.

PRT–009880

Applicant: Patrick F. Taylor, New Orleans, LA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–009879

Applicant: Mark C. Fisher, Missoula, MT.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–009878

Applicant: Jeffrey E. Baier, Lynnwood, WA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–009877

Applicant: Robert H. Sterchi, Loudon, TN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–009876

Applicant: Robert L. Sterchi, Loudon, TN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–009875

Applicant: Gregory H. Murtland, Livonia, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–783956

Applicant: Wildlife Conservation Society, Bronx, NY.

The applicant requests an amendment and renewal of a permit to import blood and tissue samples from live animals and carcasses, respectively, obtained opportunistically from wild origin tapirs (Tapiridae), deer (Cervidae), felids (Felidae), canids (Canidae), caiman (Alligatoridae), falcons (Falconidae), psittacines (Psittacidae), storks (Ciconiidae), and vultures (Cathartidae) in Bolivia for the purpose of scientific research. This notification covers activities conducted by the applicant over a five year period.

PRT–009695

Applicant: University of Illinois, Chicago, IL.

The applicant requests a permit to import biological samples taken from Cuban sandhill cranes (*Grus canadensis nesiotes*) in Cuba for the purpose of Scientific research.

PRT–009989

Applicant: Jerome C. Stohlman, Lebanon, OH.

The applicant requests a permit to import sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

PRT–009991

Applicant: Peter J. Cassinelli, Cincinnati, OH.

The applicant requests a permit to import sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: April 5, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–8817 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Agency Draft Indiana Bat (Myotis sodalis) Revised Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of the Agency Draft Indiana Bat (*Myotis sodalis*) Revised Recovery Plan. The species has been documented in 26 states in eastern North America. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the agency draft revised recovery plan must be received on or before June 8, 1999 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy from the Service's website at www.fws.gov/r3pao/bat.pdf, or purchase a copy by contacting the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (telephone: 301/492–6403 or 800/582–3421). Written comments and materials regarding the plan should be addressed to: Field Supervisor, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, Missouri 65201 (telephone 573/876–1911). Comments and materials received will be available for public inspection by appointment, during normal business hours, at the above U.S. Fish and Wildlife Service address.

FOR FURTHER INFORMATION CONTACT: Dr. Paul McKenzie at the U.S. Fish and Wildlife Service above address, or telephone 573/876–1911, ext. 107.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species in the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria that identifies recovery levels necessary to reclassify to threatened or delist them, and estimate time and cost to implement the recovery measures needed. The Service revises existing recovery plans to reflect important new biological information (i.e., substantially rewriting some portions of the plan) or significant conceptual changes that need to be made.

The Endangered Species Act of 1973 (Act) as amended 916 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The document under review is the Agency Draft Indiana Bat (*Myotis sodalis*) Revised Recovery Plan. The species was listed as endangered on March 11, 1967 (32 FR 4001), under the Endangered Species Preservation Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668a[c]). Based on censuses taken at hibernacula, the total, known Indiana bat population was estimated at 353,000 bats in 1995–1997. This represents a decline of about 60 percent since population surveys began in the 1960s. The most severe declines have occurred in Kentucky, where 180,000 bats were lost between 1960 and 1997, and in Missouri, where 250,000 bats were lost between 1980 and 1997.

Indiana bats winter in caves or mines that satisfy their highly specific needs

for cold (but not freezing) temperatures during hibernation. The fact that Indiana bats congregate and form large aggregations in only a small percentage of known caves suggests that very few caves meet their requirements. Exclusion of Indiana bats from hibernacula by blockage of entrances, gates that do not allow for bat flight or proper air flow, and human disturbance to hibernating bats have been major documented causes of Indiana bat declines.

During the summer, Indiana bats roost in trees and forage for insects primarily in riparian and upland forest. The most important characteristics of roost trees are probably structural (i.e., exfoliating bark with space for bats to roost between the bark and the bole of the tree). To a limited extent, tree cavities and crevices are also used for roosting. Maternity colonies use multiple primary roost trees which are used by a majority of the bats most of the summer, and a number of "secondary" roosts that are used intermittently and by fewer bats, especially during periods of precipitation or extreme temperatures. Thus, there may be more than a dozen roosts used by some Indiana bat maternity colonies. Indiana bats feed exclusively on flying insects.

The Indiana Bat Recovery Plan was approved by the Service in 1983. In October 1966, the Service solicited input from Service personnel, species experts, and state agencies within the range of the species on the Technical Draft Indiana Bat Revised Recovery Plan, prepared by the Indiana Bat Recovery Team. The agency draft incorporates most of the comments and suggestions received on the technical draft. The agency draft identifies priority research tasks that will help determine the limiting factors for the species. This is essential before adequate steps can be taken to halt the continued decline in the species' numbers. The current agency draft reflects an increased emphasis on necessary following discussions among members of the Indiana Bat Recovery Team and comments received from reviewers of the technical draft.

The primary objectives of the agency draft revised recovery plan are to: (1) Summarize research findings that have accumulated since the original plan was approved in 1983, (2) identify priority research tasks intended to pinpoint reasons for the species' continued precipitous decline, and (3) establish realistic objectives that will lead to the recovery and eventual delisting of the species. The species may be reclassified to threatened following documentation of stable or increasing populations for three consecutive census periods (6 years) and permanent protection [i.e., public ownership or long-term easement/lease, and gate/fence [where necessary and feasible]] at all Priority One hibernacula. Delisting will be considered when the reclassification criteria are met, in addition to protection and documentation of stable or increasing populations for three consecutive census periods at 50 percent of the Priority Two hibernacula in each state, and the overall population level must be restored to that of 1980. The year 1980 was chosen as the baseline for the Indiana bat because some of the currently known major hibernacula were not known prior to 1980, and it is the first year that systematic surveys were conducted at all major hibernation sites. In addition, the 1980 level is believed to be sufficient to maintain enough genetic diversity to enable the species to persist over a large geographical area and avoid extinction.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the revised recovery plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 2, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–8818 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Annual Report Availability, Calendar Year 1996

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1996 marine mammal annual report.

SUMMARY: The U.S. Fish and Wildlife Service and the Biological Resources Division of the U.S. Geological Survey have issued their joint 1996 annual report on marine mammals under the jurisdiction of the U.S. Department of the Interior, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1996, and was submitted to Congress on February 25, 1999. This notice informs you that the 1996 report is available and that copies may be obtained on request to the Service.

ADDRESSES: You should address written requests for copies to: Publications Unit, U.S. Fish and Wildlife Service, National Conservation Training Center, Route 1, Box 166, Shepherd Grade Road, Shepherdstown, WV 25443.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwarth, Division of Fish and Wildlife Management Assistance, Telephone (703) 358–1718.

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior is responsible for eight species of marine mammals, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species, law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

Dated: March 31, 1999.

Jamie Rappaport Clark,

Director.

[FR Doc. 99–8889 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1220–00]

Designation of Off-Road Vehicle Use Areas and Trails Within Shasta County, California

SUMMARY: The BLM has formulated off-road vehicle use designations for public lands within the Lower Clear Creek and Mule Mountain management areas located in Shasta County, California. These designations were specified within the Record of Decision for the Redding Resource Area Management Plan approved June, 1993. Under authority of 43 CFR 8342, motor vehicles within the Lower Clear Creek and Mule Mountain management areas are "limited" to designated roads and trails.

Roads and trails available for all registered motor vehicles on public land within the management area will be signed and include two roads connecting Muletown Road to two separate parcels of private property located within Township 31 North,

Range 6 West, sections 21 and 22, of the Mount Diablo Meridian. These private property access roads will be available for public motor vehicle use as long as they are properly maintained under private rights-of-way. Maps illustrating these road locations are available at the BLM's Redding Field Office.

Roads available for motor vehicles registered for highway-use only include: Muletown Road, Placer Street, Cloverdale Road, Clear Creek Road, and China Gulch Drive. These public road systems are controlled by Shasta County. Maps illustrating these road locations are available from the Shasta County Public Works Department.

Background

The BLM prepared an environmental impact statement and approved a record of decision (ROD) for the Redding Resource Area Management Plan in 1993. The ROD provides off-highway vehicle designations for public lands administered by the BLM. The BLM's main objective for managing lands within the Lower Clear Creek and Mule Mountain management areas is to: "Enhance non-motorized recreation opportunities by establishing a Greenway from the Sacramento River to the Whiskeytown Unit of the National Recreation Area along Clear Creek (Resource Management Plan, 1993)".

The identification of available roads and trails under the "limited" designation was further evaluated within an environmental assessment for the Lower Clear Creek Greenway—Motor Vehicle Designations prepared in 1999. The authority for this off-road vehicle designation is 43 CFR 8342. Any person who fails to comply with the terms of an off-road vehicle use designation is subject to arrest and fines of up to $100,000 and/or imprisonment not to exceed 12 months under the authority of 43 CFR 8340.0–7. Exceptions apply to authorized BLM employees, contractors, law enforcement personnel, fire prevention crews and others given express permission by the BLM authorized officer.

DATES: This off-road vehicle designation will take effect April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Field Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

Charles M. Schultz,

Redding Area Manager.

[FR Doc. 99–8897 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Washita Battlefield National Historic Site, Oklahoma

AGENCY: National Park Service.

ACTION: Notice of intent to prepare an environmental impact statement for the general management plan, Washita Battlefield National Historic Site (NHS).

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the general management plan (GMP) for Washita Battlefield NHS. This statement will be approved by the Director, Intermountain Region.

Washita Battlefield NHS was established by Public Law 104–333 on November 12, 1996, to provide for the preservation and interpretation of the Battle of the Washita. The battle, which occurred on November 27, 1868, was one of the largest engagements between Plains tribes and the United States Army on the Southern Great Plains. The site is a registered National Historic Landmark. The GMP is needed to guide the protection and preservation of the natural and cultural environments, considering a variety of interpretive visitor experiences that enhance the enjoyment and understanding of the park resources.

The effort will result in a comprehensive plan that encompasses preservation of natural and cultural resources, provision for visitor use and interpretation, and development of necessary and appropriate facilities. In cooperation with local interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources. Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following major issues:

- How can the important natural and cultural resources be best protected and preserved, while providing for visitor use for present and future generations?
- What level and type of use is appropriate to be consistent with the park's purpose, and to relate to the park's significance?
- What facilities are needed to meet the mission goals of the park regarding natural and cultural resource management, visitor use and interpretation, partnerships, and park operations?

The National Park Service is planning to hold public scoping meetings regarding the GMP during the week of May 10th. Specific dates, times, and locations will be announced in the local media, and can be obtained by contacting the park superintendent. The purpose of these meetings is to explain the planning process and to obtain comments concerning appropriate resource management; desired visitor use, interpretation, and facilities; and issues that need to be resolved. In addition to attending scoping meetings, people wishing to provide input to this initial phase of developing the GMP may address comments to the superintendent. Scoping comments should be received no later than 60 days from the publication of this Notice of Intent.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Sarah Craighead, Washita Battlefield National Historic Site, P.O. Box 890, Cheyenne, Oklahoma 73628; Tel: (580) 497–2742; Fax: (580) 497–2712; e-mail: craighead__sarah@nps.gov.

Dated: March 31, 1999.

Sarah Craighead,

Superintendent, Washita Battlefield NHS.

[FR Doc. 99–8840 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park and Preserve announce a forthcoming meeting of the Gates of the Arctic National Park and Preserve Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.
(2) Roll call.
(3) Approval of summary of minutes from January 14–15, 1998 meeting.
(4) Review agenda.
(5) Superintendent's introduction of guests and staff and review of Commission function and purpose.
(6) Superintendent's Management/ Research report.
  a. Administration and management.
  b. Park operations.
  c. Resource management.
  d. Subsistence program.
(7) Public and agency comments.
(8) Old business.
  a. SRC Chairs meeting report.
  b. Subsistence Management Plan work session.
  c. Review traditional use area report.

(9) New business.
a. Hunting plan work session.
(10) Election of Officers.
(11) Set time and place of next Subsistence Resource Commission meeting.
(12) Adjournment.

DATES: The meeting dates are: The meeting will begin at 8:30 a.m. on Tuesday, April 20, 1999, and conclude at approximately 5 p.m. The meeting will reconvene at 8:30 a.m. on Wednesday, April 21, 1999, and adjourn at 5 p.m.

ADDRESSES: The meeting location is: Sophie Station Hotel in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Steve Ulvi, Management Assistant, 201 First Avenue, Doyon Bldg., Fairbanks, Alaska 99701. Phone (907) 456–0352.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 99–8839 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Wrangell-St. Elias National Park and the Chairperson of the Subsistence Resource Commission for Wrangell-St. Elias National Park announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to Order (Chairman).
(2) Roll Call: Confirmation of Quorum.
(3) Introduction of Commission members and guests.
(4) Review Agenda.
(5) Superintendent's welcome and review of the Commission purpose.
(6) Commission membership status.
(7) Election of Chair and Vice Chair.
(8) Public and other agency comments.
(9) Review and approval of minutes from November 17–18, 1998 meeting.
(10) Report on Eastern Interior/ Southcentral Proposal Coordination Meeting.
(11) Report on SAC meeting.
(12) Superintendent's report.
(13) Wrangell-St. Elias National Park and Preserve staff reports.
a. Cordova hearing.
b. Status of Malaspina Forelands ATV study project.
(14) Old business:
a. Status report on inclusion of Healy Lake as a resident zone community.
b. Status of EA/rulemaking to add Northway, Tetlin, Tanacross and Dot Lake as resident zone communities (Dot Lake proposed boundary)
c. Possible restrictions of the harvest of ewe sheep.
d. Subsistence Hunting Program Recommendation 97–01 (establish minimum residency requirements for resident zone communities).
e. Review National Park Service response to Harry Kalmakoff (customary trade letter).
f. Status report on Hunting Plan Recommendation 96–1 and 96–2 (letter sent to all SRC Chairs 11/18/98).
g. Access to Inholdings (Chapter 5: Access, page 1).
h. Status report on draft subsistence plan, hunt maps, and subsistence brochure for Wrangell-St. Elias National Park and Preserve.
(15) New Business:
a. Inclusion of four wheeler's in draft subsistence plan (Chapter 5: access, page).
b. Federal Subsistence Program update.
(1) Review actions taken by Regional Councils on Federal Subsistence Program
(2) Status on Individual C&T proposals.
(3) Update on C&T Task Group.
(4) Review 1999–2000 Federal Subsistence Board proposals for Units 5, 6, 11, 12, and 13.
c. Update on Federal Fish Management.
(16) Public and other agency comments.
(17) Subsistence Resource Commission work session to develop proposals/ finalize recommendations.
(18) Set time and place of next Subsistence Resource Commission meeting.
(19) Adjourn meeting.

DATES: The meeting will begin at 9 a.m. on Tuesday, April 20, 1999, and conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Wednesday, April 21, 1999, and adjourn at approximately 5 p.m. The meeting will adjourn earlier if the agenda items are completed.

LOCATION: The meeting location is: Dot Lake Community Hall, Dot Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Jonathan B. Jarvis, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Phone (907) 822–5234.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 99–8838 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Scenic and Historic Trails

AGENCY: National Park Service, DOI.

ACTION: Notice of availability.

SUMMARY: The National Park Service is updating its system of internal policy instructions. When new policy and procedural documents are proposed which might affect parties outside the Service, this information is made available for public review and comment. Draft Director's Order #45–1, "National Trails System," clarifies the status of components of the National Trails System within the National Park System and gives instructions on how such trails are assigned for management and operations.

DATES: Written comments will be accepted until May 15, 1999.

ADDRESSES: Copies of the draft Director's Order 45–1 are available from Steve Elkinton, National Park Service, Room 3622, USDOI, 1849 C St., NW, Washington, DC 20240, (202) 565–1177, or by e-mail at steve_elkinton@nps.gov.

FOR FURTHER INFORMATION CONTACT: Steve Elkinton, at (202) 565–1177.

SUPPLEMENTARY INFORMATION: The purpose of Director's Order 45–1 is to clarify the administrative status within the National Park Service (NPS) of those national scenic and national historic trails administrated by NPS, and to ensure that such trails are able to operate on an equitable basis with other NPS units. Even though NPS has administered national trails since 1968, few policy directives have been issued to systematically guide their management and administration. In the past, trail administrators and their partners may have developed policy statements as needed for individual

trails through planning and partnership agreements. This Director's Order sets forth NPS responsibilities for all its National Trails System components.

Dated: March 26, 1999.

Katherine H. Stevenson,

Associate Director, Cultural Resource Stewardship and Partnerships.

[FR Doc. 99–8837 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Anchorage Museum of History and Art, Anchorage, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Anchorage Museum of History and Art which meets the definition of "object of cultural patrimony" under Section 2 of the Act.

The cultural item is a Chilkat robe or blanket (Cat. No. 73.92.1) made in the traditional style of mountain goat wool and cedarbark.

In 1973, Mr. Elton E. Engstrom signed a conditional deed of gift conveying this cultural item to the Anchorage Museum of History and Art. In 1999, Mr. Engstrom and the Anchorage Museum of History and Art signed a second unconditional deed of gift which declared the original deed of gift null and void; and which transferred ownership of this cultural item to the Anchorage Museum of History and Art as an unconditional gift. The Anchorage Museum of History and Art has no information regarding Mr. Engstrom's acquisition of this cultural item.

Based on consultation with representatives of the Wolf House (Grooch Hit) of the Kaagwaantaan and the Central Council of Tlingit and Haida, evidence of cultural affiliation and the cultural patrimony of this object has been shown by: recounting oral traditions of the connection beween their clan and the wolf; maintaining that robes were communal property that could not be alienated without approval of the members of the house; and producing a photograph showing the robe being used as a symbol of the clan and house in a funerary situation.

Officials of the Anchorage Museum of History and Art have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Anchorage Museum of History and Art have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the Kaagwaantaan Wolf House, represented by the Central Council of the Tlingit and Haida Indian Tribes.

This notice has been sent to officials of the Kaagwaantaan Wolf House and the Central Council of the Tlingit and Haida Indian Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact W.A. Van Horn, Curator of Collections, Anchorage Museum of History and Art, 121 W. 7th Ave., Anchorage, AK 99501; telephone: (907) 343-4326 before May 10, 1999. Repatriation of this object to the Central Council of the Tlingit and Haida Indian Tribes on behalf of the Kaagwaantaan Wolf House may begin after that date if no additional claimants come forward.

Dated: March 26, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–8886 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Molokai, HI in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI which meet the definition of "object of cultural patrimony" under Section 2 of the Act.

The cultural items are three sections of sandstone containing petroglyphs.

In 1909, Bishop Museum staff J.F.G. Stokes; with permission from George P. Cooke, manager of the Molokai Ranch; carved out and collected these sections of sandstone containing petroglyphs. These sections (nos. 9935-37) cam from an area called Kalaina Wawae (the feet of Kalaina), known for its numerous oblong depressions said to represent human footprints. One *mo'olelo*, or traditional story, associated with this site is that a prophetess named Kalaina made the imprints, thus foretelling the eventual arrival of boot-wearing foreigners.

Based on known Native Hawaiian traditions and practice, these sections of Kalaina Wawae are consistent with an object of cultural patrimony, and could not have been alienated, appropriated, or conveyed by any individual. Consultation evidence presented by Hui Malama I Na Kupuna O Hawai'i Nei, on behalf of its members on Molokai and the Native Hawaiian community of the island of Molokai, supports this conclusion.

Officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and Hui Malama I Na Kupuna O Hawai'i Nei.

This notice has been sent to officials of Hui Malama I Na Kupuna O Hawai'i Nei, the Office of Hawaiian Affairs, Moloka'i Museum and Culture Center, Lili'uokalani Trust, Alapa'i Hanapi, Lawrence Aki, and Walter Ritte. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these objects should contact Valerie Free, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone: (808) 847–8205 before May 10, 1999. Repatriation of these objects to Hui Malama I Na Kupuna O Hawai'i Nei on behalf of its members on Molokai and the Native Hawaiian community of Molokai may begin after that date if no additional claimants come forward.

Dated: March 26, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–8888 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Correction— Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Pecos Valley, NM in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; and the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service
ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Pecos Valley, NM in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; and the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology and Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Apache Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, Pueblo of Cochiti, the Pueblo of Jemez, Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes.

Between 1915-1929, human remains representing 1,787 individuals were recovered from Pecos Pueblo and mission church sites during excavations conducted under the auspices of Phillips Academy by Alfred Vincent Kidder. No known individuals were identified. The 498 associated funerary objects include ceramic vessels, bone awls, bone beads, effigies, bone tubes, ceramic fragments, projectile points, stone scrapers, chipped stone implements, a red paint stone, stone pendants, shell pendants, ceramic ladles, ceramic pipes, wrappings, soil samples, antler tools, faunal bone implements, stone knives, stone drills, pieces of obsidian, lumps of paint, hammerstones, stone shaft straighteners, a stone palette, faunal remains, fossils, a piece of copper ore, polishing stones, and textiles.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology and the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 1,921 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology and the Robert S. Peabody Museum of Archaeology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 534 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Robert S. Peabody Museum of Archaeology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 19 objects from the three caches at Pecos Pueblo listed above are reasonably believed to have been made exclusively to be placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology and the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Jemez.

This notice has been sent to officials of the Apache Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, Pueblo of Cochiti, the Pueblo of Jemez, Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 022138; telephone (617) 495-2254; or James W. Bradley, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810; telephone: (978) 749-4490, before May 10, 1999. Repatriation of the human remains and associated funerary objects to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: March 26, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–8887 Filed 4–8–99; 8:45 am]
BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Barrow, AK in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service
ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Barrow, AK in the possession of University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

A detailed assessment of the human remains was made by University of Nebraska-Lincoln professional staff in consultation with representatives of North Slope Borough as the authorized representative of the Native Village of Barrow Inupiat Traditional Government.

Between 1914 and 1916, human remains representing one individual were collected from Point Barrow by T.L. Richardson under unknown circumstances. At a later date, these human remains were donated to the University of Nebraska State Museum by Mrs. C. Boellstorff. No known individuals were identified. No associated funerary objects are present.

Based on the area from which these human remains were recovered and the condition of the remains, this individual has been identifed as Native American. Based on the location of these human remains, this individual has been determined to be Inupiat.

Based on the above mentioned information, officials of the University of Nebraska-Lincoln have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Nebraska-Lincoln have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Native Village of Barrow Inupiat Traditional Government.

This notice has been sent to officials of the North Slope Borough and the Native Village of Barrow Inupiat Traditional Government. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and

associated funerary objects should contact Dr. Priscilla Grew, University of Nebraska, 302 Canfield Administration Building, Lincoln, NE 68588-0433; telephone: (402) 472-3123, before May 10, 1999. Repatriation of the human remains to the North Slope Borough as the authorized representative of the Native Village of Barrow Inupiat Traditional Government may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: March 26, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–8885 Filed 4–8–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of Surface Mining, Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of Surface Mining (OSM) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OSM–8, "Employment and Financial Interests Statements—States and Other Federal Agencies." The revisions will update the System Name, System Location address, System Manager(s); accurately define the Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, Safeguards, Retention and Disposal; and clarify the Notification Procedure, Record Access Procedures and Contesting Record Procedures.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Office of Surface Mining, Privacy Officer, 1951 Constitution Avenue, NW, Mail Stop 262–SIB, Washington, DC 20240. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESS: Send written comments to the U.S. Department of the Interior, Office of Surface Mining, Privacy Act Officer, Mail Stop 262–SIB, 1951 Constitution Avenue, NW, Washington, DC 20240. You may also hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Chief, Office of Personnel, Office of Surface Mining, 1951 Constitution Avenue, NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Earlier Privacy Act Compilations list the systems of records with the prefix "OSMRE" (e.g., OSMRE–8) as originally published in the **Federal Register.** The prefix was changed to "OSM" in subsequent records systems for convenience. The OSM is proposing to amend the system notice for OSM–8 "Employment and Financial Interests Statements—States and Other Federal Agencies," previously published in the **Federal Register** on June 6, 1989 (54 FR 24270). This revision is needed to update required data elements as well as the System Name, System Location, System Manager(s) and Address. This revision more precisely defines the Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, as well as Safeguards, and Retention and Disposal policies and practices; and makes minor clarifying changes to the Notification Procedure, Record Access Procedures and Contesting Record Procedures.

Accordingly, the OSM proposes to amend the "Employment and Financial Interests Statements—States and Other Federal Agencies," OSM–8 in its entirety to read as follows:

Robert Ewing,

Chief Information Officer, Office of Surface Mining.

INTERIOR/OSM–8

SYSTEM NAME:

Employment and Financial Interests Statements—States and Federal Agencies.

SYSTEM LOCATION:

Office of Surface Mining Reclamation and Enforcement (OSM), Department of the Interior, 1951 Constitution Avenue, NW, Room 340, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Office of Surface Mining employees by 30 CFR 706.15(a); 2. The head of each State regulatory authority who is required to file a financial statement with the Director of the Office of Surface Mining Reclamation and Enforcement by 30 CFR 705.15; 3. Federal employees, other than Interior Department employees, who are required to file a financial interest statement by 30 CFR 706.11(b) and who file with the Director of the Office of Surface Mining Reclamation and Enforcement in accordance with 30 CFR 706.15(c); and 4. State employees, and Federal employees other than Interior Department employees, whose financial interest statements are referred to the Department of the Interior in accordance with 30 CFR 705.19(a)(3) or 30 CFR 706.19(c).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains statements of employment and financial interests forms for Federal employees (OGE Form 450 & DI–1993), and for State employees (Form 23). Also contains records of decisions, analysis of financial holdings, employee statements, pertinent comments from supervisors, agency heads, and the Solicitor's Office, and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 201 (c) and (f) and 517(g) of Pub. L. 95–87 and 30 CFR 705 and 706.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are: (a) To review employee financial interests and determine employee compliance or non-compliance with the applicable statute and regulations; (b) to record the fact that the employee has been made aware of specifically directed legislation or regulations covering his organization and duties and that he or she is in compliance with such specific legislation or regulations; and (c) to provide an adequate system of records for auditors performing compliance audits. Disclosures outside the Department of the Interior may be made (1) to the Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior

determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled: (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, or local agencies responsible for investigating or prosecuting the violation or, (3) to Federal, State or local agencies where necessary to obtain information relevant to resolving prohibited financial interest situations or to litigation which may affect the hiring or retention of an employee; (4) to a Congressional office from the record of an individual in response to an inquiry made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file orders.

RETRIEVABILITY:

Filed alphabetically by employee name.

SAFEGUARDS:

Maintained in a safe having a three-position dial-type, manipulation proof, combination lock.

RETENTION AND DISPOSAL:

Records will be destroyed six years after receipt unless needed in an ongoing investigation (National Archives and Records Administration, General Records Schedule, 1, Item 24). Records referred will be returned to the referring agency for disposal in accordance with that agency's disposal policy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Personnel, Office of Surface Mining, Department of the Interior, 1951 Constitution Ave., NW, Room 340, Washington, DC 20240.

NOTIFICATION PROCEDURE:

To determine whether information is maintained on you in this system, write to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES;

To see your records, write to the System Manager. Describe as specifically as possible the record sought and mark the request "Privacy Act Request for Access." See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Present or past Federal or State employees required to file employment and financial interests statements.

[FR Doc. 99–8842 Filed 4–8–99; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of Surface Mining, Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of Surface Mining (OSM) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OSM–12, "Application for Blaster Certification in Federal Program States and on Indian Lands-Computer Tracking System." The revisions will update the System Name, System Location addresses, System Manager(s), further define the Authority for Maintenance of the System, and clarify the Notification Procedure and Record Access Procedures.

EFFECTIVE DATE: 5 U.S.C. 552a (e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Office of Surface Mining, Privacy Officer, 1951 Constitution Avenue, NW, Mail Stop 262–SIB, Washington, DC 20240. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Send written comments to the U.S. Department of the Interior, Office of Surface Mining, Privacy Act Officer, Mail Stop 262–SIB, 1951 Constitution Avenue, NW, Washington, DC 20240. You may also hand deliver comments to the same address.

FOR FURTHER INFORMATION CONTACT: Federal Blaster Certification Program Coordinator, Office of Surface Mining, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902.

SUPPLEMENTARY INFORMATION: Earlier Privacy Act Compilations list the systems of records with the prefix "OSMRE" (e.g., OSMRE–12) as originally published in the **Federal Register**. The prefix was changed to "OSM" in subsequent records systems for convenience. The OSM is proposing to update and amend the system notice for OSM–12 "Application for Blaster Certification in Federal Program States and on Indian Lands-Computer Tracking System," which was previously published in the **Federal Register** on August 27, 1986 (51 FR 30554), to more accurately and clearly describe the System Name, System Location, System manager(s) and addresses. In addition, this revision further defines the Authority for Maintenance of the System by adding one citation, and clarifies the Notification Procedure and Record Access Procedures.

Accordingly, the OSM proposes to amend the "Application for Blaster Certification in Federal Program States and on Indian Lands-Computer Tracking System," OSM–12 in its entirety to read as follows:

Robert Ewing,

Chief Information Officer, Office of Surface Mining.

INTERIOR/OSM–12

SYSTEM NAME:

Blaster Certification, OSM–12.

SYSTEM LOCATION:

Office of Surface Mining Reclamation and Enforcement (OSM), Department of the Interior, Washington, DC 20240 and Field Offices in Knoxville, Tennessee; Casper, Wyoming; Albuquerque, New Mexico; and Tacoma, Washington. For specific addresses of Field Offices contact the program coordinator at the address given below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains applicants for certification as blasters in Federal Program States and on Indian Lands. Each application will be for one type of blaster certificate or purpose, from the following categories; issuance, renewal, reissuance, reexamination, replacement, or reciprocity. The application form will contain information on; personal data, examination dates, employment history, blasting experience, education, blaster training, blaster certification history,

law violation history, and personal affirmation of all of the above information.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Complete application information submitted by candidate; (2) Application Status Reports listing; the number received, incomplete, complete and not scheduled for examination, list of rejected applications, and list of applicants scheduled for examination; (3) Report Generation menu, contains; summary report of receipt of applications and alphabetic directory of Federal licensed blaster; (4) Certification Status reports contain; listing of certifications due to expire, expired certificates and a list or revoked or suspended certificates; (5) Query processing sub-systems to access information on candidates by social security number, last name, and print output of entire application information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., and 30 CFR 750.19, 816.61, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942, 947, and 955.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to: (a) Review and applicant's background, status, employment history, blasting experience and violation status; (b) record the fact that the person is in compliance with specific State and Federal authority and regulations; (c) maintain adequate control and access of record information; (d) serve as a tool for OSM to grant as blaster certificate for issuance, renewal, reissuance and reciprocity status, administration and notification procedure; (e) provide an adequate system of records for the Department, and for compliance within the Department for a Federal program; (f) enable, OSM to track appropriate actions when a blasting violation occurs, or a discrepancy with application information and the affirmation by the applicant; (g) verify the status of a blaster when queried by state or mining company official; and (h) enable OSM as the regulatory authority to effectively monitor its program requirements.

Disclosure outside the Department of the Interior may be made to: (1) The appropriate Federal, State, local or foreign agency responsible for obtaining information relevant to a Federal blaster for investigating, prosecuting, enforcing or implementing a statue, rule, regulation or order when OSM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) the U.S. Department of Justice or in a proceeding before a court or adjudicative body when; (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a State or mining company officials to verify that an individual is or is not a certified blaster under the Federal programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in secured file cabinets; and recorded on computer magnetic media.

RETRIEVABILITY:

For each Field Office, information is filed and retrievable by social security number and last name alphabetically, or date of entry. For each Field Office, information is filed alphabetically by applicant, candidate, or blasters, and consolidated in summary format at the Knoxville Field Office.

SAFEGUARDS:

Maintained in locked file cabinets for manual files, standard password files on computer and software, and accessible only by those authorized persons. Manual records are maintained in OSM areas occupied by OSM personnel during working hours with buildings locked off hours.

RETENTION AND DISPOSAL:

Data stored on magnetic media will be retained until it is determined that the information is no longer needed or required. Manual records will be retained for a minimum of 6 years to serve as verification and backup material. ADP printout records will be updated and disposed of periodically, when superseded or recertification of a certified blaster occurs. Records are disposed of in accordance with items 25 through 30 of General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Blaster Certification Program Coordinator, Office of Surface Mining, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

To determine whether information is maintained on you in this system, write to the appropriate State designated OSM Field Office Director. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records, write to the State designated OSM Field Office Director. Describe as specifically as possible the records sought and mark the request "Privacy Act Request for Access." See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the designated OSM Field Office Director and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

(1) Application for Blaster Certification in Federal Program States and on Indian Lands. (2) Federal Blaster Examination Test Scores and Status. (3) State program approved certified blasters records. (4) State and Federal criminal or law violation records.

[FR Doc. 99–8843 Filed 4–8–99; 8:45 am]
BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731–TA–825–826 (Preliminary)

Certain Polyester Staple Fiber From Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–825–826 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea and Taiwan of certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of

the United States (HTS), that are alleged to be sold in the United States at less than fair value.[1] Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 17, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by May 24, 1999.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Jozlyn Kalchthaler (202–205–3457), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on April 2, 1999, by E.I. Dupont de Nemours, Inc., Wilmington, DE; NanYa Plastics Corporation, America, Lake City, SC; KoSa, Spartanburg, SC; Wellman, Inc., Shrewsbury, NJ; and Intercontinental Polymers, Inc., Charlotte, NC.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 23, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. In the event that the Commission is closed for business on April 23, the conference will be held at 9:30 a.m. on April 22, 1999. Parties wishing to participate in the conference should contact Jozlyn Kalchthaler (202–205–3457) not later than April 20, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 28, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 6, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–8883 Filed 4–8–99; 8:45 am]

BILLING CODE 7020–02–P

[1] These investigations include synthetic staple fibers of polyesters, the foregoing not carded, combed, or otherwise processed for spinning and measuring 3.3 decitex (3 denier) or more in diameter. This merchandise is cut to lengths varying from 25 mm (1 inch) to 127 mm (5 inches), inclusive. Merchandise subject to the investigations may be coated, usually with a silicone or other finish, or not coated.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 23, 1998, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The phenylacetone will be imported for conversion to amphetamine base, isomers and salts thereof for sale in bulk form to customers. The firm plans to import the raw opium and concentrate of poppy straw for the bulk manufacture of controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 10, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 24, 1999.

John H. King,

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

[FR Doc. 99–8809 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 23, 1999, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The firm plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for sale to its customers for drug testing and pharmaceutical research and development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 10, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 1, 1999.

John H. King,

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

[FR Doc. 99–8810 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–8]

Leonard E. Reaves, III, M.D.; Removal of Stay of Revocation

On August 13, 1998, the then-Acting Deputy Administrator of the Drug Enforcement Administration (DEA)

issued a final order revoking DEA Certificate of Registration AR2127377 issued to Leonard E. Reaves, III, M.D. (Respondent), effective September 18, 1998. *See* 63 F.R 44471 (August 19, 1998). The then-Acting Deputy Administrator further ordered that the revocation be stayed for six months from the effective date of the order "during which time Respondent must present evidence to the Acting Deputy Administrator of his completion of a training course regarding controlled substances, and of his ongoing treatment for his codependency problems [and] must request modification, if necessary, of his 1995 renewal application to accurately reflect what schedules he wishes to be registered in to effectively treat his patient population." *Id.*

The then-Acting Deputy Administrator noted that should Respondent fail to provide this information in a timely manner, the stay would be removed and Respondent's DEA Certificate of Registration would be revoked and any pending applications for renewal would be denied.

The Deputy Administrator finds that more than six months have passed since the effective date of the final order regarding Respondent's DEA Certificate of Registration, and Respondent has not presented any evidence to the Deputy Administrator of his completion of a training course regarding controlled substances or of his ongoing treatment for his codependency problems. In addition, the Deputy Administrator has not received a request from Respondent to modify his 1995 renewal application.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the stay placed on the revocation of DEA Certificate of Registration AR2127377 pursuant to the final order dated August 13, 1998, be, and it hereby is removed. The Deputy Administrator further orders that DEA Certificate of Registration AR2127377, previously issued to Leonard E. Reaves, III, M.D., be, and it hereby is revoked and any pending renewal applications be, and they hereby are denied. This order is effective May 10, 1999.

Dated: April 1, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–8814 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 25, 1999, Roberts Laboratories, Inc., 4 Industrial Way West, Eatontown, New Jersey 07724–2274, made application by renewal to the Drug Enforcement Administration to be registered as an importer of propiram (9649), a basic class of controlled substance listed in Schedule I.

The firm plans to import the propiram to manufacture in bulk for product development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 10, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 19, 1999.

John H. King,

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

[FR Doc. 99–8811 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Registration

By Notice dated December 23, 1998, and published in the **Federal Register** on January 4, 1999, (64 FR 182), Wildlife Laboratories, Inc., 1501 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Etorphine Hydrochloride (9059) ...	II
Carfentanil (9743)	II

The firm plans to import the listed controlled substances to produce finished products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Wildlife Laboratories, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Wildlife Laboratories, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local news, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: March 17, 1999.

John H. King,

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

[FR Doc. 99–8813 Filed 4–8–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 2, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Acting Departmental Clearance Officer, Pauline Perrow (202–219–5096 ext. 165) or by E-Mail to Perrow-Pauline@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration (ESA).

Title: Certification of Funeral Expenses.

OMB Number: 1215–0027 (Revision).

Frequency: On-occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 195.

Estimated Time Per Respondent: LS–265 15 minutes.

Total Burden Hours: 49.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $70.00.

Description: This form is used to request basic information relative to the amount of funeral expenses incurred. The information is submitted to OWCP district offices that have responsibility for monitoring and processing death cases. The information is usually incorporated into a compensation order at the time death benefits are ordered paid in a case.

Agency: Employment Standards Administration (ESA).

Title: Worker Information—Terms and Conditions of Employment.

OMB Number: 1215–0187 (Extension).

Frequency: On-occasion.

Affected Public: Individuals and households, business or other for-profit; farms.

Number of Respondents: 160,000.

Estimated Time Per Respondent: 32 minutes.

Total Burden Hours: 85,333.

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $24,000.

Description: Form WH–516 is an optional form which a farm labor contractor, agricultural employer or agricultural association can use to disclose in writing the terms and conditions of employment to migrant and seasonal agricultural workers. Although use of the form is optional, disclosure of the terms and conditions of employment is required by MSPA.

Agency: Employment Standards Administration (ESA).

Title: Housing Occupancy Certificate-Migrant and Seasonable Agricultural Worker Protection Act.

OMB Number: 1215–0158 (Revision).

Frequency: On-occasion.

Affected Public: Individuals and households; business or other for-profit; farms.

Number of Respondents: 60.

Estimated Time Per Respondent: 3 minutes.

Total Burden Hours: 4.

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $0.

Description: The information collected on Form WH–520 identifies the housing for which certification is being requested; the expected dates of occupancy of the housing; occupancy rates; and the name, address and telephone number of the person(s) who own and/or will control the housing when it is occupied. The form is completed by a Wage and Hour Division Investigator based upon the oral responses of the applicant and an inspection of the housing.

Agency: Employment Standards Administration (ESA).

Title: Payment of Compensation Without Award.

OMB Number: 1215–0022 (Extension).

Frequency: On-occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 900.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 6,750.

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $10,000.

Description: The LS–206 is a basic claims form which is used by insurance carriers and self-insurers to report the start of compensation benefits. It requests only basic data relating to the compensation benefits which are to be paid.

Agency: Employment Standards Administration (ESA).

Title: Notice of Controversion of Right to Compensation.

OMB Number: 1215–0023 (Extension).

Frequency: On-occasion.

Affected Public: Business or other profit.

Number of Respondents: 900.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 4,500.

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $7,000.

Description: This LS–207 form is a basic claims form which is used by insurance carriers and self-insurers to controvert compensation benefits. It requests only basic data relating to the reason(s) that benefits are not paid.

Pauline Perrow,

Acting Department Clearance Officer.

[FR Doc. 99–8930 Filed 4–8–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following proposed extension collection: Rehabilitation Action Report (OWCP–44). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 9, 1999. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation programs administers the Federal Employees' Compensation Act, which provides, in pertinent part, that eligible injured workers are furnished vocational rehabilitation services. The costs of these services are paid from the Employees' Compensation Fund. The Rehabilitation Action Report (OWCP–44) is submitted by the rehabilitation counselor to report transition periods in the vocational rehabilitation process and to request prompt claims adjudicatory action.

II. Current Actions

The Department of Labor seeks an extension of approval to collect this information in order to render timely decisions on eligibility for benefits.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Rehabilitation Action Report.
OMB Number: 1215–0182.
Agency Number: OWCP–44.
Affected Public: Business of other for-profit; individuals or households.
Total Respondents: 7,000.
Frequency: On occasion.
Total Responses: 7,000.
Time per Response: 30 minutes.
Estimated Total Burden Hours: 3,500.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Dated: April 2, 1999.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 99–8931 Filed 4–8–99; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and superseded decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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ME990022 (Mar. 12, 1999)
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None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 2nd day of April, 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–8582 Filed 4–8–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on May 11 and 12, 1999, in Room S 4215 A–C of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, D.C. The meeting is open to the public and will begin at 1:00 p.m. lasting until approximately 5:00 p.m. the first day, May 11. On May 12, the meeting will begin at 8:30 a.m. and last until approximately 4:00 p.m.

During its November 1998 meeting, NACOSH decided that one of its areas of activity over the next two years would be to study OSHA's standard-setting and regulatory process. The Committee plans to continue this study at its May meeting by studying the use of advisory committees in addition to the 6(b) process. As examples, the committee will discuss both the Steel Erection Negotiated Rulemaking Committee and the current Standards Advisory Committee on Metalworking Fluids. NACOSH will invite key players who were or are involved in the activities of each of these committees to participate in a panel discussion on the morning of May 12th. These include representatives from industry, labor and the public, as well as the involved government officials from OSHA and NIOSH. Members of the public are invited to submit written comments. Presenters will be asked to address issues/questions similar to those that were used in discussing the development of the methylene chloride standard under the standard 6(b) process at the February 10–11 meeting. Some of these are: How did you become involved in the process? How would you define our role? How would you define OSHA's role in the process? What are/were the key issues in the process (e.g., technical, economic and political feasibility); scope of the standard; nature of the regulated community)? What are/were your expectations for the process? What will you consider a successful outcome? What are the strengths and limitations of the process? How could the process be improved? What advice would you give OSHA if it were to embark on another rulemaking using the same process?

Other agenda items will include: an overview of current activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH), work group reports and a panel discussion of the use of partnerships both in OSHA and NIOSH.

Written data, view or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Theresa Berry (phone: 202–693–1999; FAX: 202–293–1641) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–693–2350). For additional information contact: Joanne Goodell, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW, Washington, D.C., 20210 (phone: 202–693–2400; FAX 202–293–1641; e-mail joanne.goodell@osha-no.osha.gov; or at www.osha.gov).

Signed at Washington, D.C., this 2nd day of April, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–8932 Filed 4–8–99; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on April 17, 1999. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Hilton Hotel, 5000 Seminary Road, Alexandria, Virginia 22311.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of February 22, 1999.
3. Approval of minutes of the executive session of the Board's meeting of February 22, 1999.
4. Chairman's Report.
5. Members' Report.
6. President's Report
7. Inspector General's Report.
8. Appointment of the membership of each committee of the Board and appointment of each committee's chairperson.
9. Consider and act on the Board's meeting schedule, including designation of locations, for year 2000.
10. Consider and act on the report of the Board's Operations and Regulations Committee.
- Consider and act on the Committee's recommendation regarding proposed final rule, 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors.
- Consider and act on the Committee's recommendation regarding final rule, 45 CFR Part 1628, Recipient Fund Balances.
- Consider and act on the committee's recommendation regarding the Inspector General's level of compensation.

11. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
12. Consider an act on proposed amendment(s) to the Corporation's 403(b) Thrift Plan that are intended to increase the Corporation's employer contribution level to more closely track the Federal retirement plans.
13. Consider and act on the resolution to recognize and thank the law firm of Covington & Burling for outstanding *pro bono* efforts for the Corporation.
14. Report on the status of the special panel the board authorized the Board Chair to establish to study and report back to the board on issues relating to LSC grantees' representation of legal alien workers and the requirement that they be "present in the United States."
15. Dissolution of the Board's 1998 Annual Performance Reviews Committee.

Closed Session

16. Briefing [1] by the Inspector General on the activities of the OIG.
17. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.
18. Consider and act on a request for indemnification.

Open Session

19. Consider and act on other business.
20. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: April 6, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–9020 Filed 4–7–99; 12:59 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR § 1622.2 & 1622.3

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on April 16, 1999. The meeting will begin at 10:00 p.m. and continue until the Committee concludes its agenda.

LOCATION: Hilton Hotel, 5000 Seminary Road, Alexandria, Virginia 22311.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of February 21, 1999.
3. Consider public comment and consider and act on final rule, 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors.
4. Consider public comment and consider and act on final rule, 45 CFR Part 1628, Recipient Fund Balances.
5. Develop a recommendation to make to the Board regarding setting of the compensation level for the Corporation's Inspector General.
6. Consider and act on other business.
7. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: April 6, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–9021 Filed 4–7–99; 12:59 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on April 16, 1999. The meeting will begin at 2:00 p.m. and continue until the Committee concludes its agenda.

LOCATION: Hilton Hotel, 5000 Seminary Road, Alexandria, Virginia 22311.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.

2. Approval of minutes of the Committee's meeting of February 20, 1999.

3. Report by the Corporation's Office of Program Performance on the state planning process.

4. Consider and act on other business.

5. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: April 6, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–9022 Filed 4–7–99; 12:59 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used when veterans or other authoized individuals request information from or copies of documents in military service records. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before June 8, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhèlm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request Pertaining to Military Records.

OMB number: 3095–0029.

Agency form number: SF 130.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 850,100.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel record).

Estimated total annual burden hours: 172,300 hours.

Abstract: In accordance with rules issued by the Department of Defense (DOD) and Department of Transportation (DOT, US Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military service records of veterans after discharge, retirement, and death. When veterans and other authorized individuals request information from or copies of documents in military service records, they must provide in forms or in letters certain information about the veteran and the nature of the request. Federal agencies, military departments, veterans, veterans' organizations, and the general public use Standard Forms (SF) 180, Request Pertaining to Military Records, in order to obtain information from military service records stored at NPRC. The authority for this information collection is contained in 36 CFR 1228.162.

Dated: April 5, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–8816 Filed 4–8–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME AND DATE: 10:30 am–12:30 pm—Friday, May 14, 1999.

STATUS: Open.

ADDRESSES: The Westin Crown Center Hotel, One Pershing Road, Kansas City, MO 64108, (816) 474–4400.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Friday, May 14, 1999 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda

75th Meeting of the National Museum Services Board

The Westin Crown Center Hotel, One Pershing Drive, Kansas City, MO, Friday, May 14, 1999

10:30–12:30 pm

I. Chairperson's Welcome and Minutes of the 74th NMSB Meeting—February 5, 1999
II. Director's Report
III. Appropriations Report
IV. Legislative/Public Affairs Report
V. Office of Research and Technology Report
VI. Office of Museum Services Program Reports
  A. David Ucko's Report on the 21st Century Learners Meeting in Washington, DC on March 22–23, 1999
VII. Office of Library Services Program Reports

Dated: April 1, 1999.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 99–8953 Filed 4–6–99; 4:41 pm]

BILLING CODE 7036–01–M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of public meeting.

SUMMARY: At its twelfth regular meeting the National Gambling Impact Study Commission, established under Public Law 104–169, dated August 3, 1996, will conduct its normal meeting business; hear possible presentations from one or more subcommittees; continue its ongoing review of Commission research on economic and social gambling impacts; and deliberate on possible findings and recommendations for the Final Report.

DATES: Tuesday, April 27, 8:30 a.m. to 5:30 p.m. and Wednesday, April 28, 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting site will be: Hall of the States, Room 385, 444 North Capitol Street, NW, Washington, DC 20001.

Written comments can be sent to the Commission at 800 North Capitol Street, NW, Suite 450, Washington, DC 20002.

STATUS: The meeting will be open to the public both days.

CONTACT PERSONS: For further information contact Craig Stevens at (202) 523–8217 or write to 800 North Capitol St., NW, Suite 450, Washington, DC 20002.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public both days. However, due to limited seating, members of the media planning to attend are kindly asked to contact Craig Stevens to secure arrangements. Individual subcommittees, including the Regulation, Enforcement & Internet Subcommittee, may meet on Monday, April 26 from 6:00 p.m. to 11:00 p.m. at the Phoenix Park Hotel located at 520 North Capitol Street. For information on individual subcommittee meetings, please contact Mr. Craig Stevens, Communications and Logistics Coordinator, at 202–523–8217.

Tim Bidwill,

Special Assistant to the Chairman.

[FR Doc. 99–8933 Filed 4–8–99; 8:45 am]

BILLING CODE 6802–ET–P

NUCLEAR REGULATORY COMMISSION

[IA 98–058]

A. Abdulshafi, Ph.D.; Order Prohibiting Involvement in NRC-Licensed Activities

I

Dr. A. Abdulshafi, Ph.D. (Dr. Abdulshafi) is the Owner, President, and Radiation Safety Officer of DAS Consult, Inc. (DAS or Licensee), an NRC licensee who is the holder of Byproduct Material License No. 34–26551–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorizes possession and use of moisture density gauges containing byproduct material in accordance with the conditions specified therein. The license was originally issued on February 2, 1994, and is due to expire on February 28, 2004.

II

Between June 19 and 25, 1998, a special inspection of licensed activities was conducted to determine if licensed material was being used, stored, or transferred in accordance with NRC requirements. The inspection was initiated because the Licensee failed to pay its annual fee, and attempts to contact the Licensee by telephone and by mail were unsuccessful. The inspector discovered that in January, 1997, the Licensee had sold its physical assets, including six moisture density gauges containing byproduct material, to Diversified Global Enterprises Company (DGE), an entity which was not authorized to possess or use such material either by the NRC or by an Agreement State. The gauges contained sufficient quantities of cesium-137 and americium-241 to require persons who possess these devices to hold a specific NRC license. NRC regulations at 10 CFR 30.41, provide, in part, that licensees may not transfer byproduct material except to a person authorized to receive such byproduct material under the terms of a specific or general license issued by the Commission or an Agreement State.

In March 1997, two months after the sale of DAS physical assets to DGE, by a letter to NRC Region III dated March 24, 1997, Dr. Abdulshafi requested that the DAS license be amended to reflect a change in office location. The letter forwarded payment for the amendment as well as the annual fee. The letter did not indicate that the gauges had been sold or transferred. After May 1997, DGE moved the gauges to another location and the business association between Dr. Abdulshafi and DGE ended. As a result of the NRC special inspection, Dr. Abdulshafi retrieved the gauges from DGE and properly transferred them to another company authorized to possess and receive them.

On June 29, 1998, an investigation was initiated by the NRC Office of Investigations (OI) to determine whether the transfer of byproduct material to DGE was a willful violation. At the predecisional enforcement conference held with Dr. Abdulshafi and NRC staff by telephone on January 5, 1999, Dr. Abdulshafi agreed that a violation involving the improper transfer of licensed material occurred. He maintained that his actions were not deliberate, but were the result of personal problems and a misunderstanding between himself and DGE. In his OI testimony, however, Dr. Abdulshafi stated that during the negotiations preceding the January, 1997, sale of physical assets, he advised DGE that DGE must have an NRC license to possess the gauges, knowing that DGE did not possess a license. Moreover, Dr. Abdulshafi acknowledged continuing to advise Dr. El-Naggar, President of DGE, and possibly other DGE officials at various times between January and April 1997, that DGE needed to obtain an NRC license in order to possess the gauges. Based on the evidence obtained by OI and a predecisional enforcement conference with Dr. Abdulshafi on January 5, 1999, the NRC staff concludes that in January, 1997, Dr. Abdulshafi, Owner, President and Radiation Safety Officer of DAS,

deliberately transferred nuclear material to DGE, a person not authorized to possess or use such material, in violation of 10 CFR 30.41.

III

Based on the above, it appears that Dr.Abbdulshafi engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1), causing the Licensee to be in violation of 10 CFR 30.41(a) and (b)(5). Dr. Abdulshafi deliberately transferred six Troxler moisture density gauges containing byproduct material to a person not authorized to possess or use such material.

The NRC must be able to rely upon licensees and their employees to comply with NRC requirements, including the requirement that byproduct material may be transferred only to persons authorized to receive such materials, in order to protect public health and safety. Dr. Abdulshafi's deliberate action in causing the Licensee to violate 10 CFR 30.41 has raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Dr. Abdulshafi were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Abdulshafi be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. Additionally, Dr. Abdulshafi is required to notify the NRC of his subsequent employment in NRC-licensed activities for a one year period following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered that:

1. Dr. Abdulshafi is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Dr. Abdulshafi is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

3. For a period of one year after the one year period of prohibition has expired, Dr. Abdulshafi shall, within 20 days of acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Dr. Abdulshafi shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon a demonstration by Dr. Abdulshafi of good cause.

V

In accordance with 10 CFR 2.202, Dr. Abdulshafi must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. Abdulshafi or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532, and to Dr. Abdulshafi if the answer or hearing request is by a person other than Dr. Abdulshafi. If a person other than Dr. Abdulshafi requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. Abdulshafi, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–8872 Filed 4–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 98–059]

Dr. Mohamed El-Naggar; Order Prohibiting Involvement in NRC-Licensed Activities

I

Dr. Mohamed El-Naggar (Dr. El-Naggar) is the owner of Diversified Global Enterprise Company (DGE), neither an NRC licensee nor an Agreement State licensee. DGE purchased the physical assets of DAS Consult, Inc., (DAS or Licensee), including, in particular, DAS assets subject to an NRC license. DAS is the holder of Byproduct Material License No. 34–26551–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorized possession and use of moisture density gauges containing byproduct material in accordance with the conditions specified therein.

II

Between June 19 and 25, 1998, the NRC conducted an inspection of DAS's

licensed activities to determine if byproduct material was being used, stored, or transferred in accordance with NRC regulations. The inspection was initiated because DAS failed to pay its annual fee and attempts to contact the Licensee by telephone and mail were unsuccessful. The NRC inspector discovered that, in January 1997, the physical assets of DAS, including six moisture density gauges containing certain byproducts material, were sold to DGE. The gauges contained sufficient quantities of cesium-137 and americium-241 to require persons who possess these devices to hold a specific NRC license. No person may receive or possess byproduct material except as authorized by a specific or general license as required pursuant to Section 81 of the Atomic Energy Act of 1954, as amended, and 10 CFR 30.3. Neither Dr. El-Naggar nor DGE had an NRC license.

On June 29, 1998, the NRC Office of Investigations (OI) initiated an investigation to determine, among other things, whether DGE possessed six moisture density gauges containing byproduct material in willful violation of NRC requirements. Based on the evidence obtained by OI and during a predecisional enforcement conference with Dr. A. Abdulshafi, the owner of DAS, on January 5, 1999, the NRC staff concludes that DGE, through the conduct of Dr. El-Naggar, possessed byproduct material in deliberate violation of NRC requirements. Between January and May 1997, the gauges containing byproduct material remained at the original DAS location on Kenny Road, where they were tendered by Dr. A. Abdulshafi, and trained gauge users who had been authorized to use the devices under the DAS license. On or about June 1997, DGE moved the gauges to another location, and the business association between DGE and DAS ended. Dr. El-Naggar was repeatedly informed by one of his employees between May and June 1997 that DGE was required to have an NRC license to possess the gauges. However, Dr. El-Naggar did not submit an application for an NRC license. In June 1998, as a result of the NRC inspection at DAS, DAS retrieved the gauges from DGE and properly transferred them to a company authorized to possess and use them.

Between December 1, 1998 and January 20, 1999, three attempts were made by the NRC staff to schedule a predecisional enforcement conference with Dr. El-Naggar. The NRC staff was unsuccessful in scheduling this conference with Dr. El-Naggar.

III

Based on the above, it appears that Dr. El-Naggar, owner of DGE, deliberately violated Section 81 of the Atomic Energy Act of 1954, as amended, and 10 CFR 30.3. Specifically, the NRC has concluded that Dr. El-Naggar, knowingly possessed six Troxler moisture density gauges containing byproduct material without an NRC license. Dr. El-Naggar's conduct has raised serious doubt as to whether he can be relied upon to comply with NRC requirements. Consequently, in light of the nature of the violation, the length of time the noncompliance existed, and the deliberate nature of the violation, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Dr. El-Naggar were permitted to be involved in any NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. El-Naggar be prohibited from any involvement in NRC-licensed activities for a period of one year from the effective date of this Order. Additionally, Dr. El-Naggar is required to notify the NRC of his subsequent employment in NRC-licensed activities for a one year period following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.3, and 10 CFR 150.20, *It is hereby ordered that:*

1. Dr. El-Naggar is prohibited from engaging in NRC-licensed activities for one year from the effective date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Dr. El-Naggar is involved in NRC-licensed activities on the effective date of this Order, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

3. For a period of one year after the one year period of prohibition has expired, Dr. El-Naggar shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Dr. El-Naggar shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will not comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Dr. El-Naggar of good cause.

V

In accordance with 10 CFR 2.202, Dr. El-Naggar must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. El-Naggar or other persons adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532, and to Dr. El-Naggar if the answer or hearing request is by a person other than Dr. El-Naggar. If a person other than Dr. El-Naggar requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. El-Naggar or a person whose interest is adversely affected, the Commission will issue an Order designating the time and

place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 31st day of March 1999.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–8870 Filed 4–8–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[IA 98–066, EA 98–538, Docket No. 150–00019, License No. MD–33–095–01 (expired)]

Dale Todd and Roof Systems Design, Inc., Bayamon, Puerto Rico 00961; Order Prohibiting Involvement In NRC Licensed Activities

I

Mr. Dale Todd is employed as the President of Roof Systems Design, Inc. (RSDI). RSDI is a Pennsylvania Corporation, formerly doing business in Laurel, Maryland and now doing business in Bayamon, Puerto Rico. RSDI (a Maryland Licensee) possessed and used radioactive materials at its Laurel, Maryland facility under the authority of Maryland License No. MD–33–095–01, Amendment No. 2, issued by the Maryland Department of the Environment (MDE), Radioactive Materials and Compliance Division (RMCD) on May 31, 1994, pursuant to the Maryland Radiation Act, and in reliance on statements and representations made by RSDI. RSDI's Maryland license authorized RSDI to receive, acquire, possess and transfer, within the State of Maryland, Americium-241 (not to exceed 50 millicuries per source) contained in Troxler model 3216 moisture gauges used to locate areas of high moisture content in roof systems. On May 31, 1998, Maryland License No. MD–33–095–01, Amendment No. 2, expired.

II

On April 23, 1998, the Nuclear Regulatory Commission (NRC) was notified by MDE/RMCD, that Mr. Todd had moved RSDI equipment and operations to the Commonwealth of Puerto Rico, an area within the NRC's jurisdiction. An investigation by the NRC Office of Investigations (OI) was initiated on May 8, 1998, to determine whether Mr. Todd and RSDI were in unauthorized possession of moisture gauges containing byproduct material, without a specific or general license issued by the NRC. Based on the evidence developed, OI determined that RSDI willfully possessed and used Troxler moisture gauges, containing byproduct material, in the Commonwealth of Puerto Rico without a specific or general license issued by the NRC. Specifically, on May 8, 1998, Mr. Todd and RSDI were found to be in possession of four Troxler Model Number 3216 moisture gauges in Puerto Rico, each containing approximately 40 millicuries of Americium-241 without having obtained an NRC license, in violation of 10 CFR 30.3 and 10 CFR 150.20. In addition, based on statements Mr. Todd made to OI, the gauges were used at job sites in Puerto Rico, including Searle Pharmaceutical in 1992 and Ft. Buchanan and Intel in Las Piedras in September 1997 without a specific or general license issued by the NRC, in violation of 10 CFR 30.3.

Mr. Todd acknowledged to OI that he was aware that the jobs in Puerto Rico required an NRC license and that one had not been obtained. In addition, Mr. Todd told OI that he and RSDI also conducted licensed activities in New Jersey, Pennsylvania, and Virginia, areas of NRC jurisdiction, without a specific or general NRC license.

On May 12, 1998, Confirmatory Action Letter (CAL) 2–98–003 was sent to Mr. Todd confirming that he agreed to transfer the four RSDI gauges to an authorized recipient by June 7, 1998.

Mr. Todd confirmed that the four moisture gauges were transferred to an authorized recipient by letter to Mr. Mark Lesser of the NRC, dated June 11, 1998. In addition to the May 12, 1998 CAL, the NRC also sent Mr. Todd a December 30, 1998 letter that informed him of the terms of the Confirmatory Order and that requested Mr. Todd to inform the NRC whether he consented to the issuance of the Order. Mr. Todd informed the NRC in a facsimile dated December 31, 1998, that he understood the terms of this Order and that he consented to the issuance of the Order; however, he expressed reservation concerning the scope of the rights he was waiving. By letter dated January 11, 1999, a Confirmatory Order was forwarded to Mr. Todd for his signature. Subsequently, on February 18, 1999, NRC contacted Mr. Todd to discuss the proposed Order, at which time he indicated agreement with its provisions and his intent to sign and facsimile the Order to the NRC. To date, no response has been received from Mr. Todd.

III

The Commission's regulations in 10 CFR 30.3 specify that, except for persons exempt as provided in Parts 30 or 150, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued by the NRC. In accordance with 10 CFR 150.20(a), any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted an NRC general license to conduct the same activity in a non-Agreement State, provided the provisions of 10 CFR 150.20(b)(1) have been met. Pursuant to 10 CFR 150.20(b)(1), persons engaging in such activity must file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States", with the Regional Administrator of the appropriate NRC regional office. Based on the facts set forth above in Part II, and the fact that Mr. Todd and RSDI never filed an application for a specific license or obtained a general license under 10 CFR part 150 by filing NRC Form 241 and/or maintaining a Maryland office, the NRC has concluded that Mr. Todd and RSDI willfully possessed and used Troxler moisture gauges, without a specific or general license issued by the NRC, in violation of 10 CFR 30.3. Furthermore, based on the facts that (1) Mr. Todd told OI that he knew that his and RSDI's activities in Puerto Rico required an NRC license and (2) Mr. Todd chose not to obtain an NRC license, the NRC has concluded that Mr. Todd and RSDI have engaged in deliberate misconduct, in violation of 10 CFR 30.10. Both Mr. Todd's and RDSI's past activities raise serious doubt as to whether they can be relied upon to comply with NRC requirements in the future.

Mr. Todd's and RDSI's failure to obtain a specific or general license resulted in the NRC being uninformed that activities involving the use of radioactive materials were being conducted in areas of NRC jurisdiction. Because of Mr. Todd's and RSDI's failure to file NRC Form 241, the NRC

was denied the opportunity to inspect the licensee's facility and to verify that radioactive materials were being safely used and stored. Furthermore, the NRC was informed by the State of Maryland that Mr. Todd and RSDI committed a similar violation as a Maryland Licensee. Specifically, RSDI was issued a civil penalty in 1987 by the State of Maryland for the use of radioactive material without a license.

In view of the foregoing, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with NRC requirements and that the health and safety of the public would be protected if Mr. Todd or RSDI were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Todd and RSDI be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Additionally, Mr. Todd and RSDI are required to notify the NRC of their first involvement in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to sections 81,161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.3, 10 CFR 30.10 and 10 CFR 150.20, It is hereby ordered, that:

1. For a period of one (1) year from the date of this Order, Mr. Dale Todd and RSDI are prohibited from engaging in or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities are those activities which require a specific or general license issued by the NRC including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

2. At least five (5) days prior to the first time that Mr. Dale Todd and/or RSDI engage in or exercise control over NRC-licensed activities, during a period of five (5) years following the one year prohibition stated in Section IV.1 above, the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, shall be notified in writing of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath or affirmation, that Mr. Dale Todd and/or RSDI understand the applicable NRC requirements and are committed to compliance with NRC requirements. Mr. Dale Todd and/or RSDI also should provide a basis as to why the Commission should have confidence that Mr. Dale Todd and/or RSDI will now comply with applicable NRC requirements.

The Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Dale Todd and/or RSDI of good cause.

V

In accordance with 10 CFR 2.202, Mr. Todd and RSDI must, and any person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Todd and RSDI or other persons adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, S.W., Suite 23T85, Atlanta, Georgia 30303–3415 and to Mr. Todd, if the answer or hearing request is by a person other than Mr. Todd. If a person other than Mr. Todd requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Todd or RSDI or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 31st day of March 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–8871 Filed 4–8–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41243; File No. SR–NASD–99–09]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of an Agency Quotation in Nasdaq

April 1, 1999.

On February 3, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") a proposal to permit the separate display of customer orders by market makers in Nasdaq through a market maker agency identification symbol ("Agency Quote"). Notice of the proposed rule change was published for comment on March 11, 1999.[1]

To give the public additional time to comment on the proposal, the Commission is extending the comment period for the NASD's Agency Quote proposal to June 1, 1999. A copy of the proposed rule change is available in the Commission's Public Reference Room in File No. SR–NASD–99–09.

Interested persons are invited to submit written data, views, and

[1] Securities Exchange Act Release No. 41128 (march 2, 1999), 64 FR 12198.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Securities Exchange Act of 1934. Persons making written submissions should file six copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–09 and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8797 Filed 4–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41244; File No. SR–NASD–99–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Pilot Program To Provide Daily Share Volume Reports via NasdaqTrader.com

April 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 24,1 999, Nasdaq filed Amendment No. 1 which replaces and supersedes the initial proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change as contained in Amendment No. 1 from interested persons.

I. Self-regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to amend NASD Rule 7010 to establish a fee for the Volume and Issue Data Package provided through the NasdaqTrader.com.web site. The text of the proposed rule change is provided below in italics.

(p) NasdaqTrader.com Volume and Issue Data Package Fee

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be $75 per month. The charge to be paid by market data vendors for this information shall be $50 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members. Qualified Institutional Buyers and data vendors. The Volume and Issue Data Package includes:

(1) Daily share Volume reports.

(2) Daily Issue Data.

(3) Month Volume Summaries.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq proposes to establish a fee for a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions (*i.e.*, Qualified Institutional Buyers ("QIBs")[4] and market data vendors through its "NasdaqTrader.com" web site. Under the proposal, subscribers to this service as well as retail customers of participating market data vendors, will be able to obtain the Volume and Issue Data Package, proposed to be named Nasdaq Post Data℠.

Post Data℠ will consist of three separate reports that will be provided as a single package. The first item will be the Daily Share Volume Report, to be named Nasdaq Volume Post℠, which will provide subscribers with access to T+1 daily share volume in each Nasdaq security, listing the volume by each NASD member firm that reports volume in the security and has voluntarily chosen to permit the dissemination of this information. The daily share volume will be verified for accuracy by Nasdaq's Automated Confirmation Transaction Service ("ACT"). The second item, the Daily Issue Data report, will contain a summary of the previous day's activity for every Nasdaq issue. The third item, Monthly Summaries, will provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security, or type of trading (*e.g.*, block or total).

Post Data℠ will be made available in two ways through the NasdaqTrader.com web site. The information will be provided to market data vendors to be redistributed to their retail customers for which the data vendor will pay a $50 per month fee to Nasdaq for each end user obtaining this information. The information will also be provided directly to subscribers, limited to NASD members and non-NASD member QIBs, for a fee of $75 per month. Fees from system subscribers and vendor users will be used to offset the costs associated with the ongoing enhancement, maintenance and marketing of the NasdaqTrader.com web site. The fee paid by direct system subscriber swill be used to offset the

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[2] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 18, 1999, Nasdaq submitted its initial proposal to provide only T+1 daily share volume reports in each Nasdaq security to market data vendors, NASD members, and non-NASD member Qualified Institutional Buyers ("QIBs") as defined in Rule 144A under the Securities Act of 1933. 17 CFR 230.144A. After discussions with at least one market data vendor, and internal discussions at Nasdaq, Nasdaq filed Amendment No. 1 on March 24, 1999. The revised proposal will provide the same information in Nasdaq's original proposal to market data vendors, NASD members, and non-NASD member QIBs, as well as daily issue summaries of the previous day's activity for every Nasdaq issue, and monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, or type of trade.

[4] For purposes of this service, Nasdaq will rely on the definition of "Qualified Institutional Buyer" found in Rule 144A under the Securities Act of 1933. 17 CFR 230.144A.

cost associated with the ongoing maintenance and administration of the Nasdaq web security infrastructure.

This proposal is a direct response to requests from professional Nasdaq market participants to increase the availability of Nasdaq-verified trading data through NasdaqTrader.com. Sell-side traders use share volume to display their trading activity in specific Nasdaq issues while buy-side representatives use similar data to determine which sell-side firm to select for execution of their orders. Post Data℠ will provide a secure, controlled mechanism to allow these parties to view such data and make informed choices regarding their trading partners.

Modifications to Post Data℠ during the pilot period will be limited to minor enhancements to the content of the package.[5] Any such modifications will be provided at no additional cost to the subscribers, and would be available to data vendors for redistribution.

Nasdaq recognizes the proprietary and confidential nature of the data contained in Post Data℠. As such, Nasdaq has established a secure information display and retrieval environment through the combined use of User IDs, passwords and digital certificates. To further protect NASD member firms' proprietary data, the service is designed so that the information will only be made available to the member firm itself, unless that member determines voluntarily to submit the information to be included in the Nasdaq Volume Post℠ Report for dissemination to other subscribers or vendors.

Concerns for data protection, and the system security requirements needed to encourage greater disclosure of proprietary trading statistics, also shaped Nasdaq's determination to make Post Data℠ available only to NASD member firms, market data vendors, and QIBs.[6] It is Nasdaq's belief that these groups represent the largest number of market participants who may benefit from the availability of the voluntarily disclosed, Nasdaq-verified trading volumes. At the same time, these participants are also the most likely to possess the requisite staff and resources to comply with the system security mandates. Moreover, the QIBs consist of entities registered with various regulatory bodies, which Nasdaq believes provides an additional layer of protection against the improper use of its members' proprietary trading data. Finally, the definition of QIB on which Nasdaq seeks to rely has already been adopted by the Commission as a standard delineating the characteristics of institutional market participants.

Given the commercial uncertainties associated with the launching of any new data product, Nasdaq will be establishing this new service as a 12 month pilot program, beginning from the date of Commission approval, to evaluate user interest. At the end of the 12 month pilot, Nasdaq will evaluate the program and make a determination to either terminate the program, continue the program for an additional 12 month pilot, or continue the program as a permanent feature of NasdaqTrader.com.

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)[7] and 15A(b)(6)[8] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires that the rules of the association be designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–12 and should be submitted by April 30, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8798 Filed 4–8–99; 8:45 am]

BILLING CODE 8010–01–M

[5] Nasdaq has represented to the Commission that changes to the content of the package will be limited to stylistic, non-substantive changes. Telephone conversation between Scott W. Anderson, Attorney, Office of the General Counsel, Nasdaq, and Joseph P. Morra, Attorney, Division of Market Regulation, Commission, on March 30, 1999.

[6] *See supra* note 4.

[7] 15 U.S.C. 78o–3(b)(5).

[8] 15 U.S.C. 78o–3(b)(6).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3019]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed

Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the three (3) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State {(703) 875–6644}.

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: April 5, 1999.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–P

United States Department of State

Washington, D.C. 20520

MAR 19 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves technical assistance agreements with Russia providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 39-98

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 8 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of two (2) Area Weapons Effect Simulator(AWES) systems to the United Kingdom for use by the Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 54-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 24 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the sale of one (1) AN/FPS-129 Radar System to the Government of Norway.

The United States Government is prepared to license the export of this item having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 63-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

[FR Doc. 99-8911 Filed 4-8-99; 8:45 am]
BILLING CODE 4710-25-C

DEPARTMENT OF STATE

[Public Notice 3024]

Notice of a Public Meeting Regarding Government Activities on International Harmonization of Chemical Classification and Labeling Systems

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES), Department of State.

SUMMARY: This public meeting will provide an update on current activities related to international harmonization since the previous public meeting, conducted January 11, 1999 (See Department of State Public Notice 2955 on pages 1266–1267 of the **Federal Register** of January 8, 1999). The meeting will also offer interested organizations and individuals the opportunity to provide information and views for consideration in the development of United States Government policy positions. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

The meeting will take place from 10 a.m. until noon on May 27, 1999, in Room N 5437 A–D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. Attendees should use the entrance at C and Third Streets NW. To facilitate entry, please have a picture ID available and/or a U.S. Government building pass if applicable.

FOR FURTHER INFORMATION CONTACT: For further information or to submit written comments or information, please contact Mary Frances Lowe, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street NW., Washington, D.C. 20520. Phone (202) 647–4284, fax (202) 647–5947. A public docket is also available for review at the Department of Labor (OSHA docket H–022H).

SUPPLEMENTARY INFORMATION: The Department of State is announcing a public meeting of the interagency committee concerned with the international harmonization of chemical hazard classification and labeling systems (an effort referred to as the "globally harmonized system" or GHS). The purpose of the meeting is to provide interested groups and individuals with an update on activities since the January 11, 1999, public meeting, a preview of upcoming international meetings, and an opportunity to submit additional information and comments for consideration in developing U.S. Government positions. Representatives of the following agencies participate in the interagency group: the Department of State, the Environmental Protection Agency, the Department of Transportation, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Food and Drug Administration, the Department of Commerce, the Department of Agriculture, the Office of the U.S. Trade Representative, and the National Institute of Environmental Health Sciences.

The Agenda of the public meeting will include:

1. Introduction
2. Reports on recent international meetings
   —Second meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labour Organisation Working Group on Hazard Communication, January 26–27, 1999, Geneva Switzerland.
   —Thirteenth Consultation of Coordinating Group for the Harmonization of Chemical Classification Systems, January 28–29, 1999, Geneva Switzerland.
   —Third meeting of the Organization for Economic Cooperation and Development Expert Group on Classification Criteria for Mixtures, February 1–3, 1999, Paris France.
3. Preparation for upcoming meetings
   —Third meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labour Organisation Working Group on Hazard Communication, June 21–23, 1999, Dublin, Ireland. This group will consider final terms of reference and preparation of a detailed review document describing current hazard communications programs.
   —Fourteenth Consultation of the Coordinating Group for the Harmonization of Chemical Classification Systems, June 24–25, 1999, Dublin, Ireland. Among other issues, this group will consider long and short terms implementation issues and more detailed terms of reference for an ongoing joint committee on transport of dangerous goods and the GHS and a GHS subcommittee.
   —Fourth meeting of the Organization for Economic Cooperation and Development Expert Group on Classification Criteria for Mixtures, June 28–29, 1999, Dublin, Ireland. This group will focus on approaches and options for harmonization of existing systems for classifying chemical mixtures according to their health and environmental hazards.
   —UN Committee of Experts on the Transport of Dangerous Goods, July 5–16, 1999, Geneva, Switzerland.
4. Public Comments
5. Concluding Remarks

Interested parties are invited to submit their comments as soon as possible for consideration in the development of U.S. positions and to present their views orally and/or in writing at the public meeting. Participants may address other topics relating to harmonization of chemical classification and labeling systems and are particularly invited to identify issues of concern to specific sectors that may be affected by the GHS. Participants who attended and participated in recent international sessions may also offer their observations on the results of the sessions.

All written comments will be placed in the public docket (OSHA docket H–022H). The docket is open from 10 am until 4 pm, Monday through Friday, and is located at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, DC. (Telephone: 202–219–7894; Fax: 202–219–5046). The public may also consult the docket to review previous **Federal Register** notices, comment received, Questions and Answers about the GHS, a response to comments on the April 3, 1997, **Federal Register** notice, and other relevant documents.

Dated: April 2, 1999.

Michael Metelits,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 99–8915 Filed 4–8–99; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF STATE

[Public Notice #3000]

Secretary of State's Advisory Committee on Private International Law (ACPIL) Study Group on Protection of Incapacitated Adults; Meeting Notice

There will be a public meeting of the Study Group on Incapacitated Adults of the Secretary of State's Advisory Committee on Private International Law on Monday, May 3, 1999. The meeting will be held from 9:30 a.m. to 4:30 p.m. in the 9th Floor Conference Room, American Bar Association, 740 15th St., NW, Washington, DC 20005.

The purpose of the meeting is to consider legal issues related to the project of the Hague Conference on Private International Law to prepare a

multilateral convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of the Protection of Adults. The meeting will assist the Department of State prepare the U.S. position for the special diplomatic session of the Hague Conference on Private International Law on September 20—October 2, 1999, which will adopt the final text of the convention.

The Study Group meeting will consider a draft text of the convention prepared at the Hague Special Commission session on Incapacitated Adults, September 3–12, 1997. Comments received will assist the Department of State in formulating comments on the draft text for submission to the Permanent Bureau of the Hague Conference for circulation to all the participating states in advance of the September 1999 diplomatic session, as well as in preparing for the final negotiations.

The draft convention sets up rules for jurisdiction and the law to be applied to proceedings to take measures for the protection of adults who are in some way unable to make appropriate decisions regarding themselves or their property. Such measures include the appointment of guardians with limited or general powers and the execution by an adult of powers of attorney or similar documents to become effective in the event of incapacity. The draft convention sets up the standards for recognition and enforcement by the states parties of the measures of protection undertaken pursuant to the convention. Finally, the draft convention establishes a system of cooperation between national authorities to ensure that appropriate information is exchanged and action taken.

Persons interested in the draft convention or in attending the May 3 Study Group meeting in Washington may request copies of the draft convention and the report of the September 1997 Special Commission session of the Hague Conference. Requests may be sent to Ms. Rosie Gonzales by fax at 202–776–8482, by phone at 202–776–8420 or by email to pildb@his.com. Please include your request, name, phone number, and mailing address.

The Study Group meeting is open to the public up to the capacity of the meeting room. Any person wishing to attend should provide Ms. Gonzales with his or her name to facilitate admission to the building. It would also be helpful to include affiliation, address, telefax and telephone numbers, and email address for purposes of updating the Department's contact list.

Those unable to attend but wishing to have their views considered by the Department of State may send their views, attention Ms. Gonzales, to the above fax number or email address, or to the following address: Office of the Assistant Legal Adviser for Private International Law, Suite 203, South Building, 2430 E St., NW, Washington, DC 20037–2800.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 99–8912 Filed 4–8–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice #3005]

Secretary of State's Advisory Committee on Private International Law (ACPIL) Study Group on Judgments; Meeting Notice

There will be a public meeting of the Study Group on Judgments of the Secretary of State's Advisory Committee on Private International Law on Friday, May 7, 1999, from 9:30 AM to 4:30 PM in Room 5951 of the U.S. Department of State, 2201 C Street, NW, Washington, DC.

The purpose of the meeting is to consider legal issues related to the project of the Hague Conference on Private International Law to prepare a multilateral convention on jurisdiction and the recognition and enforcement of foreign civil judgments. The meeting will assist the Department of State prepare the U.S. position for the fourth negotiating session of the Hague Conference's Special Commission on June 7–18, 1999.

The meeting will consider a report prepared by the drafting group of the Hague Special Commission at the third negotiating session in November 1998, which will be before the delegates to the fourth session in June 1999. The drafting committee report includes a preliminary first draft of a limited number of the provisions of a future draft convention. This text does not represent the views of any particular government, but is the first attempt to put into treaty language various approaches discussed so far in the Special Commission to resolving some of the many complex issues posed by a global convention. Included, for example, are draft provisions on jurisdiction in tort, contract, and over branches; provisional and protective measures; recognition and enforcement of judgments; damages; and concurrent and declining jurisdiction.

The Study Group will also consider other issues that will be before the delegates to the June 1999 session of the Special Commission, including: litigation involving governments or governmental entities as plaintiffs or defendants; the structure and geographic scope of the convention; class actions and multiple defendants; the independence of the court issuing the judgments and the fairness of the proceedings; public policy exception to enforcement; the relationship of the convention to other treaties on the same subject; review or oversight of operation of the convention; and how the convention is to work in countries that are federal states. It is expected that additional texts will emerge from the drafting group at the end of the June 1999 session, including possibly a complete draft convention. Currently, a diplomatic session of the Hague Conference is scheduled for October 2000 to complete and adopt and final text of the convention.

Persons interested in the draft convention or in attending the May 7 Study Group meeting in Washington may request a copy of the report of the drafting committee. Requests may be sent to Ms. Rosie Gonzales by fax at 202–776–8482, by phone at 202–776–8420 or by email to pildb@his.com. Please include your request, name, phone number, and mailing address.

The Study Group meeting is open to the public up to the capacity of the meeting room. As access to the State Department building is controlled, any person wishing to attend should provide Ms. Gonzales with his or her name, social security number, and date of birth by no later than Monday, May 3, to facilitate admission to the building. It would also be helpful to include affiliation, address, telefax and telephone numbers, and email address for purposes of updating the Department's contact list. Participants should be sure to use only the C Street entrance of the State Department, between 21st and 23rd Streets, NW, where someone will be present to assist them.

Those unable to attend but wishing to have their views considered may send their views, attention Ms. Gonzales, to the above fax number or email address, or to the following address: Office of the Assistant Legal Adviser for Private International Law, Suite 203, South

Building, 2430 E St., NW, Washington, DC 20037–2800.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 99–8913 Filed 4–8–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice #3006]

Secretary of State's Advisory Committee on Private International Law (ACPIL) General Meeting on Developments in Private International Law; Meeting Notice

There will be a general meeting of the Secretary of State's Advisory Committee on Private International Law (ACPIL) on Monday, May 10, 1999, from 9 a.m. to 5 p.m., and Tuesday, May 11, from 9 a.m. to 3 p.m., at the Department of State in Washington, DC.

The general meeting agenda will include a review of activities of international organizations specializing in this field, including the International Institute for Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law, the United Nations Commission on International Trade Law (UNCITRAL), the Inter-American Specialized Conference on Private International Law (CIDIP) sponsored by the Organization of American States (OAS), and other international organizations, as appropriate.

Topics for discussion, subject to available time, will include the proposed Hague convention on jurisdiction and the recognition and enforcement of foreign civil judgements; current electronic commerce developments, including electronic signatures, cross-border recognition, jurisdiction, and electronic transfer of rights; international commercial finance negotiations, including receivables financing and aircraft and space equipment financing; OAS projects on secured interests, uniform Inter-American bills of lading, and private law jurisdiction and applicable law aspects of cross-border environmental damage; problems in implementation of the Hague Convention on the Civil Aspects of International Child Abduction, legislative issues for implementation of the Hague Convention on Intercountry Adoption, and proposals for agreements on child support and protection of incapacitated adults; and developments in international commercial arbitration, including proposed rules for the 1975 Panama Convention, and proposals for changes to the 1958 New York Convention.

The relation between developments in regional bodies such as the EU and the OAS and global bodies such as the UN, UNIDROIT and the Hague Conference will also be considered. Additional topics may be considered as time permits.

Members of the general public may attend up to the capacity of the meeting room, and participate subject to the direction of the Chair. The meeting will be held in Conference Room 1107 at the Department of State; entry should be only via the Diplomatic entrance at 2201 "C" Street, NW. As access to the building is controlled, the office indicated below should be notified not later than Monday, May 3 of the name, address, social security number, date of birth, and firm or affiliation of persons wishing to attend.

To register for the meeting or to request copies of documents on particular topics, please contact the Office of the Assistant Legal Adviser for Private International Law (L/PIL), attention Ms. Rosie Gonzales, at 2430 E Street, NW, Suite 203, South Building, Washington, DC 20037–2800, or notify Ms. Gonzales by fax at (202) 776–8482 or by e-mail at pildb@his.com.

Harold S. Burman,

Advisory Committee Executive Director.

[FR Doc. 99–8914 Filed 4–8–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 12, 1998 [63 FR, page 63349].

DATES: Comments must be submitted on or before May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, (202) 366–4387, DOT, Office of Airline Information, Room 4125, K–25, 400 Seventh Street, NW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Report of Financial and Operating Statistics for Large Certificated Air Carriers.

Type of Request: Extension of a currently approved Collection.

OMB Control Number: 2138–0013.

Form(s): BTS Form 41.

Affected Public: Large certificated air carriers.

Abstract: Large certificated air carriers submit BTS Form 41, which provides basic financial, traffic, employment, and operating data. DOT uses the data in safety surveillance, international negotiations, airport improvement, air traffic control, etc.

Estimated Annual Burden Hours: 33,121.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 5, 1999.

Timothy E. Carmody,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 99–8916 Filed 4–8–99; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program: Availability of Fiscal Year 1999 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a Notice that the IRS has made available the grant application package for parties interested in applying for a Low Income Taxpayer Clinic Grant for Fiscal Year 1999.

DATES: Grant applications for Fiscal Year 1999 funds must be submitted to the IRS by May 10, 1999.

ADDRESSES: Send completed grant applications to: Internal Revenue Service, Attn: LITC Program Manager, OP:C:A:E:E, NCFB Room C–7–171, 5000 Ellin Road, Lanham, MD 20706. Copies of the grant application package can be downloaded from the IRS Internet site at: *http://www.irs.ustreas.gov.*

FOR FURTHER INFORMATION CONTACT: Eli McDavid, Customer Education, Assistance Section, (202) 283–0181 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 3601 of the IRS Restructuring and Reform Act of 1998, Public Law No. 105–206, added new section 7526 to the Internal Revenue Code ("Code"). Section 3601 authorizes the IRS, subject to the availability of appropriated funds, to make grants to provide matching funds for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 3601 authorizes the IRS to provide grants to qualified organizations that provide legal assistance to low-income taxpayers having disputes with the IRS or operate programs to inform individuals, for whom English is a second language, about their rights and responsibilities under the Code.

Comments and Analysis

In Notice 99–9 (1999–4 IRB 23)(see § 601.601(d)(2)), the IRS solicited comments on a draft grant application package. In written submissions, commentators expressed concern about various matters, including the IRS's view of the scope of the grant program in terms of the types of organizations eligible to apply for and receive grant funds and the potential burden on clinics of gathering information to establish their clients' status as qualifying low income taxpayers. The IRS took all of the commentators' comments and concerns into consideration in formulating the final grant application package. The final grant application package reflects what the IRS believes is a proper balance between the commentators' concerns and the implementation of Congressional intent in enacting the grant program. Interested parties are encouraged to provide comments on the IRS's administration of the grant program on an ongoing basis.

Deborah A. Butler,

Assistant Chief Counsel, Office of Assistant Chief Counsel (Field Service).

[FR Doc. 99–8679 Filed 4–8–99; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 64, No. 68
Friday, April 9, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Access to Automated Boards of Trade

Correction

In proposed rule document 99–6829, beginning on page 14159, in the issue of Wednesday, March 24, 1999, make the following corrections:

1. On page 14160, in the first column, in the second full paragraph, in the 12th line, before "countries" add "country or within".

2. On the same page, in the third column, in the first full paragraph, in the 21st line from the bottom, "regulatory" should read "regulator".

3. On page 14161, in the third column, under the heading *A. Definitions*, in the first paragraph, in the 15th line, "FMC" should read "FCM", and in the 16th line, "rule" should read "Rule".

4. On page 14163, in the first column, in the first full paragraph, in the eighth line, "creates" should read "create".

5. On the same page, in the second column, in the third paragraph, in the 10th line, "A a" should read "As a", and in the 11th line, "alter-native" should read "alternative".

6. On page 14164, in the second column, in the first full paragraph, in the fourth line from the bottom, "aboard" should read "abroad".

7. On page 14165, in the third column, in the first full paragraph, in the seventh line, "petitioners" should read "petitioner", and in the fourth line from the bottom, "regulatory" should read "regulator".

8. On page 14166, in the first column, in the first full paragraph, in the 16th line, "30.30" should read "30.10".

9. On page 14169, in the third column, in the sixth line from the bottom, "memebers" should read "members".

10. On page 14170, in the second full paragraph, in the 11th line, "(or its affiliate" should read "(or its affiliate)".

11. On page 14171, in the second column, in the 13th line, "and" should read "any".

12. On page 14174, in the second column, in the second line, "2(a)91)(A)" should read "2(a)(1)(A)".

§ 1.71 [Corrected]

13. On page 14175, in the first column, in § 1.71(c)(1), in the first line, the paragraph designation "((c)(1)" should read "(c)(1)".

14. On the same page, in the same column, in § 1.71(c)(2), in the second line, delete "Medicare" and add "commission merchant".

[FR Doc. C9–6829 Filed 4–8–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-99-018]

RIN 2115-AA97

Safety Zone: Bergen County United Way Fireworks, Hudson River, Manhattan, NY

Correction

In the temporary final rule, document 99–8475, beginning on page 16642, in the issue of Tuesday, April 6, 1999, in the preamble, the DATES section is corrected to read as follows:

DATES: This rule is effective from 9:30 p.m. Saturday, April 10, 1999 until 11:00 p.m. Sunday, April 11, 1999. For rain date, refer to the regulatory text set out in this rule.

[FR Doc. C9–8475 Filed 4–8–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 29029; Amendment No. 93–77]

RIN 2120–AG45

Anchorage, Alaska, Terminal Area

Correction

In rule document 99–7625, beginning on page 14972, in the issue of Monday, March 29, 1999, make the following corrections:

§ 93.53 [Corrected]

1. On page 14976, in the second column, in § 93.53, in the first paragraph, in the 16th line from the bottom, "lat. 61°16′13″N." should read "lat. 61°17′13″N.".

§ 93.55 [Corrected]

2. On page 14976, in the third column, in § 93.55(b), in the second line, "an" should read "and".

3. On the same page, in the same column, in § 93.55(c), in the eighth line, "Seaward" should read "Seward".

4. On the same page, in the same column, in § 93.55(e), in the fourth line, "long. 149°43735″W." should read "long. 149°37′35″W.".

5. On page 14977, in the first column, in § 93.55(f), in the second line, "an" should read "and".

6. On the same page, in the same column, in § 93.55(f), in the 10th line, "61°40723″N." should read "61°07′23″N.".

7. On the same page, in the same column, in § 93.55(f), in the 17th line, "Rod" should read "Road".

§ 93.65 [Corrected]

8. On page 14977, in the third column, in § 93.65(d), in the second line, "AFB;" should read "AFB,".

[FR Doc. C9–7625 Filed 4–8–99; 8:45 am]
BILLING CODE 1505–01–D

federal register

Friday
April 9, 1999

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts; Proposed Rule

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This document is a proposal resulting from the reexamination by the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor (Wage and Hour) of regulations previously issued to govern the employment of "helpers" on federally-financed and assisted construction contracts subject to the prevailing wage standards of the Davis-Bacon and Related Acts (DBRA).

Based on the Department's experience both prior to and during implementation of the suspended regulations, and a reexamination of the reasons and data underlying promulgation of the suspended helper regulations, Wage and Hour proposes to amend the regulations to incorporate its longstanding policy allowing use of helpers only where their duties are clearly defined and distinct from journeymen and laborer classifications in the area.

DATES: Comments are due June 8, 1999.

ADDRESSES: Submit written comments to John Fraser, Deputy Administrator, Wage and Hour Division (ATTN: Government Contracts Team), Employment Standards Administration, U.S. Department of Labor, Room S–3020, 200 Constitution Avenue, N.W., Washington, DC 20210. Any commenters desiring notification of receipt of comments should include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone (202) 692–0062. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule does not contain any new information collection requirements and does not modify any existing requirements. Thus, the rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995.

II. Background

The Department's longstanding practice regarding the issuance of helper classifications, apart from the periods, as discussed below, when the suspended "helper" regulations were implemented, has been to allow the use of helpers on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where (1) the duties of the helper are clearly defined and distinct from those of the journeyman or laborer, (2) the use of such helpers is an established prevailing practice in the area, and (3) the term "helper" is not synonymous with "trainee" in an informal training program.

On May 28, 1982, Wage and Hour published revised final Regulations, 29 CFR Part 1, Procedures for Predetermination of Wage Rates, and 29 CFR Part 5, Subpart A—Davis-Bacon and Related Acts Provisions and Procedures (47 FR 23644 and 23658, respectively), containing the following four new provisions intended to allow contractors to expand their use of helpers on Davis-Bacon covered projects at wages lower than those paid to skilled journeyworkers:

- A new definition of the term "helper," allowing a helper's duties to overlap with those of a journeylevel worker:

A *helper* is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice. (29 CFR 5.2(n)(4), 47 FR 23667.)

- A provision allowing a helper classification to be included in the wage determination if it was an "identifiable" local practice. 29 CFR 1.7(d), 47 FR 23655.
- A provision limiting the number of helpers to two for every three journeyworkers. 29 CFR 5.5(a)(4)(iv), 47 FR 23670.
- A provision allowing the addition of helper classifications on contracts containing wage determinations without helper classifications. 29 CFR 5.5(a)(1)(ii)(A), 47 FR 23688.

These regulations were challenged in a lawsuit brought by the Building and Construction Trades Department, AFL–CIO, and a number of individual unions. On December 23, 1982, the U.S. District Court for the District of Columbia held that the new helper regulations conflicted with the Davis-Bacon Act and enjoined DOL from implementing the regulations. *See Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.*, 553 F. Supp. 352 (D.D.C. 1982). The court held that the regulations improperly defined the helper classification in terms of the level of supervision instead of in the traditional terms of the tasks performed. *Id.* at 355.

On appeal, the U.S. Court of Appeals for the District of Columbia affirmed in part and reversed in part. *Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.*, 712 F.2d 611 (D.C. Cir. 1983), *cert. denied*, 464 U.S. 1069 (1983). The court upheld the Department's authority to allow the increased use of helpers and concluded that the Secretary's regulatory definition of a helper was "not clearly unreasonable." *Id.* at 630. However, the court struck down the regulation allowing for the issuance of a helper wage rate where helpers were only "identifiable." *Id.* at 624.

On remand, the district court lifted the injunction as it applied to the helper definition, but maintained it as to the remaining helper regulations. The district court added that the Secretary "may, however, submit to this Court reissued regulations governing the use of helpers, and if these regulations conform to the decision of the Court of Appeals, they will be approved." 102 CCH Labor Cases ¶34,648, p. 46,702 (D.D.C. 1984).

In accordance with the district court's order, DOL published in the **Federal Register** (52 FR 31366, August 19, 1987) proposed revisions to the helper regulations to add the requirement that helpers must prevail in an area in order to be recognized. After analyzing the comments on this proposal, the Department, on January 27, 1989, published a revised final rule governing the use of semi-skilled helpers on

federal and federally assisted construction contracts subject to the Davis-Bacon and Related Acts (54 FR 4234).

On September 24, 1990, the district court vacated its injunction, and on December 4, 1990, Wage and Hour published a **Federal Register** notice implementing the helper regulations, effective February 4, 1991 (55 FR 50148).

In April 1991, Congress passed the Dire Emergency Supplemental Appropriations Act of 1991, Public Law 102–27 (105 Stat. 130), which was signed into law on April 10, 1991. Section 303 of Public Law 102–27 (105 Stat. 152) prohibited the Department of Labor from spending any funds to implement or administer the helper regulations as published, or to implement or administer any other regulation that would have the same or similar effect. In compliance with this directive, the Department did not implement or administer the helper regulations for the remainder of fiscal year 1991.

After fiscal year 1991 concluded and subsequent continuing resolutions expired, a new appropriations act was passed which did not include a ban restricting the implementation of the helper regulations. On January 29, 1992, Wage and Hour issued All Agency Memorandum No. 161, instructing the contracting agencies to include the helper contract clauses in contracts for which bids were solicited or negotiations were concluded after that date. On April 21, 1992, the U. S. Court of Appeals for the District of Columbia invalidated the regulation that prescribed a ratio of two helpers for every three journeyworkers as being without sufficient support in the record, but upheld the remaining helper provisions. *Building and Construction Trades Department, AFL–CIO* v. *Martin,* 961 F.2d 269 (D.C. Cir. 1992). To comply with this ruling, on June 26, 1992, Wage and Hour issued a **Federal Register** notice removing 29 CFR 5.5(a)(4)(iv) from the Code of Federal Regulations. 57 FR 28776. Further advice regarding implementation of the helper regulations in light of the lifting of the appropriations ban and the court action was given in All Agency Memorandum No. 163, dated June 22, 1992, and All Agency Memorandum No. 165, dated July 24, 1992.

Subsequently, Section 104 of the Department of Labor Appropriations Act of 1994, Public Law 103–112, enacted on October 21, 1993, prohibited the Department of Labor from expending funds to implement or administer the helper regulations during fiscal year 1994.

Accordingly, on November 5, 1993, Wage and Hour published a **Federal Register** notice (58 FR 58954) suspending the regulations governing the use of semi-skilled helpers on DBRA-covered contracts, and reinstating the Department's prior policy regarding the use of helpers. The Department of Labor Appropriations Act for fiscal year 1995 again barred the Department from expending funds with respect to the helper regulations. Section 102, Public Law 103–333. That prohibition extended into fiscal 1996 as a result of several continuing resolutions. There was no such prohibition in the Department of Labor's Appropriations Acts for fiscal 1996 and 1997, Public Law 104–134, enacted on April 26, 1996 and Public Law 104–208, enacted on September 30, 1996.

On August 2, 1996, Wage and Hour published in the **Federal Register** (61 FR 40366) a proposal to continue to suspend the implementation of the helper regulations while additional rulemaking procedures are undertaken to determine whether further amendments should be made to those regulations. On December 30, 1996, a final rule was published in the **Federal Register** (61 FR 68641) continuing the suspension. Pursuant to that final rule, the November 5, 1993 suspension of the helper regulations continues in effect until Wage and Hour either (1) issues a final rule amending (and superseding) the suspended helper regulations; or (2) determines that no further rulemaking is appropriate, and issues a final rule reinstating the suspended regulations.

By decision dated July 23, 1997, the U.S. District Court for the District of Columbia upheld the Department's December 30 final rule continuing the suspension of the helper regulations until the completion of rulemaking proceedings. *Associated Builders & Contractors, Inc.* v. *Herman,* C.A. No. 96–1490, 1997 WL 525268 (D.D.C. July 23, 1997). The Associated Builders and Contractors had filed suit challenging the Department's failure to immediately reinstate the rule when the appropriations ban was lifted. The district court dismissed the suit, ruling that any error in failing to act immediately to issue a new effective date for the rule was mooted by the suspension rulemaking completed in December. The court observed that the Department was not required to ignore changed circumstances in the two-and-a-half years since the rule was last implemented, and went on to hold that the December rule was a valid rule, supported by the record, and consistent with the requirements of the Davis-Bacon Act.

III. Discussion

During the period following the passage of the appropriations act for fiscal year 1996, Wage and Hour has carefully considered whether the suspended regulations governing the use of helpers should be modified. Seventeen years have passed since Wage and Hour first promulgated the regulations, and more than five years have passed since the Department's last attempt to put a revised version of those regulations in effect was curtailed by legislative action. The final helpers rule, which first became effective on February 4, 1991, was originally proposed and adopted because it was believed that it would result in employment practices on federal construction projects that more closely mirrored the private construction industry's practice of using helpers, which was assumed to be widespread, and would at the same time effect significant savings in federal construction costs. It was also believed that the expanded helper definition would provide additional job and training opportunities to unskilled workers, in particular women and minorities.

Implementation of the suspended helper definition and development of enforcement guidelines proved, however, to be more difficult than was anticipated, particularly in light of the court-ordered abandonment of the ratio provision.

Furthermore, the Department's experience with surveys conducted to implement the regulation and information from the surveys, and other data sources which were previously unavailable or not examined, indicated that the use of helpers was not as widespread as previously thought. Wage and Hour was also concerned about the possible negative impact of the suspended regulation on formal apprenticeship and training programs. These concerns, and the controversy evidenced by the rule's long history of litigation and by Congressional action over the 1989 final rule, led Wage and Hour to reexamine the basis and effect of the semi-skilled helper regulations.

As the Circuit Court of Appeals noted in its 1983 decision upholding the Secretary's authority to adopt a new definition of helper, it is within the Secretary's province to alter or overturn administrative rulings upon reconsideration of relevant facts. *See Building and Construction Trades Department, AFL–CIO* v. *Donovan,* 712 F.2d 611, 629 (D.C. Cir. 1983). The court

also made clear the authority of the Secretary to choose from among various regulatory programs the one he or she believes will best serve the purpose of the statute. As the Court of Appeals acknowledged, the Secretary is especially entitled to deference when his or her "decision turns on the enforceability of various regulatory schemes." *Donovan,* 712 F.2d at 629. An important factor to consider in making that choice is whether a particular regulatory scheme is sufficiently capable of practical and efficient administration and enforcement to achieve the statutory goal.

Wage and Hour has preliminarily concluded, after a full review of the suspended rule and all available information, that it is likely that the suspended rule cannot be enforced effectively. Furthermore, a key underpinning of the rule, that helper use is widespread, has been seriously undermined by an examination of all available data sources. Wage and Hour also believes that the suspended helper rule, if fully implemented, could have a negative impact on apprenticeship and training.

Wage and Hour therefore carefully considered a number of alternative approaches, focusing particularly on consistency with the purposes of the Act, enforceability, administrative feasibility, and ease of compliance. Although not a primary consideration, Wage and Hour also considered the potential impact of the various alternatives on employment and training opportunities for unskilled workers, including women and minorities. A necessary consideration was also consistency with the Department's "reinvention" efforts to revise and improve the Davis-Bacon wage determination process.[1]

After a thorough review, Wage and Hour has preliminarily concluded that the current, longstanding practice of recognizing helpers only where they are a separate and distinct class with clearly defined duties is the sole alternative considered that is both capable of effective enforcement and administration, and at the same time fully consistent with the purposes of the Act.

Comments are invited on the regulation proposed, as well as the other alternatives considered, including the Department's analysis and conclusions thereon.

Problems With the Suspended Helper Definition

1. The Suspended Helper Definition Would Be Difficult To Administer and Enforce

Wage and Hour has preliminarily concluded that the suspended regulation poses significant administrative difficulties, and cannot be effectively enforced in a manner consistent with the goals of the statute. The Department's experience in trying to develop enforcement guidelines to implement the helper regulations during the period they were in effect (from February 4, 1991 to April 10, 1991, and from January 29, 1992 to October 21, 1993) has led Wage and Hour to conclude that a supervisory-based, semi-skilled helper definition would be difficult to administer and enforce consistent with the purpose of the statute, namely to identify and preserve the locally prevailing wage for construction job classifications.

The suspended regulation defines a helper, not by the traditional test of the specific tasks performed by the worker, but as "a semi-skilled worker" who "may use tools of the trade at and under the direction and supervision of the journeyman." The suspended helper definition is the first and only instance of determining a Davis-Bacon classification solely on the basis of the worker's skill level and work-site supervision. Furthermore, the definition is internally inconsistent in that the examples given of the types of assistance the helper might provide to a journeyworker are not semi-skilled but rather are largely unskilled duties commonly performed by laborers.[2] Thus, the suspended definition specifically allows extensive overlap with duties performed by both journeylevel craft workers and laborers, instead of providing an objective means for distinguishing between helpers and other classifications.

During the period the suspended regulation was in effect, Wage and Hour tried to develop enforcement guidelines to implement the regulation. A fundamental problem that emerged was how to make a meaningful distinction between semi-skilled and skilled workers under the suspended definition. Wage and Hour has traditionally identified and differentiated among job classifications on the basis of the tasks performed by each classification. Among the issues Wage and Hour struggled with in trying to develop enforcement guidelines were: (1) What it means to be semi-skilled; (2) how to identify the line between a semi-skilled and skilled journeyworkers; (3) whether at some point a semi-skilled helper could acquire sufficient skills to qualify as a skilled worker, and how to determine when that had occurred; (4) whether a skilled worker could accept a position as a semi-skilled helper—and therefore be paid the lower helper wage rate—without violating the regulation or the intent of the Act; and (5) whether hiring as a semi-skilled helper a skilled worker who failed to disclose his skill level would violate the regulation or the Act.

The supervision aspect of the suspended helper definition likewise provides little assistance in distinguishing a helper from other classifications of workers. The definition states that a " 'helper' * * * works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman * * *." Supervision by a journeyworker is not a practical standard for distinguishing semi-skilled helpers from others on the worksite, as even laborers and journeylevel construction workers may work under the "direction and supervision" of other journeyworkers. The definition does not indicate the nature or amount of direction and supervision that helpers must receive to distinguish them from others on the worksite. The definition similarly provides little meaningful guidance for distinguishing between a "semi-skilled helper" who uses the tools of the trade, and a journeyworker with little experience, thus increasing the instances in which journeyworkers may be misclassified as helpers.

In addition, the definition's allowance of significant overlap between the duties of helpers and those of laborers increases the difficulty of identifying helpers as a distinct classification. Although the definition states that a helper must be "semi-skilled," the unskilled tasks listed in the definition as examples of a helper's duties are

[1] Wage and Hour is currently considering two potentially viable options:

(1) Through procedural changes and the application of technology, reengineer the current wage survey system to make it more efficient and to produce more accurate and timely wage determinations.

(2) Use redesigned and expanded BLS survey instruments—the Occupational Employment Statistics (OES) Survey and the National Compensation Survey (NCS, formerly known as "Comp 2000"), when these are available, and modified as may be needed—for Davis-Bacon prevailing wage/fringe benefits determination purposes. (The OES survey would use government-wide Standard Occupational Classification (SOC) definitions, which are currently undergoing review. See 60 FR 10998 (February 28, 1995), 60 FR 52284 (October 5, 1995), and 62 FR 36338 (July 7, 1997).)

[2] *E.g.*, "preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools. * * *" 47 FR 23667.

commonly performed by unskilled laborers. Thus, it would be difficult to distinguish between a laborer and a helper when a worker is performing only unskilled work. It may theoretically be possible for a helper under this definition to be distinguished from a laborer if the helper directly assists a particular class of journeyworker(s) and uses the tools of the trade. However, based on a further review of the duties of laborers who assist craft workers, together with the Department's experience in conducting conformance surveys during the brief period the suspended regulation was in effect, and the low wages paid helpers in the Current Population Survey (CPS), Wage and Hour now believes—contrary to its earlier assumptions—that many laborers also assist journeylevel workers and that laborers sometimes use tools of the trade to perform certain limited duties (e.g., demolition/removal of materials, building of scaffolding or forms). The overlap of duties therefore increases the likelihood that helpers will displace laborers, or that laborers will be misclassified as helpers. For example, a laborer working under the supervision of a journeyworker could be classified as a lower-paid "helper" simply by adding to his or her duties a few relatively low-skilled tasks.[3]

Wage and Hour recognized the subjectivity of the suspended definition when it first proposed the helper regulations in 1981, and sought "to protect against possible abuse" by proposing to establish a maximum ratio of helpers to journeyworkers. Wage and Hour originally proposed a 1:5 ratio, then settled on a ratio of 2 helpers for every 3 journeyworkers in the final regulation. (46 FR 41456, August 14, 1981; 47 FR 23658, May 28, 1982). While not a guarantee against misclassification in any particular case, the ratio would at least have decreased the likelihood of widespread misclassification between journeyworkers and helpers and provided one objective measure for compliance and enforcement. As the Court stated in its 1983 decision, the ratio "increased the likelihood that gross violations will be caught, or at least that evasion will not get too far out of line." 712 F.2d. at 630. In rejecting the 2:3 ratio in its 1992 decision on the ground that the rulemaking record lacked adequate support for that particular numeric ratio, the Court of Appeals deprived Wage and Hour of the mechanism designed to mitigate the possibility of abuse.

What remains is a vague standard that Wage and Hour has preliminarily concluded is not amenable to effective enforcement. Thus, Wage and Hour believes that the suspended regulation does not define helpers in a manner sufficient to differentiate readily between semi-skilled helpers and journeyworkers or laborers, as a practical matter, in day-to-day compliance and enforcement. Contractors would likely find it difficult to apply the regulation in classifying their workers and could find themselves unwittingly in violation of prevailing wage requirements due to misclassification. It would also be difficult to prevent unscrupulous contractors from taking advantage of the uncertainties created by the definition by intentionally misclassifying large numbers of workers.

The definitional problems discussed above are compounded by evidence that the term "helper" has multiple, quite different meanings within the construction industry. A review of comments received in response to the Department's rulemaking proposal to continue the suspension of the helper rule (61 FR 40366) disclosed that some contractors use the term "helper" to refer to skilled workers who are less experienced, *i.e.*, those who use tools of a trade to perform some tasks, but have not been trained in the full range of journeylevel work. Others use the term to refer to workers who perform unskilled laborer duties that are related to the work of skilled journeyworkers, as a short-term entry level job, or as a longer-term specialized worker to perform a limited range of work duties that somewhat overlaps those of the craft journeylevel worker. Still others use the term helper to refer to employees with little or no experience in the construction industry, *i.e.*, untrained entry level workers. Wage and Hour believes that these variations in the use of the term helper may exist in any given local area where use of helper classifications is prevalent. Direct assistance to, or supervision by, a journeyworker—the central component of the suspended regulatory definition—does not appear to be an important consideration for commenters in distinguishing helpers from other workers. Thus, it appears that the suspended definition, and perhaps any regulatory definition of helpers, does not adequately reflect the actual and varied practice in the construction industry as a whole or even in any particular area. However, Wage and Hour is interested in obtaining further evidence regarding how helpers are in fact used by contractors, particularly any data regarding whether there is in fact a generally recognized definition of helpers that is capable of being objectively identified.

Wage and Hour also believes it would be difficult for it to conduct a meaningful wage determination process concerning helpers in light of the likelihood that contractors responding to area wage surveys would ascribe very different meanings to the term "helpers." Thus, contrary to basic principles of the Davis-Bacon Act, it is assumed that workers who perform quite different work would likely be grouped together for purposes of determining prevailing wage rates for a single class of "helpers" within a given area. Moreover, Wage and Hour believes that some contractors may report workers as helpers, whereas other contractors might report the same type of worker as a laborer or craft journeyworker. Such data would not provide a meaningful basis for determining prevailing wage rates for the affected classifications, as required by the statute.

2. Helpers Are Less Widespread Than Previously Believed.

The belief that a distinct class known as "helpers" was in widespread use in the construction industry was a key assumption underlying the Department's development of the helper regulation. Indeed, in the preamble to the proposed rule published in 1987, the Secretary projected that helpers would be determined to be prevailing in two-thirds to 100% of all craft classifications. 52 FR 31366, 31369–370 (August 19, 1987).[4] The Department's actual experience with the helper regulation reflects a different picture.

During implementation of the suspended regulations, Wage and Hour collected data and determined whether helpers prevailed in various areas, in accord with the Court's ruling and the requirements of the now-suspended rule. Thus, implementation of the suspended regulations, albeit brief, did provide some data and insight into whether the use of helpers is, in fact, widespread in the construction industry.

The data Wage and Hour received in implementing the regulations failed to substantiate the prior assumption that the use of helpers is widespread.

[3] As set forth in the economic impact analysis set forth herein, the Current Population Survey (CPS) indicates that average earnings for helpers are less than the average earnings received by laborers.

[4] This was amended by the statement (without quantification) in the final rule that this would be reduced somewhat to the extent that collectively bargained rates were recognized as prevailing and did not provide for use of a helper classification. 54 FR 4242.

Whether analyzed by individual classifications covered or by surveys completed (each of which would include various classifications), the survey data showed a substantially lower rate of helper use than was anticipated. For example, a review of the wage schedules issued based on the 78 prevailing wage surveys completed during the period the rule was in effect,[5] revealed that the use of helpers prevailed with respect to only 69, or 3.9 percent, of the 1763 classifications included in wage schedules. Of the 69 classifications in which helpers prevailed, only 48, or 2.7 percent of the 1763 classifications, were in the non-union sector.[6] This is particularly noteworthy because it had been assumed in the past that helpers would almost always be found to prevail for classifications in the non-union sector.

Furthermore, use of helpers was not prevailing in any classifications in 43 of the 78 surveys conducted, covering 229 of 328 counties surveyed. The 78 surveys included two in which the resulting wage schedules contained only collectively bargained rates, ten surveys in which the schedules contained only open shop rates, and 66 mixed schedules, 51 of which contained 50 percent or more open shop rates. In 13 of the 35 surveys where a helper classification was issued, the only helper classification found to prevail was a union helper. A total of only 48 open shop helper classifications were found to prevail. Thus, in only 20 of the 78 surveys conducted, covering only 52 of 328 counties surveyed, were *any* open shop helper classifications found to prevail. *See* 61 FR 68644–68645.

The conclusion that helpers are less widespread than had been expected is also supported by the Economic Impact and Flexibility Analysis. The 1996 Current Population Survey (CPS), compiled and published by the Bureau of Labor Statistics (BLS) and the Bureau of the Census, which Wage and Hour believes is most likely to be representative of the distribution of employment of helpers in the construction industry, shows that helpers account for only 1.2 percent of total construction industry employment. Data from the Occupational Employment Statistics ("OES") program, which formed the basis for earlier analyses of helper employment, shows that helpers comprise 8.7 percent of the total construction workforce—higher than the CPS data but a much lower incidence than the Department's economic impact analysis in 1987 and 1989 would suggest. Furthermore, as is discussed more fully in the Economic Impact Analysis, *infra*, the OES figure is based on a helper definition that appears to correspond to what is commonly considered to be laborers' or tenders' work and does not appear to envision that helpers use tools of the trade—an important component of the definition in the suspended regulation. For this reason Wage and Hour believes that the OES figure significantly overstates the use of helpers in the construction industry.[7]

3. The Suspended Regulation Could Have a Negative Impact on Formal Apprenticeship and Training Programs

Wage and Hour has long been of the view that formal structured training programs are more effective than informal on-the-job training alone. Workers enrolled in formal apprenticeship training programs are more likely to achieve journeylevel status, and to do so more quickly, than workers trained informally, who may become stuck in low-paying jobs. Apprenticeship programs are also more likely to produce better skilled, more productive and safety-conscious workers.[8]

Although not its primary concern in this rulemaking, Wage and Hour is concerned about the potential impact of the suspended regulations on formal apprenticeship and training programs. An acknowledged goal of Wage and Hour when it proposed the suspended helpers definition was to encourage training for unskilled and semi-skilled workers, including in particular, women and minorities,[9] (47 FR 23647 (May 28, 1982)) and to that end Wage and Hour encourages formal training and work advancement to assure that workers—particularly young, minority, and female workers—are not frozen into low paying, low skilled jobs. Because the Department's experience suggests that some contractors may establish apprenticeship programs to take advantage of the lower wages which can be paid apprentices and trainees on Davis-Bacon projects,[10] Wage and Hour believes that the suspended helper regulations could undermine effective training in the industry if contractors use helpers, who may never become journeylevel workers, in lieu of apprentices and trainees participating in formal programs.

The Proposed Rule—Helpers as a Separate and Distinct Class with Clearly Defined Duties Which Do Not Overlap With Laborer or Journeyman Classifications

Wage and Hour proposes to amend the regulations to reflect the longstanding policy of recognizing helpers as a distinct classification on DBRA-covered work only where Wage and Hour determines that (1) the duties of the helpers are not performed by other classifications in a given area, *i.e.*, the duties of the helper are clearly defined and distinct from those of the journeyworker and laborer;[11] (2) the use of such helpers is an established prevailing practice in the area; and (3) the term "helper" is not synonymous

[5] Not included in the 69 helper classifications are instances where the number of helpers actually used or the number of contractors using helpers was not enough to provide an adequate basis for determining a prevailing wage rate. (Wage and Hour procedures at the time these surveys were conducted required that there be at least 6 workers employed by at least 3 employers if the contractor-response rate to the survey was less than 50 percent, and at least 3 workers employed by at least 2 employers if the response rate was 50 percent or more.)

[6] Fifteen of the 21 union-sector helpers classifications were elevator constructor helpers—a classification historically recognized nationwide in the union sector of the constructor trade.

[7] As discussed in the Impact Analysis, there are strengths and weaknesses to both the CPS and the OES data sources. For example, CPS is a household survey and it may be that a carpenter's helper would self-report his or her duties and occupation as a carpenter. The Impact Analysis also contains an alternative estimate of the number of helpers, utilizing the percentage of laborers in the CPS workforce to adjust the OES data. Under that methodology, described further in the Impact Analysis, helpers constitute 3.4% of the total construction workforce.

[8] Indicative of the lesser efficacy of informal training is the report issued by the Business Roundtable, which found that more than 60 percent of its member respondents said they could not find adequate numbers of skilled workers, and 75 percent said the trend had accelerated in the past ten years. 203 Daily Labor Report (DLR) A–9 (Oct. 21, 1997). The report associated the problem with the "lack of a unified approach to training nonunion trades workers," which surfaced 14 years ago, and "the lack of a consistent delivery method and commitment to training by other than a small minority of major contractors." Significantly, the Bureau of Apprenticeship and Training reports almost three times as many union as non-union apprentices (77,163 union apprentices, compared to 28,542 non-union apprentices, out of data reported for 36 states (14 states and the of Columbia do not maintain data byP union affiliation)).

[9] Wage and Hour has no data to support or refute the proposition that employment of helpers leads to an increase in minority and female skilled employment in the non-union sector.

[10] Effective training for targeted under-represented or economically disadvantaged workers who are not qualified for apprenticeship programs can be designed under the existing regulations. For example, the Step-Up Program developed by the Department of Housing and Urban Development (HUD) provides disadvantaged workers with training necessary for them to move on to other more skilled jobs or into a formal apprenticeship program.

[11] For example, roofing subcontractors, like other specialty subcontractors, often do not hire laborers, and might employ helpers to perform duties such as bringing materials to the roof and removing the old roof.

with "trainee" in an informal training program.[12]

This approach retains the duties-based classification distinction that provides an objective basis for administration and enforcement. It provides clear criteria to facilitate compliance. It is also consistent with the intent of the Davis-Bacon Act to assure that workers employed on federal and federally-assisted construction work be paid at least the wages paid to workers doing similar work on similar construction in the area. Lack of overlapping duties should also discourage contractor misclassification and/or abuse. This approach also encourages contractors to establish or participate in structured training programs leading to journeylevel status if they want to pay subminimum rates to entry-level or less skilled workers.

Unlike some of the other alternatives considered, this policy concerning helpers does not require Wage and Hour to make a fact-bound inquiry in each case to assess a worker's skill level and the nature of work-site supervision to determine whether the worker will be recognized as a "helper" for Davis-Bacon prevailing wage compliance and enforcement purposes. The requirement that helpers be separate and distinct from journeylevel workers and laborers should also facilitate collection of wage data to establish the prevailing wage rates to be paid on DBRA-covered construction work.

Although this proposal could be said to disregard local area practices in those instances where there may be a prevailing practice of employing "helpers" who do not meet the regulatory test set forth above, it appears that there is wide variation in how helpers are used, such that change in practices by contractors would be likely under any definition. Wage and Hour has been unable to identify a generally accepted definition of helper that corresponds to industry practices. Similarly, Wage and Hour has been unable to find a practical method of determining prevailing practice regarding how helpers are in fact utilized in an area.

[12] Where Wage and Hour has determined that this standard is met, the helper classification will be listed on the wage determination. Where no helper is listed on the wage determination, a contractor who believes that use of a helper classification meeting the criteria is prevailing in the locality may request an additional classification in accordance with 29 CFR 5.5(a)(1)(ii). Like other classifications, the particular duties such a helper may perform are determined by area practice.

Discussion of Other Alternatives Considered

1. Add a Ratio Requirement to the Suspended Helper Definition

Wage and Hour recognized that the broad scope of the helper rule's definition created the potential for abuse when it originally proposed to amend the regulations to allow the expanded use of helpers. The rule as proposed in 1981, as well as subsequent modifications, sought "to protect against possible abuse" by establishing a maximum ratio of helpers to journeyworkers. In 1992, the Court of Appeals ruling nullified the ratio of two helpers to every three journeyworkers because that specific numeric ratio had not been justified in the rulemaking record. As noted in the foregoing discussion, the inherent definitional problems regarding the suspended "helper" rule were compounded by elimination of the ratio provision, which was intended to ameliorate the possible overuse of helpers.

Since the Court of Appeals ruling does not prevent Wage and Hour from implementing a ratio, provided it has support in the rulemaking record, implementation of a new ratio was the first alternative considered. Implementation of a ratio provision would be essential if the suspended rule were implemented, since it would reduce the potential for abuse. However, adoption of such a provision would not address or resolve the inherent definitional problems discussed above, which make it extremely difficult under the suspended rule for contractors, as well as Wage and Hour and contracting agencies, to identify helpers for Davis-Bacon enforcement and wage determination purposes.

Furthermore, determination of an appropriate ratio standard —either a single nationwide ratio or local ratios— would be difficult. While a nationwide ratio would not accord with local practices, local ratios would present significant administrative and enforcement concerns, and would require substantial resources for implementation.

2. Change the "Helper" Definition To Emphasize the Semi-Skilled Nature of the Classification

The intention of Wage and Hour in promulgating the suspended rule was to allow the expanded employment on Davis-Bacon covered projects of helpers who are "semi-skilled," in other words, they perform some journeylevel duties, but not the entire range of journeylevel work. This attempt to define helpers as similar to but less skilled than a journeyworker resulted in a helper definition that is internally inconsistent, since the specific tasks listed as within the scope of a helper's duties are commonly performed by unskilled workers. Wage and Hour therefore considered possible modifications to the helper definition to emphasize the semi-skilled nature of helpers, elaborate on the supervisory relationship of the journeyworkers with the helper and the craft-specific assistance provided, and expressly limit the unskilled work the helper may perform.

This approach to the definition would help assure that the "helper" classification would be a true "semi-skilled" classification rather than a broad catch-all classification that can perform everything from laborer duties to an undefined assortment of skilled tasks overlapping the work of the journeyworkers. Such a definition would therefore aid in distinguishing helpers from laborers. However, this alternative would not resolve the administrative and enforcement problems that stem from the overlap of duties between journeyworkers and helpers. Furthermore, Wage and Hour is concerned that this type of definition, with its emphasis on semi-skilled duties, may result in helper classifications being used to replace, rather than supplement, the use of apprentices and trainees registered in bona fide training programs.

3. Define "Helpers" Based on the Bureau of Labor Statistics, Occupational Employment Statistics (OES) Dictionary of Occupations, Which Focuses on Unskilled Duties and the Worker's Interaction With Journeylevel Craft Workers

The Bureau of Labor Statistics Occupational Employment Statistics (OES) Dictionary of Occupations classification scheme includes a broad category titled "Helpers, Laborers, and Material Movers, Hand, Exclud[ing] Agriculture and Forestry Laborers." The work of helpers so defined in the construction industry is currently described generally as follows:

> Help workers in the construction trades, such as Bricklayers, Carpenters, Electricians, Painters, Plumbers and Surveyors. Perform duties such as furnishing tools, materials and supplies to other workers; cleaning work areas, machines, and tools; and holding materials or tools for other workers.

Use of this approach would provide for definitional consistency with other uses of the OES data and would take advantage of a standard definition that could be easily followed and understood by contractors from whom data is collected for various purposes,

including Davis-Bacon prevailing wage surveys. The OES definitions would focus on the role of the helper in assisting the journeyworker, in accord with the Department's intention that such a role be a key component of any definition selected.

These definitions, which would eliminate the "semi-skilled" characterization from the definition and highlight unskilled duties, could provide a more practical basis for distinguishing helpers from journeyworkers. On the other hand, laborers may often perform the same work encompassed within the OES helper definition, thereby raising significant problems in conducting wage and area practice surveys and in enforcement. It may be difficult for contractors to determine whether workers performing similar or identical duties are "laborers" or "helpers" when submitting Davis-Bacon survey data and in classifying workers on Davis-Bacon projects. In turn, Wage and Hour believes it would likely be difficult for it to determine whether contractors have properly classified workers paid as helpers as distinguished from laborers on Davis-Bacon projects, and therefore whether contractors have submitted accurate wage data in regard to helpers.

4. Explicitly Delineate the Semi-Skilled Tasks Performed by Each Helper Classification

The "job family" concept is currently employed for certain occupations under the McNamara-O'Hara Service Contract Act. An employee who performs only lower level duties that are associated with a particular job family may be classified and paid at the lower level helper rate; however, an employee who performs some lower level duties and some higher level duties must be paid the higher level journeylevel rate for all of the employee's work time.

In effect, this approach would allow for the expanded use of helpers, with differentiation based on the skill and knowledge required to perform particular duties. Once the duties or tasks that the helpers could perform were clearly defined, wage data could be collected on that basis, and contractors could reasonably be expected to comply with the wage requirements for the various classifications employed on their contracts, thereby facilitating administration and enforcement.

However, developing clear definitions of the duties or tasks that helpers to each journeylevel craft worker would be allowed to perform would be very difficult. It would require extensive occupational analyses and further rulemaking to promulgate helpers duties descriptions. Furthermore, this alternative—like other alternatives considered—presumably would result in uniform, nationwide definitions, departing from the principle that classifications are determined based on local area practice.

IV. Executive Order 12866; § 202 of the Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act

Wage and Hour has determined that this proposed rule should be treated as "economically significant" within the meaning of Executive Order 12866 and as a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act. This proposed rule would continue the status quo which has been in effect since November 1993, and therefore it would have no economic impact compared to current practices. However, various alternatives considered would result in potential savings which could be in excess of $100 million per year. Therefore a full economic impact analysis has been prepared.

However, for purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any federal mandate that may result in increased annual expenditures in excess of $100 million by state, local and tribal governments in the aggregate, or by the private sector. The requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1532, do not apply here because the proposed rule does not include a "Federal mandate." The term "Federal mandate" is defined to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate." 2 U.S.C. 658(6). Except in limited circumstances not applicable here, those terms do *not* include an enforceable duty which is "a condition of Federal assistance" or "a duty arising from participation in a voluntary program." 2 U.S.C. 658(5)(A)(I) and (7)(A). A decision by contractors to bid on Federal or Federally-assisted construction contracts is purely voluntary in nature, and their duty to meet Davis-Bacon requirements are "conditions of Federal assistance" which arise "from participation in a voluntary Federal program."

Similarly, the proposed rule is not an "unfunded mandate" within the meaning of Executive Order 12875 since it does not create any unfunded mandate not currently required by the Davis-Bacon and Related Acts and regulations thereunder. Furthermore, most of the funds necessary to pay the direct costs incurred by State, local and tribal governments under projects subject to the Davis-Bacon and related Acts are provided by the Federal Government.[13] Thus, any additional savings to States if the proposed rule increased use of helpers allowed on Davis-Bacon projects would not be significant.

V. Economic Impact and Flexibility Analysis on Davis-Bacon Helper Regulations

Summary

This document presents an Economic Impact Analysis comparing the proposed rule governing the use of helpers under the Davis-Bacon and Related Acts to the suspended rule. The basic process utilized to estimate the potential savings impact of the suspended regulation is to compare the occupational distribution of workers with, and without helpers. The alternative occupational employment patterns are then assessed in terms of their costs, based upon the annual earnings of the workers in the occupations affected by the suspended regulation: journeyworkers, apprentices, laborers, and helpers. The total wage bill with the suspended regulation in force is then subtracted from the wage bill estimated without the regulation. The difference, then, is the estimated savings.

The principal finding of the analysis is that any impact which would result from the increased use of helpers under the suspended rule, or any of the other alternatives considered, would be relatively modest. Potential savings are estimated to be from $72.8 million (utilizing Current Population Survey—CPS data) to $296.0 million (utilizing Occupational Employment Statistics—OES data). A methodology that is OES-based, but utilizes CPS data to estimate the number of laborers and helpers in the OES, provides an estimate of $108.6 million in possible savings. This alternative OES estimate was developed to compensate for the likelihood that OES data overestimate the number of helpers.[14] In any case, for reasons discussed below, Wage and Hour believes that the potential savings are likely to be closer to $72.8 million than to $296.0 million.

Relative to total construction expenditures covered by the Davis-

[13] It is significant that no such entities commented on the proposed rule published in August 1996.

[14] As explained in detail below, OES has no distinct classification for laborer. This characteristic of the OES program, in combination with the helper OES definition that includes workers who would normally be classified as construction laborers, inflates the OES helper total.

Bacon and Related Acts, these potential cost savings are very small, ranging from 0.2 percent to 1.0 percent. As discussed below, the estimated savings are far less than previously believed. For the most part, changes in the savings potential resulted from the use of improved data, including information derived from experience administering the suspended regulations, which temporarily expanded the use of helpers.

A. Introduction

Over the years, Wage and Hour has prepared and updated regulatory impact and flexibility analyses in connection with proposed and final regulations governing the use of semi-skilled helpers under the Davis-Bacon and Related Acts. Specifically, cost savings derived from the increased use of helpers were estimated in the August 14, 1981 proposed rule (46 FR 41456); the May 28, 1982 final rule (47 FR 23644); the August 19, 1987 proposed rule (52 FR 31366): and the January 27, 1989 final rule (54 FR 4234). Wage and Hour is now updating its cost estimates in connection with the proposed rule being published today, as set forth above.

This latest economic impact analysis has the advantage of utilizing information not previously available. For example, for the first time, survey data are available from a limited period when the regulations expanding the use of helpers were actually being implemented. Other data sources, utilized for the first time in such an analysis, include:

- Estimates of apprentice employment, based upon information provided by the Bureau of Apprenticeship and Training (BAT) from its Apprentice Information System (AIMS).
- F.W. Dodge construction reports.
- Detailed published occupational information and unpublished Bureau of Labor Statistics (BLS) tabulations from the Current Population Survey (CPS).
- National Occupational Employment Statistics (OES) Program data.

B. Assumptions and Data Sources

1. Assumptions

a. There is a strong positive correlation between the value of construction and the level of construction employment. This assumption is derived from the fact that labor costs generally are considered to constitute a significant proportion of total construction expenditures.

b. Under the suspended rule, helpers would replace laborers, apprentices, and journeyworkers in proportion to the number of workers in each of these occupations. The previous helper impact analysis assumed that helpers would only replace journeyworkers, and measured only the wage differentials from this replacement effect. This exaggerated the estimates of possible cost savings from the expanded use of helpers. Since wage rates generally reflect skill levels, the relative closeness of average annual earnings for helpers, laborers, and apprentices, compared to journeyworkers, strongly suggests that this assumption was incorrect. These wage data suggested that helpers (at $9,008 per year) are more likely to assume the duties of laborers (at $15,907 per year) and apprentices (at $12,564 per year) than journeyworkers (at $23,007 per year).[15] In fact, had the redistribution of employment been strictly in accordance with occupational wages, savings estimates would have been reduced significantly (see Estimating Process, Step 2).

The assumption that helpers would perform tasks previously performed by laborers and apprentices, as well as journeyworkers, is also based upon comments made by general contractors surveyed during the processing of helper conformance requests during the period February 1992 to October 1993. These comments indicated that the job title "laborer" was often applied to those performing the work of a "helper" (as defined in the suspended regulations). In order to take the middle ground for this analysis, it is assumed that when a helper classification is added, the jobs which would be performed by helpers were previously those of laborers, apprentices, and journeyworkers, in the same proportion as their relative occupational employment.

c. Utilizing the decision rules specified in Section 1.7(d), 29 CFR of the suspended regulations (see Section C, Part 2, Estimating Process, Step 3, below), helpers would be likely to "prevail" for a limited number of classes in areas that represent about half the construction employment covered by the Davis-Bacon and Related Acts. This estimate is based on the findings of prevailing wage surveys conducted during the period from February 1992 to October 1993. This is generally consistent with the small number of helpers relative to total construction employment found in the CPS, OES, and adjusted OES databases, only 1.3 percent, 8.7 percent, and 3.4 percent of construction employment, respectively.[16]

d. The proportion of employment by occupation would be consistent in all areas, and therefore the average national proportion of helpers, apprentices, laborers, and journeyworkers would be the same in areas where helpers prevail and where they do not. One could, of course, contend that a proportion higher than the national average should be used for helpers in the half of Davis-Bacon construction in which it is assumed that some helpers would prevail. However, some helpers would also be employed in the much larger group of classifications in which helpers would not be determined to prevail. Furthermore, an analysis of helper employment from Davis-Bacon surveys during the period when the suspended Regulation was in effect, found that in areas where helpers prevailed for one or more classifications, versus those where no helpers prevailed, the percent helpers were of total employment was almost identical (1.8 percent vs. 1.7 percent). Therefore, it is reasonable to assume that, on average, the level of helpers employed in areas where helpers prevail would be consistent with the level of helper employment overall.

e. Approximately one-third of public, non-Federal construction projects receive Federal assistance. This estimate is based upon the extensive experience of the Office of Federal Contract Compliance Programs (OFCCP) with F.W. Dodge data (which classifies public projects into Federal and public non-Federal classifications) to select construction sites for compliance inspections (only Federal and Federally-assisted projects are inspected by OFCCP). However, since not all types of Federal assistance trigger Davis-Bacon and Related Acts coverage, recent prevailing wage surveys were used to determine the average proportion of public, non-Federal construction covered by the Davis-Bacon and Related Acts. Based upon a study of 34 prevailing wage surveys, approximately 23 percent of the value of public non-Federal construction is covered by Davis-Bacon.

f. Except for the specific requirements of Davis-Bacon, such as those concerning helpers, primary characteristics of the labor force, i.e., occupational distribution, work assignments, etc. under Davis-Bacon are

[15] Source: 1996 BLS/CPS.

[16] Based upon the results of the methodology utilized, if the suspended regulations were in effect, the proportion of helpers to total employment would increase from 1.3 to 1.4 percent (CPS), 8.7 to 9.2 percent (OES) and 3.4 to 3.5 percent (Adjusted OES, hereafter "AdjOES").

comparable to those of the labor force not covered by prevailing wages.

2. Data Sources

Databases from which estimates were developed include:

- The BAT AIMS Reporting System (number of apprentices).
- The BLS/Bureau of the Census CPS (total construction industry employment, distribution of employment by selected occupation, and total annual earnings by occupation).
- The BLS OES Program (total construction industry employment and distribution of employment for selected occupational combinations).
- F.W. Dodge Construction Reports (construction value by ownership).
- Wage and Hour Division Regional Survey Planning Reports (RSPR) (public construction value by wage determinations reflecting union, open shop, and mixed wage rates).
- Information gained through conduct of Wage and Hour Division wage surveys.

There are significant differences in the CPS and OES data, some of which are due to the way the data are collected. The CPS is a household survey and relies on information provided by residents, whereas the OES is an establishment survey, with data usually provided by employers' personnel offices. The most apparent difference is in the total number of construction workers. In the CPS survey, the total number is much higher than in the OES, in part because the OES does not count the self-employed. (See tables in Section C.1.b., below.)

Although they constitute the best available data on occupational employment and wages in the construction industry, neither the CPS nor the OES is ideal for the purpose of this analysis. In fact, there are a number of differences between the two surveys that are of particular importance to this analysis. Specifically, each has strengths and weaknesses that impact the helper savings derived from database use.

For the purpose of estimating the impact of the proposed helper regulation, the Current Population Survey has the following strengths:

- The CPS survey includes those workers not covered by State unemployment insurance—primarily self-employed workers. This latter group is particularly important since the construction industry includes a significant number of workers (e.g., painters, carpenters, and plumbers) who are independent contractors, and therefore self-employed. Davis-Bacon prevailing wage requirements extend to every laborer and mechanic working on a covered project, regardless of contractual relationship, including the self-employed (independent contractors). Thus, the CPS number of construction workers, particularly the skilled workers who are more likely to be self-employed, reflects the universe of construction employment that is relevant to this analysis.
- The CPS provides separate employment totals for helper, apprentice, laborer, and journeyworker classes, all of which are needed to conduct this impact analysis.
- The CPS provides annual average earnings for the above classes. These data are also essential to estimating the impact of implementing the suspended rule.

For purposes of this analysis, the CPS survey program also has the following weaknesses:

- CPS is a household survey, rather than an establishment survey. In general, household surveys are likely to produce less accurate and consistent wage and classification information than establishment surveys. Self-reporting can result in some workers exaggerating their level of responsibility or wages. For example, a carpenter's helper may self-report his or her duties and occupation as carpenter.[17]
- The CPS data on annual earnings include wages earned outside construction, although construction is the industry of longest employment for each worker.
- Apprentice data, other than four separately identified classes, are combined with data for the associated journeyworkers. This has the effect of inflating journeyworker employment totals and lowering journeyworker wages.
- CPS responses can be provided by the worker's spouse or adult child if the worker is unavailable.

For the purpose of estimating potential savings, the OES Program exhibits three particular strengths:

- The OES Program utilizes standard occupational definitions, describing those workers who should be reported in each.
- Establishment (i.e., employer) personnel staff usually provides the survey data requested. This, together with the standard definitions, is likely to result in more accurate and consistent assignment of occupational classes, and more accurate wage reporting than that characteristic of surveys with self-reporting of workers, such as the CPS.
- The OES sample size (1.2 million employers) is larger than the CPS sample size (50,000), with one-third of the 1.2 million establishments surveyed each year. This large sample increases the number of participating establishments and reduces sampling error.

Weaknesses of the OES survey program, for purposes of this analysis, include:

- The OES does not provide a specific employment total for "laborer." Instead, laborers appear to be combined with craft helpers, as well as in an OES occupational category titled "All Other Helpers, Laborers, and Material Movers, Hand." Since it is assumed that some helpers would replace laborers under the suspended regulation, separate laborers and helpers totals are required for development of an accurate savings estimate.
- The OES definitions of the various helper classifications are very similar to unskilled laborers who provide assistance to journeyworkers. (Helpers "perform duties such as furnishing tools, materials and supplies to other workers; cleaning work areas, machines, and tools; and holding materials or tools for other workers.") Thus, the OES craft helper may often be an unskilled worker (and thus a laborer) rather than the semi-skilled worker required in the suspended regulation. As a result, laborer employment in the OES likely is, to a great extent, included with helper employment, thereby overstating the number of helpers.
- The OES survey collects only hourly wage data and does not collect annual hours worked data. At the same time, OES counts jobs rather than employees. As a result, if one person holds a job at more than one establishment, each one of those jobs will be counted, providing a total that exceeds the number of employees. Since labor costs are computed by multiplying the number of employees times annual CPS wages, the OES jobs count acts to overestimate costs.
- The OES excludes those who are self-employed (independent contractors) and those not covered by State unemployment insurance, thus significantly understating the total number of construction workers and the number of construction workers in the Davis-Bacon workforce.
- All apprentice data are combined with the journeyworker data, thus overstating the number of journeyworkers.

[17] A 1973 comparison of CPS earnings reported by those surveyed versus corresponding IRS records indicated that exaggeration is minimal. See Herriot, Roger A., and Spiers, Emmet F., "Measuring the Impact on Income Statistics of Reporting Differences between the Current Population Survey and Administrative Sources," Unpublished, 1973.

Based principally on the fact that at this time the OES does not have a separate classification for laborer, together with the fact that OES does not collect data on self-employed individuals, Wage and Hour believes that the CPS data are more likely than the OES data to be representative of the distribution of employment in construction by occupation for helpers and laborers. However, given that neither database is ideal for this purpose, and the fact that OES data are also relevant, both CPS and OES will be used to develop a range of possible savings estimates.

3. Measuring Helpers and Laborers

The major difficulty in developing an impact analysis to estimate potential savings from the expanded use of Davis-Bacon helpers is the dearth of data that reasonably represent the employment of helpers as defined by the suspended regulations, and of laborers. As noted in the Data Sources section, above, the Current Population Survey (CPS) does have separate categories for helper and laborer. However, the survey does not contain standard occupational definitions. Therefore, there can be no assurance that the number of those reported as helpers truly corresponds to the definition in the suspended regulation. For example, it is believed that some helpers—defined by the regulation as semi-skilled workers who may use tools of the trade—may actually be reported in the CPS as journeyworkers. On the other hand, many laborers may be reported as helpers.

Also, as noted above, although the Occupational Employment Statistics (OES) program includes the use of standard occupational definitions, it has *no* distinct category for laborers and the helper definitions used in the survey are quite different than the definitions in the suspended regulations. In fact, the OES helper definition likely includes many laborers who primarily work with or assist journeyworkers. Also, many of those reported as helpers under OES may not be semi-skilled at all, but unskilled workers who perform "duties of lesser skill" and do not have the knowledge and abilities necessary to use tools of the trade. Therefore, Wage and Hour believes that the OES employment totals for helpers likely include many laborers and unskilled helpers.

Since the OES database has no distinct class for laborer, the methodology to estimate potential savings using OES data requires development of a methodology for separating laborers from helpers. Therefore, OES classes were identified that by their terms appeared to primarily include laborers. The classes selected for that purpose included Helpers, Mechanic and Repairer; Helpers, Extractive Workers; Freight, Stock, and Material Movers, Hand; Vehicle Washers and Equipment Cleaners; and Other Helpers, Laborers, & Material Movers, Hand. On the one hand, given these job titles, some workers other than laborers would be included in these totals. On the other hand, the total number of laborers derived from this process (262,310) is well below what would be expected, leading one to believe that many laborers are included in the OES craft helper employment totals.

Corroborating evidence that this approach to the OES data without further adjustment overestimates the number of helpers, underestimates the number of laborers, and therefore overestimates potential savings, when utilized in a helpers impact analysis, may be found in both Decennial Census and CPS data. The Decennial Census estimates 949,000 construction laborers (a ratio of 1 laborer for every 5 journeymen), the CPS estimates 988,000 (1 laborer for every 4 journeymen), and OES estimates just 262,310 (1 laborer for every 10 journeymen).[18]

One way to compensate for this likely undercount of laborers and overestimate of helpers is to determine what percent laborers constitute in the CPS universe, and apply that to the OES data. The laborer category is chosen for this purpose because it is the least likely to suffer from error due to the reporting workers exaggerating their duties. In the CPS, the laborers constitute 18.8 percent of the total for journeymen, apprentices, laborers, and helpers. Multiplying that percent times the comparable OES total provides an adjusted number of OES laborers. Subtracting the adjusted laborer total from the laborer-helper combination (called helper) in OES yields an adjusted number for helpers. While this figure (and therefore the potential savings estimate) is probably an improvement over the unadjusted OES helper total, one cannot be certain of problems that may have inappropriately affected the resulting estimates, since two dissimilar databases have been combined.[19]

In light of these problems, it is advised that the estimates included in this impact analysis be considered with caution. *All* the figures provided should be treated as very rough measures that provide a general range within which possible savings could fall.

C. Key Data Elements, Estimating Process and Computations

1. Key Data Elements

a. Value of total construction starts, 1996:

Total: $321,736,705,000
Federally owned: $10,799,923,000
Public-Non-Fed: $87,122,347,000

b. Construction industry employment, and average annual earnings, 1996:

TABLE 1.—CONSTRUCTION INDUSTRY EMPLOYMENT AND AVERAGE TOTAL EARNINGS, TOTAL AND SELECTED OCCUPATIONS, CPS DATABASE, 1996

Data source and occupation	Total employment *	Percent of total	Average total annual earnings **
CPS	9,333,000	100.000	N.A.
Construction Trades, Except Supervisors and Apprentices ***	3,958,000	42.409	$23,007
Apprentices	192,000	2.057	12,564
Helpers	124,000	1.329	9,008
Laborers	988,000	10.586	15,907
Other Occupations ****	4,071,000	43.619	N.A.

*CPS data include the incorporated self-employed.
**Total average annual earnings data are for workers who reported their longest job during the year to be in the construction industry. The data are for 1996. Compensation for non-construction work by these workers is included.

[18] Since the OES universe is 60.7 percent of the CPS universe, one would expect the OES laborers total to be about 600,000.

[19] As discussed below, it is also necessary to utilize CPS wage data, thereby combining dissimilar data bases with attendant problems.

*** The CPS figure for four classes of apprentices is 48,000, while the BAT/AIMS total for all occupations is 192,000. For this purpose, the BAT apprentice figure was utilized, with the 144,000 "additional" apprentices subtracted from the CPS construction trades total, based on the assumption that a number of apprentices self-reported their occupation to be journeyworkers. AIMS data are generated as part of the national apprenticeship program and represent active apprentices at the end of the year. Since several states do not report these data, BAT staff estimated the U.S. total based upon the percent of construction employment represented by the missing States.

**** Other occupations include Executive, Administrative, and Managerial positions; Technical, Sales, and Administrative Support; etc., and others, such as those in Service occupations.

TABLE 2.—CONSTRUCTION INDUSTRY EMPLOYMENT AND AVERAGE TOTAL EARNINGS, TOTAL AND SELECTED OCCUPATIONS, OES DATABASE, 1996

Data source and occupation	Total employment *	Percent of total	Average total annual earnings **
OES	5,666,150	100.000	N.A.
Construction Trades Except Supervisors and Apprentices ***	2,064,900	36.443	N.A.
Apprentices	192,000	3.389	N.A.
Helpers ****	495,600	8.747	N.A.
Laborers *****	262,310	4.629	N.A.
Other Occupations	2,651,340	46.793	N.A.

* Excludes self-employed and those not covered by UI.

** Data on wages provided in hourly rates only.

*** Since all apprentices are combined with OES journeyworkers, the BAT apprentice total of 192,000 was subtracted from the OES journeyworker total.

**** Likely includes significant numbers of unskilled helpers and laborers who primarily work with or assist journeyworkers.

***** Figure taken from a catchall classification that includes "All Other Helpers, Laborers, And Material Movers, Hand," plus the OES classifications of Helpers, Mechanic and Repairer; Helpers, Extractive Workers; Freight, Stock, and Material Movers, Hand; and Vehicle Washers and Equipment Cleaners.

TABLE 3.—CONSTRUCTION INDUSTRY EMPLOYMENT AND AVERAGE TOTAL EARNINGS, TOTAL AND SELECTED OCCUPATIONS, ADJUSTED OES DATABASE, 1996

Data source and occupation	Total employment *	Percent of total	Average total annual earnings **
Adjusted OES	5,666,150	100.000	N.A.
Construction Trades Except Supervisors and Apprentices ***	2,064,900	36.443	N.A.
Apprentices	192,000	3.389	N.A.
Helpers ****	191,126	3.373	N.A.
Laborers	566,784	10.003	N.A.
Other Occupations	2,651,340	46.793	N.A.

* Excludes self-employed and those not covered by UI.

** Hourly rates only.

*** BAT figure subtracted from journeyworker total.

**** The OES reports a laborer/helper combination employment of 757,910 (Helpers, Laborers, & Material Movers, Hand). To separate laborer from helper, the percent that CPS laborers (988,000) are of the CPS employment sum (5,262,000) for journeyman, apprentices, laborers, and helpers (18.8 %) was multiplied by the comparable OES employment total (3,014,810). That product (566,784) then was adopted as the OES laborer total, and subtracted from the laborer/helper combination to yield the OES helper figure (191,126).

2. Estimating Process and Computations

A 5-step estimating process was developed and utilized to approximate annual savings that might have been realized in 1996 from the increased use of helpers, if the suspended regulations had been implemented:

Step 1: *Davis-Bacon Employment.* Determine the value of construction covered by the Davis-Bacon and Related Acts. This is achieved by adding 100 percent of Federal construction starts value to 23 percent of the value of public, non-Federal construction starts. Divide that sum by the total value of construction starts to obtain the proportion that Davis-Bacon covered construction is of total construction value. Multiply the Davis-Bacon proportion times total construction employment to estimate the share of total construction employment allocated to Davis-Bacon construction.

Value of DB Construction =
($10,799,923,000) + (0.23 × $87,122,347,000) = $30,838,062,810

Proportion DB is of Total =
$30,838,062,810/$321,736,705,000 = 9.585%

DB Employment =
CPS: 9,333,000 × 0.09585 = 894,568
OES: 5,666,150 × 0.09585 = 543,100
AdjOES: 5,666,150 × 0.09585 = 543,100

Step 2: *Occupational Employment, 1996.* First, the number of additional apprentices, estimated by BAT and above the CPS apprentice's estimate, was added into the CPS construction apprentices total, and subtracted from the journeyworkers total. The BAT apprentice total was similarly subtracted from the OES journeyman/apprentice combination, and established as the OES apprentice total, both unadjusted and adjusted.

Then, 1996 Davis-Bacon employment for the number of journeyworkers, laborers, apprentices, and helpers is obtained. (Note that these on-site construction workers are the only occupations likely to be impacted by any helper regulation.) This is accomplished for each occupational group by multiplying their corresponding adjusted CPS/OES proportions times total Davis-Bacon construction employment. However, since procedures in effect in 1996 prohibited the use of helpers on Davis-Bacon work, the number of helpers computed must be allocated (added) to the number of Davis-Bacon journeyworkers, laborers, and apprentices. This allocation is made in

proportion to each occupational group's composition of covered employment, in order to obtain final estimates of total Davis-Bacon employment for the selected occupational groups. (As indicated under Assumption 2, had this employment been distributed based upon closeness of occupational wage, helper savings would have been significantly reduced.)

DB Journeyworker Employment =
CPS: 894,568 × 0.42409 = 379,377
OES: 543,100 × 0.36443 = 197,922
AdjOES: 543,100 × 0.36443 = 197,922
DB Laborer Employment =
CPS: 894,568 × 0.10586 = 94,699
OES: 543,100 × 0.04629 = 25,140
AdjOES: 543,100 × 0.10003 = 54,326
DB Apprentice Employment =
CPS: 894,568 × 0.02057 = 18,401
OES: 543,100 × 0.03389 = 18,406
AdjOES: 543,100 × 0.03389 = 18,406
DB Helper Employment =
CPS: 894,568 × 0.01329 = 11,889
OES: 543,100 × 0.08747 = 47,505
AdjOES: 543,100 × 0.03373 = 18,319
Subtotals:
CPS: 504,366
OES: 288,973
AdjOES: 288,973

TABLE 4.—DATA FOR "NO HELPER" HELPER ADJUSTMENT

Occupation	CPS No.	CPS %	OES No.	OES %	AdjOES No.	AdjOES %
Journeyworker	379,377	0.77034	197,922	0.81966	197,922	0.73127
Laborer	94,699	0.19229	25,140	0.10411	54,326	0.20072
Apprentice	18,401	0.03736	18,406	0.07623	18,406	0.06801
Total	492,477	0.99999	241,468	1.00000	270,654	1.00000

Helper Adjustment

DB Journeyworkers =
CPS: 379,377 + (11,889 × 0.77034 = 388,536
OES: 197,922 + (47,505 × 0.81966) = 236,860
AdjOES: 197,922 + (18,319 × 0.73127) = 211,318
DB Laborers =
CPS: 94,699 + (11,889 × 0.19229) = 96,985
OES: 25,140 + (47,505 × 0.10411) = 30,086
AdjOES: 54,326 + (18,319 × 0.20072) = 58,003
DB Apprentices =
CPS: 18,401 + (11,889 × 0.03736) = 18,845
OES: 18,406 + (47,505 × 0.07623) = 22,027
AdjOES: 18,406 + (18,319 × 0.06801) = 19,652

Step 3: *Occupational Employment (52 FR 31368).* Determine Davis-Bacon employment for the number of journeyworkers, laborers, apprentices, and helpers likely to be employed if the Regulations published in 52 FR 31368 were in effect throughout 1996. For the employment half in which helpers do not prevail for any classes, Step 2 proportions are utilized; for the half in which helpers do prevail for a limited number of classes, proportions reflect average national employment of helpers.

Employment of DB Journeyworkers (CPS: 0.77034; OES: 0.81996; AdjOES: .73127) + Laborers (CPS: 0.19229; OES: 0.10411; AdjOES: .20072) + Apprentices (CPS: 0.03736; OES: 0.07623; AdjOES: .06801) =
CPS: 504,366
OES: 288,973
AdjOES: 288,973

Half DB Selected Occupation Employment (CPS: 252,183; OES: 144,487; AdjOES: 144,487)

Where Helpers Are *Not* Likely To Prevail:

Journeyworkers =
CPS: 252,183 × 0.77034 = 194,267
OES: 144,487 × 0.81966 = 118,430
AdjOES: 144,487 × 0.73127 = 105,659
Laborers =
CPS: 252,183 × 0.19229 = 48,492
OES: 144,487 × 0.10411 = 15,043
AdjOES: 144,487 × 0.20072 = 29,001
Apprentices =
CPS: 252,183 × 0.03736 = 9,422
OES: 144,487 × 0.07623 = 11,014
AdjOES: 144,487 × 0.06801 = 9,827

Half DB Selected Employment (CPS: 252,183; OES: 144,487; AdjOES: 144,487) Where Helpers *Are* Likely To Prevail for Some Occupations

TABLE 5.—DATA FOR HELPER ADJUSTMENT, INCLUDING HELPERS

Occupation	CPS No.	CPS %	OES No.	OES %	AdjOES No.	AdjOES %
Journey-worker	379,377	0.75219	197,922	0.68492	197,922	0.68492
Laborer	94,699	0.18776	25,140	0.08700	54,326	0.18800
Apprentice	18,401	0.03648	18,406	0.06369	18,406	0.06369
Helper	11,889	0.02357	47,505	0.16439	18,319	0.06339
Total	504,366	1.00000	288,973	1.00000	288,973	1.00000

Journeyworkers =
CPS: 252,183 × 0.75219 = 189,690
OES: 144,487 × 0.68492 = 98,962
AdjOES: 144,487 × 0.68492 = 98,962
Laborers =
CPS: 252,183 × 0.18776 = 47,350
OES: 144,487 × 0.08700 = 12,570
AdjOES: 144,487 × 0.18800 = 27,164
Apprentices =
CPS: 252,183 × 0.03648 = 9,200
OES: 144,487 × 0.06369 = 9,202
AdjOES: 144,487 × 0.06369 = 9,202
Helpers =
CPS: 252,183 × 0.02357 = 5,944
OES: 144,487 × 0.16439 = 23,752
AdjOES: 144,487 × 0.06339 = 9,159
Total:
Journeyworkers =
CPS: 194,267 + 189,690 = 383,957
OES: 118,430 + 98,962 = 217,392
AdjOES: 105,659 + 98,962 = 204,621
Laborers =
CPS: 48,492 + 47,350 = 95,842
OES: 15,043 + 12,570 = 27,613
AdjOES: 29,001 + 27,164 = 56,165
Apprentices =
CPS: 9,422 + 9,200 = 18,622
OES: 11,014 + 9,202 = 20,216
AdjOES: 9,827 + 9,202 = 19,029
Helpers =
CPS: 5,944
OES: 23,752

AdjOES: 9,159

Step 4: *Alternative Wage Bills.* Since half of Davis-Bacon employment is estimated to be in areas in which helpers would *not* be found to prevail for any classification, such employment would not have been affected by the proposed regulation change. For the remaining half, the occupational group totals—both before and after a possible regulation change—are multiplied by the corresponding annual salaries.[20]

Alternative Wage Bills (1996)

CPS: (388,536 × 23,007) + (96,985 × 15,907) + (18,845 × 12,564) = 8,939,047,752 + 1,542,740,395 + 236,768,580 = 10,718,556,727

OES: (236,860 × 23,007) + (30,086 × 15,907) + (22,027 × 12,564) = 5,449,438,020 + 478,578,002 + 276,747,228 = 6,204,763,250

AdjOES: (211,318 × 23,007) + (58,003 × 15,907) + (19,652 × 12,564) = 4,861,793,226 + 922,653,721 + 246,907,728 = 6,031,354,675

Suspended Regulation

CPS: (383,957 × 23,007) + (95,842 × 15,907) + (18,622 × 12,564) + (5,944 × 9,008) = 8,833,698,699 + 1,524,558,694 + 233,966,808 + 53,543,552 = 10,645,767,753

OES: (217,392 × 23,007) + (27,613 × 15,907) + (20,216 × 12,564) + (23,752 × 9008) = 5,001,537,744 + 439,239,991 + 253,993,824 + 213,958,016 = 5,908,729,575

AdjOES: (204,621 × 23,007) + (56,165 × 15,907) + (19,029 × 12,564) + (9,159 × 9008) = 4,707,715,347 + 893,416,655 + 239,080,356 + 82,504,272 = 5,922,716,630

Step 5: *Estimated Annual Savings.* Subtract the Davis-Bacon wage bill computed assuming helper employment from the comparable wage bill with no helpers employed. The difference is an estimate of potential 1996 savings. Divide that total by the value of Davis-Bacon construction to obtain savings as a percent of 1996 Davis-Bacon-covered construction starts.

Short-term Annual Savings:

CPS: 10,718,556,727 − 10,645,767,753 = *$72,788,974*

OES: 6,204,763,250 − 5,908,729,575 = *$296,033,675*

AdjOES: 6,031,354,675 − 5,922,716,630 = *$108,638,045*

[20] Note that this methodology counts each additional helper towards potential cost savings. However, results of relevant Davis-Bacon wage surveys indicate that only a small proportion of helpers would be in classifications in which helpers prevail, thereby substantially reducing savings realized.

Savings as a Proportion of the Value of 1996 Davis-Bacon Construction Starts =

CPS: $72,788,974/$30,838,062,810 = 0.00236 or 0.236 percent;

OES: 296,033,675/$30,838,062,810 = 0.00960 or 0.960 percent;

AdjOES: $108,638,045/$30,838,062,810 = 0.00352 or 0.352 percent.

D. Findings

Given the above assumptions, data, process, and computations, several key findings are established concerning the economic impact of the suspended regulation:

1. *Davis-Bacon Employment.* The workforce on construction projects covered by the Davis-Bacon and Related Acts is estimated to be under 1 million workers (CPS: 894,568; OES: 543,100; AdjOES: 543,100).

Occupational Employment (No Helpers). Davis-Bacon employment for relevant occupations was estimated without the employment of helpers. Under this scenario, employment for those occupations impacted directly by the helper regulation was as follows:

Journeyworkers—CPS: 388,536; OES: 236,860; AdjOES: 211,318; Laborers—CPS: 96,985; OES: 30,086; AdjOES: 58,003; and Apprentices—CPS: 18,845; OES: 22,027; AdjOES: 19,652.

Occupational Employment (Helpers). In this case, Davis-Bacon occupational employment in areas where it is assumed helpers would prevail for at least one classification was as follows:

Journeyworkers:
- CPS: 383,957
- OES: 217,392
- AdjOES: 204,621

Laborers:
- CPS: 95,842
- OES: 27,613
- AdjOES: 56,165

Apprentices:
- CPS: 18,622
- OES: 20,216
- AdjOES: 19,029

Helpers:
- CPS: 5,944
- OES: 23,752
- AdjOES: 9,159

Wage Bills and Savings. Total earnings for each of the two employment patterns described above were estimated as follows:

Without helpers:
- CPS: $10,718,556,727
- OES: $6,204,763,250
- AdjOES: $6,031,354,675;

With helpers:
- CPS: $10,645,767,753
- OES: $ 5,908,729,575
- AdjOES: $ 5,922,716,630

Therefore, possible savings are estimated to range from $72.8 million (CPS) or 0.236 percent of the value of 1996 Davis-Bacon construction starts, to $108.6 million (AdjOES) or 0.352 percent, to 296.0 million (OES) or .960 percent. However, it should be noted that these short-term savings realized through increased use of helpers could be partially offset in the long run by higher journeyworkers' wage rates.

This follows from the fact that helper use has been most extensive among contractors who traditionally do not sponsor formal apprenticeship and training programs. As increased helper use on Davis-Bacon contracts might lead to contract gains for such employers, reduced use of apprenticeship programs might lead to a somewhat smaller supply of journeyworkers. This could cause a modest increase in journeyworkers' wage rates, in the long run.

These findings indicate that previous Department of Labor estimates of savings that could be attributed to the expanded use of helpers have been greatly overstated. For example, while the current analysis places possible annual savings from $72.8 to $108.6 to $296.0 million, earlier estimates (1982 and 1989) placed such savings at $687.1 million and $760.5 million (all 1996 dollars). While the current estimates' ratios of savings to the value of Davis-Bacon construction starts are only 0.00236 to 0.00352 to 0.00960, estimates of the comparable 1982 and 1989 savings ratios would have been over twice what today's data indicate. In addition, some State laws restrict the use of helpers on public construction, thereby further reducing potential savings from those estimated for Federal regulations that expand the use of helpers.

Several factors appear to be responsible for the wide variation in savings estimates:

- The value of construction covered by the Davis-Bacon and Related Acts, as a proportion of total construction value, about 9.6 percent, is significantly less than was previously assumed. Earlier estimates of 18 percent and higher appear to have been based upon the assumption that all non-Federal public construction is covered. However, examination of available information does *not* confirm that assumption. For example, experience working with F.W. Dodge information indicates that the majority of city, county, and State-owned construction has no Federal assistance. Specifically, by identifying non-Federal public construction projects through F.W. Dodge reports, and then determining their Davis-Bacon coverage through completed wage survey forms for those projects, it

becomes clear that the majority of such construction is not covered.

• The previously utilized assumption that helpers would prevail for 67 percent to 100 percent of the trades (and on projects representing 67 to 100 percent of the Davis-Bacon employment) is not confirmed by survey experience under the previously proposed regulations or by other relevant information. For the 78 wage surveys conducted under the new regulations, rates were recommended for helpers in one or more classifications in just 35 of these data collection efforts. Although all 12 open shop areas surveyed found one or more helper classifications to prevail, they prevailed for only 20 percent of the classes represented. For the 64 mixed area surveys, helpers were found to prevail in 30 surveys, but for only 6 percent of the classes. No helpers were found to prevail in the two area surveys that found all prevailing rates to be union. Furthermore, 30 percent of the helper classifications that were found to prevail were union helpers—especially elevator constructor helpers, a classification negotiated nationwide in that trade. Therefore, the assumption in this analysis that one or more helper classifications prevail in areas that represent half of Davis-Bacon covered employment is probably inflated in terms of estimating the actual prevalence of helpers.

• Previous estimates of the proportion that helper employment is of total construction employment appears to have overstated that classification's workforce standing. For example, the 1976–77 compensation study, upon which many of the early helper savings estimates were based, found that helpers comprised just 3.2 percent of the survey universe. Because of the survey's concentration in metropolitan/union areas and the fact that enough helper data were found to publish for only four construction trades, that proportion was doubled and tripled when developing alternative savings estimates. Later estimates of helper employment proportions assumed that 15 percent of total construction employment fell into that classification. As noted above, CPS, AdjOES, and OES estimates are approximately 1.3, 3.4, and 8.7 percent, respectively.

• The assumption that helpers will replace journeyworkers exclusively was not supported by experience during implementation of the suspended regulation. For example, personnel who processed helper conformance actions have indicated that often construction contractors surveyed reported that workers meeting the definition of helper in the regulations were classified by the contractors as laborers. Similarly, the low wage rates paid helpers are indicative of their lower skill level, increasing the likelihood of substitution for laborers. Recognizing helpers may perform work of laborers and apprentices, as well as journeyworkers, narrows the differential between the wage bills incurred before and after helper expansion. In fact, in the short run, helpers may disproportionately assume work of laborers and apprentices. In the longer run, supply problems in obtaining quality skilled journeyworkers may well appear, as helpers displace apprentices, and subsequently, apprentice-trained journeyworkers.

E. Possible Economic Impact of Helper Alternatives

A number of different approaches were considered in developing the proposed regulation to define the circumstances in which helpers may be used on Davis-Bacon projects. In addition to the proposal that helpers only be permitted where the prevailing practice is to use helpers with duties that do not overlap with those of a journeyworker or laborer, Wage and Hour considered four other alternatives: (1) Add a ratio requirement to the suspended helper definition; (2) change the helper definition to emphasize the semi-skilled nature of the classification; (3) define helpers in accordance with the OES definition which focuses on unskilled duties; and (4) delineate the semi-skilled tasks performed by each helper classification.

Section D of this Impact Analysis estimated helper use under the suspended rule in areas where helpers would prevail. Alternatives 1–4 involved changing the helpers definition or their use. Each alternative would likely result in greater use of helpers than under the proposed rule, but less than under the suspended rule. Similarly, the economic impact of the alternatives would presumably yield some portion but not all, of the savings anticipated under the suspended rule.

Given that each alternative encompassed many possible variations and outcomes, and that there is no data source that would provide appropriate information on these variations and outcomes, it is not possible to provide detailed estimates of the economic impacts of the four alternatives. However, discussed below are the factors likely to affect the economic impact of the alternatives.

Proposed Rule—Helpers Used in Accordance With Current Practice

The proposed rule would reflect the longstanding, and current, practice of recognizing helpers only where helper duties are separate and distinct from those of journeyworkers and laborers. As it would continue a practice that has been in effect for many years, the proposed rule is expected to have no economic impact.

Alternative 1—Add a Helper to Journeyworker Ratio Requirement to the Suspended Rule

Adding a ratio, whether one ratio that applies nationally or a number of local ratios, to the suspended rule would have the effect of limiting the number of helpers allowed on Davis-Bacon sites, as compared to the number that could be utilized under the suspended rule alone. Where the practice of employers under the suspended rule without a ratio would result in the use of more helpers than allowed under a ratio cap, the economic impact would be lower savings with the cap than without it. On the other hand, allowing helpers to be used under a rule that combined the suspended rule with a ratio would allow greater helper use than exists currently and would likely result in savings. The amount of savings to be achieved would depend on the ratio chosen.

Alternative 2—Emphasize Semi-Skilled Nature of the Helper Classification

Changing the suspended rule to emphasize the "semi-skilled" nature of the helper classification would likely result in less use of helpers than there would be under the suspended rule, but more than under the rule currently in effect. The extent of helper use would depend on the scope of duties allowed under such a helper classification. Thus, some savings would be achieved, but less than would be expected under the suspended rule. The amount of savings would also be impacted by how such a definition affected the relative substitution of helpers for laborers and journeyworkers. As it could be expected that emphasizing the semi-skilled nature of the helper classification would result in little or no substitution for laborers, the decrease in savings as compared to the suspended rule would be less dramatic.

Alternative 3—Emphasize Unskilled Duties

As with Alternative 2, defining helpers by limiting their duties to unskilled duties would also result in less use of helpers than there would be under the suspended rule, but more than under the rule currently in effect.

While some savings would be achieved, this amount would be less than expected under the suspended rule. Again, the effect of the rule on the substitution of helpers for laborers versus journeyworkers would impact the degree of savings. Under this alternative, it could be expected that few, if any, helpers would replace journeyworkers, resulting in greater savings than would be expected under Alternative 2.

Alternative 4—Delineate Semi-Skilled Tasks for Each Helper Classification

The extent of savings, as compared to current practice, under this alternative would depend on the scope of the tasks allowed to be performed by helpers assisting in each craft. Again, savings would be expected relative to current practice, but in an amount less than would be achieved under the suspended rule. As in Alternative 2, limiting helpers to semi-skilled duties would likely result in less substitution for laborers, and the decrease in savings as compared to the suspended rule would be less dramatic.

F. Benefits

Wage and Hour originally believed that the primary benefits to be gained from promulgation of the suspended helper regulation would be a construction workforce on Federal construction projects that more closely mirrored the private construction workforce's widespread use of helpers, and significant cost savings in Federal construction costs. As is more fully explained previously in this document, Wage and Hour now believes that the use of helpers is less widespread than originally thought and that the cost savings would be a small fraction of the amount originally computed.

On the other hand, this proposal would allow Wage and Hour to arrive at a definition of helper that would be capable of effective administration and enforcement consistent with the purpose of the Davis-Bacon Act. The alternatives considered would lessen the overlap with other classifications, and would also provide a more objective means by which both government agencies and contractors can distinguish between helpers and other classifications, consistent with the underlying purpose of the Davis-Bacon Act. All of the alternatives would to varying degrees ameliorate the potential for misclassification and abuse of helper classifications, thereby providing fairer competitive bidding on Federal and federally-assisted construction projects. Finally, Wage and Hour believes that this proposal could help preserve effective training in the construction industry. A discussion of the possible benefits provided by each of the specific proposed alternatives immediately follows.

The proposed rule would continue the current practice which requires that helper duties be separate and distinct from those of the journeyworker and laborer. By retaining the traditional duties-based classification distinction, it would provide clear criteria that can be objectively administered and enforced, and that facilitate contractor compliance. Because classifications would not have overlapping duties under this alternative, there would be less opportunity for contractor misclassification and abuse. Wage and Hour also believes that this approach would encourage contractors to establish or participate in structured training programs that would aid workers in achieving journeylevel status.

Alternative 1, which would provide use of a national ratio, or a number of local ratios, would reduce to some extent the potential for abuse of the helper classification by contractors seeking to gain an unfair competitive advantage, whether implemented in conjunction with the suspended helper definition or with one of the other proposed alternatives.

Alternative 2 would change the helper definition to emphasize the semi-skilled nature of the classification by modifying the suspended definition to emphasize semi-skilled duties. The modified definition under this alternative might possibly aid in differentiating the helper from journeyworker and laborer classifications by emphasizing the "semi-skilled" nature of the work performed by helpers, the supervisory relationship between journeyworkers and helpers, and the craft-specific assistance provided by the helper. This definition would also expressly limit the unskilled work the helper may perform in an attempt to distinguish helpers from laborers.

Alternative 3, which would utilize the OES definition of helper, would provide a more objective definition of helper than the suspended definition. By focusing on unskilled duties and the helper's interaction with journeylevel craft workers, this alternative could provide a more practical basis for distinguishing helpers from journeyworkers.

Alternative 4, which would in essence adopt the "job family" concept currently utilized under the McNamara-O'Hara Service Contract Act, would allow for the expanded use of helpers, with differentiation based on the skill and knowledge required to perform various duties. This would result in clearer definitions of helper classifications on a craft-by-craft basis, which would facilitate administration and enforcement.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, Public Law 96–354 (94 Stat. 1164; 5 U.S.C. 601 *et seq.*), Federal agencies are required to prepare and make available for public comment an initial regulatory flexibility analysis that describes the anticipated impact of proposed rules that would have a significant economic impact on small entities. Wage and Hour is of the view that a Regulatory Flexibility Analysis is not necessary for the proposed rule because the proposed regulation would not result in any changes in requirements for small businesses. Furthermore, if Wage and Hour were to propose implementing the suspended rule or any of the alternatives considered, it would not be more costly than current regulatory requirements and therefore would not have a significant economic impact on a substantial number of small entities. Furthermore, Wage and Hour is of the view, as discussed in the preamble, that neither the suspended rule nor any of the alternatives considered would accomplish the objectives of the statute. Notwithstanding, because of widespread interest in the rule, Wage and Hour has prepared the following Regulatory Flexibility Analysis, which compares the proposed rule to the suspended rule and should be considered in conjunction with the analysis set forth in the preamble and the analysis under Executive Order 12866.

(1) Reasons Why Action Is Being Considered

In 1982, over fifteen years ago, Wage and Hour published final regulations which, among other things, would have allowed contractors to use "semi-skilled" helpers on Davis-Bacon covered projects at wages lower than those paid to skilled journeyworkers. These rules represented a sharp departure from Wage and Hour's longstanding practice of not allowing overlap of duties between job classifications. To protect against possible abuse, a provision was included limiting the number of helpers which could be used on a covered project to a maximum of two helpers for every three journeyworkers. This ratio provision was subsequently invalidated by the U.S. Court of Appeals for the District of Columbia.

As discussed in greater detail above, during its existence, the helper rule has been the subject of considerable

litigation and Congressional attention. The rule has been enjoined by the district court and modified on two occasions as a result of court of appeals decisions. It has twice been implemented for short periods of time. It has also been suspended on two occasions as the result of Congressional action prohibiting Wage and Hour from spending any funds to implement or administer the helper rule. On December 30, 1996, the suspension was continued pending completion of this rulemaking.

The helper rule was originally proposed and adopted because it was believed that it would result in a construction workforce on Federal construction projects that more closely mirrored the private construction's "widespread" use of helpers and, at the same time, effect significant cost savings in federal construction costs. It was also believed that the expanded definition would provide additional job and training opportunities for unskilled workers, in particular women and minorities. The Department's subsequent efforts to develop enforcement guidelines led it to conclude that administration of the revised helper rule would be much more difficult than anticipated, especially in light of the court's invalidation of the ratio provision. Moreover, new data, including the Department's experience implementing the helper regulations, indicated that the use of helpers is not as widespread as previously thought. Wage and Hour is also concerned about the possible negative effect of the helper regulations on formal apprenticeship and training programs. These factors, and the obvious controversy evidenced by the rule's long history of litigation and by Congressional actions prohibiting implementation of the rule, led Wage and Hour to reexamine the helper rule and consider several alternative approaches to govern employment of helpers on DBRA-covered projects.

(2) Objectives of and Legal Basis for Rule

These regulations are issued under the authority of the Davis-Bacon Act, 40 U.S.C. 276a, *et seq.*, Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix, and the Copeland Act, 40 U.S.C. 276c. The objective of these regulations is to establish the most appropriate approach to governing employment of helpers on DBRA-covered projects. Wage and Hour believes the proposed rule is the only alternative considered that is both consistent with the purposes of the Davis-Bacon Act and capable of practical and efficient administration, enforcement, and compliance.

(3) Number of Small Entities Covered Under the Rule

Size standards for the construction industry are established by the Small Business Administration (SBA), and are expressed in millions of dollars of annual receipts for affected entities, *i.e.*, Major Group 15, Building Construction—General Contractors and Operative Builders, $17 million; Major Group 16, Heavy Construction (non-building), $17 million; and Major Group 17, Special Trade Contractors, $7 million. The overwhelming majority of construction establishments would have annual receipts under these levels. According to the Census, 98.7 percent of these establishments have annual receipts under $10 million. Therefore, for the purpose of this analysis, it is assumed that virtually all establishments potentially affected by this rule would meet the applicable criteria used by the SBA to define small businesses in the construction industry.

As explained above, however, the proposed rule would cause no impact on small entities since it does not propose to make any changes in requirements applicable to small businesses. Implementation of the suspended rule or any of the alternatives considered would expand the use of helpers and could result in some savings. The impact would depend upon the specifications of the alternative relative to current practice. Even relative to unlimited use, however, possible savings would be very modest, ranging from 0.239 percent of the value of Davis-Bacon annual construction starts (CPS), to 0.359 (adjusted OES), and 0.958 (unadjusted OES) percent.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

There are no reporting or recording requirements for contractors under the proposed rule. Nor would there be any such requirements under the suspended rule or any of the alternatives considered. The compliance requirements under any rule regarding helpers would merely require contractors who use helpers to do so in accordance with a chosen definition and pay helpers at least the appropriate prevailing wages for helpers as set by the Department.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There are currently no Federal rules that duplicate, overlap or conflict with this proposed rule.

(6) Differing Compliance or Reporting Requirements for Small Entities

The proposed rule contains no reporting, recordkeeping, or other compliance requirements specifically applicable to small businesses or that differ from such requirements applicable to the Davis-Bacon contracting industry as a whole. Such different treatment would not seem feasible since virtually all employers in the industry are small businesses.

(7) Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements

The compliance and reporting requirements of the proposed rule, the suspended rule, and each of the alternatives considered, as well as the advantages and disadvantages of each, are described in the preamble above, which discusses issues such as ease of compliance for contractors.

(8) Use of Other Standards

The Davis-Bacon Act requires the Secretary to determine the prevailing wages and fringe benefits to be paid to the classes of workers to be employed on a project. Therefore compliance by contractors can only be achieved through design standards. The proposed rule, the suspended rule, and the alternative approaches to employing helpers on DBRA-covered projects are discussed in the preamble above and are not repeated here.

(9) Exemption From Coverage for Small Entities

Exemption from coverage under this rule for small entities would not be appropriate given the statutory mandate of the Davis-Bacon Act that all contractors (large and small) performing on DBRA-covered contracts must pay its workers prevailing wages and fringe benefits as determined by the Secretary of Labor. Further, exclusion of such small businesses from data collected to determine prevailing wages and fringe benefits for helpers would be impractical and would distort such determinations, possibly to the detriment of small businesses.

VII. Document Preparation

This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed at Washington, D.C., this 1st day of April, 1999.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 99–8566 Filed 4–7–99; 8:45 am]

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federal register

Friday
April 9, 1999

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: Amendment for Hazardous Air Pollutants Emissions From Magnetic Tape Manufacturing Operations; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6321–8]

RIN 2060–AH71

National Emission Standards for Hazardous Air Pollutants for Source Categories: Amendment for Hazardous Air Pollutants Emissions From Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to amend National Emission Standards for Hazardous Air Pollutants (NESHAP) From Magnetic Tape Manufacturing Operations, codified as subpart EE to 40 CFR part 63. The existing standards allow facility owners or operators to leave a limited number of solvent storage tanks uncontrolled if they control coating operations at a level greater than the standards otherwise require. EPA is publishing this final amendment to provide another compliance option for facility owners and operators. If facility owners or operators increase the control of hazardous air pollutant (HAP) emissions from coating operations beyond what the standards otherwise require, this final amendment gives them the choice of leaving a limited number of solvent storage tanks and/or a limited number of pieces of mix preparation equipment uncontrolled. EPA believes this final amendment will not decrease the stringency of the existing standards.

DATES: *Effective Date.* This final rule amendment is effective on June 8, 1999 without further notice, unless EPA receives adverse comments on this rulemaking by May 10, 1999 or a request for a hearing concerning the accompanying proposed rule is received by EPA by April 19, 1999. If EPA receives timely adverse comment or a timely hearing request, EPA will publish a withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: *Comments.* Interested parties may submit comments on this rulemaking in writing (original and two copies, if possible) to Docket No. A–91–31 to the following address: Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street, S.W., Room 1500, Washington, D.C. 20460. Public comments on this rulemaking will be accepted until May 10, 1999.

Docket. A docket containing supporting information used in developing this direct final rule amendment is available for public inspection and copying at the EPA's docket office located at the above address in Room M–1500, Waterside Mall (ground floor). The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Air Docket Office at (202) 260–7548. Refer to Docket No. A–91–31. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Michele Aston, U.S. Environmental Protection Agency, Policy, Planning, and Standards Group, Emission Standards Division, Mail Drop 13, Research Triangle Park, NC 27711; electronic mail address aston.michele@epa.gov; telephone number (919) 541–2363; facsimile number (919) 541–0942.

SUPPLEMENTARY INFORMATION: We are publishing this rule amendment without prior proposal because we consider this to be a noncontroversial amendment, and we do not expect to receive any adverse comment. We believe that this change to the previously promulgated rule will increase compliance flexibility for affected sources without any adverse environmental consequences. However, in the "Proposed Rules" section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal for this amendment, in the event we receive adverse comment or a hearing request and this direct final rule is subsequently withdrawn. This final rule amendment will be effective on June 8, 1999 without further notice, unless we receive adverse comment on this rulemaking by May 10, 1999 or a request for a hearing concerning the accompanying proposed rule is received by EPA by April 19, 1999. If EPA receives timely adverse comment or a timely hearing request, we will publish a withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. In that event, we will address all public comments in a subsequent final rule, based on the proposed rule amendment published in the "Proposed Rules" section of this **Federal Register** document. The EPA will not provide further opportunity for public comment on this action. Any parties interested in commenting on this amendment must do so at this time.

Regulated entities. Entities potentially regulated by this action include any facility engaged in the surface coating of magnetic tape. This includes, but is not limited to, the following magnetic tape products: audio and video recording tape, computer tape, the magnetic stripes of media involved in credit cards and toll tickets, bank transfer ribbons, instrumentation tape, and dictation tape. Regulated categories and entities are shown in Table 1.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Entity category	Description
Industrial	Any facility that is engaged in the surface coating of magnetic tape (SIC 3695 & 2675).
Federal Government: Not affected	
State/Local/Tribal Government: Not affected	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated.

Internet. The text of this **Federal Register** document is also available on the EPA's web site on the Internet under recently signed rules at the following address: http://www.epa.gov/ttn/oarpg/rules.html. The EPA's Office of Air and Radiation (OAR) homepage on the Internet also contains a wide range of information on the air toxics program and many other air pollution programs and issues. The OAR's homepage address is: http://www.epa.gov/oar/.

Electronic Access and Filing Addresses. The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A–91–31 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address listed in the **ADDRESSES** section at the beginning of this preamble.

Interested parties may submit comments on this rulemaking electronically to the EPA's Air and

Radiation Docket and Information Center at: "A-and-R-Docket@epamail.epa.gov." Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–91–31). No CBI should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Outline. The information in this preamble is organized as follows:

I. Authority

The statutory authority for this action is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

II. Background

On December 15, 1994, we published in the **Federal Register** the final rule containing national standards for reducing HAP in facilities that manufacture magnetic tape (see 59 FR 64580). Since then, a regulated facility has asked us to consider alternative compliance options for a narrow aspect of the regulation.

This amendment is very similar to the existing provision at 40 CFR 63.703(c)(4), but adds an optional approach for compliance. The new approach requires the same enhanced control efficiency for coating operations as required by the provisions published in 1994. We expect this amendment to protect the environment as well as the rule published in 1994, while offering the regulated community more flexibility for compliance.

III. Regulatory Requirements and Performance Standards

A. Original Compliance Option for Solvent Storage tanks

In the final rule published in 1994, we included a compliance option for owners or operators of facilities that manufacture magnetic tape (referred to as operators in the rest of this preamble). It allows them to leave uncontrolled the emissions from certain solvent storage tanks in return for better controlling the largest emissions source at their facilities. Through that alternative compliance provision, we allow operators to vent emissions from these tanks to the atmosphere, rather than routing them through a control device. (See 40 CFR 63.703(c)(4)—as published December 15, 1994—for this option.) As explained in the 1994 preamble, we concluded then that added control at the coating operations would offset emissions from the uncontrolled storage tanks (see 59 FR 64590–64592, December 15, 1994.)

B. What Information We Used To Establish the New Compliance Option

Since 1994, we've received detailed technical information from a facility that manufactures magnetic tape (see Docket No. A–91–31). It compares estimates for HAP emissions from uncontrolled solvent storage tanks to those for uncontrolled pieces of mix preparation equipment. The facility asked us to allow more flexibility in the types of equipment that can be left uncontrolled in exchange for a higher level of control of the coating operations at the facility. In evaluating this request, we've generally compared the amount of HAP emissions that may be uncontrolled under the 1994 published rule's alternative provision with those HAP emissions that may be uncontrolled under the added options in today's rule. For this analysis, we incorporate by reference our rationale for the existing alternative compliance options which was included in our preamble for the 1994 published rule.

At magnetic tape manufacturing facilities, solvent storage tanks and mix preparation equipment are typically covered, even if the headspace vapors aren't vented to a control device. Emissions from a given solvent storage tank at a manufacturing facility vary depending on throughput, tank size, solvents stored in the tanks, and other factors. Emissions from a given piece of mix preparation equipment vary for similar reasons, and also vary based on the amount that the temperature of the mix increases during mixing.

The facility's detailed technical information estimates their maximum potential emissions under process constraints in the milling operations. The facility's solvent storage tanks and mix preparation equipment have varying characteristics, including capacity. Their largest tanks and mix preparation equipement are 20,000 gallons and 1200 gallons, respectively. The solvent storage tanks have fixed roofs with conservation vents, so the facility used standard calculations for these tanks to estimate emissions. For solvent recovery tanks, they believed this method may not be appropriate because they maintain most tanks at nearly constant levels with a mechanical weir. However, we don't know of a better way to calculate emissions for these tanks, so we'd use the same method unless rigorous monitoring ensured a constant level of liquid in the tank. Therefore, we decided to include tanks from the solvent recovery unit in our evaluation of the data.

The facility estimated emissions for their mix preparation equipment using our calculation methods for batch processes, which we believe is appropriate for this application. In developing the regulations, we estimated emissions from the entire mix preparation operation. But their method estimates emissions for pieces of mix equipment, which requires more detailed information than we had while developing the regulations. At the same time, we believe this facility's solvent storage tanks and mix preparation equipment are representative of the tanks and equipment used by the rest of the regulated magnetic tape industry, so we used their data to analyze the requested alternative compliance approach.

C. Why We Chose To Allow the New Compliance Option

The 1994 published rule restricts the capacity of the solvent storage tanks we allowed to be uncontrolled to 20,000 gallons each but doesn't restrict other parameters that affect emissions. Therefore, we believe it's reasonable to use the highest emitting tanks in this comparison if they don't exceed the capacity restriction. For the magnetic tape manufacturing facility we studied, we found the maximum potential HAP emissions from a solvent storage tank and from a piece of mix preparation

equipment were 1.6 tons/yr (tpy) and 1.9 tpy, respectively.

Because maximum emissions are similar, we believe it's reasonable for facility operators to leave uncontrolled some mix preparation equipment and some solvent storage tanks, if they better control their coating operations. But they must leave fewer pieces of mix preparation equipment uncontrolled because the maximum emissions from mix preparation equipment are greater than those from solvent storage tanks. Also, some tanks had emissions as low as 0.01 tpy, whereas the lowest level for mix preparation equipment was 0.1 tpy. Based on all the data, it's reasonable to allow manufacturers to leave uncontrolled half as many pieces of mix preparation equipment as of solvent storage tanks. This 2-to-1 ratio makes up for the wider range of HAP emissions in the tanks.

As noted above, the 1994 published rule's alternative compliance approach limits the capacity of solvent storage tanks that can be left uncontrolled. Our amendment also uses a capacity limit of 1,200 gallons for each piece of mix preparation equipment that can be left uncontrolled. We believe the equipment at this facility is representative of equipment in the industry. In any case, limiting maximum capacity makes sure the size of uncontrolled mix preparation equipment is no larger than the size used for the estimates supporting this amendment.

D. How the New Compliance Option Affects You as a Manufacturer

Today's final rule amendment affects you if, as a facility owner or operator, you choose to increase the overall control efficiency of your coating operations for magnetic tape. As the final rule was published in 1994, 40 CFR 63.703(c) allowed you to leave HAP solvent storage tanks uncontrolled if you increase the overall control efficiency of your coating operations. Under today's final rule amendment, you may still leave uncontrolled 10, 15, or 20 tanks in exchange for controlling your coating operations to an overall efficiency of 97, 98, or 99 percent, respectively. Under today's amendment, however, you may leave uncontrolled one piece of mix preparation equipment in exchange for two solvent storage tanks left uncontrolled under the 1994 rule. For example, you could leave uncontrolled six solvent storage tanks and two pieces of mix preparation equipment if you achieve an overall efficiency of 97 percent—instead of 10 solvent storage tanks. See the amendment to 40 CFR 63.703(c)(4) for combinations you may use to comply with the new alternative provisions.

We believe this amendment will limit HAP emissions from facilities that manufacture magnetic tape at least as much as provisions in the 1994 rule. Furthermore, the amendment will give you more flexibility to meet the regulation. We don't expect our amendment to pose any problems for enforcement or permitting because it's essentially similar to the 1994 rule, which affected facilities are following now. We expect you'll like this amendment because you may be able to save money and other resources, compared to the compliance approaches under the 1994 rule. Also, if you decide not to follow the amended provisions, they won't burden you—they merely give you another option, and the regulation is otherwise virtually unchanged.

IV. Administrative Requirements

A. Executive Order 12866: "Significant Regulatory Action Determination'

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this final rule amendment would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order, it has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of this amendment, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for this rulemaking.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The EPA determined that this amendment to the Magnetic Tape Manufacturing Operations does not have a significant impact on a substantial number of small entities. The EPA has also determined that is not necessary to prepare a regulatory flexibility analysis in connection with this action.

C. Paperwork Reduction Act

This amendment does not include or create any information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the

Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this amendment is of very narrow scope, and provides a compliance alternative very similar to one already available in the promulgated regulation. The EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Docket

The docket includes an organized and complete file of all the information upon which EPA relied in taking this direct final action. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See CAA section 307(d)(7)(A).)

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action does not create a mandate on State, local or tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that the EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This amendment to the National Emissions Standards for Magnetic Tape Manufacturing Operations is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separate identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This amendment to National Emissions Standards for Magnetic Tape Manufacturing Operations does not significantly or uniquely affect the communities of Indian tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

I. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller general of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This action to amend the currently effective rule is not a "major rule" as defined by 5 U.S.C. 804(2).

J. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTA), Public Law 104–113 (March 7, 1996), the EPA is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the NTTA requires the Agency to provide

Congress, through OMB, an explanation of the reasons for not using such standards. This action does not put forth any technical standards; therefore, consideration of voluntary consensus standards was not required.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Coating operation, Hazardous air pollutant, Magnetic tape manufacturing, Mix preparation equipment, Solvent storage tank.

Dated: April 1, 1999.

Carol M. Browner,

Administrator.

Chapter I, Part 63 of the Code of Federal Regulations are amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—National Emission Standards for Magnetic Tape Manufacturing Operations

2. Section 63.703 is amended by revising paragraph (c)(4) (i), (ii) and (iii) to read as follows:

§ 63.703 Standards.

* * * * *

(c) * * *

(4) In lieu of controlling HAP emissions from each solvent storage tank and piece of mix preparation equipment to the level required by paragraph (c)(1) of this section, an owner or operator of an affected source may elect to comply with one of the options set forth in paragraph (c)(4)(i), (ii) or (iii) of this section.

(i) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 97 percent in lieu of either:

(A) Controlling up to 10 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 8 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 6 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 4 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 2 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity.

(ii) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 98 percent in lieu of either:

(A) Controlling up to 15 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 13 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 11 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 9 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 7 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 5 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(G) Controlling up to 6 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 3 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(H) Controlling up to 7 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 1 HAP solvent storage tank that does not exceed 20,000 gallons in capacity.

(iii) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 99 percent in lieu of either:

(A) Controlling up to 20 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 18 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 16 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 14 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 12 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 10 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(G) Controlling up to 6 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 8 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(H) Controlling up to 7 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 6 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(I) Controlling up to 8 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 4 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(J) Controlling up to 9 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 2 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(K) Controlling up to 10 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity.

* * * * *

[FR Doc. 99–8779 Filed 4–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6321–7]

RIN 2060–AH71

National Emission Standards for Hazardous Air Pollutants for Source Categories: Amendment for Hazardous Air Pollutants Emissions From Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend National Emission Standards for Hazardous Air Pollutants (NESHAP) From Magnetic Tape Manufacturing Operations, codified as subpart EE to 40 CFR part 63. The existing standards allow facility owners or operators to leave a limited number of solvent storage tanks uncontrolled if they control coating operations at a level greater than the standards otherwise require. EPA is publishing this proposed amendment to provide another compliance option for facility owners and operators. If facility owners or operators increase the control of hazardous air pollutant (HAP) emissions from coating operations beyond what the standards otherwise require, this final amendment gives them the choice of leaving a limited number of solvent storage tanks and/or a limited number of pieces of mix preparation equipment uncontrolled. EPA believes this proposed amendment will not decrease the stringency of the existing standards.

We don't consider this amendment controversial and expect no negative comments, so we're also publishing it as a direct final rule in the Final Rules section of this **Federal Register** publication. We'll consider any negative comments about today's direct final rule to also be negative comments about this proposal. We'll take no further action unless, within the time allowed (see **DATES**, below), we receive negative comments about the proposal or final rule, or we receive a request for a public hearing on the proposal. If we take no further action, the amendment will become effective on the date in the **DATES** section of the associated direct final rule.

DATES: *Comments.* The EPA will accept comments regarding the proposed amendment on or before May 10, 1999. Additionally, a public hearing regarding the proposed amendment will be held if anyone requesting to speak at a public hearing contacts the EPA by April 19, 1999. If a hearing is requested, the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC. on April 30, 1999 beginning at 10:00 a.m.. For more information about submittal of comments and requesting a public hearing, see the **SUPPLEMENTARY INFORMATION** section in this preamble.

ADDRESSES: *Comments.* Interested parties having comments on this action may submit these comments in writing (original and two copies, if possible) to Docket No. A–91–31 at the following address: Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street, S.W., Room 1500, Washington, D.C. 20460. The EPA requests that a separate copy of the comments also be sent to the contact person listed in the following paragraph of this preamble.

FOR FURTHER INFORMATION CONTACT: Michele Aston, U.S. Environmental Protection Agency, Policy, Planning, and Standards Group, Emission Standards Division, Mail Drop 13, Research Triangle Park, NC 27711; electronic mail address aston.michele@epamail.epa.gov; telephone number (919) 541–2363; facsimile number (919) 541–0942.

SUPPLEMENTARY INFORMATION: Regulated entities. Entities potentially regulated by this action include any facility that is engaged in the surface coating of magnetic tape. This includes, but is not limited to, the following magnetic tape products: audio and video recording tape, computer tape, the magnetic stripes of media involved in credit cards and toll tickets, bank transfer ribbons, instrumentation tape, and dictation tape. Regulated categories and entities are shown in Table 1.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Entity category	Description
Industrial	Any facility that is engaged in the surface coating of magnetic tape (SIC 3695 & 2675)
Federal Government: Not affected.	
State/Local/Tribal Government: Not affected.	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated.

Internet. The text of this **Federal Register** document is also available on the EPA's web site on the Internet under recently signed rules at the following address: http://www.epa.gov/ttn/oarpg/rules.html. The EPA's Office of Air and Radiation (OAR) homepage on the Internet also contains a wide range of information on the air toxics program and many other air pollution programs and issues. The OAR's homepage address is: http://www.epa.gov/oar/.

Electronic Access and Filing Addresses. The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A–91–31 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address listed in the **ADDRESSES** section at the beginning of this preamble document.

Interested parties having comments on this action may submit these comments electronically to the EPA's Air and Radiation Docket and Information Center at: "A-and-R-Docket@epamail.epa.gov." Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–91–31). No CBI should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Public Hearing. If EPA receives a request to make an oral presentation at a hearing concerning this proposal by April 19, 1999, the public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC on April 30, 1999 beginning at 10 a.m. Persons interested in making an oral presentation or inquiring as to whether a hearing is to be held should contact Michele Aston, (see **FOR FURTHER INFORMATION CONTACT** section of this preamble document.)

Docket. Docket A–91–31 contains the supporting information for the original NESHAP and this action. This **Federal Register** document and other materials related to this proposed rule are

available for review in the docket. The docket is available for public inspection and copying at the EPA's docket office located at the above address in Room M–1500, Waterside Mall (ground floor). The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Air Docket Office at (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Outline. The information in this preamble is organized as follows:

I. Authority

The statutory authority for this action is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

II. Background

On December 15, 1994, we published in the **Federal Register** the final rule containing national standards for reducing HAP in facilities that manufacture magnetic tape (see 59 FR 64580). Since then, a regulated facility has asked us to consider alternative compliance options for a narrow aspect of the regulation.

This proposed amendment is very similar to the existing provision at 40 CFR 63.703(c)(4) but adds an optional approach for compliance. The new approach requires the same enhanced control efficiency for coating operations as existing provisions. We expect this proposed amendment to protect the environment as well as the rule issued in 1994 while offering the regulated community more flexibility for compliance.

III. Proposed Amendment

We're proposing to amend the emission standards for magnetic tape manufacturing so facilities will have another compliance option if they choose to control their coating operations to an overall HAP reduction efficiency greater than 95%. Under the existing standards, facility owners or operators may choose to control HAP emissions for all coating operations by an overall efficiency of at least 97%, 98%, or 99%, instead of controlling 10, 15, or 20 HAP solvent storage tanks, respectively. This amendment would allow them to control their coating operations to those higher efficiencies in exchange for leaving uncontrolled a limited number of pieces of mix preparation equipment, combined with a limited number of HAP solvent storage tanks.

For further information on this proposed amendment and our rationale, see the associated direct final rule published in the Final Rules section of today's **Federal Register**. We incorporate all such information in this proposal by reference.

IV. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make verbal presentations regarding this regulation in accordance with 42 U.S.C. 7004(b)(1); 40 CFR part 25. Persons wishing to make a verbal presentation on this proposed rule amendment must contact Michele Aston of the U.S. EPA, at the address given in the **ADDRESSES** section of this document, no later than April 19, 1999. If a public hearing is held, written statements may be submitted at the hearing, and EPA will also include in the record any rebuttal or supplementary information submitted in written form within 30 days following the date of the hearing. Any written statements not submitted at the hearing should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing, and written statements provided at or following the hearing will be available for inspection and copying during normal business hours at the EPA address for docket inspection given in the **ADDRESSES** section of this preamble.

B. Executive Order 12866: "Significant Regulatory Action Determination"

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of the proposed rule amendment would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order, it has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of this amendment, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for this regulatory action.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The EPA determined that this amendment to the Magnetic Tape Manufacturing Operations does not have a significant impact on a substantial number of small entities. EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This amendment does not include or create any information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in

compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this proposed amendment is of very narrow scope, and provides a compliance alternative very similar to one already available in the promulgated regulation. The EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Docket

The docket is an organized and complete file of the administrative record upon which any final rule is based. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. All written comments on this proposal submitted in a timely manner will be included in the docket. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See CAA section 307(d)(7)(A).)

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action does not create a mandate on State, local or tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that the EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This amendment to the National Emissions Standards for Magnetic Tape Manufacturing Operations is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separate identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's amendments do not significantly or uniquely affect the communities of Indian tribal government. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

J. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTA), Public Law 104–113 (March 7, 1996), the EPA is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the NTTA requires the Agency to provide Congress, through OMB, an explanation of the reasons for not using such standards. This amendment does not put forth any technical standards; therefore, consideration of voluntary consensus standards was not required.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Coating operation, Hazardous air pollutant, Magnetic tape manufacturing, Mix preparation equipment, Storage tank.

Dated: April 1, 1999.

Carol M. Browner,

Administrator.

Chapter I, Part 63 of the Code of Federal Regulations are amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—National Emission Standards for Magnetic Tape Manufacturing Operations

2. Section 63.703 is amended by revising paragraph (c)(4)(i), (ii) and (iii) to read as follows:

§ 63.703 Standards.

* * * * *

(c) * * *

(4) In lieu of controlling HAP emissions from each solvent storage tank and piece of mix preparation equipment to the level required by paragraph (c)(1) of this section, an owner or operator of an affected source may elect to comply with one of the options set forth in paragraph (c)(4)(i), (ii), or (iii) of this section.

(i) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 97 percent in lieu of either:

(A) Controlling up to 10 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 8 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 6 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 4 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 2 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity.

(ii) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 98 percent in lieu of either:

(A) Controlling up to 15 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 13 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 11 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 9 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 7 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 5 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(G) Controlling up to 6 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 3 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(H) Controlling up to 7 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 1 HAP solvent storage tank that does not exceed 20,000 gallons in capacity.

(iii) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 99 percent in lieu of either:

(A) Controlling up to 20 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(B) Controlling 1 piece of mix preparation equipment that does not exceed 1,200 gallons in capacity and up to 18 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(C) Controlling up to 2 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 16 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(D) Controlling up to 3 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 14 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(E) Controlling up to 4 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 12 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(F) Controlling up to 5 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 10 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(G) Controlling up to 6 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 8 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(H) Controlling up to 7 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 6 HAP solvent storage tank that do not exceed 20,000 gallons each in capacity; or

(I) Controlling up to 8 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 4 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(J) Controlling up to 9 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity and up to 2 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(K) Controlling up to 10 pieces of mix preparation equipment that do not exceed 1,200 gallons each in capacity.

* * * * *

[FR Doc. 99–8780 Filed 4–8–99; 8:45 am]

BILLING CODE 6560–50–P

federal register

Friday
April 9, 1999

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA39

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final Rule.

SUMMARY: The Department of the Treasury, Financial Management Service (Service), is revising its regulation, 31 CFR Part 210 (Part 210), governing the use of the Automated Clearing House (ACH) system by Federal agencies (agencies). The ACH system is the primary electronic funds transfer (EFT) system used by agencies to make payments, and the Service anticipates that agencies increasingly will use the ACH system to collect funds. Part 210 provides the regulatory foundation for use of the ACH system by agencies. It defines the rights and liabilities of agencies, Federal Reserve Banks, financial institutions, and the public, in connection with ACH credit entries, debit entries, and entry data originated or received by an agency through the ACH system.

DATES: This rule is effective May 10, 1999. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of May 10, 1999.

ADDRESSES: This rule is available on the Financial Management Service's ACH web site at the following address: http://www.fms.treas.gov/ach/.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705; Mary Bailey, Financial Program Specialist, at (202) 874–6749; Natalie H. Diana at (202) 874–6590; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Margaret Marquette, Senior Attorney, at (202) 874–6681.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The ACH system is a nationwide EFT system which provides for the interbank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. The Federal Government (Government) is the largest single user of the ACH system, originating and receiving millions of transactions each month. As the Government's financial manager, the Service collects and disburses funds for most agencies. In fiscal year 1998, approximately 63% of payments made by the Department of the Treasury (Treasury) were made through the ACH system. In addition, a growing number of transactions involving the collection of funds by agencies are being made through the ACH system. In fiscal year 1998, over $1.1 trillion in corporate tax payments was collected electronically.

Two laws are responsible for the substantial increase in the use of the ACH system by agencies. Provisions in the North American Free Trade Agreement Implementation Act (NAFTA), Pub. L. No. 103–182, sec. 523 (codified at 26 U.S.C. 6302(h)) mandate the use of EFT for the collection of certain Federal taxes. Provisions in the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. No. 104–134, require that most Federal payments (other than payments under the Internal Revenue Code of 1986) be made by EFT.

To meet the NAFTA requirements, the Service, in conjunction with the Internal Revenue Service and Federal Reserve Banks, implemented the Electronic Federal Tax Payment System (EFTPS) which enables taxpayers to pay Federal taxes by EFT. 31 CFR Part 203 (Payment of Federal Taxes and the Treasury Tax and Loan Program) addresses the rights and responsibilities of taxpayers, financial institutions, and Federal Reserve Banks in connection with EFTPS. 63 FR 5644.

On September 25, 1998, Treasury published a final rule, 31 CFR Part 208 (Part 208), implementing the requirement of the DCIA that agencies convert from check to EFT payments, subject to the waiver authority of the Secretary of the Treasury. 63 FR 51490.

The Service anticipates that the ACH system will be the dominant, though not exclusive, EFT system used by agencies to make payments and to collect funds. Part 210 provides the regulatory foundation for use of the ACH system by agencies.

B. Proposed Rulemakings

On September 30, 1994, the Service published a Notice of Proposed Rulemaking with respect to Part 210. 59 FR 50112. After considering the comments received on the 1994 proposed rule, and taking into account developments since that proposal was issued, the Service issued a new Notice of Proposed Rulemaking on February 2, 1998 (NPRM). 63 FR 5426. The NPRM proposed to adopt the ACH rules developed by the National Automated Clearing House Association (NACHA) (ACH Rules) as the rules governing all Government ACH transactions, with twelve exceptions for which the Service proposed to establish special rules as a matter of Federal law.

The Service received 26 comment letters on the NPRM. Commenters generally supported the adoption of the ACH Rules as the rules governing Government ACH transactions, but had differing views regarding the twelve proposed exceptions. Some financial institutions commented that Federal payments should be subject to the ACH Rules without variation or exception, commenting that imposing liability on financial institutions for losses resulting from Government errors and omissions will damage efforts to expand the use of the ACH as a vehicle for making Federal payments, and may have pricing implications for recipients of Federal payments. Other financial institutions and agencies commented that certain of the twelve proposed exceptions were not appropriate. Specific comments are discussed in the section-by-section analysis below.

C. Final Rule

Part 210, which implements Treasury's statutory responsibility to collect and disburse public funds, establishes the rights and duties of parties to transactions originated or received by agencies through the ACH system, just as other Treasury rules regulate the rights of parties to Treasury checks.[1]

The ACH Rules, which are developed and updated by NACHA, allocate rights and liabilities among participants to an ACH transaction. Financial institutions agree to be bound by the ACH Rules when they join an ACH association. The ACH Rules are structured upon the premise that five entities participate in the ACH system. They are: (1) The originator, which is the person or entity that agrees to initiate ACH entries in accordance with an arrangement with a receiver; (2) the originating depository financial institution (ODFI), which is the institution that receives payment instructions from the originator and forwards the entries to an ACH Operator; (3) the ACH Operator, which is a central clearing facility, operated by a Federal Reserve Bank or a private organization, that receives entries from ODFIs, distributes the entries to appropriate receiving depository financial institutions (RDFIs), and performs the settlement function for the affected financial institutions; (4) the RDFI, which is the institution that receives ACH entries from the ACH Operator and posts them to the accounts

[1] 31 CFR Part 240.

of its depositors; and (5) the receiver, which is a natural person or organization that has authorized an originator to initiate an ACH entry to the receiver's account with the RDFI.

In initiating and receiving Government entries, agencies, Federal Reserve Banks, and the Service operate in unique capacities that differ from the roles contemplated by the ACH Rules. These differences are a result of the statutory authorities that govern Government payments and collections and that distinguish Government payments from commercial payments involving private parties and financial institutions.

Because the ACH Rules employ terminology that is based upon private industry financial institution-customer relationships, the definitions used in the ACH Rules do not address the roles of agencies, the Service, and the Federal Reserve Banks with respect to the origination or receipt of an ACH entry. Due to the bifurcation of function between certifying and disbursing agencies, Government operations do not conform to the definitions in the ACH Rules. From a functional perspective, the agency that certifies an ACH entry to the Service performs a function that is analogous to that of the originator of the entry for purposes of the ACH Rules. In disbursing the payment, the Service is acting as the ODFI and the Federal Reserve Bank is the originating ACH Operator with respect to the entry. Similarly, an agency that receives a payment through the ACH system functions as the receiver, while the Service functions as the RDFI, and the Federal Reserve Bank functions as the receiving ACH Operator for the entry.

The ACH Rules generally require ODFIs and RDFIs to assume responsibility for entries originated and received by their customers. ODFIs and RDFIs must make certain warranties with respect to entries originated and received by their customers and are liable to other participants in the ACH system for breach of those warranties. The ACH Rules do not impose direct liability upon originators and receivers; any losses resulting from an act or omission by an originator or receiver are imposed on the ODFI or RDFI. The ODFI or RDFI can seek recourse against the originator or receiver if it has the right to do so under the contract between the parties and/or applicable state law.

The Service does not believe that it is appropriate to assume liability arising from the acts and omissions of agencies originating and receiving ACH entries. Accordingly, although it is the Service's view that agencies operate as originators and receivers and the Service operates as an ODFI and RDFI from a functional perspective, the Service believes it is appropriate to impose upon agencies that originate or receive ACH entries the obligations and liabilities imposed on ODFIs and RDFIs, respectively, for purposes of the ACH Rules. Part 210 therefore is structured on the premise that agencies are subject to all of the obligations and liabilities imposed on ODFIs and RDFIs under the ACH Rules, except as otherwise provided in Part 210.

After reviewing the comments and further considering the issues raised, the Service has determined to preempt 11 provisions of the ACH Rules.[2] In view of the special nature of Government entries, and the importance of protecting public funds, the Service believes that it is in the best interest of the public to preempt the 11 provisions of the ACH Rules described briefly below, for reasons discussed in more detail in the section-by-section analysis.

The following five ACH Rules are preempted entirely and are excluded specifically from Part 210's definition of "applicable ACH Rules" (see § 210.2(d)):

1. ACH members. Part 210 preempts the limitation on the applicability of the ACH Rules to members of an ACH association.

2. Compensation. Part 210 preempts the compensation rules set forth in the ACH Rules.

3. Rules Enforcement. Part 210 preempts the requirement under the ACH Rules that participants agree to be subject to a national system of fines to ensure compliance with the ACH Rules.

4. Reclamation. The reclamation provisions of Subpart B preempt all ACH Rules related to the reclamation of entries and the liability of participants that otherwise would apply to benefit payments.

5. Timing of Origination. Part 210 preempts the requirement set forth in the ACH Rules that a credit entry be originated no more than two banking days before the settlement date of the entry.

In addition to the foregoing five provisions of the ACH Rules which Part 210 entirely preempts through the definition of "applicable ACH Rules," six other provisions of the ACH Rules are preempted in part by operation of specific sections of Part 210. Those provisions are:

1. Verification of identity of recipient (see §§ 210.4(a) and 210.8(b)(2)). Under the ACH Rules, a receiver must authorize an entry before the entry may be originated and the ODFI must warrant that the authorization is valid. The ODFI thus bears the ultimate liability for any loss resulting from a forged authorization under the ACH Rules. Part 210 imposes a different rule for Government entries. Specifically, under § 210.4(a), a financial institution that accepts an authorization from a recipient must verify the identity of the recipient. The financial institution is liable to the Government for all entries made in reliance on a forged authorization that the institution has accepted. Thus, Part 210 preempts the ODFI warranty and liability provisions of the ACH Rules by allocating liability to the RDFI if it accepts a forged authorization.

2. Authorization for debit entries to agencies (see §§ 210.4(a)(2) and 210.8(b)(1)). Part 210 preempts the ACH Rules with respect to the form of authorization required to initiate debit entries to an agency. The ACH Rules require that every entry be authorized by the receiver, but only require that the authorization be in writing in the case of debit entries to a consumer account. Under § 210.4(a), no person or entity (including any financial institution) may initiate or transmit a debit entry to an agency, other than a reversal of a credit entry, unless the agency has expressly authorized in writing (or through a similarly authenticated authorization) the origination of the entry by that particular originator. An ODFI transmitting an entry in violation of this requirement would be liable for the amount of the transaction, plus interest, under § 210.8(b)(1).

3. Liability of the Government

(a) Amount of damages (see § 210.6). In general, the ACH Rules impose liability on an RDFI or ODFI for all losses, liabilities, or claims incurred by another depository financial institution (DFI), ACH Operator, or ACH Association as a result of the RDFI's or ODFI's breach of any warranty. Thus, under the ACH Rules, an agency that originates payments would be liable for all losses resulting from any breach by it of an applicable warranty under the ACH Rules. Similarly, an agency that receives payments would be liable for all losses resulting from any breach by it of an applicable warranty under the ACH Rules.

Section 210.6 limits an agency's liability to the amount of the entry whether it is originating or receiving

[2] The NPRM proposed to preempt 12 provisions of the ACH Rules. As discussed in the section-by-section analysis, the final rule deletes from the listing of provisions to be preempted the provision related to arbitration and replaces it with a provision related to rules enforcement. In addition, the provision related to prenotifications has been deleted, leaving a total of 11 provisions to be preempted.

ACH entries. Therefore, an agency would not be liable to a DFI, ACH Operator, or ACH Association for interest, attorneys' fees, or other consequential damages. In addition, in certain circumstances, an agency's liability may be reduced further by the amount of the loss caused by the financial institution's negligence.

(b) Liability of Federal Reserve Banks (see § 210.7(a)). Part 210 preempts section 11.5 of the ACH Rules, which provides that a Federal Reserve Bank is not the agent of an RDFI or ODFI. Part 210 provides that Federal Reserve Banks are Fiscal Agents of the Treasury in carrying out their duties as the Government's ACH Operator and are not liable to any party other than the Treasury for their actions under Part 210.

4. Liability of financial institutions (see § 210.8(b)). Part 210 preempts the provisions of the ACH Rules that would operate to make a financial institution liable to the Government for any loss, liability or claim relating to an entry in an amount exceeding the entry. The ACH Rules impose liability on an RDFI or ODFI for all losses, liabilities, or claims incurred by another DFI, ACH Operator, or ACH Association as a result of the RDFI's or ODFI's breach of any warranty. Under Part 210, a financial institution would not be liable to the Government for interest, attorneys' fees, or other consequential damages, except in the case of an unauthorized debit to an agency, as discussed above.

5. Reversals (see § 210.6(f)). Part 210 requires agencies initiating reversals to certify that the reversal does not violate applicable law or regulations. This requirement is not imposed under the ACH Rules. In addition, Part 210 applies the ACH Rules relating to indemnification to the Government, but limits the extent of the indemnification to the amount of the individual entry(ies) being reversed.

6. Account requirements for Federal payments (see § 210.5). Part 210 imposes a requirement with respect to ACH credit entries representing Federal payments other than vendor payments that is not imposed under the ACH Rules, i.e., that such payments be deposited to an account at a financial institution "in the name of" the recipient, with three exceptions discussed in the section-by-section analysis. The term "account" for purposes of § 210.5 is intended to mean a deposit account and not a loan account or general ledger account. The Service is aware that NACHA has approved a change to the ACH Rules, which will become effective in September 2000, to permit the crediting of ACH credits to a financial institution general ledger account or to a loan account. Because of the consumer protections associated with the crediting of Federal payments to a deposit account, including those available under Regulation E (12 CFR Part 205) and Regulation DD (12 CFR Part 230), as well as the availability of Federal deposit or share insurance, the Service does not intend to accept this ACH Rule with respect to payments other than vendor payments.

In addition to preempting the provisions of the ACH Rules listed above, Part 210 also establishes, as a matter of Federal law, certain rights and obligations that are not addressed in the ACH Rules. For example, the ACH Rules generally do not address the rights and liabilities between receivers and originators, nor do the ACH Rules address rights and liabilities between ODFIs and originators, or between RDFIs and receivers. Under the ACH Rules, an ODFI is responsible for entries originated by its customers. The ODFI must make certain warranties with respect to any entry originated by its customer, and is liable for breach of those warranties. The ODFI's ability to seek recourse against the originator in the event of a loss for which the ODFI is liable under the ACH Rules is beyond the purview of the ACH Rules and would be governed by the contract between the ODFI and originator and applicable state law.

The Service is establishing some of these rights in Part 210 with respect to agencies vis-a-vis originators or receivers of Government entries. For example, Part 210 provides that an agency will be liable to a recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with Part 210, and limits that liability to the amount of the entry. Neither the basis nor the extent of an originator's liability to a receiver is addressed in the ACH Rules. In addition, the ACH Rules do not address the circumstances in which an entry, in fact, is "authorized." The determination of whether a valid authorization exists ordinarily would depend on the contract between the parties and applicable state law. Part 210 establishes certain circumstances in which an entry shall be deemed to be unauthorized.

D. Future Changes to Subpart B

The NPRM solicited preliminary comment on the reorganization of Subpart B in order to allow for the increasing use of automated processes to effect reclamations, rather than requiring reclamations to be conducted on the basis of paper-driven procedures. In addition, the Service requested comment on ways in which the reclamation process might be restructured in the future to operate more efficiently as a fully automated process.

In order to begin formulating a preliminary approach to implementing an automated reclamation process, the Service solicited comment on whether the protection afforded to financial institutions by the limited liability provisions of Subpart B is outweighed by the processing costs of handling reclamations. In particular, the Service requested comment on an approach in which an RDFI would be liable for the amount of any post-death entries received, regardless of whether the RDFI had actual or constructive knowledge of the death.

Although commenters generally expressed conceptual support for increased automation of reclamation processing, most commenters did not favor moving toward an automated reclamation process at this time. One agency questioned the business case for replacing the current paper reclamation process with a form of automated reclamation. That agency indicated that the use of death notification entries (DNEs) has significantly reduced the number of reclamation requests produced and that, at the same time, payment cycling is causing a significant reduction in reclamations because the agency has additional time to receive and act on reports of recipients' deaths. The agency commented that these enhancements reduce the need for a future electronic reclamation process.

Some financial institutions commented that the approach outlined in the NPRM would substantially increase financial institutions' losses from reclamations without a corresponding reduction in expenses. One financial institution pointed out that it would expect to perform much of the same research under the Service's suggested approach as it currently does in order to pursue reimbursement from the surviving depositor(s) or the estate of the decedent. Another financial institution expressed support for assuming liability for any payments received within a one-year period of the recipient's death, but recommended that the Service continue the existing limitations on financial institution liability for payments received more than one year after the death of the recipient.

II. Section-by-Section Analysis of Part 210

The title of Part 210 has been changed to "Federal Government Participation in the Automated Clearing House" to reflect the broadened scope of the regulation to cover all types of transactions that are handled, or that may in the future be handled, over the ACH system.

As revised, Part 210 is comprised of two subparts. Subpart A sets forth rules applicable to all ACH credit and debit entries and entry data originated or received by an agency, which are defined in the proposed rule as "Government entries." Subpart B contains the rules for the reclamation of benefit payments. Subpart C, which dealt with discretionary salary allotments, has been deleted as unnecessary because it is redundant of rules that appear elsewhere. For example, regulations issued by the Office of Personnel Management, at 5 CFR Part 550, address the circumstances under which salary and savings allotments may be made.

Section 210.1—Scope; Relation to Other Regulations

Part 210 formerly covered only ACH payments made by the Government. In the NPRM, the Service proposed to broaden the scope of Part 210 to cover all entries and entry data originated or received by an agency through the ACH system. Section 210.1 is revised as proposed in the NPRM. Thus, Part 210 as amended applies to collections and the information entries that are handled through the ACH system, as well as to Federal payments made through the ACH system.

Part 210 establishes the general legal and operational framework applicable to all "Government entries" as defined in the rule. Federal tax payments made by ACH debit or credit are governed by 31 CFR Part 203, which sets forth the rights and responsibilities of taxpayers, financial institutions, and Federal Reserve Banks in connection with EFTPS. ACH credits and debits originated by the Bureau of the Public Debt to pay principal or interest on, and to collect payment for the purchase of, United States securities are governed by 31 CFR Part 370.

Both Part 203 and Part 370 impose certain requirements with respect to the payments subject to those regulations that are inconsistent with the provisions of Part 210. Federal tax payments received by the Government through the ACH system that are governed by Part 203 and ACH entries for the purchase of, or payment of principal and interest on, United States securities that are governed by Part 370 are not subject to any provision of Part 210 that is inconsistent with Part 203 or Part 370, respectively.

Section 210.2—Definitions

The Service is revising this section, as proposed, to provide that any term not defined in Part 210 shall have the meaning given to that term in the ACH Rules. In addition, for clarity and simplification, the Service is adding, removing, or redesignating certain other terms, as indicated below.

The Service is deleting certain definitions from Part 210 because Part 210, as revised, uses these terms in the same way as the ACH Rules. Thus, the definitions of the terms "banking day," "business day," and "prenotification," have been deleted. In addition, the term "payment" is not defined in revised Part 210 because Part 210 uses instead the ACH terms "entry" and "credit." Similarly, the term "payment date" is not defined because Part 210 uses instead the ACH term "settlement date."

Other terms previously defined in Part 210, such as "allotment," "allotter," "discretionary allotment," "employee," and "nonbenefit payment" have been deleted because they are not used in revised Part 210. The terms "account," "payment instruction," and "Federal Reserve Bank" have been deleted as unnecessary.

The Service has added a definition of "ACH Rules" at § 210.2(a). This definition explains that the ACH Rules consist of the NACHA Operating Rules and the NACHA Operating Guidelines.

The Service also has added a definition of "actual or constructive knowledge" at § 210.2(b). This phrase is used in Subpart B in connection with determining a financial institution's liability for post-death and post-legal incapacity payments. The addition of this definition is intended to clarify that in reference to the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary, the RDFI is deemed to have actual knowledge of the death or legal incapacity when it has received, by whatever means, any information of the death or incapacity and has had a reasonable opportunity to act upon the information. Moreover, if the RDFI would have discovered the death or legal incapacity if it had followed commercially reasonable business practices, the RDFI will be deemed to have constructive knowledge of the death or incapacity. For example, an RDFI would have actual knowledge of a death or legal incapacity through a communication of that fact by an executor of the deceased recipient's or beneficiary's estate, a family member, another third party, or the agency issuing the benefit payment. On the other hand, if an RDFI misplaced a letter sent through the mail containing notice of death or legal incapacity, or failed to open or read the letter, the RDFI would be deemed to have constructive knowledge of the death even though it did not have actual knowledge.

Although Part 210 previously did not contain a definition of "actual or constructive knowledge," the reclamation provisions of Subpart B of Part 210 provided that a financial institution is deemed to have knowledge of the death or legal incapacity of a recipient or the death of a beneficiary if the financial institution would have discovered the death or legal incapacity if it had exercised due diligence. The Service is not changing that standard, but is adding this definition to clarify that the basis for determining whether a financial institution has constructive knowledge of the death or legal incapacity is whether commercially reasonable business practices would have resulted in discovery of the information.

Financial institutions questioned whether the addition of a definition of "actual or constructive knowledge" might be viewed to broaden the circumstances under which a financial institution can be liable in reclamation cases. Several commenters asked whether financial institutions would have an obligation to check obituaries, noting that Part 210 previously provided expressly that there is no such obligation. One commenter stated that banks should not be responsible for acting on the basis of unconfirmed information, regardless of its source, and therefore suggested that the definition of actual or constructive knowledge include the concept that the information should come from an official source such as a death certificate, written communication from a decedent's personal representative, or a copy of a court order adjudicating a recipient's incapacity. The same commenter pointed out that under the proposed standard, a bank might be deemed to have knowledge of death prior to the time when the information is, or should have been, brought to the attention of an employee who handles benefit payments. The commenter urged that banks be permitted an opportunity to communicate the information to the responsible individual or department.

The deletion of the language formerly in Part 210 stating that financial institutions are not required to check obituaries does not mean that financial

institutions must check obituaries. The standard of constructive knowledge set forth in the final rule, i.e., whether commercially reasonable business practices would have resulted in discovery of the recipient's death or incapacity, is a flexible concept. For example, what is a commercially reasonable practice for a large money center bank may not be commercially reasonable for a small rural bank. Similarly, business practices that are not today technologically feasible or cost-effective may become standard industry practices at some future time. Thus, with regard to whether financial institutions should be responsible for acting on the basis of unconfirmed information, the Service declines to adopt a rule under which a financial institution has knowledge of the death of a recipient only if the information comes from an "official source." Rather, whether a financial institution would be deemed to have knowledge of a recipient's death would depend on whether, given all the facts and circumstances, a similarly situated financial institution would reasonably conclude that the information was reliable.

The Service agrees that financial institutions need a reasonable period of time to act on information of death or incapacity and, as indicated above, has incorporated a provision to this effect in the final definition. Some commenters indicated that banks utilizing batch processing systems cannot activate a hold on an account following receipt of notice until evening or the following day, depending on the processing schedule. Accordingly, the Service believes that a reasonable period of time will not exceed one business day, i.e., twenty four hours, excluding weekends or holidays.

The Service has added a definition of "agency" at § 210.2(c) to mean any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States. Part 210 formerly used the term "program agency." The change is not intended to alter the scope of Part 210. The definition is identical to the definition of agency in Part 208, which sets forth rules governing the mandatory use of EFT by Federal agencies, except that the definition of agency for purposes of Part 210 expressly excludes Federal Reserve Banks.

For purposes of Subpart B, which governs reclamations, "agency" means the agency that certified the benefit payment(s) being reclaimed.

Section 210.2(d) defines the term "applicable ACH Rules" to mean the ACH Rules with an effective date on or before September 17, 1999, which are made applicable to "Government entries" pursuant to § 210.3. Part 210 completely preempts those ACH Rules that: govern claims for compensation or reclamation of benefit payments; provide for rules enforcement procedures; limit the applicability of the ACH Rules to members of an ACH association; or require that a credit entry be originated no more than two banking days before the settlement date of the entry. Therefore, these ACH Rules have been excluded from the term "applicable ACH Rules." As discussed above in the Introduction, Part 210 also preempts certain other provisions of the ACH Rules through operation of particular sections of Part 210.

In the NPRM, the Service proposed to preempt the requirement under the ACH Rules that disputes among participants be settled by arbitration procedures set forth in the ACH Rules. Since the ACH Rules have been amended, effective March 19, 1999, to make arbitration voluntary rather than mandatory, the Service no longer believes it is necessary to preempt the arbitration provisions of the ACH Rules. However, since publication of the NPRM, NACHA has adopted a rule that became effective on December 18, 1998, establishing a national system of fines applicable to both financial institutions and access participants for violation of the provisions of the ACH Rules. The Service does not believe it is in the public interest to subject the Treasury General Account (TGA) to an unquantified liability based on an untested system of fines; therefore, at this time the Service is not incorporating in Part 210 those provisions of the ACH Rules dealing with enforcement for noncompliance. However, the Service intends to work with agencies to achieve Government-wide compliance with all ACH Rule requirements, including applicable time frames.

Other than the requirement that credit entries be originated no more than two banking days before the settlement date of the entry, any technical or timing requirements imposed on DFIs under the ACH Rules constitute applicable ACH Rules, and will be binding on agencies and financial institutions, unless preempted. Thus, for example, agencies will be subject to the timing requirements for reversals and returns.

Many commenters objected to permitting agencies to originate an entry more than two banking days before the settlement date of the entry. Some financial institutions pointed out that production and storage costs are incurred by an RDFI to warehouse ACH entries and that expanding the origination window increases the risk to which the RDFI is exposed. For example, several financial institutions pointed out that a DNE is ineffective to cause the automated return of a benefit payment that has already been received but is being held or warehoused pending settlement. Some agencies also indicated that there is no reason that the Government cannot adhere to the two-day origination deadline eventually, and that it would benefit the Government to do so by allowing agencies more time to process reports that affect continuing payment entitlement. The Service anticipates that in the future agencies will be able to adhere to the two-day window and expects to revise Part 210 accordingly at that time. However, because there is not uniform operational capability to meet the two-day window at this time, the Service has retained this preemption of the ACH Rules in the final rule.

The Service is adding a definition of "authorized payment agent" at § 210.2(e) in connection with the account requirements set forth at § 210.5. The definition has been reworded slightly from the proposed definition in order to correspond to the definition of "authorized payment agent" for purposes of Part 208.

In the case of a beneficiary who is physically or mentally incapable of managing his or her payments, § 210.5 would permit an authorized payment agent to receive the payments on behalf of the beneficiary. The Social Security Act, the Veterans' Benefits Act, and the Railroad Retirement Act contain provisions permitting a benefit payment to be made to an individual or organization other than the beneficiary when doing so is in the best interest of the beneficiary.[3] The Social Security Administration (SSA) and the Railroad Retirement Board use the term "representative payee" to refer to individuals and organizations that have been selected to receive benefits on behalf of a beneficiary who is "legally incompetent or mentally incapable of managing benefit payments." The Department of Veterans Affairs uses the term "fiduciary" to refer to individuals or organizations appointed to serve in similar circumstances. The definition of the term "recipient" in former § 210.2 refers to representative payees and fiduciaries. SSA, the Railroad Retirement Board, and the Department of Veterans Affairs have issued detailed regulations addressing the qualifications

[3] *See* 42 U.S.C. 1383(a)(2)(A)(ii)(i); 38 U.S.C. 5502(a)(1); 45 U.S.C. 231k, respectively.

and duties of representative payees and fiduciaries.[4] The rules governing these representational relationships are longstanding and well established. Therefore, the Service believes that it is appropriate to rely on existing agency regulations in defining the term "authorized payment agent."

Other agencies also may provide for payment to representative payees and fiduciaries. While not specifically mentioned by name, the phrase "or other agency" in the definition is intended to refer to such agencies.

The Service has added a definition of "Automated Clearing House or ACH" in § 210.2(f) to make it clear that the electronic fund transfers that are subject to Part 210 are limited to those effected through an EFT system that has adopted the ACH Rules.

The definition of "beneficiary" in § 210.2(g) has been reworded slightly from the definition previously set forth in Part 210 to reflect the addition of a definition of benefit payment, but substantively is unchanged from the previous definition.

The definition of "benefit payment" in § 210.2(h) is similar to the definition previously set forth in Part 210. The regulation lists several types of benefit payments for purposes of convenience and illustration. It should be noted, however, that the term "benefit payment" includes, but is not limited to, the specific examples set forth at § 210.2(h).

The Service has added to Part 210 a definition of "Federal payment." The definition in § 210.2(i) is identical to the definition of that term in Part 208 except that the definition of Federal payment in Part 208 excludes payments under the Internal Revenue Code of 1986, whereas the term "Federal payment" in § 210.2(i) includes those payments. Payments under the Internal Revenue Code of 1986 are excluded in Part 208 because the DCIA expressly provides that payments under the Internal Revenue Code of 1986 are not subject to the DCIA's mandatory EFT requirements. However, payments that the Internal Revenue Service or a taxpayer elects to make using the ACH system are subject to Part 210 and thus are included within the definition of Federal payment at § 210.2(i).

The definition of "financial institution" in § 210.2(j) is identical to the definition contained in Part 208 except that the Service has added a sentence noting that, in Part 210, a financial institution may be referred to as an Originating Depository Financial Institution (ODFI) or a Receiving Depository Financial Institution (RDFI), depending on whether it is originating or receiving entries to or from its ACH Operator.

The definition of "financial institution" makes specific reference to banks, savings banks, credit unions, savings associations, and United States-based foreign bank branches. The definition has been designed to reflect the class of entities that can participate directly in the ACH system, i.e., financial institutions that are authorized by law to accept deposits.

The term "Government entry" is defined in § 210.2(k) as an ACH credit or debit entry or entry data originated or received by an agency. As noted above, Part 210 previously applied only to credit entries originated by an agency for the purpose of making payments. As amended, Part 210 has a broader scope; it applies to all entries originated or received by an agency, whether made for the purpose of payments or collections or for information purposes.

The Service has added a definition of the "Green Book" in § 210.2(l) to clarify that financial institutions that originate or receive Government entries are subject to the procedures and guidelines published by the Service in the Green Book, as provided at § 210.3(c).

The term "notice of reclamation" at § 210.2(m) means a notice issued by the Government in a paper, electronic, or other form in order to initiate a reclamation. This definition clarifies that the Government is not limited to a paper-based means of communication and opens the way for an automated reclamation procedure. The definition of "notice of reclamation" is moved to the definition section of Part 210 from § 210.13(a), where it was previously located.

The Service has preserved the definition of "outstanding total" in Part 210 without substantive change.

The definition of "recipient" in § 210.2(o) is substantially similar to the corresponding definition in Part 208. The term includes an authorized payment agent that receives a payment on behalf of a beneficiary.

The term "Service" has been added at § 210.2(p) to mean the Financial Management Service, Department of the Treasury.

The term "Treasury" has been added at § 210.2(q) to mean the United States Department of the Treasury.

The Service has added a definition of the term "Treasury Financial Manual" at § 210.2(r) to clarify that the Service may publish procedures and guidelines applicable to Government entries in the Treasury Financial Manual. The Treasury Financial Manual contains procedures to be observed by all agencies with respect to central accounting, financial reporting, and other Government-wide fiscal responsibilities of the Treasury.

Section 210.3—Governing Law

Section 210.3(a) provides that the rights and obligations of the United States and the Federal Reserve Banks with respect to all Government entries are governed by Part 210, which has the force and effect of Federal law. This approach is consistent with *Clearfield Trust Co.* v. *United States,* 318 U.S. 363 (1943), and its progeny, which support the principle that the Government can establish the rules that govern Federal payments and collections and that Federal law applies whenever Treasury engages in its sovereign function of collecting and disbursing public funds, regardless of the method used to carry out this function.

One commenter requested clarification regarding the extent to which Article 4A of the Uniform Commercial Code (UCC Article 4A) is applicable to Government entries. Treasury consistently has taken the position that under *Clearfield Trust,* state law, including the Uniform Commercial Code, is inapplicable to Federal payments and collections, except to the extent that the state law is incorporated in Federal law. However, UCC Article 4A is incorporated in the ACH Rules, which the Service is adopting, and, therefore, will apply to Government entries except as preempted in Part 210.

Section 210.3(b)(1) provides that Part 210 incorporates by reference the applicable ACH Rules published in Parts I, II, and IV of the 1999 NACHA Rule Book (including any rule changes in effect on or before September 17, 1999), as modified by Part 210. NACHA has approved an amendment to the ACH Rules that, effective September 2000, will permit the crediting of entries to non-deposit accounts. The Service does not intend to accept this amendment for payments subject to § 210.5.

Section 210.3(b)(2) describes how subsequent amendments to the ACH Rules will be handled. The proposed rule provided that Government entries would be governed by any amendment to the ACH Rules that became effective after a specified date only if the Service accepted the amendment by publishing notice to that effect. Many commenters urged the Service to change this position. Several financial institutions and agencies recommended that the Service provide that amendments to the ACH Rules are deemed accepted unless

[4] *See* 20 CFR Parts 404, 410, 416, 266, and 348; and 38 CFR Part 13, respectively.

the Service expressly rejects the amendment by publishing notice to that effect in the **Federal Register**.

Federal regulations require that any changes to a publication incorporated by reference in a Federal regulation be published in the **Federal Register**.[5] Accordingly, the Service may not adopt an approach whereby amendments to the ACH Rules are deemed accepted unless expressly rejected. In order to mitigate the uncertainty and inconvenience to financial institutions that would result from a lag in addressing ACH Rule amendments, the Service intends to work closely with NACHA to track proposed ACH Rule changes and to respond to such changes in a timely manner. The Service anticipates that it will publish a **Federal Register** notice addressing ACH Rule changes within 90 days of NACHA's publication of its rule book, which is published annually.

For the above reasons, Part 210 states that amendments effective after September 17, 1999, will not apply to Government entries unless the Service expressly accepts such amendments by publishing notice of acceptance in the **Federal Register**. In addition, § 210.3(b)(2) provides that with respect to any future amendment that the Service determines to accept, the date of applicability of the amendment to Government entries will be the effective date of the rulemaking specified by the Service in the **Federal Register** notice that expressly accepts the amendment.

Section 210.3(c) provides that any person or entity that originates or receives a Government entry must comply with the instructions and procedures issued by the Service, including the Treasury Financial Manual and the Green Book. As indicated above, the Service has moved certain requirements that previously were set forth in the regulation itself to the Green Book and the Treasury Financial Manual. In light of the proposed relocation of these provisions, the Service believes it is important to make explicit in the regulation the Service's longstanding policy that the requirements set forth in the Green Book and the Treasury Financial Manual are binding upon financial institutions and agencies to the same extent as the regulation itself.

The requirements set forth in the Green Book and the Treasury Financial Manual, including those provisions that the Service is relocating from the regulation to the Green Book or Treasury Financial Manual, are procedural, rather than substantive, in nature. Changes to the substantive rights and liabilities of parties to a Government entry will be made through amendments to Part 210 itself in accordance with administrative rulemaking requirements.

Section 210.4—Authorizations and Revocations of Authorizations

Section 210.4(a) provides that each debit and credit entry subject to Part 210 must be authorized in accordance with the applicable ACH Rules and the additional requirements set forth in this section. The liability of a financial institution for failing to comply with the authorization requirements is set forth at § 210.8(b)(2).

Section 210.4(a)(1) provides that the agency or RDFI that accepts the recipient's authorization shall verify the identity of the recipient and, in the case of a written authorization that bears the recipient's signature, the validity of the signature. Traditionally, recipients of benefit payments, such as Social Security and Veterans benefits, enrolled in Direct Deposit by completing a Form 1199A with the assistance of their financial institution. In recent years, in order to encourage recipients to use Direct Deposit, SSA and other agencies have become directly involved in the enrollment process by accepting Direct Deposit authorizations over the phone with the assistance of trained customer service representatives. Part 210 acknowledges that the enrollment process may be completed by the recipient's financial institution or by the agency. In addition, § 210.4(a) encourages automated enrollments by removing the requirement that the financial institution sign the authorization form. Section 210.4(a) recognizes that signature verification may not be possible or practical in an automated enrollment process.

Part 210 imposes an absolute requirement that the RDFI or agency accepting the authorization verify the recipient's identity and, where appropriate, the recipient's signature. The Service leaves to the discretion of the financial institution or agency accepting an authorization the steps it will take to verify the recipient's identity.

Some commenters requested that the Service clarify that a financial institution that accepts an authorization is not required to verify that the recipient, in fact, is entitled to receive the payment(s) in question. Financial institutions, in particular, commented that the RDFI is not in a position to determine who is entitled to the payment being authorized. The Service agrees that the financial institution is not in a position to know whether the customer, in fact, is entitled to the payment(s) being authorized. Section 210.4(a) requires only that the identity of the recipient be verified; the financial institution is not liable for determining whether the customer is entitled to the payment.

Agencies and other commenters supported the requirement that the RDFI verify the identity of the recipient as a means of reducing fraud. Financial institutions and ACH associations generally objected to the imposition of liability on financial institutions that accept and process enrollments, rather than on the ODFI, as provided for in the ACH Rules. Financial institutions further commented that if the ACH Rules are preempted in this respect, financial institutions should not be held to a strict liability standard. These institutions urged the Service to adopt a "commercially reasonable business practices" standard of care, or an "actual or constructive knowledge" of a fraud standard. Financial institutions argued that they cannot be an insurer against all fraud and that a strict liability standard creates a disincentive for financial institutions to participate in the enrollment process.

The Service continues to believe that the authorization process represents an opportunity to reduce fraud which could otherwise result in significant losses to the Government. Because a financial institution that accepts an authorization from a customer has an obligation to know the customer and is in a position to verify a written signature, the Service believes it is appropriate to hold the financial institution strictly liable for verifying the identity of the customer.

Under § 210.4(a)(2), an originator and an ODFI are prohibited from initiating a debit entry to an agency, other than a reversal of a credit entry, without the express permission, in writing or similarly authenticated, of the agency. The Service has conducted pilot programs to test the initiation of debit entries to the Government. These pilots indicate that the use of debit entries to the Government is a cost-efficient payment mechanism that benefits both the Government and the payee-recipient. However, in order to protect the interests of the Government, the Service believes that it is appropriate to require the prior written or similarly authenticated authorization, just as the ACH Rules require prior written authorization in the case of debits to a consumer account. In the case of recurring entries, the agency is required to give an authorization only once, prior to the first entry.

[5] See 1 CFR 51.11.

As proposed, § 210.4(a)(2) did not provide an exception from the authorization requirements for a reversal of a credit entry previously sent to an agency. Since a reversal of a credit entry is a debit entry, some commenters questioned whether proposed § 210.4(a)(2) would limit or restrict a financial institution's right to reverse a credit entry. It was not the Service's intention to require a prior written authorization before the initiation of a reversal, and the final rule has been revised to clarify this point.

Section 210.4(b) specifies the terms to which a recipient agrees by executing an authorization for an agency to initiate an ACH entry. Under § 210.4(b)(1), a recipient agrees to be bound by Part 210 and, under § 210.4(b)(2), the recipient agrees to provide accurate information.

Section 210.4(b)(3) provides that the recipient agrees to verify the recipient's identity to the satisfaction of the party that accepts the authorization, whether this is the RDFI or the agency. The imposition of this requirement on recipients complements the duty of the party accepting the authorization to verify the recipient's identity.

Section 210.4(b)(4) provides that a new authorization supersedes any existing authorization that is inconsistent with the new authorization.

Under § 210.4(b)(5), the recipient agrees that the Government may reverse any duplicate or erroneous entry as provided in § 210.6(f).

Section 210.4(c)(1) provides that, in the case of a recipient of benefit payments, a change in the recipient's ownership of the account results in the termination of the authorization. The purpose of this provision is to ensure that payments are not deposited to an account to which a recipient no longer has access or in which the recipient's ownership interest has changed.

Some commenters questioned whether an authorization is revoked as a result of any change in the ownership of an account, even if that change does not affect the recipient's ownership interest in the account. These commenters questioned whether, for example, the addition of a co-signatory on the account would cause the authorization to be revoked. It is not the Service's intent that an authorization be revoked as a result of a change in ownership of an account where the recipient's interest is not adversely affected. The wording of 210.4(c)(1) has been changed accordingly.

Under § 210.4(c)(2), the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary results in the termination of the authorization.

Section 210.4(c)(3) provides that the closing of the recipient's account at the RDFI results in termination of the authorization. In addition, this section requires the RDFI to provide 30 days written notice to the recipient prior to closing the account to which benefit payments currently are being sent, except in cases of fraud.

Final § 210.4(c)(3) is unchanged from the NPRM except that the 30-day notice requirement is limited in the final rule to accounts to which benefit payments currently are being sent. Most financial institutions commented that the 30-day notice requirement was an improper interference with their customer relationships. Financial institutions pointed out that banks routinely close accounts in cases of excessive overdrafts or in instances of fraud, and noted that the 30-day period would require banks to establish a separate account closing process for accounts receiving Federal ACH transactions. Some agencies also questioned whether it was appropriate for the Service to regulate account closing in this fashion, indicating that they had not had a problem with closed accounts. However, the Service believes that the notice requirement protects recipients from being deprived of timely access to their funds as a result of an account being closed without sufficient notice to allow the recipient to make other arrangements to receive the funds. Because the Service is concerned that a recipient of benefit payments may suffer hardship if the account to which his or her benefit payments are being sent is closed, the final rule has been limited to address this class of recipients.

One agency commenting on the proposed rule requested clarification regarding situations in which payments are sent to an account that has been kept open by a financial institution notwithstanding the recipient's request that the account be closed. The agency stated that, in its view, "the only criterion that should apply in such a situation is whether the recipient has closed the account at the financial institution. . . . When a recipient can provide proof that an account has been closed, all Federal payments subsequently received by the financial institution must be returned."

The effect of 210.4(c) is that payments sent to an account that has been closed must be returned by the financial institution. However, Part 210 does not establish the circumstances in which a financial institution can or must close an account. A financial institution's right or obligation to close a customer's account is established by the terms of the account agreement between the financial institution and the customer and applicable state or Federal laws. Thus, a recipient's assertion that an account has been closed is not necessarily sufficient to require the financial institution to return funds sent to the account. There may be situations in which a recipient wishes to close an account but does not have a legal right to do so. This could occur, for example, when the account has been overdrawn and language in the deposit contract provides that the financial institution may keep the account open until the overdraft is settled. In such a case, a financial institution's obligation to return a payment depends on whether the closing of the account, in fact, has been accomplished, not upon the recipient's desire to close the account or belief that the account has been closed. The Service emphasizes that it is the actual closing of the account as a legal matter, and not the recipient's desire or attempts to close the account, that imposes an obligation on the financial institution to return payments under § 210.4(c).

In order to eliminate any unnecessary interruptions in ACH services to recipients when any of the events described in § 210.4(c)(4) occurs, § 210.4(c)(4) states that an authorization will not terminate upon the insolvency or closure of the RDFI, provided that a successor is named for the institution. If no successor is named, the Government may transfer temporarily the authorization to a consenting financial institution for a period of no longer than 120 days.

The Service has deleted the provision formerly contained in § 210.4(e) that stated that, except as authorized by law or other regulations, Part 210 shall not be used to effect an assignment of a payment. The Service believes that a prohibition against assignments is not appropriate in Part 210. Other Federal laws, such as the Social Security Act, govern the assignment of benefits.

Section 210.5—Account Requirements for Federal Payments

Section 210.5 imposes restrictions on the type of account to which Federal payments may be deposited. Section 210.5(a) reiterates the general rule set forth in Part 208 that Federal payments other than vendor payments must be deposited to an account at a financial institution in the name of the recipient. The phrase "notwithstanding ACH Rule 2.1.2" indicates that § 210.5 imposes a requirement not imposed under the applicable ACH Rules, i.e., that the account be "in the name of" the recipient, with certain exceptions discussed below. This section is designed to ensure that payments reach

the intended recipient by requiring that such payments be deposited into an account in which the recipient has an ownership interest. Vendor payments are excluded under § 210.5(a) because the Service is aware that under current commercial practices many vendors designate an account in a general corporate name to receive payments in the name of a subsidiary or designate a bank account in the name of an accountant or other service provider for the receipt of payments.

Proposed § 210.5 would have imposed these restrictions only on benefit payments, which by definition excluded Federal retirement payments. Upon further consideration, the Service has determined that Federal retirement payments need not be excluded from the account restrictions. In the situation most often cited, that in which a surviving spouse is entitled to a deceased recipient's retirement payment, the surviving spouse is considered to be the recipient and, therefore, the payment would be deposited into the surviving spouse's account. The final rule parallels Part 208, which requires that all Federal payments other than vendor payments be deposited to an account in the name of the recipient, with two exceptions.

The first exception, related to authorized payment agents, is unchanged from the proposed rule. The second exception, related to investment accounts, contains two changes from the proposed rule. First, the exception has been expanded to cover investment accounts established through an investment company registered under the Investment Company Act of 1940, in addition to investment accounts established through a securities broker or dealer registered under the Securities Exchange Act of 1934. Second, the requirement contained in the proposed rule that the investment account and all associated records be structured so that the recipient's interest is protected under applicable Federal or State deposit insurance regulations has been deleted. The reasons for these changes are discussed in detail in the final rulemaking for Part 208. 63 FR 51490, 51500. Additionally, in order to ensure consistency with Part 208, § 210.5(b)(3) has been added. Section 210.5(b)(3) provides that the Secretary of the Treasury may waive the requirements of § 210.5(a) in any case or class of cases.

A number of commenters requested additional guidance on various aspects of § 210.5. Some commenters questioned whether the account must be solely in the name of the recipient, which would preclude the use of joint accounts, and whether master-subaccounts can be established with limited access by the beneficiary. One agency commented that it has no way of knowing the account title at the financial institution and cannot be expected to monitor industry practices in this regard.

The part 208 final rulemaking release contains an extensive discussion of the restrictions on accounts to which Federal payments can be sent, and addresses the issues raised by commenters on proposed § 210.5. See 63 FR 51490, 51499. The Service does not believe it is necessary to duplicate that discussion here, and refers readers to the Part 208 rulemaking release. However, in response to the question raised by commenters as to whether § 210.5 would prohibit the use of a joint account between the recipient and a spouse or other member of the recipient's family, the Service emphasizes that § 210.5 does not require that the recipient's name be the only name on the account, and thus would not prohibit the use of such a joint account. In addition, as discussed in the Part 208 rulemaking release, § 210.5 does not prevent recipients of Federal salary payments from making discretionary allotments, as such allotments are made prior to the time the recipient's payment is deposited into an account at a financial institution.

The Service is aware that NACHA has approved an amendment to the ACH Rules (effective September 2000), which permits the crediting of entries to general ledger accounts and loan accounts. The Service does not intend to accept that amendment with respect to Federal payments other than vendor payments.

Section 210.6—Agencies

The title of this section has been changed from "The Federal Government" to "Agencies." Section 210.6 sets forth a number of obligations and liabilities to which agencies that initiate or receive Government entries are subject. These obligations and liabilities are in addition to, or different from, the obligations and liabilities that otherwise would be imposed under the applicable ACH Rules. For example, the authorization and reversal requirements of §§ 210.6(a) and (f) constitute additional obligations. The liability provisions of §§ 210.6(b), (c), (d), and (f) expand as well as limit the liability that an agency would otherwise be subject to under the applicable ACH Rules. Specifically, an agency's liability is broader than it would be under the applicable ACH Rules because an agency is liable for a failure to act "in accordance with this part [210]." However, the extent of an agency's potential liability is capped by the amount of the entry(ies), which is a limitation on the liability generally provided for under the applicable ACH Rules.

Section 210.6 is largely unchanged from the NPRM except that § 210.6(b) of the NPRM, relating to prenotifications, has been deleted and the subsections of § 210.6 have been renumbered accordingly. A prenotification is a non-value informational entry sent through the ACH system that contains the same information that will be carried on subsequent entries (with the exception of the dollar amount and transaction code). Under the ACH Rules, prenotifications are optional for all entries. The Service had proposed at § 210.6(b) of the NPRM to modify the ACH Rules by requiring prenotifications for debit entries initiated by an agency. The purpose of the proposed requirement was to ensure that a debit initiated by an agency would be applied against the correct account at the intended financial institution.

In light of comments received, the Service has deleted this requirement from the final rule. The purpose of a prenotification is to verify the accuracy of the account information to ensure that when a live entry is received, it can be posted to the correct account. However, a prenotification does not provide notice to the owner of the account to be debited, and thus does not serve as a protection against a debit to an incorrect account. Moreover, requiring prenotifications for debit entries may impede the implementation and operation of programs such as point-of-sale check payment capture, in which ACH debits are initiated against a consumer account at the time a purchase of goods or services takes place. Requiring prenotification also would effectively preclude agencies from effecting reversals of credit entries, as a number of commenters pointed out. For these reasons, the Service has deleted from the final rule the requirement that agencies utilize prenotifications before initiating debit entries.

Section 210.6(a) requires an agency to obtain prior written authorization from the Service in order to receive ACH credit or debit entries. The Service requires this process in order to make software and operational changes to permit the receipt of entries by the agency. Section 210.6(a) is not intended to reduce or change the liability of originators or ODFIs for the initiation of an unauthorized entry to an agency;

rather, it is an operational requirement imposed by the Service on agencies.

Sections 210.6(b)–(d) set forth an agency's liability to various parties in connection with Government entries. Section 210.6(b) provides that an agency will be liable to the recipient for any loss sustained as a result of the agency's failure to originate a credit or debit entry in accordance with Part 210. This section further provides that the agency's liability will be limited to the amount of the entry.

Several financial institutions urged the Service to reconsider this limitation on liability, pointing out that losses resulting from agency errors may be shifted unfairly to the RDFI. One commenter gave an example of an agency's initiation of a duplicate debit entry to a receiver's account, in which case the account might become overdrawn, resulting in returned checks and related charges for which the receiver would attempt to recover compensation. If the receiver's right of recovery from the Government were limited to the amount of the entry, the receiver might seek compensation from the RDFI for a refund of charges and other damages resulting from the return of checks, loss of use of funds, etc.

To address this concern, § 210.8(b) of the final rule provides that a financial institution will not be liable to any party for any loss resulting from an agency's error or omission in originating an entry. This provision does not affect a financial institution's responsibilities to its customer to resolve errors under the Electronic Fund Transfer Act or Regulation E. Rather, this provision establishes that a financial institution is not liable for consequential damages resulting from an agency's error.

The ACH Rules do not address the basis for, or the extent of, the liability of an originator or ODFI to a receiver. A receiver's rights against an originator or ODFI for failing to properly originate an entry ordinarily would be governed by contract and state law. Section 210.6(b) establishes a recipient's rights against an agency in these circumstances as a matter of Federal law: an agency will be liable for any loss sustained by a recipient, up to the amount of the entry, as a result of the agency's failure to originate a credit or debit entry in accordance with Part 210.

Section 210.6(c) establishes that an agency may be liable to an originator or an ODFI for any loss sustained by the originator or ODFI resulting from the agency's failure to credit an ACH entry to the agency's account in accordance with part 210. The agency's liability would be limited to the amount of the entry(ies). The ACH Rules do not address the liability of an RDFI to an originator. Under the ACH Rules, if an RDFI fails to properly credit an ACH entry to the designated account within the applicable time limitations, the RDFI will have breached a warranty to the ACH Operator, ACH Association, and ODFI, and may be liable to one of those parties for any losses resulting from the RDFI's breach. Whether the originator has any recourse in such a situation depends on its contract with its ODFI and on state law.

Section 210.6(c) preempts the ACH Rules with respect to the extent of an agency's liability to an ODFI by limiting that liability to the amount of the entry(ies). In addition, § 210.6(c) establishes, as a matter of Federal law, that an agency may be liable directly to an originator in an amount not exceeding the amount of the entry(ies).

Section 210.6(d) provides that an agency's liability to an RDFI for losses sustained by the RDFI in processing a duplicate or erroneous entry will be limited to the amount of the entry(ies). The phrase "[e]xcept as otherwise provided in this Part 210" is intended to preserve the allocation to the RDFI of liability in connection with the RDFI's failure to comply with, for example, the authorization requirements. While Part 210 previously addressed processing errors by an agency, the final rule refers to duplicate and erroneous entries, as defined in the ACH Rules, in order to describe specifically the type of errors or the nature of the losses for which an agency is liable.

Under the ACH Rules, an ODFI is liable for losses caused by its origination of duplicate or erroneous entries. Part 210 subjects agencies to the liability imposed on ODFIs under the ACH Rules for originating erroneous and duplicate entries, but preempts the ACH Rules in three respects. First, an agency is not liable for all costs incurred by the RDFI, such as attorneys' fees, but is liable only up to the amount of the entry. Second, § 210.6(d) uses comparative negligence and reduces an agency's liability to the extent the loss results from the financial institution's failure to follow standard commercial practices and exercise due diligence. Third, § 210.6(d) excludes credit entries received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary. It should be noted that liability in connection with any benefit payment to a deceased recipient is not covered under § 210.6(d), but is governed solely by Subpart B.

Several commenters questioned how the comparative negligence standard would be administered and what negligence would consist of in this context. One commenter questioned whether the costs of apportioning negligence might exceed the benefit to the Government of limiting its liability in this fashion.

What will constitute negligence on the part of a financial institution in a particular context depends on the relevant facts and circumstances. Although the Service recognizes that there may be costs associated with investigating and determining the causes of a particular loss, the Service believes it is important to retain this provision in order to apportion liability appropriately in cases where an agency and a financial institution share responsibility for a loss. For example, if an agency erroneously originated a credit entry to an incorrect account, and the person who received the misdirected funds brought the mistake to the attention of the financial institution, the financial institution could incur liability if it failed to take appropriate action and the agency subsequently was unable to recover the erroneously transmitted funds.

Section 210.6(e) is unchanged from § 210.6(f) of the proposed rule, except that the word "final" has been added in recognition that a Federal Reserve Bank's crediting of an account can be reversed if actual and final funds are not collected in settlement of a credit item at or before 8:30 a.m. Eastern Time on the banking day following the settlement date.

Section 210.6(f) addresses the Government's initiation of reversals. As discussed in the analysis of § 210.4(b) above, a recipient who executes an authorization agrees, among other things, that the Government may reverse duplicate or erroneous entries or files, as provided in § 210.6(f).

The ACH Rules permit an originator to reverse duplicate or erroneous entries and permit an ODFI, originator, or originating ACH Operator to reverse duplicate or erroneous files within five banking days of the settlement date of the duplicate or erroneous file or entry. For purposes of the ACH Rules, and as used herein, a duplicate entry is an entry that is a duplicate of an entry previously initiated by the originator or ODFI and an erroneous entry is an entry that orders payment to or from a receiver not intended to be credited or debited by the originator or that orders payment in a dollar amount different than what was intended by the originator.

Under the ACH Rules, the ODFI and/or originating ACH Operator must indemnify the RDFI against any losses the RDFI incurs as a result of effecting

a reversal. Consequently, in the event that the RDFI reverses an entry or file initiated by the ODFI, but the RDFI cannot recover the amount of the entry from the receiver (because, for example, the receiver has withdrawn the funds and closed the account), it is the ODFI or originator who bears the loss.

The ability to effect reversals is an important way for the Government to reduce losses resulting from overpayments and misdirected entries. If a reversal is effected expeditiously, in many cases the receiver may not be aware that the erroneous or duplicate entry occurred, and thus the funds may be available in the account for recovery by the RDFI and, ultimately, the Government.

With respect to certain types of payments, however, the Government's ability to reverse a duplicate payment or overpayment to a recipient may be constrained due to the existence of various Federal statutory provisions governing the manner in which the Government may recover overpayments. For example, in the context of Federal benefit payments, the Government may be required to provide notice and a hearing prior to taking action to recover payments, or may be limited in the amount, timing, or manner in which an overpayment is recovered. Part 210 does not address the operation of these requirements because the applicable requirements may vary depending on the type of payment. It is the agency's responsibility to determine before certifying a reversal that the reversal will not violate any applicable laws or regulations.

One commenter requested that the Service clarify how the certification requirement of § 210.6(f) affects the indemnification of the RDFI and other parties to a transaction as provided under ACH Rule 2.4.5. The certification requirement represents an additional obligation of any agency that originates a reversal. The certification requirement is intended to function as an intra-Governmental warranty and is not intended to affect the indemnification of the RDFI or other parties to a transaction under ACH Rule 2.4.5. and Part 210.

Several commenters requested clarification as to whether the Government, when initiating reversals, would be bound by any ACH Rule requirements that generally apply with respect to reversals, such as the five-day reversal deadline. It is the intention of the Service that all ACH Rule requirements apply to Government-initiated reversals except that the extent of the Government's indemnification would be limited to the amount of the entry(ies). Therefore, an agency that reverses a Government entry must do so within the five-day deadline.

Section 210.7—Federal Reserve Banks

Section 210.7 sets forth the role and responsibilities of the Federal Reserve Banks.

The settlement of ACH entries is determined by the ACH Operator which, in the case of Government entries, is a Federal Reserve Bank. The Service has deleted as unnecessary the provisions previously in Part 210 relating to funds availability since those requirements are addressed under Federal Reserve Bank Operating Circular No. 4 on ACH Items.

Some commenters were concerned that a change in the timing of payments would result from the deletion from § 210.7 of language stating that Federal Reserve Banks are to make available to the financial institution the amount specified in a payment instruction, and debit the TGA, on the payment date. Part 210 previously defined the payment date as the date upon which funds are to be available for withdrawal by the recipient, and on which the funds are to be made available to the financial institution by the Federal Reserve Bank, and provided that "if the payment date is not a business day for the financial institution receiving a payment, or for the Federal Reserve Bank from which it received such payment, then the next succeeding business day for both shall be deemed to be the payment date." The Service is not changing the foregoing timing requirements, which are consistent with the Federal Reserve Bank Operating Circular on ACH items.

Some agencies indicated that the time frame of settlement under the ACH system may conflict with statutory requirements regarding when certain payments must be made. For example, the Office of Personnel Management (OPM) commented that the Civil Service annuity benefit is payable "on the first business day of the month after the month or period for which it has accrued." Therefore, OPM indicated that it cannot legally request another payment date when the first day of the month is on a Saturday, which is a business day for purposes of the relevant statute, but which is not a settlement date under the ACH Rules. The Railroad Retirement Board commented that the Railroad Retirement Act prohibits issuing payments before the first day of the next calendar month.

The Service recognizes that agencies subject to statutory constraints on payment dates will need to address the interaction of those constraints with the timing of ACH payments. Because different statutes present different issues and limitations, the Service believes that these issues must be addressed on a case-by-case basis. Where statutory payment requirements potentially conflict with the use of the ACH system, the Service urges the paying agency to work with the Service in order to resolve those issues. For example, a statute that requires that payment be made no later than the first business day of the month may allow for the initiation of payments one or two days early in order to ensure that the recipient receives the funds no later than the statutorily prescribed payment date. On the other hand, this approach would not be a viable solution in the context of a statute that requires that payment be made no earlier than the first business day of the month. Because statutes differ, the Service is not in a position to adopt a uniform approach to these issues.

Section 210.7(a), which is unchanged from the proposed rule, specifies that each Federal Reserve Bank, as the Fiscal Agent of the Treasury, serves as the Government's ACH Operator for Government entries. The phrase "notwithstanding Section 11.5 and Article 8 of the ACH Rules" has been added to clarify that the Service is preempting the ACH Rule that provides that a Federal Reserve Bank is not an agent of an RDFI or ODFI.

Section 210.7(b), also unchanged from the proposed rule, has been added to Part 210 to ensure that the Service is aware of new ACH applications at an agency so that proper accounting can take place and correct credit can be given in the Treasury investment program as an agency receives ACH transactions. Agencies desiring a routing number should obtain approval from the Service prior to requesting a routing number from a Federal Reserve Bank.

Section 210.8—Financial Institutions

Section 210.8 addresses the obligations of financial institutions with respect to Government entries, which were previously set forth at § 210.7. The Service has removed as unnecessary many of the provisions of previous § 210.7 because they are addressed in the ACH Rules. For example, former § 210.7(e) has been deleted since the ACH Rules adequately cover the inability of an RDFI to credit an account indicated in an entry. In addition, former §§ 210.7(f)(1), (f)(2), and (f)(4) have been deleted since the ACH Rules address these provisions.

The Service had proposed at § 210.8(a) of the NPRM to require RDFIs to verify that the account number and one other item of information in a prenotification entry both relate to the

same account. A prenotification, as described in the ACH Rules, is a non-dollar entry, sent through the ACH system, which contains the same information (with the exception of the dollar amount and Standard Entry Class Code) that will be carried on subsequent entries. The ACH Rules do not require that RDFIs verify prenotifications in this manner; thus, the proposed requirement and the corresponding liability to which a financial institution would have been subject for failing to verify a prenotification would have superseded the ACH Rules with respect to agency-initiated prenotifications.

Several agencies commenting on the proposed rule supported the verification requirement because, in the words of one commenter, "[t]his will ensure that subsequent Federal direct deposit payments are credited to the intended party, not just into an account that happens to coincide with a valid account number at the RDFI." Other agencies indicated that they did not intend to use prenotifications and did not believe the proposed verification requirement was necessary.

All of the financial institutions commenting on the NPRM objected to the proposed requirement. Financial institutions commented that they rely on account numbers alone in processing entries, as permitted by the ACH Rules and UCC Article 4A, and that they presently cannot perform the proposed verification in an automated processing environment. Therefore, in order to comply with the requirement, financial institutions would be required either to manually process Government entries or to develop and implement new processing systems. Many banks commented that they cannot invest in new processing systems at this time, especially in view of Year 2000 requirements and related systems testing. Some financial institutions indicated that if the verification requirement were imposed, the costs of processing Government entries would increase and they might shift these costs to payment recipients. Some commenters also noted that, in the case of payments made to representative payees, beneficiary information relating to the payment may not be listed on the account in any manner since financial institutions typically have information only on persons who are authorized to sign on the account.

Financial institutions also argued that shifting losses to banks is inconsistent with basic principles of electronic payment law, pointing out that both UCC Article 4A and the ACH Rules provide that the RDFI may make payment on the basis of account number alone.

After considering the comments received, the Service has decided not to include in Part 210 a requirement that upon receipt of a prenotification an RDFI verify one other identifying data element in addition to the recipient's account number. The Service does not believe it is in the best interest of the public to implement a requirement that would make it more expensive for financial institutions to receive and process electronic Government payments or that would require manual processing of Government entries. The Service acknowledges the rationale for allowing RDFIs to rely on account number alone, as set forth in the commentary to UCC Article 4A–207(b)(1): "If the [RDFI] has both the account number and the name of the beneficiary supplied by the originator of the funds transfer, it is possible for the [RDFI] to determine whether the name and number refer to the same person, but if a duty to make that determination is imposed on the [RDFI] the benefits of an automated payment are lost. Manual handling of payment orders is both expensive and subject to human error."

Moreover, the Service believes that more data is needed regarding the causes of misdirected Government entries. Without information as to the types of Government entries that are misdirected and the reasons for such mistakes, the Service is concerned that the verification requirement would eliminate any incentive for agencies to follow commercially reasonable standards in initiating payments. The Service does not believe it is appropriate to impose on financial institutions liability for losses resulting from agency errors.

Although data regarding misdirected entries is not available, the Service has anecdotal information that suggests that many misdirected entries are a result of human error by agency personnel who key in account numbers. The Service is particularly concerned with agency practices in which account information is processed through a single manual key entry, and urges agencies to review their enrollment practices and to consider adopting more stringent key entry procedures such as scanning a voided check or performing a double-key entry, or instituting some other verification procedure to avoid key entry mistakes. The Service encourages agencies to review their enrollment practices and intends to work with agencies to develop data regarding the extent and causes of misdirected ACH entries and to formulate ways of reducing such errors.

The Service also understands that, in some cases, misdirected entries occur as a result of financial institutions' errors in enrolling recipients or in transmitting notifications of change (NOCs). The Service believes that it is appropriate to hold financial institutions responsible for losses caused by their errors in enrolling recipients and has revised § 210.8(b)(2) accordingly, as discussed below.

The Service has redesignated former § 210.7(g) of Part 210 as § 210.8(a) without making any substantive change.

Section 210.8(b) provides that financial institutions shall be subject to liability for failing to handle an entry in accordance with Part 210 and that the amount of that liability will be limited to the amount of the entry, except as otherwise specifically provided in §§ 210.8(b)(1) and (2). The phrase "[n]otwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2" indicates that the liabilities imposed on financial institutions under this section may be in addition to, or different from, the liabilities that otherwise would be imposed under the applicable ACH Rules. To the extent that Part 210 imposes duties on a financial institution not imposed under the applicable ACH Rules, § 210.8(b) correspondingly imposes liabilities on a financial institution not imposed under the applicable ACH Rules. However, the extent of the liability to which a financial institution would be subject would not exceed the amount of the entry (except in the case of unauthorized debits).

The ACH Rules generally provide that an RDFI or ODFI is liable for all claims, losses, liabilities, or expenses, including attorneys' fees and costs, resulting directly or indirectly from the breach by the RDFI or ODFI of its obligations. Under UCC Article 4A, which would apply to credit entries to non-consumer accounts, the liability of financial institutions that fail to handle entries properly generally does not extend to all resulting losses, but does include imputed interest in certain circumstances. Because Part 210, as a general matter, limits the Government's liability to the amount of an entry, the Service believes that as a matter of equity the liability of financial institutions similarly should be limited. Accordingly, § 210.8(b) preempts the extent of the liability to which financial institutions are subject under both the ACH Rules and UCC Article 4A by limiting that liability to the amount of the entry. Thus, for example, if an agency originated a credit entry to a corporate vendor and the RDFI failed to credit the entry to the vendor's account

in a timely manner, § 210.8(b) would limit the RDFI's liability to the Government to the amount of the entry, thereby preempting the UCC Article 4A rule that imposes liability on the financial institution for imputed interest for the period of the delay. Section 210.8(b) does not affect a financial institution's liability under Subpart B.

Although financial institutions generally objected to changing the liability provisions of the ACH Rules for Government entries, most financial institutions indicated that if the final rule limited the liability of the Government to the amount of an entry, the liability of financial institutions should be correspondingly limited under § 210.8(b).

Section 210.8(b) of the final rule also provides that a financial institution will not be liable to any third party for any loss resulting from an agency's error or omission in originating an entry. The Service has added this provision to the final rule to address comments by several financial institutions that limiting an agency's liability to the amount of an entry, as set forth at § 210.6, may have the effect of shifting losses resulting from an agency error to the RDFI. As discussed above, one commenter gave an example of an agency's initiation of a duplicate debit entry to a receiver's account, in which case the account might become overdrawn, resulting in returned checks and related charges for which the receiver would attempt to recover compensation. If the receiver's right of recovery from the Government were limited to the amount of the entry, the receiver might seek compensation from the RDFI for a refund of charges and other damages resulting from the return of checks, loss of use of funds, etc. Section 210.8(b) addresses this situation by providing that the receiver cannot recover against the RDFI for these damages.

Section 210.8(b)(1) is unchanged from the proposed rule except that the reference to "reserve account" has been changed to "account" in response to comments that Federal Reserve Banks also maintain clearing accounts for financial institutions in some cases. Section 210.8(b)(1) clarifies that a financial institution may not originate or transmit a debit entry to an agency without the prior written authorization of the agency. As previously discussed, debit entries to the TGA represent a significant security concern for the Service. By expanding the use of the ACH system to allow for Government payments by a debit to the TGA, the possibility of unauthorized debits to the TGA arises. In carrying out its fiscal responsibility, the Service believes it is necessary to take precautions to ensure that such debits do not occur. Therefore Part 210 requires special security measures not imposed under the ACH Rules.

The ACH Rules provide that a receiver must have authorized the initiation of an entry to the receiver's account before the entry is originated and that the ODFI must warrant that the authorization is valid. Section 210.8(b)(1) goes beyond the ACH Rules by requiring that an agency authorize the debit entry, and that the authorization be in writing or similarly authenticated.

Under Part 210 as amended, a financial institution is liable for any unauthorized debit entries initiated to an agency in violation of this requirement. In connection with this, the Government also must be able to recover the interest that it would have derived from the use of the debited funds had they remained in the TGA. Therefore, a financial institution's liability for unauthorized debit entries to the TGA includes imputed interest under § 210.8(b)(1). This provision is an exception to the general limitation of a financial institution's liability to the amount of an entry. The Service believes it is necessary to impose this additional liability in order to avoid any potential loss of public funds resulting from an unauthorized debit to the TGA.

Section 210.8(b)(2) restates the third and fourth sentences of former § 210.11(b) and addresses the RDFI's liability in situations where the financial institution accepts a forged authorization. Under the ACH Rules, a receiver must authorize an entry before the entry may be originated and the ODFI must warrant that the authorization is valid. The ODFI or the originator thus bears the ultimate liability for any loss resulting from a forged or invalid authorization. Similarly, under UCC Article 4A, the ODFI or originator generally bears the risk of loss if an entry is originated to a receiver not entitled to the payment. Section 210.8(b)(2) operates to preempt these ACH and UCC Article 4A rules in situations where a financial institution accepts the recipient's authorization and fails to verify the identity of the recipient. If the financial institution accepts a forged authorization, the financial institution rather than the Government will be liable for the entries effected in reliance on the forged authorization.

The Service has revised § 210.8(b)(2) of the final rule to provide that an RDFI that transmits to an agency an authorization containing an incorrect account number shall be liable for any resulting loss, up to the amount of the payment(s) made on the basis of the incorrect number. With respect to NOCs that contain incorrect account information, the Service believes that the treatment of erroneous NOCs are appropriately addressed under the ACH Rules. The ACH Rules provide that an RDFI that transmits an NOC warrants that the information contained within the NOC is correct, and that the RDFI is liable for any loss or liability resulting from a breach of this warranty. (See ACH Rules, Article Five, Section 5.3) Accordingly, a financial institution that transmits to an agency an NOC containing erroneous information will be liable to the agency for the amount of any resulting misdirected entry.

In the case of a misdirected entry that an agency believes was the result of an incorrect account number in an authorization or NOC transmitted by an RDFI, the agency shall carry out an investigation to determine the cause of the error. If the agency determines that the loss in fact resulted from an RDFI's transmission of an incorrect account number, the agency may instruct the Service to direct the appropriate Federal Reserve Bank to debit the RDFI's account for the amount of the misdirected payment(s). The agency may not issue such an instruction until it has notified the RDFI of the results of its investigation and provided the RDFI a reasonable opportunity to respond.

Section 210.8(c) sets forth the conditions under which the obligation for the amount of an entry is acquitted. The word "final" has been added to the wording in the proposed rule in recognition that a credit entry may be reversed after crediting by a Federal Reserve Bank if the Reserve Bank does not receive actually and finally collected funds in settlement of the item at or before 8:30 a.m. Eastern Time on the banking day following the settlement date. Section 210.8(c) also has been revised from the proposed rule to clarify that the originator's obligation, in addition to any obligation of the ODFI, is discharged upon final crediting. The final rule also provides that, in the case of a debit entry originated by an agency against an account, full acquittance does not occur until the underlying payment is final.

Subpart B—Reclamation of Benefit Payments

The Service has restructured Subpart B of Part 210 by adding a new § 210.9—Parties to the reclamation. The other five sections comprising Subpart B (§§ 210.10 through 210.14) are a

reorganization of the four previous sections on reclamations in Part 210. As discussed above, the reclamation provisions of Subpart B completely preempt the reclamation provisions of the ACH Rules with respect to benefit payments received by an RDFI after the death or legal incapacity of a recipient or the death of a beneficiary. Any provisions of the ACH Rules dealing with reclamation of benefit payments are not applicable ACH Rules as defined in § 210.2. The Service has not changed significantly the obligations and liabilities of agencies and financial institutions in effect under former Part 210.

In order to simplify the regulation and enhance its flexibility with respect to automating reclamations, the Service has moved certain procedures and guidelines from Subpart B to the Service's Green Book or Treasury Financial Manual. As discussed above with respect to Subpart A, the Green Book and the Treasury Financial Manual do not introduce new rights and obligations that are not contained in Part 210. Instead, they provide specific operational directions and procedures which put the regulatory requirements into practice. The Service has the authority to enforce the requirements set forth in the Green Book and the Treasury Financial Manual in the same manner that it enforces regulations.

Section 210.9—Parties to the Reclamation

The Service has added this new section to delineate the differing roles of the financial institution, the Service, and the agency that certified the benefit payments in question.

Section 210.9(a) restates provisions of former §§ 210.7(a) and 210.14(d) of Part 210, which provided that by accepting and handling benefit payments, a financial institution agrees to the provisions of Subpart B, including the reclamation actions and the debiting of the financial institution's Federal Reserve Bank account for any reclamation amount for which it is liable.

Section 210.9(b) clarifies that the Service performs only disbursing and collection functions on behalf of agencies and does not make decisions as to the underlying obligations themselves. For example, if a financial institution or recipient has a question about the amount of a reclamation, the Service will respond that the amount was determined by the appropriate agency. In addition, if a financial institution or recipient disputes the facts underlying a death or date of death, that party should discuss the dispute with the appropriate agency. After resolution, the Service will carry out the reclamation in accordance with the direction of the agency that certified the payment or directed the Service to reclaim the funds in question.

Section 210.10—RDFI Liability

This section defines the liability of RDFIs for benefit payments received after the death or legal incapacity of a recipient or death of a beneficiary, and limits the extent of that liability.

Section 210.10(a) restates the rule set forth at § 210.12(a) of previous Part 210, but moves the limited liability provisions to the next section to make it clear that an RDFI is presumed liable for all benefit payments received after the death or legal incapacity of a recipient or death of a beneficiary unless the RDFI meets the qualifications for limited liability set forth in § 210.11. An RDFI has no right to limit its liability with respect to benefit payments received after it knows of the death or incapacity of a recipient or death of a beneficiary and has had a reasonable opportunity to act on that knowledge. Accordingly, the RDFI is required to return all benefit payments received after it learns of the death or legal incapacity of a recipient or death of a beneficiary. This obligation applies whether the RDFI has received a notice of reclamation or learned of the death or legal incapacity on its own.

In addition, § 210.10(a) requires that the RDFI immediately notify a paying agency if the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency. Some financial institutions, while recognizing that it may be in the institution's best interest to provide agencies with such notice, commented that financial institutions should not incur further liability by failing to provide the notice.

Under § 210.11(d) as proposed, an RDFI that failed to notify an agency as required by § 210.10(a) would have forfeited its right to limit its liability. The Service agrees that proposed § 210.11(d) could potentially impose a harsh result in some circumstances, particularly where no loss is caused by the RDFI's failure to comply with the notice requirement. Accordingly, the Service has amended § 210.11(d) to provide that an RDFI that fails to comply with any provision of Subpart B in a timely and accurate manner, including the notice requirements at § 210.13, will be liable to the Government for any loss resulting from its act or omission.

Section 210.10(d) provides that an RDFI's liability for post-death and post-incapacity payments is limited to the most recent six years of payments. Previously, RDFIs were subject under Part 210 to potentially unlimited liability in situations where an agency is unaware of the death or legal incapacity of the recipient or the death of a beneficiary and continues to make payments to the account for a number of years. Financial institutions that commented on the proposed rule supported shortening the time frame for initiating reclamations, although several financial institutions urged the Service to adopt a shorter period than six years. Some agencies supported the proposed time limit, while other agencies objected to it.

Section 210.10(d) also provides an exception to the six-year limitation where the amount in the account when the RDFI receives the notice of reclamation and has had a reasonable opportunity to act on the notice exceeds the six-year amount for which the RDFI otherwise would be liable. In such a case, the RDFI would be liable for the total amount of all post-death or post-incapacity payments, up to the amount in the account.

In addition, § 210.10(d) requires that an agency that initiates a reclamation must do so within 120 days after the date that the agency receives notice of the death or incapacity of the recipient or death of the beneficiary. This provision is intended to encourage agencies to act in a timely manner in initiating reclamations, and to protect RDFIs from liability in the event an agency does not act expeditiously. Some agencies commented that the 120-day period was an adequate and appropriate period deadline, whereas other agencies commented that 120 days is too short a period in view of exception processing delays on the part of the Service that occur with respect to certain non-recurring entries. Financial institutions commenting on this provision supported a shortened deadline for initiating reclamations and generally felt that 120 days was appropriate.

Section 210.10(e) is unchanged from the proposed rule except that the reference to "reserve account" has been changed to "account" to reflect the fact that a Federal Reserve Bank may also maintain clearing accounts for financial institutions in some cases. Section 210.10(e) restates a rule of reclamations previously set forth at §§ 210.13(c) and (d): the Government has the right to debit the RDFI's account at its Federal Reserve Bank for the full amount of all post-death or post-incapacity benefit payments owed to an agency or for a lesser amount as a result of the RDFI's ability to limit its liability. Such action,

if necessary, represents a last step in reclaiming funds that have not otherwise been recovered.

The 60-day time period for an RDFI to return funds, which was previously set forth at § 210.13(c), is a procedural item that may change with the automation of reclamations. Therefore, the Service has relocated this requirement to the Green Book.

Section 210.11—Limited Liability

The Service has not changed the criteria that an RDFI must meet in order to limit its liability under Subpart B, but has reworded the provisions setting forth the criteria for greater clarity.

Section 210.11(a) provides the basis for calculating an RDFI's liability if it is eligible to limit its liability because it did not have actual or constructive knowledge of the death or incapacity of a recipient or the death of a beneficiary. The formula is taken from previous § 210.12(b) and, although reworded, does not change significantly the substantive operation of the previous formula.

Former § 210.12(d) of Part 210 contained rules addressing the circumstances in which an RDFI is "deemed to have knowledge" of the death or incapacity using a standard of "due diligence." The Service, believing that the description of due diligence may be confusing or difficult to apply in this context, proposed to utilize a definition of "actual or constructive knowledge" set forth at proposed § 210.2.

Formerly under Part 210, one of the factors relevant to determining the extent of an RDFI's limited liability was the amount in the account. Former § 210.13(b)(2)(i) defined the "amount in the account" to mean the balance in the account when the RDFI has received a notice of reclamation and has had a reasonable time to take action based on its receipts, plus any additions to the account balance made before the RDFI returns the notice of reclamation to the Government. Part 210 previously provided that a reasonable time to take action was not later than the close of business on the day following the receipt of the notice of reclamation.

The Service has experienced many instances in which the "amount in the account" for reclamation purposes has been reduced by automated teller machine (ATM) withdrawals and the RDFI cannot provide information regarding the identity of the withdrawer. The Service therefore proposed in the NPRM to define the "amount in the account" as the account balance at the time the RDFI receives the notice of reclamation and to eliminate the "reasonable time to take action" language formerly at § 210.13(b)(2)(i).

A number of financial institutions commenting on the proposed rule objected to the calculation of the amount in the account on the basis that they cannot take immediate action to prevent withdrawals upon receipt of a notice of death. One commenter noted that approximately one-half of community banks utilize batch processing systems, in which a hold placed on an account cannot be activated until evening or the following day, depending on the processing schedule. As discussed above with respect to the definition of "actual and constructive knowledge," the Service has revised the definition to provide financial institutions with a reasonable opportunity to take action after receiving notice of death or incapacity. The Service believes that one business day will normally constitute a reasonable opportunity to take action.

Section 210.11(b) sets forth the steps an RDFI must take in order to qualify for limited liability. By requiring an RDFI to certify the information required in § 210.11(b)(1) and (2), the burden of demonstrating qualification for limited liability is placed on the RDFI. Failure to meet this burden results in the full liability of the RDFI under proposed § 210.10.

Section 210.11(b)(2) incorporates the last sentence of former § 210.13(b)(1), and adds the requirement that the RDFI certify the date the RDFI first had actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary even if such knowledge was obtained first through notice received from the agency. As proposed, § 210.11(b)(2) stated that the RDFI must certify the date the RDFI first had "information" of the death or incapacity. Some commenters questioned the meaning of the word "information," as opposed to the phrase "actual or constructive knowledge." Because "information" was intended to refer to actual or constructive knowledge, § 210.11(b)(2) has been revised to eliminate any apparent inconsistency.

Requiring these certifications, in combination with the authority of the Government to debit the RDFI's account as provided in § 210.10(e), underscores that the burden is on the RDFI to demonstrate its qualification for limited liability.

Former § 210.13(b)(2)(ii) has been relocated to § 210.11(b)(3) of the final rule.

Section 210.11(c) provides the payment and collection procedures which apply if an RDFI qualifies for limited liability. After an RDFI returns the amount specified in § 210.11(a)(1), if the agency is unable to collect the remaining amount of the outstanding total, the Government will debit the RDFI's account at its Federal Reserve Bank (or the correspondent account utilized by the RDFI) for the amount specified in § 210.11(a)(2), which is the *lesser* of: (i) the benefit payments received by the RDFI from the agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary, or (ii) the *balance* of the outstanding total. It should be noted that in no instance will the RDFI be liable for more than the outstanding total because the amount potentially recoverable under § 210.11(a)(2) cannot exceed the balance of the unrecovered outstanding total.

As proposed in the NPRM, § 210.11(d) would have provided that an RDFI would forfeit its right to limit its liability if the RDFI failed to comply with any provision of Subpart B. One financial institution commented that the proposed expanded liability in § 210.11(d) was inappropriate and unfair, and that only a violation of those provisions that relate directly to the qualifications for limited liability stated in § 210.11(a) and (b) should cause a financial institution to lose its right to limit its liability. The Service has revised § 210.11(d) to provide that a financial institution that violates any provision of Subpart B shall be liable to the Government for any loss resulting from its act or omission, in addition to any amount(s) for which the RDFI is liable under § 210.10 or § 210.11(a).

Section 210.12—RDFI's Rights of Recovery

Section 210.12(a) restates the principle set forth in former § 210.14(c) that in reclaiming funds from an RDFI, the Government is not directing or authorizing the RDFI to debit the recipient's account. Any rights that an RDFI may have to recover the amount of reclaimed funds from a recipient are a matter of applicable state law and the contract between the RDFI and the recipient. Subpart B neither limits nor expands those rights.

Section 210.12(b) restates without substantive change former § 210.14(d) of Part 210.

Section 210.13—Notice to Account Owners

Section 210.13 is based on former § 210.14(a) of Part 210, but has been changed slightly to provide for the possibility of an automated reclamation process by the addition of the phrase

"or otherwise provide to the account owner(s)" to the existing requirement that notice be mailed. In addition, the phrase "any notice required by the Service to be provided to account owners as specified in the Green Book" has been substituted for the specific reference to the "Notice to Account Owners" to allow for more flexibility in changing the format of the required notice.

Part 210 formerly required that RDFIs notify account owners of any actions to be taken by the RDFI with respect to the account in connection with a reclamation action. The Service believes that this requirement may intrude unnecessarily into the relationship between the RDFI and its customer and conflicts with the principle that reclamations are actions between the Government and the RDFI, and not between the Government and the recipient. Actions taken by an RDFI with respect to a customer account, and any notice to the customer in connection with those actions, are a matter of State law or contract, not Federal law.

Section 210.14—Erroneous Death Information

This section is based upon former § 210.15 of Part 210, with certain additions and deletions. Much of former § 210.15 was procedural information which the Service has moved to the Green Book, where it is more appropriately located. In particular, the Service has relocated to the Green Book the procedures that RDFIs are to follow in correcting erroneous death information (previously codified in § 210.15(a)(1) and (2) and § 210.15(c)). The Service also has moved to the Green Book the 60-day time limit for the RDFI to return the completed notice of reclamation to the Government in order for the RDFI to limit its liability for the payments made after the death or legal incapacity of the recipient or death of the beneficiary. This 60-day limit is a requirement for the paper-based reclamation procedure. Any automated reclamation procedures developed or used by the Government would not be bound by the same time limit as the paper process since an automated procedure theoretically could be completed in less time.

The provisions at § 210.14(b) direct questions and disputes to the agency issuing directions on reclamations. These provisions clarify that the Service only performs disbursing and collection functions on behalf of the agencies and does not make decisions as to the underlying obligations.

Subpart C—Discretionary Salary Allotments

The Service has removed Subpart C from Part 210. Subpart C provided that discretionary allotments from Federal employees' wage and salary payments permitted by the issuing agency could be made through the ACH system and were subject to Part 210. The Service determined that Subpart C was redundant since the substance of Subpart C was covered in other regulations. For example, regulations issued by the Office of Personnel Management, at 5 CFR Part 550, address the circumstances under which discretionary allotments may be made. Subpart A of Part 210 sets forth the rules governing all ACH credit entries made by an agency, including any savings and salary allotment payments. For these reasons, specific provisions for the use of the ACH system to allow for discretionary allotments in Part 210 are unnecessary.

III. Rulemaking Analysis

Treasury has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866.

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

There is no collection of information contained in this rule and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfers, Fraud, Incorporation by reference.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR Part 210 is revised to read as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

Sec.

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

§ 210.1 Scope; relation to other regulations.

This part governs all entries and entry data originated or received by an agency through the Automated Clearing House (ACH) network, except as provided in paragraphs (a) and (b) of this section. This part also governs reclamations of benefit payments.

(a) Federal tax payments received by the Federal Government through the ACH system that are governed by part 203 of this title shall not be subject to any provision of this part that is inconsistent with part 203.

(b) ACH credit or debit entries for the purchase of, or payment of principal and interest on, United States securities that are governed by part 370 of this title shall not be subject to any provision of this part that is inconsistent with part 370.

§ 210.2 Definitions.

For purposes of this part, the following definitions apply. Any term that is not defined in this part shall have the meaning set forth in the ACH Rules.

(a) *ACH Rules* means the Operating Rules and the Operating Guidelines published by the National Automated Clearing House Association (NACHA), a national association of regional member clearing house associations, ACH Operators and participating financial institutions located in the United States.

(b) *Actual or constructive knowledge,* when used in reference to an RDFI's knowledge of the death or legal incapacity of a recipient or death of a beneficiary, means that the RDFI received information, by whatever means, of the death or incapacity and has had a reasonable opportunity to act on such information or that the RDFI would have learned of the death or incapacity if it had followed commercially reasonable business practices.

(c) *Agency* means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States. The term agency does not include a Federal Reserve Bank.

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or

before September 17, 1999, as published in Parts I, II, and IV of the "1999 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.4 and Appendix Eleven (governing the enforcement of the ACH Rules);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of "Effective Entry Date" in Appendix Two).

(e) *Authorized payment agent* means any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or other agency making Federal payments, to act on behalf of an individual entitled to a Federal payment.

(f) *Automated Clearing House or ACH* means a funds transfer system governed by the ACH Rules which provides for the interbank clearing of electronic entries for participating financial institutions.

(g) *Beneficiary* means a natural person other than a recipient who is entitled to receive the benefit of all or part of a benefit payment.

(h) *Benefit payment* is a payment for a Federal entitlement program or for an annuity, including, but not limited to, payments for Social Security, Supplemental Security Income, Black Lung, Civil Service Retirement, Railroad Retirement annuity and Railroad Unemployment and Sickness benefits, Department of Veterans Affairs Compensation and Pension, and Worker's Compensation.

(i) *Federal payment* means any payment made by an agency. The term includes, but is not limited to:

(1) Federal wage, salary, and retirement payments;

(2) Vendor and expense reimbursement payments;

(3) Benefit payments; and

(4) Miscellaneous payments including, but not limited to, interagency payments; grants; loans; fees; principal, interest, and other payments related to United States marketable and nonmarketable securities; overpayment reimbursements; and payments under Federal insurance or guarantee programs for loans.

(j)(1) *Financial institution* means:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iii) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iv) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to apply to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

(v) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution as defined in such Act (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(vi) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

(2) In this part, a financial institution may be referred to as an Originating Depository Financial Institution (ODFI) if it transmits entries to its ACH Operator for transmittal to a Receiving Depository Financial Institution (RDFI), or it may be referred to as an RDFI if it receives entries from its ACH Operator for debit or credit to the accounts of its customers.

(k) *Government entry* means an ACH credit or debit entry or entry data originated or received by an agency.

(l) *Green Book* means the manual issued by the Service which provides financial institutions with procedures and guidelines for processing Government entries.

(m) *Notice of reclamation* means notice sent by electronic, paper, or other means by the Federal Government to an RDFI which identifies the benefit payments that should have been returned by the RDFI because of the death or legal incapacity of a recipient or death of a beneficiary.

(n) *Outstanding total* means the sum of all benefit payments received by an RDFI from an agency after the death or legal incapacity of a recipient or the death of a beneficiary, minus any amount returned to, or recovered by, the Federal Government.

(o) *Recipient* means a natural person, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency.

(p) *Service* means the Financial Management Service, Department of the Treasury.

(q) *Treasury* means the United States Department of the Treasury.

(r) *Treasury Financial Manual* means the manual issued by the Service containing procedures to be observed by all agencies and Federal Reserve Banks with respect to central accounting, financial reporting, and other Federal Government-wide fiscal responsibilities of the Treasury.

§ 210.3 Governing law.

(a) *Federal Law.* The rights and obligations of the United States and the Federal Reserve Banks with respect to all Government entries, and the rights of any person or recipient against the United States and the Federal Reserve Banks in connection with any Government entry, are governed by this part, which has the force and effect of Federal law.

(b) *Incorporation by reference—applicable ACH Rules.*

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before September 17, 1999, as published in Parts I, II, and IV of the "1999 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network." The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the "1999 ACH Rules" are available from the National Automated Clearing House Association, 607 Herndon Parkway, Suite 200, Herndon, Virginia 20170. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. 20001.

(2) Any amendment to the applicable ACH Rules that takes effect after September 17, 1999, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register.** An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal**

Register notice expressly accepting such amendment.

(c) *Application of this part.* Any person or entity that originates or receives a Government entry agrees to be bound by this part and to comply with all instructions and procedures issued by the Service under this part, including the Treasury Financial Manual and the Green Book. The Treasury Financial Manual is available for downloading at the Service's web site at http://www.fms.treas.gov/ or by calling (202) 874–9940 or writing the Directives Management Branch, Financial Management Service, Department of the Treasury, 3700 East West Highway, Room 500C, Hyattsville, MD 20782. The Green Book is available for downloading at the Service's web site at http://www.fms.treas.gov/fmsnews.html or by calling (202) 874–6540 or writing the Product Promotion Division, Financial Management Service, Department of the Treasury, 401 14th Street, S.W., Room 309, Washington, D.C. 20227.

Subpart A—General

§ 210.4 Authorizations and revocations of authorizations.

(a) *Requirements for authorization.* Each debit and credit entry subject to this part shall be authorized in accordance with the applicable ACH Rules and the following additional requirements:

(1) The agency or the RDFI that accepts the recipient's authorization shall verify the identity of the recipient and, in the case of a written authorization requiring the recipient's signature, the validity of the recipient's signature.

(2) Unless authorized in writing, or similarly authenticated, by an agency, no person or entity shall initiate or transmit a debit entry to that agency, other than a reversal of a credit entry previously sent to the agency.

(b) *Terms of authorizations.* By executing an authorization for an agency to initiate entries, a recipient agrees:

(1) To the provisions of this part;

(2) To provide accurate information;

(3) To verify the recipient's identity to the satisfaction of the RDFI or agency, whichever has accepted the authorization;

(4) That any new authorization inconsistent with a previous authorization shall supersede the previous authorization; and

(5) That the Federal Government may reverse any duplicate or erroneous entry or file as provided in § 210.6(f) of this part.

(c) *Termination and revocation of authorizations.* An authorization shall remain valid until it is terminated or revoked by:

(1) With respect to a recipient of benefit payments, a change in the recipient's ownership of the deposit account as reflected in the deposit account records, including the removal of the name of the recipient, the addition of a power of attorney, or any action which alters the interest of the recipient;

(2) The death or legal incapacity of a recipient of benefit payments or the death of a beneficiary;

(3) The closing of the recipient's account at the RDFI by the recipient or by the RDFI. With respect to a recipient of benefit payments, if an RDFI closes an account to which benefit payments currently are being sent, it shall provide 30 calendar days written notice to the recipient prior to closing the account, except in cases of fraud; or

(4) The RDFI's insolvency, closure by any state or Federal regulatory authority or by corporate action, or the appointment of a receiver, conservator, or liquidator for the RDFI. In any such event, the authorization shall remain valid if a successor is named. The Federal Government may temporarily transfer authorizations to a consenting RDFI. The transfer is valid until either a new authorization is executed by the recipient, or 120 calendar days have elapsed since the insolvency, closure, or appointment, whichever occurs first.

§ 210.5 Account requirements for Federal payments.

(a) Notwithstanding ACH Rule 2.1.2, an ACH credit entry representing a Federal payment shall be deposited into an account at a financial institution. For all payments other than vendor payments, the account at the financial institution shall be in the name of the recipient, except as provided in paragraph (b) of this section.

(b)(1) Where an authorized payment agent has been selected, the Federal payment shall be deposited into an account titled in accordance with the regulations governing the authorized payment agent.

(2) Where a Federal payment is to be deposited into an investment account established through a securities broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, or an investment account established through an investment company registered under the Investment Company Act of 1940 or its transfer agent, such payment may be deposited into an account designated by such broker or dealer, investment company, or transfer agent.

(3) The Secretary of the Treasury may waive the requirements of paragraph (a) of this section in any case or class of cases.

§ 210.6 Agencies.

Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2, agencies shall be subject to the obligations and liabilities set forth in this section in connection with Government entries.

(a) *Receiving entries.* An agency may receive ACH debit or credit entries only with the prior written authorization of the Service.

(b) *Liability to a recipient.* An agency will be liable to the recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(c) *Liability to an originator.* An agency will be liable to an originator or an ODFI for any loss sustained by the originator or ODFI as a result of the agency's failure to credit an ACH entry to the agency's account in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(d) *Liability to an RDFI or ACH Association.* Except as otherwise provided in this part, an agency will be liable to an RDFI for losses sustained in processing duplicate or erroneous credit and debit entries originated by the agency. An agency's liability shall be limited to the amount of the entry(ies), and shall be reduced by the amount of the loss resulting from the failure of the RDFI to exercise due diligence and follow standard commercial practices in processing the entry(ies). This section does not apply to credits received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary as governed by Subpart B of this part. An agency shall not be liable to any ACH association.

(e) *Acquittance of the agency.* The final crediting of the amount of an entry to a recipient's account shall constitute full acquittance of the Federal Government.

(f) *Reversals.* An agency may reverse any duplicate or erroneous entry, and the Federal Government may reverse any duplicate or erroneous file. In initiating a reversal, an agency shall certify to the Service that the reversal complies with applicable law related to the recovery of the underlying payment. An agency that reverses an entry shall indemnify the RDFI as provided in the applicable ACH Rules, but the agency's liability shall be limited to the amount of the entry. If the Federal Government

reverses a file, the Federal Government shall indemnify the RDFI as provided in the applicable ACH Rules, but the extent of such liability shall be limited to the amount of the entries comprising the duplicate or erroneous file. Reversals under this section shall comply with the time limitations set forth in the applicable ACH Rules.

§ 210.7 Federal Reserve Banks.

(a) *Fiscal Agents.* Each Federal Reserve Bank serves as Fiscal Agent of the Treasury in carrying out its duties as the Federal Government's ACH Operator under this part. As Fiscal Agent, each Federal Reserve Bank shall be responsible only to the Treasury and not to any other party for any loss resulting from the Federal Reserve Bank's action, notwithstanding Section 11.5 and Article 8 of the ACH Rules. Each Federal Reserve Bank may issue operating circulars not inconsistent with this part which shall be binding on financial institutions.

(b) *Routing Numbers.* All routing numbers issued by a Federal Reserve Bank to an agency require the prior approval of the Service.

§ 210.8 Financial institutions.

(a) *Status as a Treasury depositary.* The origination or receipt of an entry subject to this part does not render a financial institution a Treasury depositary. A financial institution shall not advertise itself as a Treasury depositary on such basis.

(b) *Liability.* Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section. A financial institution shall not be liable to any third party for any loss or damage resulting directly or indirectly from an agency's error or omission in originating an entry. Nothing in this section shall affect any obligation or liability of a financial institution under Regulation E, 12 CFR part 205, or the Electronic Funds Transfer Act, 12 U.S.C. 1693 *et seq.*

(1) An ODFI that transmits a debit entry to an agency without the prior written or similarly authenticated authorization of the agency, shall be liable to the Federal Government for the amount of the transaction, plus interest. The Service may collect such funds using procedures established in the applicable ACH Rules or by instructing a Federal Reserve Bank to debit the ODFI's account at the Federal Reserve Bank or the account of its designated correspondent. The interest charge shall be at a rate equal to the Federal funds rate plus two percent, and shall be assessed for each calendar day, from the day the Treasury General Account (TGA) was debited to the day the TGA is recredited with the full amount due.

(2) An RDFI that accepts an authorization in violation of § 210.4(a) shall be liable to the Federal Government for all credits or debits made in reliance on the authorization. An RDFI that transmits to an agency an authorization containing an incorrect account number shall be liable to the Federal Government for any resulting loss, up to the amount of the payment(s) made on the basis of the incorrect number. If an agency determines, after appropriate investigation, that a loss has occurred because an RDFI transmitted an authorization or notification of change containing an incorrect account number, the agency may instruct the Service to direct a Federal Reserve Bank to debit the RDFI's account for the amount of the payment(s) made on the basis of the incorrect number. The agency shall notify the RDFI of the results of its investigation and provide the RDFI with a reasonable opportunity to respond before initiating such a debit.

(c) *Acquittance of the financial institution.* The final crediting of the correct amount of an entry received and processed by the Federal Reserve Bank and posted to the TGA shall constitute full acquittance of the ODFI and the originator for the amount of the entry. Full acquittance shall not occur if the entries do not balance, are incomplete, are incorrect, or are incapable of being processed. In the case of funds collected by an agency through origination of a debit entry, full acquittance shall not occur until the underlying payment becomes final.

Subpart B—Reclamation of Benefit Payments

§ 210.9 Parties to the reclamation.

(a) *Agreement of RDFI.* An RDFI's acceptance of a benefit payment pursuant to this part shall constitute its agreement to this subpart. By accepting a benefit payment subject to this part, the RDFI authorizes the debiting of the Federal Reserve Bank account utilized by the RDFI in accordance with the provisions of § 210.10(e).

(b) *The Federal Government.* In processing reclamations pursuant to this subpart, the Service shall act pursuant to the direction of the agency that certified the benefit payment(s) being reclaimed.

§ 210.10 RDFI liability.

(a) *Full liability.* An RDFI shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of a recipient or the death of a beneficiary unless the RDFI has the right to limit its liability under § 210.11 of this part. An RDFI shall return any benefit payments received after the RDFI learns of the death or legal incapacity of a recipient or the death of a beneficiary, regardless of the manner in which the RDFI discovers such information. If the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency, the RDFI shall immediately notify the agency of the death or incapacity.

(b) *Notice of Reclamation.* Upon receipt of a notice of reclamation, an RDFI shall provide the information required by the notice of reclamation and return the amount specified in the notice of reclamation in a timely manner.

(c) *Exception to liability rule.* An RDFI shall not be liable for post-death benefit payments sent to a recipient acting as a representative payee or fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI did not have actual or constructive knowledge of the death of the beneficiary.

(d) *Time limits.* An agency that initiates a reclamation must do so within 120 calendar days after the date that the agency receives notice of the death or legal incapacity of a recipient or death of a beneficiary. An agency shall not reclaim any post-death or post-incapacity payment(s) made more than six years prior to the most recent payment made by the agency to the recipient's account; provided, however, that if the account balance at the time the RDFI receives the notice of reclamation exceeds the total amount of all post-death or post-incapacity payments made by the agency during such six-year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all payments made, up to the amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity (not to exceed one business day) to act on the notice.

(e) *Debit of RDFI's account.* If an RDFI does not return the full amount of the outstanding total or any other amount for which the RDFI is liable under this subpart in a timely manner, the Federal Government will collect the amount outstanding by instructing the appropriate Federal Reserve Bank to

debit the account utilized by the RDFI. The Federal Reserve Bank will provide advice of the debit to the RDFI.

§ 210.11 Limited liability.

(a) *Right to limit its liability.* If an RDFI does not have actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary at the time it receives one or more benefit payments on behalf of the recipient, the RDFI's liability to the agency for those payments shall be limited to:

(1) An amount equal to: (i) The amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity (not to exceed one business day) to act on the notice, plus any additional benefit payments made to the account by the agency before the RDFI responds in full to the notice of reclamation, or

(ii) The outstanding total, whichever is less; plus

(2) If the agency is unable to collect the entire outstanding total, an additional amount equal to:

(i) The benefit payments received by the RDFI from the agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary, or

(ii) The balance of the outstanding total, whichever is less.

(b) *Qualification for limited liability.* In order to limit its liability as provided in this section, an RDFI shall:

(1) Certify that at the time the benefit payments were credited to or withdrawn from the account, the RDFI had no actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary;

(2) Certify the date the RDFI first had actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary, regardless of how and where such information was obtained;

(3)(i) Provide the name, address, and any other relevant information of the following person(s):

(A) Co-owner(s) of the recipient's account;

(B) Other person(s) authorized to withdraw funds from the recipient's account; and

(C) Person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

(ii) If persons are not identified for any of these subcategories, the RDFI must certify that no such information is available and why no such information is available; and

(4) Fully and accurately complete all certifications on the notice of reclamation and comply with the requirements of this part.

(c) *Payment of limited liability amount.* If the RDFI qualifies for limited liability under this subpart, it shall immediately return to the Federal Government the amount specified in § 210.11(a)(1). The agency will then attempt to collect the amount of the outstanding total not returned by the RDFI. If the agency is unable to collect that amount, the Federal Government will instruct the appropriate Federal Reserve Bank to debit the account utilized by the RDFI at that Federal Reserve Bank for the amount specified in § 210.11(a)(2).

(d) *Violation of Subpart B.* An RDFI that fails to comply with any provision of this subpart in a timely and accurate manner, including but not limited to the certification requirements at § 210.11(b) and the notice requirements at § 210.13, shall be liable to the Federal Government for any loss resulting from its act or omission. Any such liability shall be in addition to the amount(s) for which the RDFI is liable under § 210.10 or § 210.11, as applicable.

§ 210.12 RDFI's rights of recovery.

(a) *Matters between the RDFI and its customer.* This subpart does not authorize or direct an RDFI to debit or otherwise affect the account of a recipient. Nothing in this subpart shall be construed to affect the right an RDFI has under state law or the RDFI's contract with a recipient to recover any amount from the recipient's account.

(b) *Liability unaffected.* The liability of the RDFI under this subpart is not affected by actions taken by the RDFI to recover any portion of the outstanding total from any party.

§ 210.13 Notice to account owners.

Provision of notice by RDFI. Upon receipt by an RDFI of a notice of reclamation, the RDFI immediately shall mail to the last known address of the account owner(s) or otherwise provide to the account owner(s) a copy of any notice required by the Service to be provided to account owners as specified in the Green Book. Proof that this notice was sent may be required by the Service.

§ 210.14 Erroneous death information.

(a) *Notification of error to the agency.* If, after the RDFI responds fully to the notice of reclamation, the RDFI learns that the recipient or beneficiary is not dead or legally incapacitated or that the date of death is incorrect, the RDFI shall inform the agency that certified the underlying payment(s) and direct the Service to reclaim the funds in dispute.

(b) *Resolution of dispute.* The agency that certified the underlying payment(s) and directed the Service to reclaim the funds will attempt to resolve the dispute with the RDFI in a timely manner. If the agency determines that the reclamation was improper, in whole or in part, the agency shall notify the RDFI and shall return the amount of the improperly reclaimed funds to the RDFI. Upon certification by the agency of an improper reclamation, the Service may instruct the appropriate Federal Reserve Bank to credit the account utilized by the RDFI at the Federal Reserve Bank in the amount of the improperly reclaimed funds.

Dated: April 6, 1999.

Richard L. Gregg,

Commissioner.

[FR Doc. 99–8873 Filed 4–8–99; 8:45 am]

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federal register

Friday
April 9, 1999

Part V

National Archives and Records Administration

Format for Notices of "Records Schedules; Availability and Request for Comments"; Notice

Records Schedules; Availability and Request for Comments; Notice

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Format for Notices of "Records Schedules; Availability and Request for Comments"

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notices at least once a month of pending records disposition schedules submitted by Federal agencies. Once approved by NARA, schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. Schedules call for the permanent retention and eventual transfer to the National Archives of the United States of records that have historical or other research value. Most records, however, lack such value and are approved for destruction after a specified period.

NARA began publishing **Federal Register** notices about schedules in 1985. This process alerts members of the public to pending schedules in which they may have an interest. Members of the public may request copies of schedules and provide NARA with comments. Until recently, notices of pending schedules contained only the name of the agency which submitted the schedule, the NARA-assigned control number, and an extremely brief summary of the records proposed for destruction. In 1998, NARA modified the format of notices. Notices now provide the total number of items covered by the schedule and the number of items proposed for disposal as well as more information concerning the types of records covered by the schedule. In addition, the explanatory information concerning the scheduling process included in each notice points out that NARA staff usually prepare appraisal memorandums concerning the records covered by a proposed schedule and that these too may be requested. (Our most recent notice of pending schedules is published elsewhere in this separate part of the **Federal Register**.)

NARA seeks public comments so we can assess and improve the effectiveness of **Federal Register** notices. We are especially interested receiving input concerning the following questions:

(1) Is the current format for notices, including the introductory material explaining the scheduling process, clear and easy to understand?

(2) Is the information provided about individual schedules sufficient to alert readers to pending schedules in which they have an interest? If not, what additional information would you need?

(3) Would it be easier for readers to locate notices of pending schedules if NARA were to publish such notices on only one specified day of the week?

(4) Are there any other ways in which NARA can use the **Federal Register** process to enhance public input concerning pending schedules?

DATES: Comments must be received on or before July 8, 1999.

ADDRESSES: Comments may be sent electronically to records.mgt@arch2.nara.gov (comments sent electronically must be in the body of the message or be in WordPerfect 6.1 or Word 6.0 if they are sent as attachments); by FAX to 301–713–6852; or by mail to Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

Dated: March 26, 1999.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 99–8878 Filed 4–8–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 24, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301)713–7110.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many

of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–99–3, 2 items, 2 temporary items). Forms relating to individual Survival, Evasion, Resistance, and Escape instructors including qualifications, training, and proficiency. Included are electronic copies of forms created using word processing and form filler software that are used to generate paper copies.

2. Department of the Air Force, Agency-wide (N1–AFU–99–6, 2 items, 2 temporary items). Checklists used to evaluate instructors in formal training courses. Included are electronic copies of forms created using word processing and form filler software that are used to generate paper copies.

3. Department of Commerce, National Oceanic and Atmospheric Administration (N1–23–99–1, 35 items, 15 temporary items). Records created by various units of the Coast and Geodetic Survey, primarily in the period 1817–1969. Included are seismograms and incomplete abstracts of earthquake reports, foreign seismograms and reports, general administrative reports and correspondence, aerial photographs, foreign tide readings, U.S. and foreign magnetic observations, instrument evaluation records, compass surveys, and magnetic declination charts. Files proposed for permanent retention date from the early 19th century through the late 1960s and include triangulation station descriptions, bench mark descriptions, earthquake report abstracts, seismological bulletins and special studies, operations logbooks, annual reports, ship and field office correspondence and reports, correspondence relating to aeronautical charting committees, aerial photographs and negatives, tidal observations and reports, international observatory station records, and research and development correspondence files.

4. Department of Defense, Defense Logistics Agency (N1–361–99–2, 11 items, 11 temporary items). Records relating to programs and services in agency Child Development Centers. Included are registers, activity schedules, lesson plans, annual reports, files on employees, and files on individual children, such as medical histories and records documenting the child's activities and development. Electronic copies of records created using electronic mail, word processing, and other office automation applications are also included.

5. Department of Energy, Federal Energy Regulatory Commission (N1–138–99–5) 4 items, 4 temporary items). Case files, working papers, and records created as documentation of the planning, creation, testing, maintenance, and use of computer systems. Included are electronic copies of documents created using electronic mail and word processing.

6. Department of Energy, Agency-wide (N1–434–98–5, 5 items, 5 temporary items). Contractor employee pay records containing pay data on each employee. This schedule also increases the retention period for levy and garnishment records and reports, registers, and other records relating to retirement of agency employees, which were previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing.

7. Department of Energy, Agency-wide (N1–434–98–6, 8 items, 8 temporary items). Records relating to employee pension plans and casualty insurance plans. These records include policies, endorsements, reports, studies, and correspondence. This schedule also increases the retention period for real property records and reports of inventory surveys, which were previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Energy, Agency-wide (N1–434–98–12, 4 items, 4 temporary items). Records relating to personal and official foreign travel. These records include forms, reports, correspondence, and electronic copies of documents created using electronic mail and word processing.

9. Department of the Treasury, Bureau of Engraving and Printing (N1–318–98–1, 1 item, 1 temporary item). Plate history cards created by the Office of Currency and Stamp Printing, ca. 1878–1960. The cards were used for work control and accountability for active and inactive numbered engraving plates, rolls, and dies used to manufacture U.S. Government securities.

10. Federal Reserve System, Board of Governors (N1–82–99–1, 7 items, 7 temporary items). Files of the Office of the Secretary pertaining to computer operations, century date conversion (Y2K), and employee performance ratings. Included are records related to the development, installation, testing, operation, and maintenance of computer applications, work stations, networks, Web sites, and other systems (not including data generated on the systems) as well as files concerning the agency's Year 2000 efforts such as plans, strategies, testing plans, research papers, and publications. Also included are electronic copies of documents created using electronic mail and word processing. In addition, this schedule increases the retention period of employee performance rating records which were previously approved for disposal.

Dated: March 26, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–8879 Filed 4–8–99; 8:45 am]

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federal register

Friday
April 9, 1999

Part VI

The President

Proclamation 7179—National Equal Pay Day, 1999

Federal Register
Vol. 64, No. 68
Friday, April 9, 1999

Presidential Documents

Title 3—

The President

Proclamation 7179 of April 7, 1999

National Equal Pay Day, 1999

By the President of the United States of America

A Proclamation

We live in a time of remarkable promise. Our Nation's economy is the strongest we have experienced in a generation, creating more than 18 million new jobs since 1993 and the fastest growth in real wages in more than two decades. American women have contributed greatly to this record of success; unfortunately, they have not enjoyed an equal share in the prosperity they have helped to create.

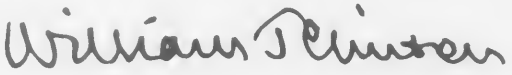
The typical woman who works full-time year-round earns approximately 75 cents for every dollar the typical man earns. An African American woman earns just 65 cents and a Hispanic woman earns 55 cents for each dollar that a white man earns. In the course of a week, this pay gap can mean one less bag of groceries, skipping a trip to the doctor, missing a rent payment, or not being able to pay for day care. Over the course of a working lifetime, it can mean thousands of dollars, a smaller pension, and fewer savings to provide for a comfortable retirement. And when a working woman is denied equal pay, it doesn't just hurt her; it also hurts her family. In more than 10 million American households today, the mother is the only breadwinner.

Americans have always believed in justice and equality. We have always believed that those who work hard should be able to provide a decent living for themselves and their children. If we are to live up to those ideals, we must ensure that women do not suffer wage discrimination. We must continue vigorous enforcement of existing laws, such as the Equal Pay Act and Title VII of the Civil Rights Act, so that no employer undervalues or underpays the work performed by women. To strengthen Department of Labor and Equal Employment Opportunity Commission efforts to end wage discrimination and expand opportunities in the workplace for women, my Administration has included a $14 million Equal Pay Initiative in my proposed balanced budget for fiscal year 2000. This initiative will provide more resources to identify wage discrimination, to educate workers and employers about their rights and responsibilities, and to bring more women into better-paying jobs. We will also work with the Congress to pass the proposed Paycheck Fairness Act—legislation designed to strengthen laws that prohibit wage discrimination.

As we observe National Equal Pay Day, let us reaffirm our commitment to justice and equality in the workplace, and let us build a Nation for the 21st century where the talents, efforts, and hard work of American women will be rightly appreciated and fairly rewarded.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim April 8, 1999, as National Equal Pay Day. I call upon Government officials, law enforcement agencies, business leaders, educators, and the American people to recognize the full value of the skills and contributions of women in the labor force. I urge all employers to review their wage practices and to ensure that all their employees are paid equitably for their work.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.



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H.J. Res. 28/P.L. 106–16

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H.R. 774/P.L. 106–17

Women's Business Center Amendments Act of 1999 (Apr. 6, 1999; 113 Stat. 27)

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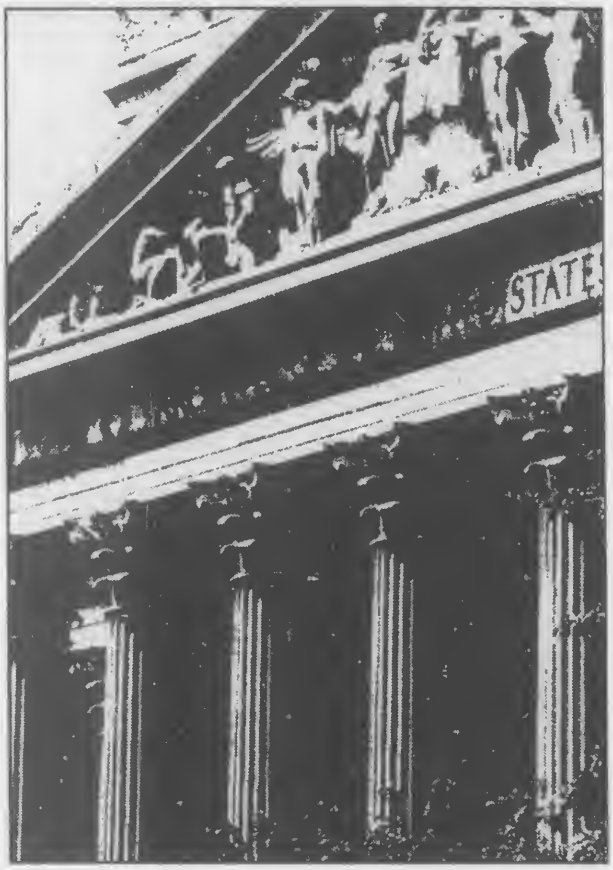

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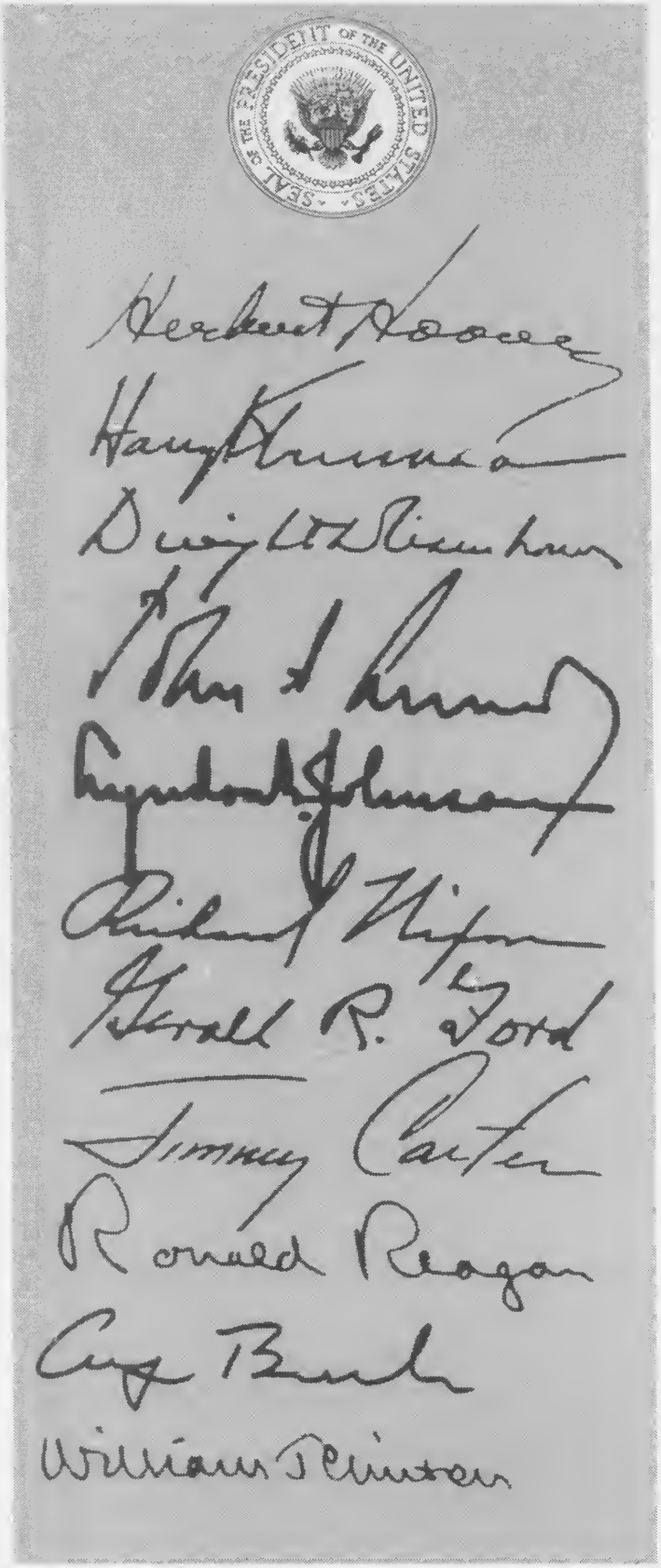

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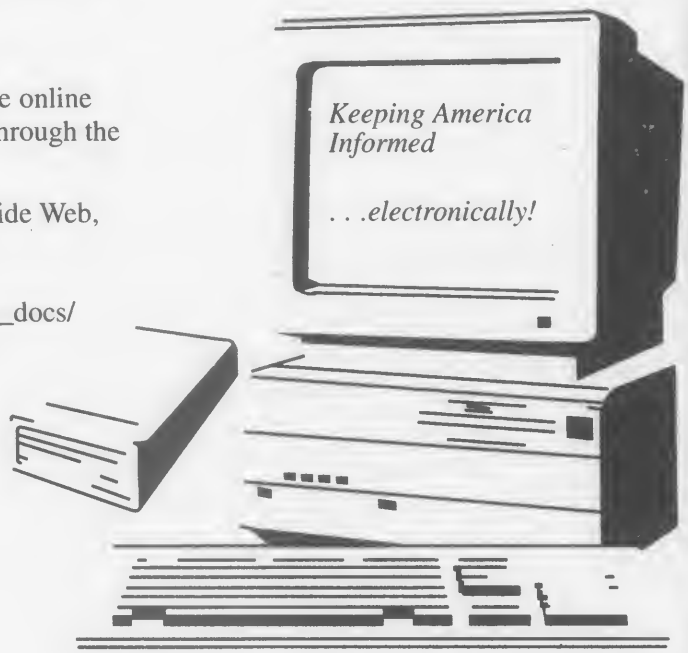

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