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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–073–4]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Oriental fruit fly regulations by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County and that the quarantine and restrictions are no longer necessary.

DATES: Interim rule effective February 18, 1998. Consideration will be given only to comments received on or before April 24, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–073–4, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–073–4. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks that can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), impose restrictions on the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective August 20, 1997, and published in the **Federal Register** on August 26, 1997 (62 FR 45141–45142, Docket No. 97–073–1), we quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area. In a second interim rule effective September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47551–47553, Docket No. 97–073–2), we quarantined an additional area in Los Angeles County, CA. In a third interim rule effective October 7, 1997, and published in the **Federal Register** on October 14, 1997 (62 FR 53223–53225, Docket No. 97–073–3), we expanded the second quarantined area to include new areas found to be infested with Oriental fruit fly.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, we have determined that the Oriental fruit fly has been eradicated from the portion of Los Angeles County, CA, that was quarantined on August 20, 1997. The last finding of Oriental fruit fly in this area was September 22, 1997.

Since then, no evidence of Oriental fruit fly infestations has been found in this area. Based on Departmental experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in this portion of Los Angeles County, CA. Therefore, we are removing this portion of Los Angeles County, CA, from the list of quarantined areas in § 301.93–3(c). One other portion of Los Angeles County remains on the list of quarantined areas.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove an unnecessary regulatory burden on the public. A portion of Los Angeles County, CA, was quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, immediate action is necessary to remove part of the quarantine on Los Angeles County, CA, and to relieve the restrictions on the interstate movement of regulated articles from that part.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule relieves restrictions on the interstate movement of regulated articles from a portion of Los Angeles County, CA.

Within the previously quarantined portion of Los Angeles County, there are approximately 143 entities that will be affected by this rule. All would be considered small entities. These include 2 farmers' markets, 1 community garden, 4 distributors, 93 fruit sellers, 7 vendors, 2 growers, 2 haulers, 27 nurseries, 2 packers, 2 processors, and 1 swap meet. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that did move regulated articles interstate was minimized by the availability of various treatments, that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County. That portion of Los Angeles County beginning at the intersection of Interstate Highway 10 and Gateway Boulevard; then east along Interstate Highway 10 to its second intersection with National Boulevard; then east along National Boulevard to Jefferson Boulevard; then east along Jefferson Boulevard to La Cienega Boulevard; then south along La Cienega Boulevard to Rodeo Road; then east along Rodeo Road to Martin Luther King, Jr. Boulevard; then southeast along Martin Luther King, Jr. Boulevard to Crenshaw Boulevard; then south along Crenshaw Boulevard to Slauson Avenue; then east along Slauson Avenue to Vermont Avenue; then south along Vermont Avenue to Florence Avenue; then east along Florence Avenue to Interstate Highway 110; then south along Interstate Highway 110 to Manchester Avenue; then east along Manchester Avenue to Avalon Boulevard; then south along Avalon Boulevard to Rosecrans Avenue; then west along Rosecrans Avenue to Interstate Highway 110; then south along Interstate Highway 110 to State Highway 91 (Artesia Boulevard); then west along State Highway 91 (Artesia Boulevard) to Western Avenue; then south along Western Avenue to 190th Street; then west along 190th Street to Anita Street; then southwest along Anita Street to Herondo Street; then southwest along Herondo Street to Hermosa Avenue; then west along an imaginary line to the Pacific Ocean coastline; then northwest along the Pacific Ocean coastline to a point due west of the west end of Ocean Park Boulevard; then east along an imaginary line drawn from that point to the west end of Ocean Park Boulevard; then northeast along Ocean Park Boulevard to Gateway Boulevard; then northeast along Gateway Boulevard to the point of beginning.

Done in Washington, DC, this 18th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–4491 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR PART 1499

RIN 0551–0035

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends regulations governing procedures for procuring ocean transportation for agricultural commodities provided under section 416(b) of the Agricultural Act of 1949 and the Food for Progress Act of 1985. These changes are consistent with the procedures applicable to title I of the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480).

DATES: This interim rule is effective February 23, 1998. Comments must be received in writing by April 24, 1998 to be assured of consideration.

ADDRESSES: Send comments to the Director, Commodity Credit Corporation, Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue, S.W., Stop 1031, Washington, D.C. 20250–1031; telephone (202) 720–3573.

FOR FURTHER INFORMATION CONTACT: Ira Branson, Director, Commodity Credit Corporation Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue, S.W., Stop 1031, Washington, D.C. 20250–1031; telephone (202) 720–3573.

SUPPLEMENTARY INFORMATION: This interim rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this interim rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this interim rule.

Paperwork Reduction Act

This interim rule does not contain any information collection requirements that require OMB approval under the provisions of the Paperwork Reduction Act.

Executive Order 12372

This interim rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This interim rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The interim rule would have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The interim rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

In accordance with section 416(b) of the Agricultural Act of 1949, 7 U.S.C. 1431(b), ("section 416(b)") and the Food for Progress Act of 1985, 7 U.S.C. 1736o, ("FFP"), Commodity Credit Corporation ("CCC") donates agricultural commodities overseas to meet food needs and to support economic development efforts in foreign countries. The recipient of a donation, commonly referred to as a "cooperating sponsor," is required to contract for the ocean transportation of the donated commodities. Current regulations governing section 416(b) and FFP require cooperating sponsors to follow certain procedures when contracting for ocean transportation of bulk cargoes and non-liner shipments of packaged commodities that parallel procedures required under title I of the Agricultural Trade Development and Assistance Act of 1954, (Pub. L. 480). The Pub. L. 480 Operations Division, Export Credits, Foreign Agricultural Service, has the responsibility of overseeing the contracting process for all these programs.

On October 10, 1997, CCC published a final rule applicable to title I, Pub. L. 480 at 7 CFR part 17 that changed certain requirements regarding the procedures for contracting for ocean transportation of bulk cargoes and non-liner shipments of packaged commodities and also reorganized part 17 (62 FR 52929). The purpose of this interim rule is to amend the regulations applicable to section 416(b) and FFP to be consistent with the new title I, P.L. 480 requirements. In particular, the interim rule deletes the prohibition in § 1499.8(b)(4) against "clarification or submission of additional information" under competitive freight invitations for bids and updates a cross reference to the title I, Pub. L. 480 regulations regarding information and certifications required from prospective shipping agents. Public participation in these rule changes is unnecessary because the changes were the subject of public comments during the title I, Pub. L. 480 rule-making process. Also, any delay in promulgating these changes may delay implementation of these foreign assistance programs this fiscal year. For these reasons, CCC is promulgating this rule as an interim rule, effective on publication. However, comments on the provisions of this regulation are invited. CCC will consider all comments received and may make changes based on the comments received.

List of Subjects in 7 CFR Part 1499

Agricultural commodities, Exports, Foreign aid.

Accordingly, CCC proposes to amend 7 CFR part 1499 as follows:

PART 1499—FOREIGN DONATION PROGRAMS

1. The authority citation for part 1499 continues to read as follows:

Authority: 7 U.S.C. 1431(b); 7 U.S.C. 1736o; E.O. 12752.

2. In § 1499.8, paragraph (b)(4) is amended by revising the first sentence to read as follows:

§ 1499.8 Ocean transportation.

* * * * *

(b) * * *

(4) In the case of shipments of bulk commodities and non-liner shipments of packaged commodities, the Cooperating Sponsor shall open offers in public in the United States at the time and place specified in the invitation for bids and consider only offers that are responsive to the invitation for bids without negotiation. * * *

* * * * *

§ 1499.8 [Amended]

3. In § 1499.8, paragraph (c)(2) is amended by removing "7 CFR 17.5" and adding, in its place, "7 CFR 17.4".

Signed at Washington, DC on November 20, 1997.

Christopher E. Goldthwait,

General Sales Manager, FAS, and Vice President, Commodity Credit Corporation.

[FR Doc. 98–4430 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 97–062–1]

Tuberculosis Testing of Livestock Other Than Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations to include species of livestock other than cattle and bison in the requirement for two annual herd tests for newly assembled herds on premises where a tuberculous herd has been depopulated. This requirement is necessary because, without testing, such livestock could become infected and spread tuberculosis to the cattle or bison in the herd before the disease was detected in the herd. Adding this requirement to the tuberculosis regulations will help ensure continued progress toward eradicating tuberculosis in the U.S. livestock population.

DATES: Interim rule effective February 23, 1998. Consideration will be given only to comments received on or before April 24, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–062–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–062–1. Comments

received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7727; or e-mail: jdavis@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The regulations in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis may be moved interstate without restriction if those cattle or bison are moved from a State designated as an accredited-free, accredited-free (suspended), or modified accredited State. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from a nonmodified accredited State.

The status of a State is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document titled "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (referred to below as the UM&R), which, as explained in the definition of *Uniform Methods and Rules—Bovine Tuberculosis Eradication* in § 77.1, has been incorporated by reference into the regulations.

Under the provisions of the UM&R, disclosure of tuberculosis in any herd must be followed by a complete epidemiologic investigation to determine the source of the infection in the herd and delimit the possible spread of the disease from the herd. Given the serious effects of the disease and the need to contain its spread, the Animal and Plant Health Inspection Service (APHIS) believes that every effort needs to be made to ensure the immediate elimination of tuberculosis from all species of domestic livestock on the affected premises. The most effective and immediate means of eliminating tuberculosis from a premises is the depopulation—i.e., removal directly to slaughter—of the entire herd.

When an affected herd has been depopulated, there is still some risk that the bovine tuberculosis disease agent, *M. bovis*, could persist on the premises from which the affected herd was removed. Because of that risk, the UM&R requires that two annual herd tests be applied to all cattle and bison in a newly assembled herd on premises where a tuberculous herd has been depopulated, with the first test being applied approximately 6 months after the assembly of the new herd. These two tests are intended to ensure that the animals in the new herd have not been infected with tuberculosis through environmental exposure to *M. bovis* remaining on the premises. The provisions of the UM&R do, however, recognize that the *M. bovis* organism cannot persist indefinitely in the environment without an animal host. Thus, the UM&R provides that the requirement for two annual herd tests for a newly assembled herd can be waived if the premises has remained vacant—i.e, free of livestock—for 1 year or more.

We believe that the testing requirement described in the previous paragraph is a necessary and sound approach to reducing the risk of tuberculosis being introduced into a newly assembled herd on a premises where a tuberculous herd has been depopulated. Because the UM&R currently incorporated specifically calls for the herd tests to be applied to all cattle and bison, the herd test requirement does not extend to other species of livestock that may be included in a new herd. However, it is becoming increasingly common for herd owners to maintain mixed groups of livestock on common ground, with cattle and bison commingling with animals such as llamas, alpacas, or captive deer. These other species are as susceptible to tuberculosis as cattle or bison and are capable of spreading the disease to, or contracting the disease from, the other livestock in the herd. Thus, the UM&R's omission of livestock other than cattle and bison from the herd testing requirement makes it possible for tuberculosis-infected livestock to be present in a mixed herd without being diagnosed, which could result in the herd's cattle or bison becoming infected with tuberculosis.

This potential risk presented by other species of livestock is recognized in our regulations in 9 CFR part 50, which provide for the payment of indemnity to the owners of animals destroyed because of tuberculosis. Specifically, § 50.14(f) of those regulations provides that a claim for compensation for exposed cattle, bison, or cervids destroyed during a herd depopulation will not be allowed if a designated epidemiologist determines that exotic bovidae (such as antelope) or other species of livestock in the herd were exposed to tuberculosis by reason of association with tuberculous livestock but were not destroyed as part of the herd depopulation. This basis for the denial of a compensation claim is intended to encourage herd owners to destroy all exposed livestock in a herd, not just the cattle, bison, or cervids for which compensation would be paid. This ensures that when the cattle, bison, or cervids in an affected herd are depopulated, other exposed species do not remain on the premises to infect the healthy livestock with which the owner reassembles the herd.

Given that the risk of tuberculosis exposure applies to all the livestock—not just the cattle and bison—in a newly assembled herd on a premises where a tuberculous herd was depopulated, we believe that it is necessary to include other species of livestock in the requirement for two annual herd tests for such herds. To do so, we have amended the definitions of *Accredited-free (suspended) State* and *Modified accredited State* in § 77.1 of the regulations. To support those changes, we have also amended the definition of *herd* in § 77.1 and have added a definition for *livestock* to that section.

The definition of *Accredited-free (suspended) State* provides that a State with the status of an accredited-free State is designated as accredited-free (suspended) if tuberculosis is detected in any cattle or bison in the State. Such a State will qualify for redesignation as an accredited-free State after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed. The definition of *Modified accredited State* provides, in part, that a State must comply with all the provisions of the UM&R regarding modified accredited States, and must apply those provisions to bison in the same manner as to cattle, in order to establish or maintain status as a modified accredited State. To each of those definitions, we have added the further requirement that if any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State must apply

the herd test requirements of the UM&R for such newly assembled herds to those other livestock in the same manner as to cattle and bison.

Because, as discussed above, the composition of a herd may not be limited to cattle or bison, we have also amended the definition of *herd* in § 77.1. The scope of the definition had been limited to groups of cattle, bison, or both; as amended by this interim rule, the definition of *herd* now includes other livestock. We have also added the following definition of *livestock*: "Cattle, bison, cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition." These two definitions are the same as those already provided for those terms in § 50.1 of the tuberculosis indemnity regulations.

Applicability to State Tuberculosis Status

Although this interim rule provides for the testing of all livestock in a newly assembled herd on a premises where a tuberculous herd has been depopulated, a State's tuberculosis status will continue to be based on the presence or absence of tuberculosis in cattle or bison in herds within the State. The intent of this interim rule is to provide for the identification and elimination of potential sources of tuberculosis infection in those newly assembled herds when they contain cattle or bison and other livestock. The detection of tuberculosis in livestock other than cattle and bison in a herd as a result of the testing provisions of this interim rule will not affect a State's tuberculosis status unless it is conclusively determined, in accordance with the existing regulations and the provisions of the UM&R, that tuberculosis infection is also present in the herd's cattle or bison.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to change the regulations in order to close a loophole in the herd testing requirements that could result in the spread of tuberculosis within mixed herds of cattle, bison, and other species of livestock. Without this testing requirement, it is possible for a tuberculosis-infected animal to spread the disease throughout a newly assembled herd, and for the disease to remain undetected until the cattle or bison in the herd are tested for tuberculosis. Two notable examples of tuberculosis being spread in this way occurred in 1992. In the State of New York, two dairy herds were depopulated after cattle in the herds were found to be infected with tuberculosis, and an additional 18 dairy herds were quarantined and tested. It was determined that the cattle in one of the herds that was depopulated had been exposed to tuberculous cervids that shared the premises. Similarly, tuberculosis was found in beef cattle in Pennsylvania that had been in contact with tuberculous cervids in the herd. As a result of these outbreaks, New York and Pennsylvania lost their accredited-free State status. Further, in one State there is a premises where cattle and bison were depopulated because of bovine tuberculosis, but other livestock exposed to the tuberculous cattle and bison remained after the depopulation. These exposed livestock have now commingled with the newly reassembled cattle and bison on that same premises. It is necessary to immediately implement this interim rule to ensure that all livestock on that premises have been properly tested before upgrading the State's tuberculosis status to accredited-free.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This interim rule amends the tuberculosis regulations by including species of livestock other than cattle and bison in the requirement for two annual herd tests for newly assembled herds on premises where a tuberculous herd has been depopulated. We are taking this action because, without testing, such livestock could become infected and spread tuberculosis to the cattle or bison in the herd before the disease was detected in the herd. Adding this requirement to the tuberculosis regulations will help ensure continued progress toward eradicating tuberculosis in the U.S. livestock population.

The U.S. livestock industry relies on healthy animals for its economic well-being, and the industry's role in the U.S. economy is significant. As an example, the total value of U.S. livestock output in 1991 was $66.6 billion, about half of the value of all agricultural production in the United States for that year. The value of live animal exports and exports of meat products totaled $4.3 billion in 1991, equivalent to 10 percent of the value of all U.S. agricultural exports that year. In 1996, there were 1,194,390 domestic operations with cattle and calves, and the inventory of cattle and calves at the end of that year stood at 101.2 million head with a value of more than $52 billion (U.S. Department of Agriculture, National Agricultural Statistics Service, "Agricultural Statistics 1995–96," Table 370).

Recent studies on the economic impact of bovine tuberculosis in the United States are not available. However, a comprehensive computer model developed by Canada in 1979 indicates that, if the United States' tuberculosis eradication program were discontinued, annual losses in the United States would exceed $1 billion. Another study, conducted in 1972, concluded that APHIS' tuberculosis eradication program was fully justified from an economic standpoint, as benefits exceeded costs by a margin of 3.64 to 1.[1]

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small entities. The entities potentially affected by this rule change are herd owners, most of whom are classified as small entities under the Small Business Administration's (SBA's) criteria. In 1992, for example, 92 percent of all 1,074,349 farms in the U.S. with cattle inventory had herds of fewer than 200 cattle (U.S. Department of Commerce, "1992 Census of Agriculture," 1993). In that same year, 98 percent of all 921,695 livestock and dairy farms in the United States had sales of less than $0.5 million, the small entity size standard established by the SBA for firms engaged in livestock and animal specialty services.

This interim rule is not expected to have a significant economic impact on a substantial number of herd owners, large or small, for several reasons. First,

[1] Information about these studies can be obtained by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

only a very small percentage of herds will be affected. It is estimated that only about 1 percent of all herds in the United States are mixed herds comprised of both cattle and/or bison and other species of livestock. Second, the testing of these other species of livestock will be conducted by Federal or State veterinary medical officers at no cost to herd owners. Herd owners will have to bear the cost of presenting the animals for testing, but that cost should be minimal in most cases. Only in rare situations, such as those where exotic animals have to be sedated, would the cost of presenting animals exceed minimal levels. Third, if it is necessary to destroy cattle or bison that have been identified as tuberculosis-exposed on the basis of a herd test that considers livestock other than cattle and bison, the economic impact on herd owners will be mitigated, if not entirely offset, by the payment of indemnity by APHIS.

For the reasons stated above, this interim rule is not expected to have an adverse impact on a significant number of herd owners. Indeed, herd owners are more likely to benefit over time as continued progress toward the eradication of tuberculosis serves to enhance livestock values.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 77.1 is amended as follows:

a. In the definition of *Accredited-free (suspended) State*, paragraph (1)(ii) is revised to read as set forth below.

b. The definition of *Herd* is revised to read as set forth below.

c. A definition of *Livestock* is added, in alphabetical order, to read as set forth below.

d. In the definition of *Modified accredited state*, paragraph (1)(i) is revised to read as set forth below.

§ 77.1 Definitions.

* * * * *

Accredited-free (suspended) State. (1)

* * *

(ii) A State is qualified for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed. If any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State must apply the herd test requirements of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" for such newly assembled herds to those other livestock in the same manner as to cattle and bison.

* * * * *

Herd. Any group of livestock maintained on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator.

* * * * *

Livestock. Cattle, bison, cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition.

Modified accredited State. (1)(i) To establish or maintain status as a modified accredited State, a State must comply with all of the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding modified accredited States, and must apply these provisions to bison in the same manner as to cattle. Further, if any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State must apply the herd test requirements of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" for such newly assembled herds to those other livestock in the same manner as to cattle and bison. Modified accredited State status must be renewed annually.

* * * * *

Done in Washington, DC, this 18th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–4490 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1720

RIN 2550–AA05

Implementation of the Privacy Act of 1974

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Interim regulation with request for comments.

SUMMARY: The Office of Federal Housing Enterprise Oversight is issuing an interim regulation to implement the Privacy Act of 1974. The regulation sets forth the procedures by which an individual may request access to records about him/her that are maintained by OFHEO, amendment of such records, or an accounting of disclosures of such records. OFHEO is requesting comments on the regulation.

DATES: This interim regulation is effective February 23, 1998. Comments regarding the regulation must be received in writing on or before April 24, 1998.

ADDRESSES: Send written comments to Anne E. Dewey, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Copies of all comments received will be available for examination by interested parties at the Office of Federal Housing Enterprise

Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Deputy General Counsel, or Isabella W. Sammons, Associate General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3800 (not a toll-free number). The toll-free telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Effective Date

The Office of Federal Housing Enterprise Oversight (OFHEO) has determined that it is in the public interest to publish an interim regulation that is effective immediately in order to give effect to the OFHEO Notice of Systems of Records published elsewhere in this issue of the **Federal Register**. The immediate effective date will permit the public to gain access to information pertaining to themselves without delay. The Administrative Procedure Act (APA) permits agencies to forgo the notice and comment period and to make a regulation effective immediately if doing so would be in the public interest. 5 U.S.C. 553(b) and (d).

Request for Public Comment

OFHEO is seeking comments on the interim regulation. Before making this interim regulation final, OFHEO will carefully review and consider all comments.

Discussion of Regulation

Section 1720.1 Scope

This section explains that the regulation implements the provisions of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a). The regulation sets forth the procedures by which an individual may request access to records about him/her that are maintained by OFHEO in a designated system of records, may request amendment of such records, or may request an accounting of disclosures of such records.

This section further explains that a request from an individual for a record about that individual that is not contained in an OFHEO designated system of records will be considered to be a Freedom of Information Act (FOIA) (5 U.S.C. 552) request and will be processed under the FOIA.

Section 1720.2 Definitions

This section defines various terms as follows:

Amendment means any correction of, addition to, or deletion from a record.

Designated system of records means a system of records that OFHEO has listed and summarized in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

Individual means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

Maintain includes collect, use, disseminate, or control.

Privacy Act Appeals Officer means the OFHEO employee who has been delegated the authority to determine Privacy Act appeals.

Privacy Act Officer means the OFHEO employee who has been delegated the authority to determine Privacy Act requests.

Record means any item, collection, or grouping of information about an individual that is maintained by OFHEO and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

Routine use, with respect to disclosure of a record, means the use of such record for a purpose that is compatible with the purpose for which it was created.

Statistical Record means a record in a system of records maintained only for statistical research or reporting purposes and not used, in whole or in part, in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

System of records means a group of records under the control of OFHEO from which information is retrieved by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

Section 1720.3 Requests for Access to Individual Records

This section explains how individuals may request access to records about themselves that are maintained by OFHEO. The procedure depends on whether or not the records are contained in a governmentwide system of records of another Federal agency or in a system of records of OFHEO.

If the records are contained in a governmentwide system of records of the U.S. Office of Personnel Management (OPM), the request is submitted to the agency specified (which may be other than OFHEO) as prescribed by OPM in its regulations found at 5 CFR part 297 and in the OPM **Federal Register** Privacy Act notice for the specific governmentwide system. If the records are contained in a governmentwide system of records of another **Federal Register** Privacy Act notice for the specific governmentwide system. Federal agencies that have published governmentwide systems of records include the Equal Employment Opportunity Commission, the General Services Administration, the Department of Labor, the Office of Government Ethics, and the Office of Personnel Management.

If the records are contained in a system of records of OFHEO, a written request must be submitted to the OFHEO Privacy Act Officer. The written request should describe the records sought and identify the designated systems of records in which such records may be contained. (A copy of the designated systems of records published by OFHEO in the **Federal Register** is available upon request from the Privacy Act Officer.) No individual will be required to state a reason or otherwise justify a request for access to records about him/her.

Section 1720.4 Decision To Grant or Deny Requests for Access to Individual Records

This section provides that access to records contained in an OFHEO system of records will be granted unless the records were compiled in reasonable anticipation of a civil action or proceeding or require special procedures for medical records. It also describes the procedures for notifying individuals of the decision to grant or deny requests for access.

Although the Privacy Act does not prescribe a time period for responding to requests for access, this section requires the Privacy Act Officer to send a written acknowledgment of receipt within 20 business days of receipt of a request. It also requires the Privacy Act Officer to inform the requesting individual, as soon as reasonably possible, normally within 20 business days following receipt of the request, whether the requested records exist and whether access is granted or denied.

If access is granted, this section requires the Privacy Act Officer to provide the individual with a reasonable period of time to inspect the records at OFHEO during normal business hours or to mail a copy of the records to the individual. If access is denied, this section requires the Privacy Act Officer to inform the individual of the reason for the denial and the right to appeal.

Section 1720.5 Special Procedures for Medical Records

With respect to medical records, this section requires the Privacy Act Officer

to disclose such records directly to the requesting individual, unless, in the judgment of OFHEO, such disclosure may have an adverse effect on that individual. If medical records are not disclosed directly to the individual, the medical records will be submitted to a licensed medical doctor named by the individual.

Section 1720.6 Requirements for Verification of Identity

To protect the privacy of individuals, this section provides for verification of identity. If an individual submits a written request in person, he/she may be required to present two forms of identification, such as an employment identification card, driver's license, passport, or other document typically used for identification purposes. One of the two forms of identification must contain the individual's photograph and signature.

If an individual submits a written request, other than in person, for access to or amendment of records, he/she may be required to provide either one or both of the following: (1) Minimal identifying information, such as full name, date and place of birth, or other personal information; (2) at the election of the individual, either a certification of a duly commissioned notary public of any State or territory or the District of Columbia attesting to the requesting individual's identity or an unsworn declaration subscribed to as true under penalty of perjury under the laws of the United States of America.

Section 1720.7 Requests for Amendment of Individual Records

This section explains how an individual may request amendment of any record about him/her that the individual believes is not accurate, relevant, timely, or complete. To request amendment, the individual must submit a written request to the Privacy Act Officer. The request should include the reason for requesting the amendment; a description of the record, or portion thereof, including the name of the appropriate designated system of record; and, if available, a copy of the record on which the specific portion requested to be amended is notated.

As with requests for access, this section provides that the Privacy Act Officer may require the individual making the request for amendment to provide identifying information.

Section 1720.8 Decision To Grant or Deny Requests for Amendment of Individual Records

This section explains the procedures that must be followed by the Privacy Act Officer in processing requests for amendment of individual records. Within 10 business days following receipt of a request for amendment of records, the Privacy Act Officer must send a written acknowledgment of receipt to the requesting individual.

The Privacy Act does not require a specific time in which the Privacy Act Officer must respond to the request for amendment. This section requires that, as soon as reasonably possible, normally within 30 business days from the receipt of the request for amendment, the Privacy Act Officer must inform the individual in writing of the decision to grant or deny the request for amendment. If the request for amendment is granted, the regulation provides that the amendment must be made. If the request for amendment is denied, the written notification must include the reason for the denial and an explanation of the right to appeal.

Section 1720.9 Appeals of the Initial Decision To Deny Access to or Amendment of Individual Records

The Privacy Act requires that agencies establish procedures by which an individual may appeal an initial denial of access to or amendment of records. This section provides that the individual must submit a written appeal, within 30 business days following receipt of notification of the denial, to the Privacy Act Appeals Officer. Both the envelope and the appeal request should be marked "Privacy Act Appeal." The appeal should include the information specified for requests for access or for requests for amendment, a copy of the initial denial notice, and any other relevant information for consideration by the Privacy Act Appeals Officer.

Section 1720.10 Decision To Grant or Deny Appeals

This section describes the notification process with respect to appeals. It requires, within 30 business days following receipt of the appeal, that the Privacy Act Appeals Officer send a written notification of the decision to the appealing individual. The Privacy Act Appeals Officer may extend the 30-day notification period for good cause. If the time period is extended, the Privacy Act Appeals Officer must provide written notice of the reason for the extension and the expected date of the final decision.

If the Privacy Act Appeals Officer grants the appeal for access or amendment, this section provides that, as appropriate, the individual must be provided access to the records or the amendment must be made. If the Privacy Act Appeals Officer denies the appeal for access or amendment, this section provides that the written notification of the decision must include the reason for the denial, the right to seek judicial review of the final decision, and, if applicable, the right to submit a statement of disagreement.

An individual may file a statement with the Privacy Act Appeals Officer that sets forth the reason he/she disagrees with the decision to deny the appeal for amendment. If filed, the statement of disagreement must be attached to the record that is the subject of the request for amendment. The Privacy Act Appeals Officer has the discretion to prepare a statement in response to the statement of disagreement that explains why the requested amendment was not made. If prepared, the statement of explanation must be attached to the subject record and a copy provided to the individual.

This section explains that, if the final decision on the appeal for amendment of records is not made within 30 working days (unless the 30-day notification period is extended), the individual may bring a civil action against OFHEO in the appropriate district court of the United States.

Section 1720.11 Disclosure of Individual Records to Other Persons or Agencies

The Privacy Act provides for certain circumstances in which individual records may be disclosed to a person or agency other than the individual about whom the record pertains (third parties). These circumstances are—

- Upon written request and authorization by the individual;
- With the prior written consent of the individual;
- If required under the Freedom of Information Act;
- For a routine use, with respect to a designated system of records as described by OFHEO in its notice of systems of records published in the **Federal Register**;
- Pursuant to the order of a court of competent jurisdiction;
- To those officers and employees of OFHEO who have a need for the record in the performance of their duties. For purposes of the regulation, officers and employees of OFHEO include officers and employees of other federal agencies with whom OFHEO has an interagency agreement to provide services and contractors with whom OFHEO has a contract for services;
- To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity

pursuant to the provisions of title 13 of the United States Code;

- To a recipient who has provided OFHEO with advance, adequate written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;
- To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States to determine whether the record has such value;
- To an agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to OFHEO specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;
- To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, concurrently with such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;
- To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee;
- To the Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office; or
- To a consumer reporting agency in accordance with 31 U.S.C. 3711(e). Section 3711(e) of title 31, United States Code, provides, in connection with the collection and compromise of claims of the U.S. Government, that certain information from a system of records may be disclosed to a consumer reporting agency.

Section 1720.12 Accounting of Disclosures

The Privacy Act requires that agencies keep an accounting of disclosures made to third parties. This section provides that OFHEO keep an accurate accounting of the date, nature, and purpose of each disclosure of a record and the name and address of each person to whom a disclosure was made. There are two exceptions to the requirement for accounting. The first exception is disclosure to those officers and employees of OFHEO who have a need for the record in the performance of their duties; the second exception is disclosure required under the Freedom of Information Act.

This section further requires that OFHEO retain the accounting for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

Furthermore, this section explains that, when a record has been amended or when a statement of disagreement has been filed, a copy of the amended record and any statement of disagreement must be provided, and any statement of explanation may be provided, to all prior and subsequent recipients of the affected record whose identities can be determined pursuant to the required disclosure of accountings.

Section 1720.13 Requests for Accounting of Disclosures

This section explains that any individual may request an accounting of disclosures of records about him/her for which an accounting is required to be maintained by submitting a written request to the Privacy Act Officer. Before processing the request, the Privacy Act Officer may require that the individual provide identifying information.

The Privacy Act Officer must provide the accounting of disclosures with one exception to the requesting individual. The Privacy Act Officer is not required to provide an accounting of any disclosures made to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity.

Section 1720.14 Fees

Generally, it will be more convenient for OFHEO and the individual to have access to the requested records by receiving a copy rather than inspecting the records at OFHEO. Therefore, this section provides that OFHEO will not charge a fee for providing a copy of the requested record or any portion thereof.

Section 1720.15 Preservation of Records

This section requires that OFHEO preserve all correspondence relating to the written requests it receives and all records processed pursuant to such requests, in accordance with the records retention provisions of General Records Schedule 14, Informational Services Records. Furthermore, this section provides that OFHEO must not destroy records that are subject to a pending request for access, amendment, appeal, or lawsuit pursuant to the Privacy Act.

Section 1720.16 Rights of Parents and Legal Guardians

This section provides that a parent of any minor or the legal guardian of any individual who has been declared to be incompetent due to a physical or mental incapacity or age by a court of competent jurisdiction may act on behalf of the individual.

Section 1720.17 Penalties

This section notes that the Privacy Act makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual from OFHEO under false pretenses.

Regulatory Impact

Executive Order 12612, Federalism

Executive Order 12612 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. OFHEO has determined that this regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12866, Regulatory Planning and Review

The regulation has been reviewed by the Office of Management and Budget (OMB) pursuant to Executive Order 12866.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. The regulation meets the applicable standards of sections 3(a) and 3(b) of Executive Order 12988.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an

analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The regulation only affects individuals and has no effect on small entities. Therefore, the General Counsel of OFHEO has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, requires that regulations involving the collection of information receive clearance from OMB. The regulation contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review under the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

The regulation does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, the regulation implements the Privacy Act. In addition, the regulation does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.

List of Subjects in 12 CFR Part 1720

Privacy.

For the reasons set forth in the preamble, OFHEO is amending on an interim basis Chapter XVII of title 12 of the Code of Federal Regulations by adding part 1720 to read as follows:

PART 1720—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

Authority: 5 U.S.C. 552a, 12 U.S.C. 4513(b).

§ 1720.1 Scope.

(a) This part 1720 sets forth the procedures by which an individual may request access to records about him/her that are maintained by the Office of Federal Housing Enterprise Oversight (OFHEO) in a designated system of records, amendment of such records, or an accounting of disclosures of such records. This part 1720 implements the provisions of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a).

(b) A request from an individual for a record about that individual that is not contained in an OFHEO designated system of records will be considered to be a Freedom of Information Act (FOIA) (5 U.S.C. 552) request and will be processed under the FOIA.

§ 1720.2 Definitions.

For the purposes of this part 1720—

Amendment means any correction of, addition to, or deletion from a record.

Designated system of records means a system of records that OFHEO has listed and summarized in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

Individual means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

Maintain includes collect, use, disseminate, or control.

Privacy Act Appeals Officer means the OFHEO employee who has been delegated the authority to determine Privacy Act appeals.

Privacy Act Officer means the OFHEO employee who has been delegated the authority to determine Privacy Act requests.

Record means any item, collection, or grouping of information about an individual that is maintained by OFHEO and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

Routine use, with respect to disclosure of a record, means the use of such record for a purpose that is compatible with the purpose for which it was created.

Statistical Record means a record in a system of records maintained only for statistical research or reporting purposes and not used, in whole or in part, in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

System of records means a group of records under the control of OFHEO from which information is retrieved by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

§ 1720.3 Requests for access to individual records.

(a) Any individual may request records about him/her that are maintained by OFHEO.

(b) The procedures for submitting requests are as follows:

(1) If the records are contained in a governmentwide system of records of the U.S. Office of Personnel Management (OPM), the request must be submitted as prescribed by the regulations of OPM (5 CFR part 297).

(2) If the records are contained in a record in a system of records of another Federal agency, the request must be submitted as prescribed in the **Federal Register** Privacy Act notice for the specific governmentwide system.

(3) If the records are contained in a system of records of OFHEO, the request must be submitted in writing to the Privacy Act Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The written request should describe the records sought and identify the designated systems of records in which such records may be contained. (A copy of the designated systems of records published by OFHEO in the **Federal Register** is available upon request from the Privacy Act Officer.) No individual shall be required to state a reason or otherwise justify a request for access to records about him/her.

§ 1720.4 Decision to grant or deny requests for access to individual records.

(a) *Basis for the decision.* The Privacy Act Officer shall grant access to records upon receipt of a request submitted under § 1720.3(b)(3), unless the records—

(1) Were compiled in reasonable anticipation of a civil action or proceeding; or

(2) Require special procedures for medical records provided for in § 1720.5.

(b) *Notification procedures.* (1) Within 20 business days of receipt of a request

submitted under § 1720.3(b)(3), the Privacy Act Officer shall send a written acknowledgment of receipt to the requesting individual.

(2) As soon as reasonably possible, normally within 20 business days following receipt of the request, the Privacy Act Officer shall send a written notification that informs the individual whether the requested records exist and, if the requested records exist, whether access is granted or denied, in whole or in part.

(c) *Access procedures.* If access is granted, in whole or in part, the Privacy Act Officer shall provide the individual with a reasonable period of time to inspect the records at OFHEO during normal business hours or shall mail a copy of the requested records to the individual.

(d) *Denial procedures.* If access is denied, in whole or in part, the Privacy Act Officer shall inform the individual of the reasons for the denial and of the right to appeal the denial, as set forth in § 1720.9.

§ 1720.5 Special procedures for medical records.

The Privacy Act Officer shall grant access to medical records to the requesting individual to whom the medical records pertain. However, if, in the judgment of OFHEO, such direct access may have an adverse effect on that individual, the Privacy Act Officer shall transmit the medical records to a licensed medical doctor named by the individual.

§ 1720.6 Requirements for verification of identity.

(a) *Written requests submitted in person.* Any individual who submits in person a written request under this part, may be required to present two forms of identification, such as an employment identification card, driver's license, passport, or other document typically used for identification purposes. One of the two forms of identification must contain the individual's photograph and signature.

(b) *Other written requests.* Any individual who submits, other than in person, a written request under this part may be required to provide either one or both of the following:

(1) Minimal identifying information, such as full name, date and place of birth, or other personal information.

(2) At the election of the individual, either a certification of a duly commissioned notary public of any State or territory or the District of Columbia attesting to the requesting individual's identity or an unsworn declaration subscribed to as true under penalty of perjury under the laws of the United States of America.

§ 1720.7 Requests for amendment of individual records.

(a) *Procedures for requesting amendment of a record.* Any individual may request amendment of any record about him/her that the individual believes is not accurate, relevant, timely, or complete. To request amendment, the individual must submit a written request to the Privacy Act Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The request should include—

(1) The reason for requesting the amendment;

(2) A description of the record, or portion thereof, including the name of the appropriate designated system of records, sufficient to enable the Privacy Act Officer to identify the particular record or portion thereof; and

(3) If available, a copy of the record, or portion thereof, on which the specific portion requested to be amended is notated.

(b) *Requirement for identifying information.* The Privacy Act Officer may require the individual making the request for amendment to provide the identifying information specified in § 1720.6.

§ 1720.8 Decision to grant or deny requests for amendment of individual records.

(a) *Notification procedures.* Within 10 business days following receipt of a request for amendment of records, the Privacy Act Officer shall send a written acknowledgment of receipt to the requesting individual. As soon as reasonably possible, normally within 30 business days from the receipt of the request for amendment, the Privacy Act Officer shall send a written notification to the individual that informs him/her of the decision to grant or deny, in whole or in part, the request for amendment.

(b) *Amendment procedures.* If the request is granted, in whole or in part, the requested amendment shall be made to the subject record. A copy of the amended record shall be provided to all prior recipients of the subject record in accordance with § 1720.12(b).

(c) *Denial procedures.* If the request is denied, in whole or in part, the Privacy Act Officer shall include in the written notification the reasons for the denial and an explanation of the right to appeal the denial, as set forth in § 1720.9.

§ 1720.9 Appeals of the initial decision to deny access to or amendment of individual records.

Any individual may appeal the initial denial, in whole or in part, of a request for access to or amendment of his/her record. To appeal, the individual must submit a written appeal, within 30 business days following receipt of written notification of denial, to the Privacy Act Appeals Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Both the envelope and the appeal request should be marked "Privacy Act Appeal." The appeal should include—

(a) The information specified for requests for access in § 1720.3(b)(3) or for requests for amendment in § 1720.7, as appropriate;

(b) A copy of the initial denial notice; and

(c) Any other relevant information for consideration by the Privacy Act Appeals Officer.

§ 1720.10 Decision to grant or deny appeals.

(a) *Notification of decision.* Within 30 business days following receipt of the appeal, the Privacy Act Appeals Officer shall send a written notification of the decision to grant or deny to the individual making the appeal. The Privacy Act Appeals Officer may extend the 30-day notification period for good cause. If the time period is extended, the Privacy Act Appeals Officer shall inform in writing the individual making the appeal of the reason for the extension and the expected date of the final decision.

(b) *Appeal granted.* If the appeal for access is granted, in whole or in part, the Privacy Act Appeals Officer shall provide the individual with reasonable time to inspect the requested records at OFHEO during normal business hours or mail a copy of the requested records to the individual. If the appeal for amendment is granted, in whole or in part, the requested amendment shall be made. A copy of the amended record shall be provided to all prior recipients of the subject record in accordance with § 1720.12(b).

(c) *Appeal denied.* If the Privacy Act Appeals Officer denies, in whole or in part, the appeal for access or amendment, he/she shall include in the written notification of the reasons for the denial an explanation of the right to seek judicial review of the final decision, and, with respect to an appeal for amendment, the right to submit a statement of disagreement under paragraph (d) of this section.

(d) *Statements of disagreement and explanation.* (1) Upon receipt of a decision to deny, in whole or in part, the appeal for amendment of records, the individual may file a statement with the Privacy Act Appeals Officer that sets forth his/her reasons for disagreeing with the decision. The Privacy Act Appeals Officer shall attach the statement of disagreement to the record that is the subject of the request for amendment. In response to the statement of disagreement, the Privacy Act Appeals Officer has the discretion to prepare a statement that explains why the requested amendment was not made. If prepared, the statement of explanation shall be attached to the subject record and a copy of the statement provided to the individual who filed the statement of disagreement.

(2) The Privacy Act Appeals Officer shall provide a copy of any statement of disagreement, and may provide any statement of explanation, to prior recipients of the subject record in accordance with § 1720.12(b).

(e) *Right to judicial review.* If OFHEO does not comply with the notification procedures under paragraph (a) of this § 1720.10 with respect to an appeal for amendment of records, the appealing individual may bring a civil action against OFHEO in the appropriate district court of the United States, as provided for under 5 U.S.C. 552a(g)(1)(A) and 552a(g)(5) before receiving the written notification of the decision.

§ 1720.11 Disclosure of individual records to other persons or agencies.

(a) OFHEO may disclose a record to a person or agency other than the individual about whom the record pertains only under one or more of the following circumstances:

(1) If requested and authorized in writing by the individual.

(2) With the prior written consent of the individual.

(3) If such disclosure is required under the Freedom of Information Act.

(4) For a routine use, as defined in § 1720.2, with respect to a designated system of records as described by OFHEO in its notice of systems of records published in the **Federal Register.**

(5) Pursuant to the order of a court of competent jurisdiction.

(6) To the following persons or agencies—

(i) Officers and employees of OFHEO who have a need for the record in the performance of their duties;

(ii) The Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(iii) A recipient who has provided OFHEO with advance, adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(iv) The National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States to determine whether the record has such value;

(v) An agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to OFHEO specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;

(vi) A person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, concurrently with such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;

(vii) Either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee;

(viii) The Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(ix) A consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b) Before a record is disclosed to other persons or agencies under paragraph (a)(1) or (2) of this section, the identifying information specified in § 1720.6 may be required.

§ 1720.12 Accounting of disclosures.

(a) OFHEO shall keep an accurate accounting of the date, nature, and purpose of each disclosure of a record, and the name and address of each person or agency to whom a disclosure was made under § 1720.11, except for disclosures made under § 1720.11(a)(3) or (a)(6)(i). OFHEO shall retain such accounting for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting was made.

(b) When a record has been amended, in whole or in part, or when a statement of disagreement has been filed, a copy of the amended record and any statement of disagreement must be provided, and any statement of explanation may be provided, to all prior and subsequent recipients of the affected record whose identities can be determined pursuant to the disclosure accountings required under paragraph (a) of this section.

§ 1720.13 Requests for accounting of disclosures.

(a) Any individual may request an accounting of disclosures of records about him/her for which an accounting is required to be maintained under § 1720.12(a) by submitting a written request to the Privacy Act Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Before processing the request, the Privacy Act Officer may require that the individual provide the identifying information specified under § 1720.6.

(b) The Privacy Act Officer shall make available the accounting of disclosures required to be maintained under § 1720.12, except for an accounting made under § 1720.11(a)(6)(v).

§ 1720.14 Fees.

OFHEO shall not charge any fees for providing a copy of any records, pursuant to a request for access under this part.

§ 1720.15 Preservation of records.

OFHEO shall preserve all correspondence relating to the written requests it receives and all records processed pursuant to such requests under this part, in accordance with the records retention provisions of General Records Schedule 14, Informational Services Records. OFHEO shall not destroy records that are subject to a pending request for access, amendment, appeal, or lawsuit pursuant to the Privacy Act.

§ 1720.16 Rights of parents and legal guardians.

For purposes of this part, a parent of any minor or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction may act on behalf of the individual.

§ 1720.17 Penalties.

The Privacy Act (5 U.S.C. 552a(i)(3)) makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual from OFHEO under false pretenses.

Dated: February 12, 1998.
Mark A. Kinsey,
Acting Director.
[FR Doc. 98–4452 Filed 2–20–98; 8:45 am]
BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 29147, Amdt. No. 25–94]

Transport Category Airplanes, Technical Amendments and Other Miscellaneous Corrections

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment corrects a number of errors in the safety standards for transport category airplanes. None of the changes are substantive in nature, and none will impose any additional burden on any person.

EFFECTIVE DATE: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. S.W., Renton, Washington 98055–4056; telephone (425) 227–2114.

SUPPLEMENTARY INFORMATION:

Background

A number of unrelated errors in the safety standards for transport category airplanes have been brought to the attention of the FAA. Some are due to inadvertent omissions or other editing errors; others are simply typographical or printing errors. This final rule amends part 25 to correct those errors. None of the corrections are substantive in nature, and none will impose any additional burden on any person.

Discussion

Subpart B of part 25, which contains flight requirements, incorporates a number of miscellaneous printing errors. Section 25.107 contains two such errors concerning the symbols used to denote specific airspeeds. Section 25.111(a) contains an erroneous reference to § 25.121(f) in lieu of § 25.121(c), and § 25.111(d)(4) contains a misspelled word. The heading of § 25.119 refers to the singular "engine" rather than the plural "engines". Section 25.233 contains an inappropriate sentence break. All of those errors are corrected herewith.

Part 25 was amended by Amendment 25–86 (61 FR 5218, February 9, 1996) to incorporate revised discrete gust load design requirements. As printed in the **Federal Register**, the introductory paragraph of § 25.349(a) incorrectly reads, "* * * principal masses furnishing the *reaching* inertia *forces.*" This phrase is corrected to read, * * * principal masses furnishing the *reacting* inertia *forces.*"

Part 25 was amended by Amendment 25–91 (62 FR 40702, July 29, 1997) to incorporate revised structural loads requirements for transport category airplanes. Due to an editing error associated with that amendment, § 25.481(a)(3) is worded as a sentence rather than a prepositional phrase continuing the text of paragraph (a). That error is corrected by removing the word "is" from § 25.481(a)(3).

Part 25 was amended by Amendment 25–88 (61 FR 57946, November 8, 1996) to adopt a number of changes concerning the type and number of passenger emergency exits in transport category airplanes. Due to inadvertent editing errors, existing requirements concerning flightcrew emergency exits and the distance between passenger emergency exits were omitted from § 25.807. That section is hereby amended to correct those omissions. This amendment places no additional burden on any persons because the operators of such airplanes are required to comply in any event by corresponding standards in parts 121 and 135.

Prior to the adoption of Amendment 25–56 (47 FR 58489, December 30, 1982), § 25.832(a)(2) specified a maximum cabin ozone concentration of 0.1 parts per million by volume under specified conditions. Although unrelated to that amendment, a printing error was introduced shortly thereafter in § 25.832(a)(2). As a result of that error, subsequent printings of part 25 have specified a maximum concentration of 0.01 parts per million by volume. Also the lead-in paragraph of § 25.832(a) was inadvertently changed to read, "* * * shown *now* to exceed—" in lieu of "* * * shown *not* to exceed—." Section 25.832 is hereby amended to correct both of those printing errors.

Prior to the adoption of Amendment 25–40, § 25.903(c) specified that each component of the stopping and restarting system on the engine side of the firewall that might be exposed to fire must be at least fire-resistant. It was recognized then that the benefits of requiring the components of the restarting system to be fire-resistant were slight because an engine could seldom be restarted safely following a fire in that engine. Amendment 25–40, therefore, removed the words "and restarting" from § 25.903(c). Although this change was adopted and published appropriately in the **Federal Register** (42 FR 15042, March 17, 1977), it has never appeared in subsequent printings of part 25. This misprint is, therefore, corrected by omitting the words "and restarting" as intended by Amendment 25–40.

Prior to 1968, the oil tanks of transport category airplanes type certificated under the provisions of part 25 of the Federal Aviation Regulations (FAR) were required to be constructed of fireproof materials. In contrast, those in smaller general aviation airplanes type certificated under the provisions of part 23 were, and still are, permitted to be constructed of materials that are only fire resistant. This difference was in recognition of the relatively small quantity of oil that can be carried in the integral sumps of the reciprocating engines typically used in the latter airplanes, the fact that the oil sump serves as a heat sink in dissipating heat from a fire near the sump, and the fact that the cooling airflow around a reciprocating engine will direct flames away from the sump. During the late 1960s, two applicant each proposed to replace the troublesome existing engines in de Havilland DH.114 Heron transport category airplanes with then modern reciprocating engines. Although large enough to be transport category airplanes, the Herons incorporated four engines comparable in size and power ratings to the engines typically used in twin-engine part 23 airplanes. Because they were designed primarily for installation in part 23 airplanes, the replacement engines proposed by both applicants incorporated integral oil sumps that were not constructed of fireproof materials. Replacing the integral sumps of those engines with fireproof sumps would have imposed an undue burden with no commensurate safety improvement. Part 25 was, therefore, amended (Amendment 25–19, 33 FR 15410, October 17, 1968) to permit the installation of reciprocating engines having non-fireproof integral oil sumps of not more than a specified quantity. As a result of this amendment, an erroneous reference to § 25.1013(a) was introduced in § 25.1185(a). Section 25.1185(a) is, therefore, amended to refer correctly to § 25.1183(a) in lieu § 25.1013(a).

Part II of Appendix F contains criteria for seat cushion flammability testing. The last sentence of paragraph (a)(3) of Part II refers to "* * * the test specified in § 25.853(b) * * *." At the time the paragraph was written the reference was correct; however, the material contained

in § 25.853(b) has since been moved to § 25.853(c). Paragraph (a)(3) of Part II of Appendix F is, therefore, amended to refer correctly to § 25.853(c).

Regulatory Evaluation

There are no quantifiable costs of benefits attributable to this final rule since each change is a non-substantive correction that will impose no additional burden on any person. A full regulatory evaluation is, therefore, not required.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (FRA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities. This final rule will have no economic impact, significant or otherwise, because it makes only non-substantive corrections of errors.

International Trade Impact Assessment

Recognizing that regulations that are nominally domestic in nature often affect international trade, the Office of Management and Budget directs Federal Agencies to assess whether or not a rule or regulation would affect any trade-sensitive activity. This final rule will have no effect, positive or negative, on international trade since it makes only non-substantive corrections of errors.

Federalism Implications

The changes adopted herein will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power or responsibilities among the various levels of government. It is, therefore, determined in accordance with Executive Order 12612 that this final rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

International Compatibility

The FAA has reviewed the corresponding regulations of the International Civil Aviation Organization regulations, where they exist, and those of the European Joint Aviation Authorities (JAA). The FAA has identified no differences in these amendments and the foreign regulations. Some of the errors were, in fact, brought to the attention of the FAA by JAA representatives.

Good Cause Justification for Immediate Adoption

This amendment is needed to make editorial corrections in part 25. In view of the need to expedite these changes, and because the amendment is editorial in nature and would impose no additional burden on the public, I find that notice and opportunity for public comment before adopting this amendment are unnecessary.

Conclusion

The FAA has determined that this final rule imposes no additional burden on any person. Accordingly, it has been determined that the action (1) is not a significant rule under Executive Order 12866 and (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends 14 CFR part 25 as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40113, 44701, 44702 and 44704.

§ 25.107 [Amended]

2. In § 25.107, paragraph (a)(1), remove "$V_{MC}G$" and add "V_{MCG}," in its place: and in paragraph (e), remove "VR" and add "V_R," in its place.

§ 25.111 [Amended]

3. In § 25.111, paragraph (a), remove "§ 25.121(f)" and add "§ 25.121(c)" in its place.

§ 25.119 [Amended]

4. In the heading of § 25.119, remove the word "engine" and add "engines" in its place.

§ 25.233 [Amended]

5. In § 25.233, paragraph (a), remove ". At" and add "at" in its place.

§ 25.349 [Amended]

6. In § 25.349, introductory paragraph, remove the words "reaching inertia fores" and add "reacting inertia forces" in its place.

§ 25.481 [Amended]

7. In § 25.481, paragraph (a)(3), remove the word "is".

8. Section 25.807 is amended by adding a new paragraph (f)(4) and new paragraph (j) to read as follows:

§ 25.807 Emergency exits

* * * * *

(f) * * *

(4) For an airplane that is required to have more than one passenger emergency exit for each side of the fuselage, no passenger emergency exit shall be more than 60 feet from any adjacent passenger emergency exit on the same side of the same deck of the fuselage, as measured parallel to the airplane's longitudinal axis between the nearest edges.

* * * * *

(j) *Flightcrew emergency exits.* For airplanes in which the proximity of passenger emergency exits to the flightcrew area does not offer a convenient and readily accessible means of evacuation of the flightcrew, and for all airplanes having a passenger seating capacity greater than 20, flightcrew exits shall be located in the flightcrew area. Such exits shall be of sufficient size and so located as to permit rapid evacuation by the crew. One exit shall be provided on each side of the airplane; or, alternatively, a top hatch shall be provided. Each exit must encompass an unobstructed rectangular opening of at least 19 by 20 inches unless satisfactory exit utility can be demonstrated by a typical crewmember.

§ 25.832 [Amended]

9. In § 25.832, paragraph (a), remove the word "now" and add the word "not" in its place, and in paragraph (a)(2) remove "0.01" and add "0.1" in its place.

§ 25.903 [Amended]

10. In § 25.903, paragraph (c), remove the words "and restarting" from the second sentence.

§ 25.1185 [Amended]

11. In § 25.1185, paragraph (a), remove "§ 25.1013(a)" and add "§ 25.1183(a)" in its place.

Appendix F to Part II [Amended]

12. In Appendix F, Part II, in paragraph (a)(3), remove "§ 25.853(b)" and add "§ 25.853(c)" in its place.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 98–4162 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–75–AD; Amendment 39–10353; AD 98–04–42]

RIN 2120–AA64

Airworthiness Directives; Grumman Model TS–2A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Grumman Model TS–2A series airplanes, that requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to add a statement of the consequences of such positioning of the power levers. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power, caused by the power levers being positioned below the flight idle stop when the airplane is in flight.

EFFECTIVE DATE: March 30, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Frank Hoerman, Aerospace Engineer, Flight Test Branch, ANM–160L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 527–5371; fax (562) 625–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Grumman Model TS–2A series airplanes was published in the **Federal Register** on December 9, 1997 (62 FR 64780). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning of the power levers below the flight idle stop while the airplane is in flight, and adds a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be $60.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–42 Grumman: Amendment 39–10353. Docket 97–NM–75–AD.

Applicability: All Model TS–2A series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power, caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO),

FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 30, 1998.

Issued in Renton, Washington, on February 12, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4248 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–30–AD; Amendment 39–10352; AD 98–04–41]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 and –300 Series Airplanes Equipped With a Main Deck Cargo Door Installed in Accordance With Supplemental Type Certificate SA2969SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200 and –300 series airplanes. This action requires repetitive inspections to detect cracks in the hinge and lift actuator box area of the main deck cargo door and upper jamb of the fuselage; and repair or replacement of any cracked part with a new part having the same part number. This amendment is prompted by a report that, during a periodic heavy maintenance check, cracks were found in the upper jamb area of the fuselage and in the main deck cargo door. The actions specified in this AD are intended to detect and correct such cracking, which could result in reduced structural integrity of the main cargo door and/or fuselage, and consequent loss or opening of the main deck cargo door while the airplane is in flight, or reduced controllability of the airplane.

DATES: Effective March 10, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6083; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The FAA has received a report that, during a periodic heavy maintenance check of a Boeing Model 737–300 series airplane equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate SA2969SO, cracks were found in the upper jamb area of the fuselage and in the main cargo door. The cracks were between 0.50 inches and 2.35 inches in length. The cause of such cracking is unknown at this time. However, several scenarios (e.g., improper cargo door operations during loading and unloading of cargo, and improper fastener locations) are being examined at this time to determine a possible cause of the cracking.

Cracking in the upper jamb area of the fuselage or in the main deck cargo door, if not corrected, could result in reduced structural integrity of the main deck cargo door and/or fuselage, and consequent loss or opening of the main deck cargo door while the airplane is in flight, or reduced controllability of the airplane.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737–200 and –300 series airplanes, equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate SA2969SO, of the same type design, this AD is being issued to detect and correct cracking in the upper jamb area of the fuselage and in the main deck cargo door; such cracking could result in reduced structural integrity of the main deck cargo door and/or fuselage, and consequent loss or opening of the main deck cargo door while the airplane is in flight, or reduced controllability of the airplane. This AD requires repetitive detailed visual inspections to detect cracks in the hinge and lift actuator box area of the main deck cargo door and upper jamb of the fuselage; and replacement of any cracked part with a new part having the same part number, or repair in accordance with a method approved by the FAA.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–30–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–41 Boeing: Amendment 39–10352. Docket 98–NM–30–AD.

Applicability: Model 737–200 and –300 series airplanes equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate (STC) SA2969SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the upper jamb area of the fuselage and in the main cargo door, which could result in reduced structural integrity of the main cargo door and/or fuselage, and consequent loss or opening of the main cargo door while the airplane is in flight, or reduced controllability of the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD, and thereafter at intevals not to exceed 600 flight cycles, perform a detailed visual inspection to detect cracks in the hinge and lift actuator box area of the main deck cargo door and upper jamb of the fuselage. Pay particular attention to the upper frame of the fuselage and upper jamb frames of the main deck cargo door, primary longeron, and clips of the fuselage, primarily in the hinge and lift actuator box area. If any crack is detected, prior to further flight, replace the cracked part with a new part having the same part number, or repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 10, 1998.

Issued in Renton, Washington, on February 12, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4245 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 97F–0336]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to change the intrinsic viscosity specifications for the poly(2,6-dimethyl-1,4-phenylene) oxide resins intended for use in contact with food from "not less then 0.40 deciliter per gram" to "not less than 0.30 deciliter per gram" as determined by ASTM method D1243–79. This action is in response to a petition filed by General Electric Co.

DATES: Effective February 23, 1998. Written objections and requests for a hearing by March 25, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 14, 1997 (62 FR 43535), FDA announced that a food additive petition (FAP 7B4551) had been filed by General Electric Co., One Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposed to amend the food additive regulations in § 177.2460 *Poly(2,6-dimethyl-1,4-phenylene) oxide resins* (21 CFR 177.2460) to change the intrinsic viscosity specifications for the poly(2,6-dimethyl-1,4-phenylene) oxide resins intended for use in contact with food from "not less then 0.40 deciliter per gram" to "not less than 0.30 deciliter per gram" as determined by ASTM method D1243–79.

In the **Federal Register** of August 14, 1997 (62 FR 43535), the filing notice for the petition stated that the action resulting from the petition qualified for a categorical exclusion under previous 21 CFR 25.24[(a)](9). Upon further review, the agency determined that such a categorical exclusion, which is based on a technical change in a regulation, is not appropriate for this proposed action because the proposed amendment is not simply a technical change. Consequently, the agency considered the environmental effects of this action.

FDA has evaluated data in the petition supporting the chemical identity of the additive and other relevant material. The agency finds that the petitioner has adequately demonstrated that poly(2,6-dimethyl-1,4-phenylene) oxide resins with an intrinsic viscosity of not less than 0.30 deciliter per gram (dL/g), which replaces the current intrinsic viscosity of 0.40 dL/g meet the specifications and extractive limitations for poly(2,6-dimethyl-1,4-phenylene) oxide resins as prescribed in § 177.2460. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 177.2460 should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 25, 1998. File with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 177.2460 [Amended]

2. Section 177.2460 *Poly(2,6-dimethyl-1,4-phenylene) oxide resins* is amended in the first sentence of paragraph (c)(1) by removing "0.40" and adding in its place "0.30".

* * * * *

Dated: February 11, 1998.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–4372 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 97F–0375]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester, which may contain up to 1 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer for olefin copolymers intended for use in contact with food. This action is in response to a petition filed by General Electric Co.

DATES: The regulation is effective February 23, 1998; written objections and requests for a hearing by March 25, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 16, 1997 (62 FR 48665), FDA announced that a food additive petition (FAP 7B4553) had been filed by General Electric Co., One Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester, which may contain up to 1 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer for olefin copolymers complying with 21 CFR 177.1520(c), items 3.1 and 3.2, intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe and the additive will achieve its intended technical effect. Therefore, the regulations in § 178.2010

should be amended as set forth below. In amending the regulation in § 178.2010, the agency updated the reference to items 3.1 and 3.2 found in § 177.1520(c) to include the current subparts listed for these items, i.e., 3.1a, 3.1b, 3.2a, and 3.2b.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this rule as announced in the notice of filing for the petition. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before March 25, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry for "Phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester" in item "3." under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
Phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester (CAS Reg. No. 161717–32–4), which may contain not more than 1 percent by weight of triisopropanolamine (CAS Reg. No. 122–20–3).	For use only: * * * 3. At levels not to exceed 0.1 percent by weight of olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1a, 3.1b, 3.2a, or 3.2b, having a density less than 0.94 grams per cubic centimeter, in contact with food only of types III, IV, V, VI–A, VI–C, VII, VIII, and IX and under conditions of use B, C, D, E, F, G, and H as described in Tables 1 and 2 of § 176.170(c) of this chapter; provided that the food-contact surface does not exceed 0.003 inch (0.076 mm) in thickness.
* * *	* * * *

Dated: February 2, 1998.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–4530 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 98–2]

Policy on the Authorized Use of the Library Name, Seal, or Logo

AGENCY: Library of Congress.

ACTION: Final regulation.

SUMMARY: The Library of Congress issues this final regulation to insure that the Library's name, seal and logos are used properly and in accordance with the procedures set forth herein.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Pugh, General Counsel, Office of the General Counsel, Library of Congress, Washington, D.C. 20540–1050. Telephone No. (202) 707–6316.

SUPPLEMENTARY INFORMATION: The purpose of this regulation is (1) To assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications; (2) to assure that the name or logo of the Library of Congress, or any unit thereof, is used only with the prior approval of the Librarian of Congress or his designee; and (3) to assure that the

seal of the Library of Congress is used only on official documents or publications of the Library.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

In consideration of the foregoing the Library of Congress amends 36 CFR part 701 to read as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 continues to read as follows:

Authority: 2 U.S.C. 136.

Section 35 also issued under 2 U.S.C. 154, 179m; 18 U.S.C. 701, 709, 1017.

2. Section 701.35 is revised to read as follows:

§ 701.35 Policy on the Authorized Use of the Library Name, Seal, or Logo

(a) *Purpose.* The purpose of this part is three-fold:

(1) To assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications.

(2) To assure that the name or logo of the Library of Congress, or any unit thereof, is used only with the prior approval of the Librarian of Congress or his designee; and

(3) To assure that the seal of the Library of Congress is used only on official documents or publications of the Library.

(b) *Definitions.* (1) For the purposes of this part, *publication* means any tangible expression of words or thoughts in any form or format, including print, sound recording, television, optical disc, software, online delivery, or other technology now known or hereinafter created. It includes the whole range of tangible products from simple signs, posters, pamphlets, and brochures to books, television productions, and movies.

(2) *Internal Library publication* means a publication over which any unit of the Library has complete or substantial control or responsibility.

(3) *Cooperative publications* are those in which the Library is a partner with the publisher by terms of a cooperative publishing agreement.

(4) *Commercial publications* are those known or likely to involve subsequent mass distribution, whether by a for-profit or not-for-profit organization or individual, which involve a cooperative agreement. A commercial publication can also include a significant number of LC references and is also approved by the LC office that entered into a formal agreement. Noncommercial publications are those which are produced by non-commercial entities.

(5) *Internet sites* are those on-line entities, both commercial and non-commercial, that have links to the Library's site.

(6) *Library logo* refers to any official symbol of the Library or any entity thereof and includes any design officially approved by the Librarian of Congress for use by Library officials.

(7) *Seal* refers to any statutorily recognized seal.

(c) *Credit and Recognition Policy.* (1) The name "Library of Congress," or any abbreviation or subset such as "Copyright Office" or "Congressional Research Service," thereof, is used officially to represent the Library of Congress and its programs, projects, functions, activities, or elements thereof. The use of the Library's name, explicitly or implicitly to endorse a product or service, or materials in any publication is prohibited, except as provided for in this part.

(2) The Library of Congress seal symbolizes the Library's authority and standing as an official agency of the U.S. Government. As such, it shall be displayed only on official documents or publications of the Library. The seal of the Library of Congress Trust Fund Board shall be affixed to documents of that body as prescribed by the Librarian of Congress. The seal of the National Film Preservation Board shall be affixed to documents of that body as prescribed by the Librarian of Congress. Procedures governing the use of any Library of Congress logo or symbol are set out below.

(3) Questions regarding the appropriateness of the use of any Library logos or symbols, or the use of the Library's name, shall be referred to the Public Affairs Officer.

(4) Internal Publications. Each internal Library publication shall include a copy of an official Library logo in a position, format, and location suitable to the particular media involved. The logo may be alone or in addition to an approved unit or activity logo, but shall be no less prominent than any other logo used, except in the cases of the Copyright Office, the Congressional Research Service, and the Center for the Book. Other exceptions to this policy may be made only if a written request is approved by the Executive Committee member under whose jurisdiction the publication falls.

(5) Cooperative Ventures. (i) Individual, commercial enterprises or non-commercial entities with whom the Library has a cooperative agreement to engage in cooperative efforts shall be instructed regarding Library policy on credit, recognition, and endorsement by the officer or manager with whom they are dealing.

(ii) Ordinarily, the Library logo should appear in an appropriate and suitable location on all cooperative publications. The Library requires that a credit line accompany reproductions of images from its collections and reflect the nature of the relationship such as "published in association with * * *".

(iii) The size, location, and other attributes of the logo and credit line should be positioned in such a way that they do not imply Library endorsement of the publication unless such endorsement is expressly intended by the Library, as would be the case in cooperative activities. Use of the Library name or logo in any context suggesting an explicit or implicit endorsement may be approved in only those instances where the Library has sufficient control over the publication to make changes necessary to reflect Library expertise.

(iv) Library officers working on cooperative projects shall notify all collaborators of Library policy in writing if the collaboration is arranged through an exchange of correspondence. All uses of the Library of Congress's name, seal or logo on promotional materials must be approved by the Public Affairs Officer, in consultation with the Office of the General Counsel, in advance. A statement of Library policy shall be incorporated into the agreement if the terms of the collaboration are embodied in any written instrument, such as a contract or letter of understanding. The statement could read as follows:

> NAME OF PARTNER recognizes the great value, prestige and goodwill associated with the name, "Library of Congress" and any logo pertaining thereto. NAME OF PARTNER agrees not to knowingly harm, misuse, or bring into disrepute the name or logo of the Library of Congress, and further to assist the Library, as it may reasonably request, in preserving all rights, integrity and dignity associated with its name. Subject to the Library's prior written approval over all aspects of the use and presentation of the Library's name and logo, the NAME OF PARTNER may use the name of the Library of Congress in connection with publication, distribution, packaging, advertising, publicity and promotion of the ____, produced as a result of this Agreement. The Library will have fifteen (15) business days from receipt of NAME OF PARTNER'S written request to approve or deny with comment such requests for use of its name or logo.

(5) Noncommercial Users. Library officers assisting individuals who are noncommercial users of Library resources shall encourage them to extend the customary professional courtesy of acknowledging their sources

in publications, including films, television, and radio, and to use approved credit lines.

(6) Each product acquired for resale by the Library that involves new labeling or packaging shall bear a Library logo and shall contain information describing the relevance of the item to the Library or its collections. Items not involving new packaging shall be accompanied by a printed description of the Library and its mission, with Library logo, as well as the rationale for operating a gift shop program in a statement such as, "Proceeds from gift shop sales are used to support the Library collections and to further the Library's educational mission."

(7) Electronic Users. Links to other sites from the Library of Congress's site should adhere to the Appropriate Use Policy for External Linking in the Internet Policies and Procedures Handbook. Requests for such linkage must be submitted to the Public Affairs Office for review and approval.

(8) Office Systems Services shall make available copies of the Library seal or logo in a variety of sizes and formats, including digital versions, if use has been approved by the Public Affairs Officer, in consultation with the Office of General Counsel.

(9) Each service unit head shall be responsible for devising the most appropriate way to carry out and enforce this policy in consultation with the General Counsel and the Public Affairs Officer.

(e) *Prohibitions and Enforcement.* (1) All violations, or suspected violations, of this part, shall be reported to the Office of the General Counsel as soon as they become known. Whoever, except as permitted by laws of the U.S., or with the written permission of the Librarian of Congress or his designee, falsely advertises or otherwise represents by any device whatsoever that his or its business, product, or service has been in any way endorsed, authorized, or approved by the Library of Congress shall be subject to criminal penalties pursuant to law.

(2) Whenever the General Counsel has determined that any person or organization is engaged in or about to engage in an act or practice that constitutes or will constitute conduct prohibited by this part or a violation of any requirement of this part, the General Counsel shall take whatever steps are necessary, including seeking the assistance of the U.S. Department of Justice, to enforce the provisions of the applicable statutes and to seek all means of redress authorized by law, including both civil and criminal penalties.

Dated: January 30, 1998.

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–3860 Filed 2–20–98; 8:45 am]

BILLING CODE 1410–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL147–1a, IL156–1a; FRL–5965–1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 23, 1996, and January 9, 1997, the State of Illinois submitted to EPA two site-specific State Implementation Plan (SIP) revision requests for Solar Corporation's (Solar) manufacturing facility located in Libertyville, Lake County, Illinois. The January 23, 1996, request seeks to revise the State's Volatile Organic Material (VOM) Reasonably Available Control Technology (RACT) requirements applicable to certain Solar adhesive operations. The January 9, 1997, request seeks to grant a temporary variance from VOM RACT requirements applicable to Solar's automotive plastic parts coating operations. In this action, EPA is approving the above requested SIP revisions through a "direct final rulemaking;" the rationale for this approval is discussed below.

DATES: This final rule is effective April 24, 1998 unless adverse written comments are received by March 25, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request and Technical Support Document (TSD) for this rulemaking action are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Air Programs Branch (AR–18J) at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act (Act); Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 182(b)(2) of the Act requires States to adopt RACT rules covering "major sources" not already covered by a Control Techniques Guideline (CTG) for all areas classified moderate nonattainment for ozone or above.[1] The Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County) is classified as "severe" nonattainment for ozone, and therefore is subject to the Act's non-CTG RACT requirement.

Under section 182(d) of the Act, sources located in severe ozone nonattainment areas are considered "major sources" if they have the potential to emit 25 tons per year or more of VOM.[2] Solar's Libertyville facility has the potential to emit more than 25 tons of VOM per year, and therefore is subject to RACT requirements.

II. Solar Operations

Solar owns and operates a facility in Libertyville, Illinois which produces custom-made, fabric covered and/or painted plastic decorative components for manufacturers of automobiles and electronic home and office products. The decorative components produced by Solar for the home and office electronics industry include speaker grilles for stereos and televisions, pressure-formed thermoplastic back enclosures for large-screen and projection television sets, and other decorative molded parts and fabric wrapped subassemblies. Solar's automotive interior products include speaker grilles, vinyl- and fabric-clad door trim components, injection molded decorative assemblies, seating trim

[1] A definition of RACT is cited in a General Preamble-Supplement published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. CTGs are documents published by EPA which contain information on available air pollution control techniques and provide recommendations on what the EPA considers the "presumptive norm" for RACT. Sources which are not covered by a CTG are called "non-CTG" sources.

[2] VOM, as defined by the State of Illinois, is identical to "Volatile Organic Compounds" (VOC), as defined by EPA.

component, and electronic subassemblies.

III. Non-CTG Adhesives Adjusted Standard

A. Existing SIP Requirements

On October 21, 1993, and March 4, 1994, the State of Illinois submitted RACT rules covering major non-CTG sources in the Chicago severe ozone nonattainment area, which includes subparts PP, QQ, RR, TT, and UU of Part 218 of the 35 Illinois Administrative Code (IAC), as a revision to the Illinois SIP. The SIP revision was approved by EPA on October 21, 1996 (61 FR at 54556). Prior to Illinois' non-CTG rule adoption, the State's RACT rules did not apply to Solar because the facility's emissions were below the rules' applicability threshold of 100 TPY or more of VOM. Pursuant to section 182(b), the State lowered the applicability threshold to include as major sources all sources with a potential to emit 25 TPY or more VOM. Solar, which had not been affected by the 100 ton RACT rules, became subject to the 25 ton RACT rules.

Among the non-CTG rule provisions Solar became subject to is subpart PP, which contains VOM control requirements for miscellaneous fabricated product manufacturing processes. Under subpart PP, Solar would be required either to use adhesives which do not exceed 3.5 pounds of VOM per gallon (lbs VOM/gallon) as-applied, or to operate emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent (%). Subpart PP is based upon requirements promulgated under the Chicago VOC Federal Implementation Plan (FIP). In developing the FIP, the EPA used information from existing coating CTGs and the State and EPA's regulatory experience to establish the 3.5 lbs VOM/gallon limitation for non-CTG coating operations.

B. Solar Adjusted Standard

On February 28, 1995, Solar and the Illinois Environmental Protection Agency (IEPA) filed a joint petition for an adjusted standard with the Illinois Pollution Control Board (Board). The adjusted standard petition requested that Illinois relax the stringency of the VOM limit for Solar's adhesive application from 3.5 lbs VOM/gallon as-applied, to 5.75 lbs VOM/gallon as-applied.

In its petition, Solar noted that the technical support for the non-CTG limitation promulgated under the Chicago FIP and adopted by Illinois did not take into account the necessary characteristics of adhesives used to adhere fabric to plastic parts for the home entertainment and auto industry, which is Solar's specific industry. Further, Solar justified the rule relaxation based upon its own technical support demonstrating that the 3.5 lbs VOM/limit is technically and economically infeasible, and that a 5.75 lbs VOM/gallon limit for its adhesive operations is RACT for the facility.

A public hearing on the adjusted standard petition was held on July 18, 1995, in Libertyville, Illinois. On July 20, 1995, the Board adopted a Final Opinion and Order, AS 94–2, granting the adjusted standard requested by Solar. The adjusted standard also became effective on July 20, 1995. On August 14, 1995, the IEPA filed a motion to modify the final Board Order. On September 1, 1995, Solar filed a response to the IEPA's motion to modify. On September 7, 1995, the Board adopted the IEPA's proposed changes to the final opinion, noting that the language of the July 20, 1995, opinion would not be affected. The IEPA formally submitted the adjusted standard for Solar on January 23, 1996, as a site-specific revision to the Illinois SIP for ozone.

C. Criteria for Evaluating Adjusted Standard

The EPA has identified VOC control levels in its CTGs and non-CTG control evaluations that it presumes to constitute RACT for various categories of sources. However, case-by-case RACT determinations may be developed that differ from EPA's presumptive norm. The EPA will approve these RACT determinations as long as a demonstration is made that they satisfy the Act's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated. To make this demonstration, it must be shown that the current SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is not and cannot be expected to be reasonably available. The EPA will determine on a case-by-case basis whether this demonstration has been made, taking into account all the relevant facts and circumstances concerning each case. A demonstration must be made that reasonable efforts were taken to determine and adequately document the availability of complying coatings or other kinds of controls, as appropriate. If it is conclusively demonstrated that complying low-solvent coatings are unavailable, the EPA would consider an alternative RACT determination based on the lowest level of VOM control technically and economically feasible for the facility.

D. Solar's Efforts To Meet the Non-CTG SIP Requirement

To comply with the 3.5 lbs VOM/gallon non-CTG SIP requirement, Solar investigated reformulation of adhesives, water-based adhesives, alternatives to adhesives, and catalytic oxidation add-on control. In testing adhesive technologies, Solar attempted to meet the 3.5 lbs VOM/gallon SIP limit while meeting customer aesthetic and environmental performance specifications. Solar's customers require the company to conduct various tests on its products to determine whether the fabric bonds withstand a wide variety of temperatures and humidities which the products will be subject to during shipment and actual use.

Solar's adhesive supplier attempted to reformulate the adhesives it sells to Solar to bring the adhesives into compliance, and was able to increase the solids content of Solar's primary adhesive from 20% to 30%, thereby reducing the VOM content from 6.02 lbs VOM/gallon to 5.49 lbs VOM/gallon. The supplier, however, determined that further reduction could not be achieved without increasing the solids content to 50%, which would result in an adhesive so viscous that it could not be applied with either a manual gun or auto-spray. Solar also investigated partially reformulating Solar's primary adhesive using acetone, which resulted in the adhesive drying too fast before the fabric could be properly adhered to the plastic. In addition to trying adhesive reformulation, Solar and its adhesive supplier conducted major test trials of several two-component water-based adhesives. However, the testing showed that the adhesives set too quickly, which was unacceptable given that Solar's process requires repeated repositioning of fabric to ensure the proper tautness of the fabric on each plastic part.

The January 1996 State submittal also provides documentation of Solar's contacts with two other adhesive suppliers to determine whether they could offer low-emitting adhesives to Solar which would both meet the 3.5 lbs VOM/gallon limit, as well as meet the performance specifications of Solar's customers. However, according to the State submittal, these suppliers did not offer adhesives which would meet the performance specifications of Solar's

customers in the majority of its adhesive operations.

After EPA received the January 1996 submittal, EPA requested that IEPA and Solar analyze whether Solar can use the adhesives or techniques of two California companies in compliance with South Coast Air Quality Management District adhesive limits, James B. Lansing (JBL) and Fleetwood Motor Homes (Fleetwood). IEPA submitted subsequent documentation on July 23, 1997, indicating that Solar cannot use the adhesives used at the California JBL and Fleetwood plants because the plants have distinguishable products and processes involving different adhesive bonding requirements than that of Solar.

Besides seeking compliant adhesives, Solar has tried adhesiveless processes as an alternative to adhesives by conducting test trials with sonic welding and use of a heat plate. Solar was unsuccessful with sonic welding because of the curved surfaces of many of its plastic components. However, Solar was somewhat successful with the heat plate technique and now uses a heat plate to bond cloth to about 20% of the plastic parts it produces. Yet, Solar cannot use the hot plate technique in more operations because for this technique to be feasible, the plastic part must have sufficient cross section to withstand the heat generated in bonding.

As for add-on controls, Solar investigated catalytic oxidation as a means of achieving 81% capture and control of VOM emission from the manual spray booths and auto-spray machines. Radian Corporation's consultants examined Solar's operations estimated costs for catalytic oxidation control to be $25,000 and $10,000 per ton for the manual spray guns and auto-spray machines, respectively. Solar contends that these costs are economically unreasonable for the facility.

E. EPA Analysis of Solar's Adjusted Standard

Based on the information and technical support IEPA provided in its submittal, the EPA finds that the non-CTG SIP requirements are not technically or economically feasible for the Solar Libertyville facility's adhesive process, and that a limit of 5.75 lbs VOM/gallon limit on adhesive content is RACT for the facility. For a more detailed analysis of this SIP revision, please refer to the TSD available from the Region 5 office listed above.

IV. Variance for Automotive Plastic Parts Coating Limit

A. Existing SIP Requirements

On October 26, 1995, EPA approved Illinois RACT regulations covering plastic parts coating operations in the Chicago ozone nonattainment area. The regulations establish VOM emission limitations which can be met in one of four ways: (1) use of coatings which meet a specified VOM content limit (218.204(n) and (o)); (2) meet a daily-weighted average limit for those coating lines that apply coatings from the same coating category (218.205(g)); (3) use of an add-on capture system and control device which meets an 81% VOM capture and control efficiency (218.207(i)); or, (4) meet a cross-line averaging limit (218.212).

Solar through its variance petition seeks temporary relief from 218.204(n)(1)(B)(i), which requires operations that apply air dried color coating to automotive interior plastic parts to meet a VOM content limit of 0.38 kg/l or 3.2 lbs/gallon, by March 15, 1996.

B. Solar Variance

On May 22, 1996, Solar filed its petition for variance from 35 IAC 218.204(n)(1)(B)(i) with the Board. On July 15, 1996, the IEPA filed its recommendation of support for the variance. A public hearing on the variance petition was held on August 9, 1996, in Libertyville, Illinois. On September 5, 1996, the Board adopted a Final Opinion and Order, PCB 96–239, granting the variance requested by Solar. On September 13, 1996, Solar signed a certificate of acceptance, which binds Solar to all terms and conditions of the granted variance. The IEPA formally submitted the variance for Solar on January 9, 1997, as a site-specific revision to the Illinois SIP for ozone.

The variance was granted because Solar presented adequate proof to the Board that immediate compliance with section 218.204(n)(1)(B)(i) would result in an arbitrary or unreasonable hardship which outweighs the public interest in attaining immediate compliance with regulations designed to protect the public. Such a burden of proof is required by Illinois law before a variance can be granted.

As of the date of the Illinois submittal, Solar replaced approximately 98% of its coatings to water-based products. However, Solar's coating supplier needed extra time to reformulate the remaining paints to water-based so as to comply with the State's VOM content requirement. Also, additional time was needed for any unanticipated delays and to ensure that the water-based coatings meet customer specifications.

Solar indicated in its variance petition that it hired a consultant to investigate the use of add-on controls to comply with the State's RACT requirements. The consultant studied carbon adsorbers, thermal and catalytic afterburners, as well as condensers, and estimated that the cost to install capture and control equipment at the spray booths would be more than $25,000 per ton. Solar contends that the use of any add-on controls is economically unreasonable because it has reformulated 98% of its paints, and only 134.25 gallons of non-compliant paint will be used.

IEPA agrees with Solar's position that daily-weighted averaging is not an appropriate option for Solar because Solar's coating lines are subject to different VOM content limits. As for cross-line averaging, this compliance option would require an operational change to pre-existing coating lines. Since Solar has committed to reformulating its paints as a means to achieve compliance, the IEPA contends in the submittal that requiring Solar to make an operation change for the five remaining non-compliant paints is not an effective or reasonable alternative. The IEPA further notes that these options are not appropriate for Solar because Solar is seeking temporary, not permanent relief.

The variance, Solar's use of non-compliant interior automotive coating is limited to the 134.25 gallons of the above coatings Solar has in stock. The variance indicates the vendor number, VOM content, and gallons allowed to be used for each of the five non-compliant coatings in stock. Solar is not allowed to use any other non-compliant coatings under the variance. Solar is also limited to a total of 0.67 tons of VOM emissions from these compliant coatings over a 12 month period beginning May 22, 1996. The variance terminates on the earlier of two dates: May 22, 1997, or when the water-based interior automotive coatings are available and approved as substitutes for the non-compliant coatings specified in the variance.

The variance provides that Solar shall send monthly status reports to IEPA providing various information regarding the non-compliant interior automotive coatings. Once a water-based automotive interior coating is available and approved by Solar's customers as a substitute for a coating covered by the variance, the variance for that coating no longer applies and the coating becomes subject to 35 IAC 218.204(n)(l)(B)(i). The variance

requires Solar to notify the IEPA within 10 days after any non-compliant interior automotive coating subject to the variance is converted to a water-based coating is approved and available to use.

C. EPA Analysis of Solar Variance

Based on the information provided in the SIP submittal, the EPA finds that the variance for Solar is justified, and the compliance milestone provisions required by the variance represent a reasonable approach to bringing the Solar facility into compliance with the automotive plastic parts coating limit in a timely manner. Therefore, the EPA finds this SIP submittal approvable.

V. Final Action

The EPA is approving, through direct final rulemaking action, Illinois' January 23, 1996, site-specific SIP revision for Solar's Libertyville, Illinois facility, which relaxes the VOM content limit required for its adhesive operations from 3.5 lbs VOM/gallon to 5.75 lbs VOM/gallon. The EPA is also approving, through direct final rulemaking action, Illinois' January 9, 1997, site-specific SIP revision which provides a temporary variance from the State's plastic parts coating rule for Solar's Libertyville facility.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified written adverse or critical comments be filed. This rule will become effective without further notice unless the Agency receives relevant adverse written comment on the parallel notice of proposed rulemaking (published in the proposed rules section of this **Federal Register**), within 30 days of today's document. Should the Agency receive such comments, it will publish a document informing the public that this rule did not take effect. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 29, 1998.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(135) to read as follows:

§ 52.720 Identification of plan.

* * * * * *

(c) * * *

(135) On January 23, 1996, Illinois submitted a site-specific revision to the State Implementation Plan which relaxes the volatile organic material (VOM) content limit for fabricated

product adhesive operations at Solar Corporation's Libertyville, Illinois facility from 3.5 pounds VOM per gallon to 5.75 pounds VOM per gallon.

(i) Incorporation by reference. July 20, 1995, Opinion and Order of the Illinois Pollution Control Board, AS 94–2, effective July 20, 1995.

3. Section 52.720 is amended by adding paragraph (c)(136) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(136) On January 9, 1997, Illinois submitted a site-specific revision to the State Implementation Plan which grants a temporary variance from certain automotive plastic parts coating volatile organic material requirements at Solar Corporation's Libertyville, Illinois facility.

(i) Incorporation by reference. September 5, 1996, Opinion and Order of the Illinois Pollution Control Board, PCB 96–239, effective September 13, 1996. Certificate of Acceptance signed September 13, 1996.

[FR Doc. 98–4378 Filed 2–20–98; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

50 CFR Part 222

[Docket No. 980212035–8035–01]

RIN 1018–AE24

Habitat Conservation Plan Assurances ("No Surprises") Rule

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Final rule.

DATES: This rule is effective March 25, 1998.

SUMMARY: This final rule codifies the Habitat Conservation Plan assurances provided through section 10(a)(1)(B) permits issued under the Endangered Species Act (ESA) of 1973, as amended. Such assurances were first provided through the "No Surprises" policy issued in 1994 by the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), (jointly referred to as the "Services,") and included in the joint FWS and NMFS Endangered Species Habitat Conservation Planning Handbook issued on December 2, 1996 (61 FR 63854). The No Surprises policy announced in 1994 provides regulatory assurances to the holder of a Habitat Conservation Plan (HCP) incidental take permit issued under section 10(a) of the ESA that no additional land use restrictions or financial compensation will be required of the permit holder with respect to species covered by the permit, even if unforeseen circumstances arise after the permit is issued indicating that additional mitigation is needed for a given species covered by a permit. The Services issued a proposed rule on May 29, 1997 (62 FR 29091) and the comments received on that proposal have been evaluated and considered in the development of this final rule. This final rule contains revisions to parts 17 (FWS) and 222 (NMFS) of Title 50 of the Code of Federal Regulations necessary to implement the Habitat Conservation Plan assurances.

ADDRESSES: To obtain copies of the final rule or for further information, contact Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C., 20240; or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD, 20910.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (Telephone 703/358–2171, or Facsimile 703/358–1735), or Nancy Chu, Chief, Endangered Species Division, National Marine Fisheries Service (Telephone (301/713–1401, or 301/713–0376).

SUPPLEMENTARY INFORMATION: These final regulations and the background information regarding the final rule apply to both Services. The proposed rule has been revised based on the comments received. The final rule is presented in two parts because the Services have separate regulations for implementing the section 10 permit process. The first part is for the final changes in the FWS's regulations found at 50 CFR 17.22 and 17.32, and the second part is for the final changes in NMFS's regulations found at 50 CFR 222.22.

Background

Section 9 of the ESA generally prohibits the "take" of species listed under the ESA as endangered. Pursuant to the broad grant of regulatory authority over threatened species in section 4(d) of the ESA, the Services' regulations generally prohibit take of species listed as threatened. See, e.g., 50 CFR 17.31 and 17.21 (FWS). Section 3(18) of the ESA defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." FWS regulations (50 CFR 17.3) define "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering."

Section 10 of the ESA, as originally enacted in 1973, contained provisions allowing the issuance of permits authorizing the taking of listed species under very limited circumstances for non-Federal entities. In the following years, both the Federal government and non-Federal landowners became concerned that these permitting provisions were not sufficiently flexible to address situations in which a property owner's otherwise lawful activities might result in limited incidental take of a listed species, even if the landowner were willing to plan activities carefully to be consistent with the conservation of the species. As a result, Congress included in the ESA Amendments of 1982 provisions under section 10(a) to allow the Services to issue permits authorizing the incidental take of listed species in the course of otherwise lawful activities, provided that those activities were conducted according to an approved conservation plan (habitat conservation plan or HCP) and the issuance of the HCP permit would not jeopardize the continued existence of the species. In doing so, Congress indicated it was acting to "* * * address the concerns of private landowners who are faced with having otherwise lawful actions not requiring Federal permits prevented by section 9 prohibitions against taking * * * " H.R. Rep. No. 835, 97th Cong., 2d Sess. 29 (1982) (hereafter "Conf. Report").

Congress modeled the 1982 section 10 amendments after the conservation plan developed by private landowners and local governments to protect the habitat of two listed butterflies on San Bruno Mountain in San Mateo County, California while allowing development activities to proceed. Congress recognized in enacting the section 10 HCP amendments that:

> " * * * significant development projects often take many years to complete and permit applicants may need long-term permits. In this situation, and in order to provide sufficient incentives for the private sector to

participate in the development of such long-term conservation plans, plans which may involve the expenditure of hundreds of thousands if not millions of dollars, adequate assurances must be made to the financial and development communities that a section 10(a) permit can be made available for the life of the project. Thus, the Secretary should have the discretion to issue section 10(a) permits that run for periods significantly longer than are commonly provided [for other types of permits]." (Conf. Report at 31).

Congress also recognized that long-term HCP permits would present unique issues that would have to be addressed if the permits were to function to protect the interests of both the species involved and the non-Federal community. For instance, Congress realized that "* * * circumstances and information may change over time and that the original [habitat conservation] plan might need to be revised. To address this situation, the Committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances." (Conf. Report at 31). Congress also recognized that non-Federal property owners seeking HCP permits would need to have economic and regulatory certainty regarding the overall cost of species mitigation over the life of the permit. As stated in the Conference Report on the 1982 ESA amendments:

"The Committee intends that the Secretary may utilize this provision to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in the approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act." (Conf. Report at 30 and 50 FR 39681–39691, Sept. 30. 1985).

Congress thus envisioned and allowed the Federal government to provide regulatory assurances to non-Federal property owners through the section 10 incidental take permit process. Congress recognized that conservation plans could provide early protection for many unlisted species and, ideally, prevent subsequent declines and, in some cases, the need to list covered species.

The Services decided that a clearer policy regarding the assurances provided to landowners entering into an HCP was needed. This need prompted the development of the No Surprises policy, which was based on the 1982 Congressional Report language and a decade of working with private landowners during the development and implementation of HCPs. The Services believed that non-Federal property owners should be provided economic and regulatory certainty regarding the overall cost of species conservation and mitigation, provided that the affected species were adequately covered by a properly functioning HCP, and the permittee was properly implementing the HCP and complying with the terms and conditions of the HCP permit in good faith. A driving concern during the development of the policy was the absence of adequate incentives for non-Federal landowners to factor endangered species conservation into their day-to-day land management activities.

The Services issued the ESA No Surprises policy in August of 1994. This policy was then included in the joint Endangered Species Habitat Conservation Planning Handbook, which was published in draft form for public review and comment on December 21, 1994 (59 FR 65782), and, after consideration of the comments, was issued as final in December 1996 (61 FR 63854). In addition to that opportunity for public comment on the No Surprises policy in general, the application of the policy and its assurances have been and continue to be subject to an opportunity for public comment on each proposed HCP permit under section 10(c) of the ESA on a case-by-case basis. The Services were subsequently sued in *Spirit of the Sage Council* v. *Babbitt*, No. 1:96CV02503 (SS) (D. D.C.), which challenged the procedures under which the No Surprises policy was adopted and under which subsequent HCP permits were issued. In settling this lawsuit, the Services agreed to submit the No Surprises Policy to further public comment and to consider public comment in deciding whether to adopt the No Surprises policy as a final regulation. The Services agreed to this approach because they recognized the benefits of permanently codifying the No Surprises policy as a rule in 50 CFR, as well as the value of soliciting additional comments on the policy itself.

Summary of the Proposed Rule

The proposed rule stated that the Services, when negotiating unforeseen circumstances provisions for HCPs, would not require the commitment of additional land, property interests, or financial compensation beyond the level of mitigation that was otherwise adequately provided for a species under the terms of a properly functioning conservation plan. Moreover, the Services would not seek any other form of additional mitigation from a permittee except under unforeseen circumstances. However, if additional mitigation measures were subsequently deemed necessary to provide for the conservation of a species that was otherwise adequately covered under the terms of a properly functioning conservation plan, the obligation for such measures would not rest with the permittee.

Under the proposed rule, if unforeseen circumstances warrant additional mitigation from a permittee who is in compliance with the conservation plan's obligations, such mitigation would, to the maximum extent possible, be consistent with the original terms of the conservation plan. Further, any such changes will be limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species. Additional mitigation requirements would not involve the payment of additional compensation or apply to parcels of land or the natural resources available for development under the original terms of the conservation plan without the consent of the permittee.

Criteria were also developed by the Services that must be used for determining whether and when unforeseen circumstances arise.

Under the proposed rule, the Services also would not seek *any* form of additional mitigation for a species from a permittee where the terms of a properly functioning conservation plan were designed to provide an overall net benefit for that species and contained measurable criteria for the biological success of the conservation plans which have been or are being met. Nothing in the proposed rule would limit or constrain the Services, or any other governmental agency, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

The Services also proposed a permit-shield provision in the proposed rule that stated that compliance with the terms of an incidental take permit constitutes compliance with the requirements of sections 9 and 10 of the ESA with respect to the species covered by the permit regardless of changes in circumstances, policy, and regulation, unless a change in statute or court order specifically requires that assurances given in the original permit be modified or withdrawn.

The Services also clarified in the proposed rule that the regulatory and economic assurances provided to HCP permittees are limited to section 10(a)(1)(B) permits. In addition, the assurances are not provided to Federal agencies.

Summary of Comments Received

The Services received more than 800 comments on the proposed rule from a large variety of entities, including Federal, State, County, and Tribal agencies, industry, conservation groups, religious groups, coalitions, and private individuals. The Services considered all of the information and recommendations received from all interested parties on the proposed regulation during the public comment period and appreciated the comments received on the proposed rule. In addition to comments that specifically addressed the proposed No Surprises policy in the proposed rule, the Services received numerous additional comments on the HCP process itself, comments which were beyond the narrow scope of this particular rulemaking on the No Surprises policy. The Services will utilize these more generic comments on HCPs, as appropriate, as we continue to improve the implementation of our HCP programs. However, at this time, the Services will only address comments received that are specific to the proposed No Surprises rule.

The Services have made changes in the proposed rule where appropriate. In addition, the Services intend to revise the HCP Handbook, both to reflect the final No Surprises rule and to further enhance the effectiveness of the HCP process in general through expanded use of adaptive management, monitoring provisions, and the establishment of overall biological goals for HCPs.

The following is a summary of the comments on the proposed regulations, and the Services' response.

Issue 1: Many commenters believed that to provide regulatory No Surprises assurances, the Secretary was directed to "* * * consider the extent to which the conservation plan is likely to enhance the habitat of the listed species or increase the long-term survivability of the species or its ecosystem * * *" (Conf. Report at 31.) and that the Services have no legislative authority to provide regulatory assurances for HCPs that do not meet this standard.

Response 1: A proposed HCP must satisfy the specific issuance criteria enumerated in section 10(a)(2)(B) of the ESA. In deciding whether these criteria have been satisfied and whether the permit should be issued for a given species, the Services consider, among other things, the extent to which the habitat of the affected species or its long-term survivability may be improved or enhanced. While it may be appropriate to consider an "enhancement factor" for an HCP, it is not a mandatory section 10(a)(2)(B) issuance criterion for all species.

Each HCP is analyzed on a case-by-case basis, using the best scientific information available. Habitat conditions are part of the data the Services evaluate to determine whether a proposed HCP meets the section 10 issuance criteria. The legislative history of the 1982 amendments to section 10 of the ESA indicates that Congress viewed habitat improvement and species conservation as appropriate considerations in determining whether to issue long-term incidental take permits. Certain types of HCPs, such as forest HCPs that include aquatic species, often allow for significant timber harvest and consequent species impacts during the initial years, while it may take decades before the riparian measures under the plan produce stream conditions that provide essential habitat functions for the listed species. The Services agree that, in appropriate situations, the legislative history supports including measures to provide for improved habitat over the life of the plan in section 10 permits. Severely depleted species and species for which the HCP covers all or a significant portion of the range are examples of circumstances in which essential habitat functions must be addressed to ensure that the conservation measures in the HCP provide a high probability that the habitat functions essential to the species' long-term survival will be achieved and maintained during the term of the permit.

Issue 2: Many commenters felt that this proposed regulation was driven solely by the needs of private landowners, and is not in the best interests of the species or other public concerns. Many commenters noted that the proposed regulation did not have commensurate certainties for protection of biological resources.

Response 2: The section 10(a) HCP provisions of the ESA were designed to help alleviate section 9 "take" liability for species on non-Federal lands. The ESA, as originally enacted, allowed the taking of listed species only under very limited circumstances, and did not, for example, allow the incidental take of listed species in the course of otherwise lawful activities. The 1982 ESA amendments to section 10(a) authorize the Services to issue HCP permits allowing the incidental take of listed species in the course of otherwise lawful activities, provided the activities are conducted according to an approved habitat conservation plan that minimize and mitigate take and avoids jeopardy to the continued existence of the affected species.

The Services disagree that the No Surprises policy has a narrow focus that excludes the consideration of listed species conservation. To the contrary, a driving concern in the development of the policy was the absence of adequate incentives for non-Federal landowners to factor endangered species conservation into their day-to-day land management activities. The Services knew that much of the habitat of listed species is in non-Federal lands and believed that HCPs should play a major role in protecting this habitat. Yet, while thousands of acres of species habitat were disappearing each year, only a handful of HCPs had been sought and approved since 1982. The No Surprises policy was designed to rechannel this uncontrolled ongoing habitat loss through the regulatory structure of section 10(a)(1)(B) by offering regulatory certainty to non-Federal landowners in exchange for a long-term commitment to species conservation. Given the significant increase in landowner interest in HCPs since the development of the No Surprises policy, the Services believe that the policy has accomplished one of its primary objectives—to act as a catalyst for integrating endangered species conservation into day-to-day management operations on non-Federal lands. The Services also believe that the HCP process, which is a mechanism that reconciles economic development and the conservation of listed species, is good for rare and declining species, and encourages the development of more of these plans. If species are to survive and recover, such plans are necessary because more than half of the species listed have 80 percent of their habitat on non-Federal lands.

Issue 3: Many commenters stressed that the proposed regulation would unlawfully allow the Services to avoid their mandatory duties under section 7 of the ESA. They argued that the proposed regulation precludes the Services from meeting the regulatory and statutory requirements under 50 CFR 402.16 and section 7(d) because it makes reinitiation of consultation useless and precludes any meaningful reexamination of mitigation measures if the measures in the HCP are later found to be inadequate to avoid jeopardy as required under section 7(a)(2). If jeopardy did arise, commenters do not

feel that the Services would be able to implement the necessary mitigation to avoid the jeopardy because of lack of funding. Other concerns were also raised by commenters regarding the respective balance of responsibilities among the participants to an HCP containing a No Surprises assurance. Also, some commenters suggested the Services would not be fulfilling their mandatory conservation obligations under section 7(a)(1).

Response 3: The Services are committed to meeting their responsibilities under section 7(a)(2) of the ESA. As required by law, the Services conduct a formal intra-Service section 7 consultation regarding the issuance of each permit issued under section 10(a)(1)(B). The purpose of any consultation is to insure that any action authorized, funded, or carried out by the Federal government, including the issuance of an HCP permit, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat of such species. In addition, the Services encourage all applicants to maximize benefits to species covered by their HCPs because of the Services' responsibilities under 7(a)(1). Moreover, as discussed in Response #1, in appropriate situations, such as when an HCP covers most or the entire range of a species or covers severely depleted species, the Services will seek measures necessary for the long-term survival of the species and its habitat.

The Services do not believe they are disregarding the requirements of section 7(d) in providing assurances to landowners through the section 10 process. During the formal section 7(a)(2) consultation process, and prior to the issuance of a final biological opinion, the Services (like any other Federal action agency) must not make any irreversible or irretrievable commitments of resources (in the case of proposing to issue an HCP permit, the Services cannot authorize incidental take) that would preclude the development of reasonable and prudent alternatives in the event that the action, as proposed, violates section 7(a)(2) of the ESA. In the context of HCP permit procedures, the only manner in which the Services could violate section 7(d) is if they authorized incidental take prior to making a final decision on a permit application, which is never the case.

In addition, the No Surprises assurances do not make reinitiation of consultation useless or preclude any meaningful reexamination of the HCP's operating conservation program. The Services will not require the landowner to provide additional mitigation measures in the form of additional land, water, or money. However, additional mitigation measures can be provided by another entity. Similarly, the No Surprises rule does not preclude the Services from shifting emphasis within an HCP's operating conservation program from one strategy to another in an effort to enhance an HCP's overall effectiveness, provided that such a shift does not increase the HCP permittee's costs. For example, if an HCP's operating conservation program originally included a mixture of predator depredation control and captive breeding, but subsequent research or information demonstrated that one of these was considerably more effective than the other, the Services would be able to request an adjustment in the proportionate use of these tools, provided that such an adjustment did not increase the overall costs to the HCP permittee.

Moreover, if the Services reinitiate consultation on the permitting action, and if additional measures are needed, the Services will work together with other Federal, State, and local agencies, Tribal governments, conservation groups, and private entities to ensure additional measures are implemented to conserve the species.

Regarding the concerns on the respective balance of responsibilities among the participants to an HCP containing a No Surprises assurance, the Services believe the No Surprises rule places the preponderance of the responsibility for protection beyond the terms of a specific HCP upon the Services. The only impediments to the Services' assumption of this additional responsibility will arise from limits on authority or funding to provide this additional protection.

The Services have significant resources and authorities that can be utilized to provide additional protection for threatened or endangered species that are the subject of a given HCP including land acquisition or exchange, habitat restoration or enhancement, translocation, and other management techniques. For example, lands managed by the Department of the Interior could be used to ensure listed species protection. Moreover, subsequent section 7 consultations and approval of subsequent section 10 permits will have to take into account the HCP and the status of the species at that time. The section 9 prohibition against unauthorized take by other landowners provides additional protection.

In addition, section 5 of the ESA authorizes the Services to acquire lands to conserve endangered and threatened fish, wildlife, and plants, and section 6 of the ESA authorizes the Services to cooperate with the States in conserving listed species. While many of these programs and authorities are subject to the availability of appropriations, others, such as the authority under the Federal Land Policy and Management Act to exchange land for conservation purposes, do not require appropriations. These authorities provide additional flexibility through which the Services could meet their section 7 responsibilities. While by no means exhaustive, the above discussion demonstrates the depth of authorities and resources available to the Services to meet their No Surprises commitments.

Utilizing these authorities and resources, the Services should be able to provide additional species protection that may be required in the unexpected event that an HCP falls short of providing sufficient protection.

Issue 4: Many commenters stated that the proposed regulation violates section 4(b)(8) of the ESA, which requires "* * * the publication in the **Federal Register** of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this ESA shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation * * *".

Response 4: The Services believe section 4(b)(8) is intended to apply only to listing and critical habitat decisions under section 4. However, even if section 4(b)(8) did apply to this rule, the Services have complied with its requirements. The proposed rule contained a thorough discussion of the basis for the proposed rule (62 FR 29091, May 29, 1997). In addition, the Services had previously explained the background of the No Surprises Policy in the draft HCP Handbook, which was published for public comment in the **Federal Register** (59 FR 65782, December 21, 1994).

Issue 5: Many commenters believe that the Secretary of the Interior does not have the authority to issue assurances for species covered by the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA).

Response 5: The FWS believes that the ESA is more restrictive and protective of species than the MBTA and the BGEPA, and that species covered under an HCP that are also covered by the MBTA and the BGEPA will adequately be protected as long as the HCP is properly implemented. The FWS has concluded that under certain

conditions, a section 10 permit allowing incidental take of listed migratory birds is sufficient to relieve the permittee from liability under the MBTA and BGEPA for taking those species. For the MBTA, this is accomplished by having the HCP permit double as a Special Purpose Permit authorized under 50 CFR 21.27. For the BGEPA, the FWS would exercise its prosecutorial discretion not to prosecute an incidental take permittee under the BGEPA if such take is in compliance with a section 10 permit under the ESA.

However, there are conditions that must be satisfied before either of these protections apply, which are explained on pages 3–40 to 3–41 in the joint Endangered Species Habitat Conservation Planning Handbook (61 FR 63854, December 2, 1996). The FWS believes this approach is warranted because the permittee already would have agreed to an operating conservation program designed to conserve the species and minimize and mitigate the impacts of take of the listed species of migratory birds to the maximum extent practicable. Through the permitting provisions of the MBTA and the FWS's discretion in the enforcement of the BGEPA and the ESA, the FWS has the authority to provide a permittee with assurance that they will not be prosecuted under the MBTA or BGEPA for take expressly allowed under the ESA.

Issue 6: Many commenters stated that HCPs with No Surprises assurances are in conflict with the issuance criteria in the ESA because, in the event of unforeseen circumstances, the project impacts may not be fully mitigated and the plan may reduce the survival and recovery of a covered species.

Response 6: The assurances provided through this regulation are consistent with the issuance criteria of the ESA. Before issuing a permit, the Services ensure that the applicant minimizes and mitigates the project impacts, to the maximum extent practicable, and that the permitted activities avoid jeopardy to the continued existence of the affected species.

In addition, in cases where significant data gaps exist, adaptive management provisions are included in the HCP. The primary reason for using adaptive management in HCPs is to allow for up-front, mutually agreed upon changes in the operating conservation program that may be necessary in light of subsequently developed biological information. In the event of unforeseen circumstances, these strategies may be redirected as long as the redirection is consistent with the scope of the mutually agreed-upon adaptive management provisions of the HCP.

Issue 7: Many commenters stated that the applicant is legally required to address all unforeseen circumstances in the HCP pursuant to section 10. They noted that fire, disease, drought, flood, global climate change, and non-point source pollution may be unforeseen, but are not uncommon. Also the proposed regulation does not direct the applicant to provide for all unforeseen circumstances that might occur during the length of the permit because it is the Services' responsibility to determine that there was an unforeseen circumstance that was not addressed and is not the fault of the permittee implementing the HCP. In addition, commenters noted that the nature of many of the HCPs that the Services are approving increases the likelihood for unforeseen events to happen (i.e., the permits are issued for many years and cover large areas and many species).

Response 7: The Services disagree that HCPs must address *all* hypothetical future events, no matter how remote the probability that they may occur. Rather, the Services believe that only reasonably foreseeable changes in circumstances need to be addressed in an HCP. Moreover, these circumstances are likely to vary from HCP to HCP given the ever changing mix of species and affected habitats covered by a given plan. Nevertheless, the Services agree that the proposed rule's treatment of unforeseen circumstances could be strengthened, and a definition of unforeseen circumstances has been codified in this rule. In particular, the Services would like to clarify that unforeseen circumstances will only include events that could not reasonably have been anticipated. *All reasonably foreseeable circumstances, including natural catastrophes that normally occur in the area, should be addressed in the HCP.* The final rule specifies how unforeseen circumstances will be addressed if they occur during the life of the permit.

Issue 8: Commenters believe that the proposed regulation would not allow for social changes that could occur over the lifetime of the permit. For example, they claim that the development and implementation of the Emergency Salvage Timber rider has affected the success of the conservation measures of several HCPs.

Response 8: There may be situations that do arise related to social changes that could occur during the lifetime of the permit. In these situations, the Services will use all of their legal authorities to adequately address the changes. The Timber Salvage rider to the Appropriations bill is actually a good example of how the Administration responded to a change in social policy. On July 27, 1995, the President signed the Rescission Act (Public Law 104–19) that provided funds for disaster relief and other programs. This bill contained provisions for an emergency salvage timber sale, and directed the preparation, offer, and award of timber salvage sales nationwide. Although the bill passed, the President did not support the provision that waived compliance with environmental laws during timber salvage and directed the Secretaries of Agriculture, the Interior and Commerce, and the heads of other agencies, to move forward to implement the timber-related provisions of the bill in an expeditious and environmentally-sound manner. The Services worked with other Federal agencies to develop a process that, as a matter of Administration policy, addressed compliance with all environmental laws while also meeting the requirements of Pub. L. 104–19. An interagency team of Federal agencies then drafted a process that addressed compliance with the ESA through a streamlined section 7 consultation procedure to ensure that these sales did not jeopardize listed species. In this case, the Services and other Federal agencies cooperatively used their administrative discretion and legal authorities to ameliorate adverse impacts upon listed species conservation.

Issue 9: Several commenters believe that the proposed No Surprises rule negates adaptive management provisions incorporated into HCPs, and may not allow future jeopardy situations to be addressed, because adaptive management must allow for adaptions to changes as they occur rather than trying to plan for everything up front. In addition, many commenters believe that in order to get No Surprises assurances, an HCP must have an adaptive management program that addresses all foreseeable biological and environmental changes and that is designed so that new applicable scientific information and information developed through a monitoring program is incorporated into the plan.

Response 9: The Services do not believe that the proposed rule negates adaptive management provisions incorporated into HCPs for the species with biological data gaps. The No Surprises assurances only apply to an approved HCP that has otherwise satisfied the issuance criteria under section 10(a)(2)(B) of the ESA. When considering permits where there are significant biological data gaps, the

Services have two choices: either deny an HCP permit application due to the inadequacy of the overall proposed plan, or build in adaptive management and monitoring provisions where warranted because of biological data gaps and issue the permit. If there is significant uncertainty associated with the operating conservation program, adaptive management becomes an integral component of the HCP. Incorporating adaptive management provisions into the HCP becomes important to the planning process and the long-term interest of affected species when HCPs cover species with significant biological data gaps. Through adaptive management, the biological objectives of an operating conservation program are defined using techniques such as models of the ecological system that includes its components, interactions, and natural fluctuations. If existing data makes it difficult to predict exactly what conservation and mitigation measures are needed to achieve a biological objective, then an adaptive management approach should be used in the HCP. Under adaptive management, the HCP's operating conservation program can be monitored and analyzed to determine if it is producing the desired results (*e.g.*, properly functioning riparian habitats). If the desired results are not being achieved, then adjustments in the program can be considered through an adaptive management clause of the HCP. Thus, adaptive management can be an integral part of the operating conservation program for an HCP and can be implemented to adjust strategies accordingly. The Services support continuing to strengthen the effectiveness of adaptive management provisions in HCPs and intend to do so in further revisions to the HCP Handbook.

Issue 10: Numerous commenters stated that the proposed regulation should identify secured sources of funding that do not rely on appropriations for the implementation of conservation measures that may be needed to address unforeseen circumstances.

Response 10: Funding mechanisms of this type would have to be established through Congressional action. Absent Congressional action on this matter, the Services must operate with the fiscal resources otherwise made available to them through the appropriations process. Moreover, in approving an HCP in the first instance, the Services must conclude that the permittee has provided for adequate funding to implement the terms of the HCP.

Issue 11: Many commenters stated that the Federal government is not capable of shouldering the financial burden of funding the implementation of conservation measures that may be needed to address unforeseen circumstances. The hardship of paying for any changes needed in the HCP on the government may have severe and far reaching effects on funding for other Federal activities. In addition, some commenters noted that the proposed regulation unlawfully shifts the burden of funding to the Services when section 10 clearly states that the applicant will provide the funding. Numerous commenters stated that the government does not have guaranteed funding for covering unforeseen circumstances and cannot make such guarantees in violation of the Anti-Deficiency Act.

Response 11: The ESA requires the Service to find that an incidental take permittee has provided adequate funding to implement an HCP in the first instance. In addition, the Services must ensure that HCPs are designed to adequately mitigate the incidental take authorized by the permit, include measures to deal with unforeseen circumstances that may arise, and comply with such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan. Once the Services have concluded that a permittee has initially satisfied the issuance criteria in section 10(a), there is nothing in the ESA that precludes the Services from assuming additional responsibility for species covered under the terms of an HCP, especially when such responsibilities are limited to highly unlikely unforeseen circumstances. In fact, the Services have responsibility for listed species conservation regardless of whether an HCP is involved or not, and carrying out that responsibility (for example, through the initiation of litigation to enforce section 9 of the ESA) is also dependent upon the availability of appropriated funds. Therefore, at a conceptual level, the lack of guaranteed funding to handle a breakdown of an HCP due to unforeseen circumstances is no different from a lack of guaranteed funding to enforce the ESA generally.

The Anti-Deficiency Act applies to the Services' activities under the ESA as it does to their activities under all other environmental laws. In the face of an unexpected species decline, where additional conservation efforts are warranted, the Services have significant resources at their disposal to address the comparative needs of the species. As noted earlier in Response #3, the Services can also work with Congress, other Federal, State, and local agencies, tribes, environmental groups, and private entities to help ensure the continued conservation of the species in the wild. The Services have a variety of tools available to ensure that the needs of the species affected by unforeseen circumstances are adequately addressed, including land acquisition or exchange, habitat restoration or enhancement, translocation, and other management techniques. Thus, the Services believe they have a wide array of options and resources available to respond to any unforseen circumstances.

Issue 12: Many commenters noted that many HCPs do not have adequate funding, and the Services must not issue an incidental take permit unless an applicant has secured adequate funding to address all foreseeable changes that might be needed in the conservation measures during the lifetime of the permit. County or State Bonds that are not guaranteed should not be considered "adequate funding."

Response 12: Section 10(a)(2)(B)(iii) requires incidental take permit applicants to "ensure that adequate funding for the plan will be provided." This issuance criterion requires that the applicant detail the funding that will be available to implement the proposed operating conservation program. Therefore, all conservation plans specify funding requirements necessary to implement the plan. The Services issue a permit only when they have concluded that the operating conservation program will be adequately funded. No Surprises only applies to an HCP that is being properly implemented, and if a major component of an HCP, like its funding strategy, is never initiated or implemented, then No Surprises no longer applies and the assurances lapse.

The FWS has incorporated provisions into HCPs that allow for a reevaluation of species coverage in case a County or State Bond that is supposed to meet the adequate funding issuance criterion ultimately is not passed. Under these provisions, the list of species authorized for incidental take may be diminished if funding is not in place within a specified time frame, and any incidental take that would occur before the bond measure is acted upon would have to be adequately mitigated up-front. This reevaluation mechanism was used in the Multiple Species Conservation Program for southwestern San Diego County, California. This type of reevaluation process will be incorporated into other HCPs that rely on proposed bonds to provide required funding.

Issue 13: Many commenters stated that funding and accountability mechanisms are more complicated for permits that involve third party beneficiaries (*e.g.*, certificates of inclusion), and that these types of permits should not include assurances.

Response 13: The Services believe that the assurances provided by the final rule should be available to individuals who participate in HCPs through a larger regional planning process. These large-scale, regional HCPs can significantly reduce the burden of the ESA on small landowners by providing efficient mechanisms for compliance, distributing the economic and logistical impacts of endangered species conservation among the community, and bringing a broad range of landowner activities under the HCPs' legal protection. In addition, these large-scale HCPs allow for ecosystem planning, which can provide benefits to more species than small-scale HCPs. Large-scale HCPs also provide the Services with a better opportunity for analyzing the cumulative effects of the projects, which is more efficient than the piecemeal approach that could result if each landowner developed his/her own HCP. The Services do believe, however, that the party that holds the "overarching" permit, and issues subpermits (*e.g.*, Certificates of Inclusion or Participation Certificates) must have the legal authority to enforce the terms and conditions of the permit and the underlying funding mechanisms for the HCP.

Issue 14: Many commenters requested the Services to remove the permit-shield provision from the proposed regulation because it improperly restricts the authority of the Secretary and citizens to enforce the requirements of the ESA. These commenters assert that the Services do not have the authority to prevent citizens from suing those who are in violation of the ESA. One commenter stated that the permit-shield provision lacks important limitations found in other permit-shield provisions, such as the Clean Water Act and Resource Conservation and Recovery Act. Commenters also stated that the proposed permit-shield provision conflicts with the citizen suit provision in section 11(g) of the ESA. Other commenters supported the proposed permit-shield provision and urged the Service to incorporate it into the final rule. These commenters believe failure to include a permit-shield provision would undercut the No Surprises assurances by exposing permit holders to potential enforcement actions even if they are complying fully with the terms and conditions of valid permits.

Response 14: After further review of the permit-shield concept, including a review of legal authorities, the Services have decided not to include a legally binding permit-shield provision in the final rule. The purpose of the permit-shield provision was to provide certainty to permittees regarding their legal obligations. The current statutory and regulatory framework appears to already provide permittees with that certainty. Although commenters stated that a permit holder might still be vulnerable to government-initiated enforcement actions notwithstanding the No Surprises assurances, the Services cannot identify situations in which a permittee would be in violation of Sections 9 or 11 of the ESA, if in fact they were acting within the permit's authorization and were complying with the terms and conditions of the permit.

In addition, as part of the review of legal authorities, the Services reviewed the court decision in *Shell Oil Company* v. *Environmental Protection Agency*, 950 F.2d 741, 761–765 (D.C. Cir. 1991), which addressed the legality of the Environmental Protection Agency's permit-shield rule for permits issued under the Resource Conservation and Recovery Act (RCRA). Although that decision upheld the RCRA permit-shield rule promulgated by the EPA, 40 CFR 270.4(a), the Services are concerned that the incidental take permit program is sufficiently different from the RCRA permit program that the *Shell Oil* decision may not support a permit-shield rule for incidental take permits. For instance, the court noted that the maximum term of RCRA permits is 10 years, which is considerably shorter than the terms of most incidental take permits. In addition, the EPA retains explicit authority to modify or terminate RCRA permits in response to information arising after a permit is issued that would have justified different permit terms had it existed when the permit was issued. In contrast, the No Surprises rule commits the Service to issue permits that do not require additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources if unforeseen circumstances arise.

Although the Services have decided not to include a legally binding permit-shield provision in the final rule, they nonetheless strongly support a policy that permittees should feel free of potential prosecution if they are acting under the authorizations of their permit and are complying with the terms and conditions of the permit. The Services therefore will continue their policy of not enforcing the prohibitions of Section 9 of the ESA against any incidental take permittee who complies fully with the terms and conditions of the permit.

Many commenters requested that the Services remove the permit-shield provision from the proposed regulation because it improperly restricts the authority of citizens to enforce the requirements of the ESA. The purpose of the proposed permit-shield provision was to provide that the Services would not utilize Section 11(e) of the ESA to enforce Section 9 prohibitions against a permittee who is in full compliance with the terms and conditions of a permit. The permit-shield provision would not, therefore, have restricted citizen suits.

Issue 15: Commenters believe that the regulatory assurances provided to the permittee deprive citizens of the right to have general oversight of HCPs, including challenging government's management decisions, guaranteeing that landowners are in compliance with the agreements, and ensuring that the plans are actually working to conserve listed species.

Response 15: The No Surprises assurances do not deprive citizens of HCP oversight or of their ability to challenge an improperly issued HCP permit. In addition, all Service decision documents (such as approval of HCP management plans) are part of the Administrative Record for any individual HCP and are available to any member of the public upon request. Nothing in this rule prevents citizens from challenging the adequacy of those decisions or bringing HCP permit terms and conditions compliance issues to the Services' attention. The Services welcome citizen input on HCP implementation. Public comments must be considered in all permit decisions. Providing No Surprises assurances to an HCP permittee does not eliminate this public comment period. In addition, the Services or any party designated as responsible by the Services (*e.g.*, State wildlife agency, local government) in the HCP will be expected to monitor the project for compliance with the terms of the incidental take permit and HCP. The Services also require periodic reporting from the permittee in order to maintain oversight to ensure the implementation of the HCP's terms and conditions. The final rule does nothing to affect these reporting requirements.

Issue 16: Numerous commenters stated that the proposed regulation should provide for permits to contain a reopener clause. Any entity (*e.g.*, landowners, government agencies, ecologists, environmentalists) would then be able to reopen the permit for any of the following reasons: 1) Any

party fails to implement the terms and conditions of the permit; (2) new listings of any species not covered; and (3) monitoring indicates that conservation goals are not being met and that the operating conservation program is ineffective.

Response 16: The HCP process already provides various mechanisms for reopening an HCP. First, the Services may suspend, or in certain circumstances, revoke all or part of the privileges authorized by a permit if the permittee does not comply with the terms and conditions of the permit or with applicable laws and regulations governing the permitted activity. If an HCP permit is suspended or revoked, incidental take must cease. The provisions of most HCPs expressly address permit suspension or revocation procedures. Second, if a species was not initially listed on an HCP permit, it may not be automatically covered by an HCP when subsequently listed. For example, if a species was not originally listed on a permit, the HCP must be formally amended. Amendment of a section 10(a)(1)(B) permit is also required when the permittee wishes to significantly modify the project, activity, or conservation program as described in the original HCP. Such modifications might include significant boundary revisions, alterations in funding or schedule, or an addition of a species to the permit that was not addressed in the original HCP. The Services encourage the public to provide them with applicable information concerning any approved HCP that would be useful in evaluating the effectiveness of the HCP or other concerns they may have.

Issue 17: Numerous commenters stated that the assurances provided through these proposed regulations should not be automatic and should be commensurate with risk, and that the Services should provide assurances to a permittee only if the HCP includes specific objectives or measurable biological goals that must be met and that would ensure the conservation of the species, if they are attained.

Response 17: The Services believe that the commitments of an HCP must be specifically identified and scientifically based, reflecting the particular needs of the species that are covered. Thus, the concept of comparative risk to various species is factored in by the Services as they assess the adequacy of the operating conservation program for a given HCP. The Services will not approve an HCP permit request found to be inadequate, but will provide No Surprises assurances to all HCPs that are found to be adequate.

For many recent HCPs, the Services are defining specific biological goals. Furthermore, comprehensive monitoring programs provide added value for measuring progress toward meeting the goals and commitments and ensuring that the permittee is in compliance with the permit. The Services often incorporate monitoring measures to assess whether goals are being met, especially in cases where additional information may be desirable or there is significant scientific uncertainty. If existing data makes it difficult to predict exactly what measures are needed to achieve a biological objective, then an adaptive management strategy is usually required. Adaptive management, which then becomes an integral component of the operating conservation program, is not negated by the No Surprises assurances because it was a part of the HCP's operating conservation program as approved by the Services.

Issue 18: Most commenters stated that to get assurances, a multispecies HCP must adequately cover each individual species rather than collectively cover a group of species defined by some type of commonality (*e.g.*, guild or habitat).

Response 18: The Services believe that each species in a multispecies HCP must be adequately addressed by satisfying the permit issuance criteria under section 10(a)(2)(B) of the ESA. The Services believe, nevertheless, that in some cases, using a "guilding" or habitat-based approach to craft preserve designs or management measures may be appropriate.

However, even when such tools are used, the Services will ensure that for each species that receives assurances, the species must be specifically named in the HCP, and adequate conservation measures are included in the plan.

Issue 19: Commenters believe that to get assurances, an HCP must have an adequate and comprehensive biological monitoring program that addresses all foreseeable changes in circumstances that may occur over the lifetime of the permit.

Response 19: Monitoring is already an element of HCPs under the Services' Federal regulations [50 CFR 17.22(b)(1), 17.32(b)(1), and 222.22]. Monitoring is also an important tool for HCPs, and their associated permit and Implementing Agreements, and should be properly designed and implemented. The scope of the monitoring program should be sufficient to address reasonably foreseeable changes in circumstances that occur during the life of the permit. Monitoring is needed to obtain the information necessary to properly assess the impacts from the HCP and to ensure that HCPs are properly implemented. Monitoring will also allow the use of the scientific data obtained on the effects of the plan's operating conservation program to modify specific strategies through adaptive management, and to enhance future strategies for the conservation of species and their habitat.

While the Services appreciate the numerous benefits of a well-developed monitoring program, some low-effect HCPs have minimal monitoring requirements because the impacts from the plan are minor or negligible, and the attempt by the commenters to make an extensive monitoring program a requirement for No Surprises assurances is misplaced. A well-developed monitoring program will add to the credibility of an HCP proposal and will facilitate the eventual approval of the HCP. Thus, the Services believe that the real test for receiving the No Surprises assurances should be whether the issuance criteria under section 10(a) have been satisfied, and not whether a particular conservation tool, such as monitoring, has been extensively employed under an HCP whether it is needed or not.

Issue 20: Numerous commenters stated that to get assurances for unlisted species, a plan must be in place that describes what is necessary for their long-term conservation. Commenters encouraged a standard for unlisted species equal to that used in the proposed policy and regulations for the Candidate Conservation Agreements (CCAs).

Response 20: While the Services agree that these two types of agreements are similar, the purposes of the proposed CCA policy and the No Surprises rule are somewhat different. As stated in the proposed CCA policy, the ultimate goal of these agreements is to encourage landowners and State and local land managing agencies to manage their lands in a manner that, if adopted on a broad enough scale by similarly situated landowners, would remove threats to species and thereby obviate the need to list them under the ESA. The purposes of including unlisted species in HCPs and of making them subject to No Surprises assurances, are to enlist landowners in efforts to conserve these species and to provide certainty to landowners who are willing to make long-term commitments to the conservation of listed and unlisted species that they will not be subjected to additional conservation and mitigation measures if one of the species is listed, except as provided in their HCPs. The standards for including an unlisted species under an HCP are the

issuance criteria under section 10(a)(2)(B) of the ESA. For HCPs, the Services will continue to use the conservation standard identified in the Habitat Conservation Planning Handbook for unlisted species. The Handbook clearly states that an unlisted species is "adequately covered" in an HCP only if it is treated as if it were listed pursuant to section 4 of the ESA, and if the HCP meets the permit issuance criteria in section 10(a)(2)(B) of the ESA with respect to the species. The No Surprises assurances apply only to species (listed and unlisted) that are adequately covered in the HCP. Species, whether listed or nonlisted, will not be included in the HCP permit if data gaps or insufficient information make it impossible to craft conservation and mitigation measures for them, unless these data gaps can be overcome through the inclusion of adaptive management clauses in the HCP.

Issue 21: Many commenters requested an addition to the rule that would address the early termination of an HCP. Commenters want the Services to discuss the possibility of terminating an HCP, including how the assurances and applicable mitigation apply to the termination.

Response 21: The Services believe that such a requested change is unnecessary. The No Surprises assurances apply during the life of the permit, provided that the HCP is properly implemented and the terms and conditions of the HCP incidental take permit are being followed. Should a permit be terminated early, the No Surprises assurances also terminate as of the same date. The question of how outstanding mitigation responsibilities should be handled upon early termination is a more generic HCP policy issue that is unrelated to the No Surprises assurances and is, therefore, beyond the scope of this particular rulemaking.

Issue 22: Several commenters stated that the proposed rule was confusing regarding the different level of assurances established in the proposed rule (for regular HCPs and for HCPs that provide a "net benefit" to the covered species) and that the distinction between the two levels should be clarified further or only one level of assurances should be provided to HCP permittees.

Response 22: The Services agree that these distinctions were unnecessarily confusing and have revised the final rule accordingly. The final rule requires the Services to provide only one level of assurances to any permittee that has an approved HCP permit. The Services eliminated the level of assurances for HCPs that were developed to provide a net benefit for the covered species since the distinction between the two types of HCPs were very difficult to delineate in practice.

Issue 23: Commenters noted that there were differences between the regulations, such as FWS use of the term "unforeseen" circumstances throughout the proposed rule, whereas NMFS used the terms "unforeseen" and "extraordinary" circumstances in their proposed rule.

Response 23: The Services agree that there was some confusion and have made the regulations consistent between the two agencies, where possible. Moreover, there was never an intention in the August 1994 No Surprises announcement to create a substantive difference between "unforeseen" and "extraordinary" circumstances. NMFS will use the term "unforeseen" in its regulations in place of "extraordinary."

Revisions to the Proposed Rule

The following represents a summary of the revisions to the proposed rule as a result of the consideration of the public comments received during this rulemaking process. The Services have rewritten the "Assurances" section of the preamble and regulatory language to improve clarity and readability. Many commenters were confused by the language in the proposed rule, and asked the Services to provide a clearer explanation of this section. Accordingly, the Services have edited and reorganized the Assurances provision, but have not made any substantive changes.

(1) Some of the definitions used in this rulemaking process will now be codified as definitions in 50 CFR 17.3 for FWS and 50 CFR 222.3 for NMFS. These definitions were concepts identified in the "Background" section of the proposed rule.

(2) The rule was revised so the Services will only provide assurances for species listed on a permit that are adequately covered in the conservation plan and specifically identified on the permit.

(3) The Services have clarified that the duration of the assurances is the same as the length of the permit.

(4) The Services revised the rule so that there is only one level of assurances provided to permittees, instead of one level of assurances for standard HCPs and another level for HCPs that were developed to provide a "net benefit" for the covered species.

(5) The Services have clarified the rule so that it is apparent that No Surprises assurances do not apply to Federal agencies who have a continuing obligation to contribute to the conservation of threatened and endangered species under section 7(a)(1) of the ESA.

(6) The Services believe that HCPs are, and will continue to be, carefully crafted so that unforeseen circumstances will be rare, if at all, and that the Services will be able to successfully handle any unforeseen circumstance so that species are not jeopardized. To help ensure that unforeseen circumstances are a rare occurrence, the Service revised the rule in appropriate areas.

(7) The Services replaced the term "properly functioning," which was used in the proposed rule to "properly implemented." This change accurately reflects the intent of the Services when discussing the implementation of HCPs.

(8) The Services eliminated the permit-shield provisions from the final rule.

(9) The Services revised the final rule by replacing the term "property interests" with the term "natural resources," which more accurately describes the intent of the Services.

Description/Overview of the Final Habitat Conservation Plan Assurances ("No Surprises" Policy) Rule

The information presented below briefly describes the "No Surprises" assurances adopted in this final rule. These assurances provide economic and regulatory certainty for non-Federal property owners that participate in the ESA's section 10(a)(1)(B) permitting process through the following:

1. General assurances. The No Surprises assurances apply only to incidental take permits issued in accordance with the requirements of the Services' regulations where the conservation plan is being properly implemented, and apply only to species adequately covered by the conservation plan.

Discussion: Once an HCP permit has been issued and its terms and conditions are being fully complied with, the permittee may remain secure regarding the agreed upon cost of conservation and mitigation. If the status of a species addressed under an HCP unexpectedly worsens because of unforeseen circumstances, the primary obligation for implementing additional conservation measures would be the responsibility of the Federal government, other government agencies, or other non-Federal landowners who have not yet developed an HCP.

"Adequately covered" under an HCP for listed species refers to any species addressed in an HCP that has satisfied the permit issuance criteria under section 10(a)(2)(B) of the ESA. For

unlisted species, the term refers to any species that is addressed in an HCP *as if it* were listed pursuant to section 4 of the ESA and is adequately covered by HCP conditions that would satisfy permit issuance criteria under section 10(a)(2)(B) of the ESA if the species were actually listed. For a species to be covered under a HCP it must be listed on the section 10(a)(1)(B) permit. These assurances apply *only* to species that are "adequately covered" in the HCP.

"Properly implemented conservation plan" means any HCP, Implementing Agreement, and permit whose commitments and provisions have been and are being fully implemented by the permittee and in which the permittee is in full compliance with the terms and conditions of the permit, so the HCP is consistent with the agreed-upon operating conservation program for the project.

2. Changed circumstances provided for in the plan. If additional conservation and mitigation measures are deemed necessary to respond to changes in circumstances that were provided for in the plan's operating conservation program, the permittee will be expected to implement the measures specified in the plan.

3. Changed circumstances not provided for in the plan. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances that were not provided for in the plan's operating conservation program, the Services will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

Discussion: It is important to distinguish between "changed" and "unforeseen" circumstances. Many changes in circumstances during the course of an HCP can reasonably be anticipated and planned for in the conservation plan (*e.g.*, the listing of new species, or a fire or other natural catastrophic event in areas prone to such events), and the plans should describe the modifications in the project or activity that will be implemented if these circumstances arise. "Unforeseen circumstances" are changes in circumstances affecting a species or geographic area covered by an HCP that could not reasonably have been anticipated by plan developers or the Services at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of a covered species (e.g., the eruption of Mount St. Helens was not reasonably foreseeable).

4. Unforeseen circumstances. In negotiating unforeseen circumstances, the Services will not require without the consent of the permittee, the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, including quantity and timing of delivery, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan.

If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Services may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or restrictions on the use of land, water (including quantity and timing of delivery), or other natural resources otherwise available for development or use under the original terms of the conservation plan, without the consent of the permittee.

In determining unforeseen circumstances, the Services will have the burden of demonstrating that such unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Services will consider, but not be limited to, the following factors: size of the current range of the affected species; percentage of range adversely affected by the conservation plan; percentage of range conserved by the conservation plan; ecological significance of that portion of the range affected by the conservation plan; level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

Discussion: The first criterion is self-explanatory. The second identifies factors to be considered by the Services in determining whether the unforeseen circumstances are biologically significant. Generally, the inquiry would focus on the level of biological threats to the affected species covered by the HCP and the degree to which the welfare of those species is tied to a particular HCP. For example, if a species is declining rapidly, and the HCP encompasses an ecologically insignificant portion of the species' range, then unforeseen circumstances warranting reconsideration of an HCP's conservation program typically would not exist because the overall effect of the HCP upon the species would be negligible or insignificant. Conversely, if a species is declining rapidly and the HCP in question encompasses a majority of the species' range, then unforeseen circumstances warranting a review of an HCP's conservation program probably would exist. If unforeseen circumstances are found to exist, the Services will consider changes in the operating conservation program or additional mitigation measures. However, measures required of the permittee must be as close as possible to the terms of the original HCP and must be limited to modifications within any conserved habitat area or to adjustments within lands or waters that are already set aside in the HCP's operating conservation program. "Conserved habitat areas" are areas explicitly designated for habitat restoration, acquisition, protection, or other conservation uses under an HCP. An "operating conservation program" consists of the conservation management activities, which are expressly agreed upon and described in an HCP or its Implementing Agreement and that are undertaken for the affected species when implementing an approved HCP. Any adjustments or modifications will not include requirements for additional land, water, or financial compensation, or additional restrictions on the use of land, water (including quantity and timing of delivery), or other natural resources otherwise available for development or use under the HCP, unless the permittee consents to such additional measures.

Modifications within conserved habitat areas or to the HCP's operating conservation program means changes to the plan areas explicitly designated for habitat protection or other conservation uses under the HCP, or changes that increase the effectiveness of the HCP's operating conservation program, provided that any such changes do not impose new restrictions or require additional financial compensation on the permittee's activities. Thus, if an HCP's operating conservation program originally included a mixture of predator depredation control and captive breeding, but subsequent

research or information demonstrated that one of these was considerably more effective than the other, the Services would be able to request an adjustment in the proportionate use of these tools, provided that such an adjustment did not increase the overall costs to the HCP permittee. Additionally, the No Surprises assurance does not preclude any Federal agency from exercising its Federal reserved water rights.

The "Unforeseen circumstances" section of the HCP should discuss the process for addressing those future changes in circumstances surrounding the HCP that could not reasonably be anticipated by HCP planners. While HCP permittees will not be responsible for bearing any additional economic burden for more mitigation measures, other methods remain available to respond to the needs of the affected species and to assure that the goals of the ESA are satisfied. These include increasing the effectiveness of the HCP's operating conservation program by adjusting the program in a way that does not result in a net increase in costs to the permittee, and actions taken by the government or voluntary conservation measures taken by the permittee.

When negotiating the unforeseen provisions in an HCP, the permittee cannot be required to commit additional land, funds, or additional restrictions on lands, water (including quantity and timing of delivery) or other natural resources released under an HCP for development or use from any permittee who is implementing the HCP and is abiding by all of the permit terms and conditions in good faith or has fully implemented their commitments under an approved HCP. Moreover, this rule does not preempt or affect any Federal reserved water rights.

In the event of unforeseen circumstances, the Services will work with the permittee to increase the effectiveness of the HCP's operating conservation program to address the unforeseen circumstances without requiring the permittee to provide an additional commitment of resources as stated above. The specific nature of the requested changes to the operating conservation program will vary among HCPs depending upon individual habitat and species needs.

5. Nothing in this rule will be construed to limit or constrain the Services, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

Discussion: This means the Services or other entities can intervene on behalf of a species at their own expense at any time and be consistent with the assurances provided to the permittee under this final rule. However, it is unlikely that the Services would have to resort to protective or conservation action requiring new appropriations of funds by Congress in order to meet their commitment under this final rule (consistent with their obligations under the ESA). If this unlikely event occurred, these actions would be subject to the requirements of the Anti-Deficiency Act and the availability of funds appropriated by Congress.

Also, nothing in this final rule prevents the Services from asking a permittee to voluntarily undertake additional mitigation on behalf of affected species. While an HCP permittee who has been implementing the HCP and permit terms and conditions in good faith would not be obligated to provide additional mitigation, the Services believe that many landowners would be willing to consider additional conservation assistance on a voluntary basis if a compelling argument for assistance could be made.

The Services believe that it will be rare for unforeseen circumstances to result in a jeopardy situation. However, in such cases, the Services will use all of their authorities, will work with other Federal agencies to rectify the situation, and work with the permittee to redirect conservation and mitigation measures so as to offset the likelihood of jeopardy. The Services have a wide array of authorities and resources that can be used to provide additional protection for threatened or endangered species covered by an HCP.

Required Determinations

A major purpose of this final rule is to provide section 10(a)(1)(B) permittees regulatory assurances related to the issuance of an HCP permit. From the Federal government's perspective, implementation of this rule would not result in additional expenditures to the permittee that are above and beyond that already required through the section 10(a)(1)(B) permitting process. There are, however, benefits derived from HCPs for both the non-Federal permittees and the species covered by the HCPs. HCPs are mechanisms that allow non-Federal entities to continue with economic use or development activities, while factoring species' conservation needs into natural resource management decisions. Benefits to the covered species may include the conservation of lands and waters upon which the species depends, decreased habitat fragmentation, the removal of threats to candidate, proposed, or other unlisted species, and in various instances, advancement of the recovery of listed species. Non-Federal entities are then provided regulatory assurances pursuant to an approved incidental take permit under section 10(a)(1)(B) of the ESA for those species that are adequately covered by the permit, conditioned, of course, on the proper implementation of the HCP. Since the Habitat Conservation Plan Assurances ("No Surprises" policy) impose no additional economic costs or burdens upon an HCP permittee, the Services have determined that the final rule would not result in significant costs of implementation to non-Federal entities.

Information Collection/Paperwork Reduction Act

No significant effects are expected on non-Federal entities exercising their option to enter into the HCP planning program because there is no additional information required during the HCP development or processing phase due solely to these regulatory assurances.

The Services have examined this final rule under the Paperwork Reduction Act of 1995 and found it to contain no requests for additional information or increase in the collection requirements associated with incidental take permits other than those already approved for incidental take permits with OMB approval #1018–0094, which has an expiration date of February 28, 2001.

Economic Analysis

This final rule was subject to Office of Management and Budget review under Executive Order 12866. However, the Services have determined that there will be no additional costs placed on the non-Federal entity associated with this final regulation. The No Surprises policy, which was drafted in 1994, went through a public comment period as part of the draft *1994 Habitat Conservation Planning Handbook* (59 FR 65782, December 21, 1994), was included in the final *1996 Habitat Conservation Planning Handbook* (61 FR 63854, December 2, 1996), and currently is being implemented in individual HCP permits as they are issued after an opportunity for public comment. The No Surprises assurances provided to permittees through these final rules apply to the HCP permitting process only, and the Services have determined that there will be no additional information required of non-Federal entities through the HCP permitting process to provide assurances to the permittee.

The Department of the Interior has certified that this rulemaking will not

have a significant economic impact on a substantial number of small entities, which includes businesses, organizations, or governmental jurisdictions. This final rule will provide non-Federal entities regulatory certainty pursuant to an approved incidental take permit under section 10(a)(1)(B) of the Act. No significant effects are expected on non-Federal entities exercising their option to enter into the HCP planning program because there will be no additional information required through the HCP process due to the application of assurances or "No Surprises." Therefore, this rule would have a minimal effect on such entities. NMFS has also reviewed this rule under the Regulatory Flexibility Act of 1980 and concurs with the above certification.

The implementation of the final Habitat Conservation Plan Assurances rule does not require any additional data not already required by the HCP process. Regulatory assurances are provided to the permittee if the HCP is properly implemented, and if all the terms and conditions of the HCP, permit, or Implementing Agreement are all being met. The underlying economic basis of comparing the final rule with and without the assurances was used to determine if there existed any potential economic effects from implementing this policy. Since the rule is being implemented with existing data, there are no incremental costs being imposed on non-Federal landowners. The benefits generated by this rule are being shared by the Services (*i.e.*, less habitat fragmentation, habitat management, and protection for covered species) and by non-Federal landowners (*i.e.*, assurances that approved HCPs will allow for future economic uses of non-Federal land without further conservation and mitigation measures).

There are no specific data to assess the effects on businesses from this rule. To the extent businesses are affected, however, such effects would be positive, not negative. Until specific HCPs are approved, it is not possible to determine effects on commodity prices, competition or jobs. Moreover, any economic effects would likely be tied to the cost of the development and implementation of the HCP itself and not to these assurances. There is a positive effect expected on the environment because these assurances act as an incentive for non-Federal entities to seek HCPs and to factor species conservation needs into national resources management decisions. No effect on public health and safety is expected from this rule. Therefore, this rule most likely would not have a significant effect on a substantial number of small entities.

The Services have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. No additional information will be required from a non-Federal entity solely as a result of these assurances.

Civil Justice Reform

The Departments have determined that these final regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act

The Department has determined that the issuance of the final rule is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10. NMFS concurs with the Department of Interior's determination that the issuance of the final rule qualifies for a categorical exclusion and falls within the categorical exclusion criteria in NOAA 216–3 Administrative Order, Environmental Review Procedure.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 222

Administrative practices and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, the Services amend Title 50, Chapter I, subchapter B; and Title 50, Chapter II, subchapter C of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

Subpart C—Endangered Wildlife

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. The FWS amends § 17.3 by adding the following definitions alphabetically to read as follows:

* * * * *

Adequately covered means, with respect to species listed pursuant to section 4 of the ESA, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the ESA for the species covered by the plan, and, with respect to unlisted species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the ESA that would otherwise apply if the unlisted species covered by the plan were actually listed. For the Services to cover a species under a conservation plan, it must be listed on the section 10(a)(1)(B) permit.

* * * * *

Changed circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and the Service and that can be planned for (*e.g.*, the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

Conserved habitat areas means areas explicitly designated for habitat restoration, acquisition, protection, or other conservation purposes under a conservation plan.

Conservation plan means the plan required by section 10(a)(2)(A) of the ESA that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as "habitat conservation plans" or "HCPs."

* * * * *

Operating conservation program means those conservation management activities which are expressly agreed upon and described in a conservation plan or its Implementing Agreement, if any, and which are to be undertaken for the affected species when implementing an approved conservation plan, including measures to respond to changed circumstances.

* * * * *

Properly implemented conservation plan means any conservation plan, Implementing Agreement and permit whose commitments and provisions have been or are being fully implemented by the permittee.

* * * * *

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and the Service at the time of the conservation plan's negotiation and development, and that result in a substantial and adverse

change in the status of the covered species.

* * * * *

3. The FWS amends § 17.22 by adding paragraphs (b) (5) and (6) to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(b) * * *

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in effect, and those permits will not be revised as a result of this rulemaking.

(i) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the conservation plan;

(*3*) Percentage of range conserved by the conservation plan;

(*4*) Ecological significance of that portion of the range affected by the conservation plan;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

Subpart D—Threatened Wildlife

4. The FWS amends § 17.32 by adding paragraphs (b)(5) and (6) to read as follows:

§ 17.32 Permits—general.

* * * * *

(b) * * *

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to specifies adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to [insert 30 days after the date of publication in the **Federal Register**]. The assurances provided in incidental take permits issued prior to [insert 30 days after the date of publication in the **Federal Register**] remain in effect, and those permits will not be revised as a result of this rulemaking.

(i) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original

terms of the conservation plan without the consent of the permittee.

(C) The Director will have the burden of demonstrating that such unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the conservation plan;

(*3*) Percentage of range conserved by the conservation plan;

(*4*) Ecological significance of that portion of the range affected by the conservation plan;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

PART 222—ENDANGERED FISH OR WILDLIFE

5. The authority citation for part 222 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

Subpart C—Endangered Fish or Wildlife Permits

6. In part 222, a new section is added to read as follows:

222.3 Definitions.

These definitions apply only to § 222.22:

Adequately covered means, with respect to species listed pursuant to section 4 of the ESA, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the ESA for the species covered by the plan and, with respect to unlisted species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the ESA that would otherwise apply if the unlisted species covered by the plan were actually listed. For the Services to cover a species under a conservation plan, it must be listed on the section 10(a)(1)(B) permit.

Changed circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and NMFS and that can be planned for (*e.g.*, the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

Conserved habitat areas means areas explicitly designated for habitat restoration, acquisition, protection, or other conservation purposes under a conservation plan.

Conservation plan means the plan required by section 10(a)(2)(A) of the ESA that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as "habitat conservation plans" or "HCPs."

Operating conservation program means those conservation management activities which are expressly agreed upon and described in a conservation plan or its Implementing Agreement, if any, and which are to be undertaken for the affected species when implementing an approved conservation plan, including measures to respond to changed circumstances.

Properly implemented conservation plan means any conservation plan, Implementing Agreement and permit whose commitments and provisions have been or are being fully implemented by the permittee.

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and NMFS at the time of the conservation plan's negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

§ 222.22 [Amended]

7. In § 222.22, paragraphs (g) and (h) are added.

* * * * *

(g) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(2) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) *Unforeseen circumstances.* (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will

consider, but not be limited to, the following factors:

(A) Size of the current range of the affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;

(E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(F) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

Dated: February 13, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: February 11, 1998.

Donald J. Barry,

Acting Assistant Secretary, Fish, Wildlife, and Parks, Department of Interior.

[FR Doc. 98–4367 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 63, No. 35
Monday, February 23, 1998

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206–AI08

Appointment, Pay, and Removal of Administrative Law Judges

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise the regulations governing the appointment, pay, and removal of administrative law judges appointed under 5 U.S.C. 3105. Among the major revisions, these regulations would permit an above-the-minimum pay rate for reinstatement eligibles with superior qualifications; permit promotion of a judge to an AL–1 position after 52 weeks in an AL–3 or AL–2 position; permit details from other agencies when an agency has insufficient work to employ a full-time administrative law judge; place a limit of 1 year on details from other agencies with a possible extension of up to 1 year; and give agencies the option of filling a vacancy by selecting a current administrative law judge employed within the agency or selecting one from OPM's priority referral list.

DATES: Written comments will be considered if received on or before April 24, 1998.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Juanita Love on 202–606–4890, FAX 202–606–0584, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: The administrative law judge function was established by the Administrative Procedure Act (APA) of 1946. Administrative law judges preside at formal hearings, which agencies are required by statute to hold, and make or recommend decisions on the basis of the record. The APA requires that this function be carried out in an impartial manner. To assure the objectivity of judges and insulate them from improper pressure, the APA made them independent of their employing agencies in matters of tenure and compensation. Further, the Office of Personnel Management (OPM) is charged with administering merit selection and pay systems for judges, and regulations covering these matters are in 5 CFR part 930, subpart B. OPM proposes to revise the regulations to make a number of substantive and editorial changes, as follows.

Section 930.203 Examination

The current regulation contains a detailed description of the components and scoring of the examination. We propose to delete this description as unnecessary because the examination announcement contains a more detailed description, and OPM makes the announcement readily available. The regulation also contains numerous references to "OPM Examination Announcement No. 318," the announcement for administrative law judge positions. We believe these references also are unnecessary in regulation and plan to delete them as other examination announcement numbers and descriptions of examination components and scoring are not routinely published in regulation.

Section 930.204 Appointment (Formerly § 930.203a)

We are renumbering section 203a and subsequent sections in subpart B to conform with publication numbering requirements.

Paragraph (c)(3) of this section addresses appointment of employees whose positions are classified as administrative law judge positions by legislation, Executive order, or court decision. An agency has six months after such classification to recommend to OPM that the incumbent be appointed as an administrative law judge. We propose to delete this requirement and instead rely on the terms of the legislation, Executive order, or court decision for any time frames for appointment.

Paragraph (c)(4) of this section provides that in an emergency situation OPM may authorize a conditional appointment of an administrative law judge pending final decision on the individual's appointment eligibility. We propose to delete this provision as inconsistent with the intent of the APA that administrative law judges serve without condition.

Section 930.205 Promotion (Formerly § 930.204)

We propose to transfer the one-year service requirement for promotion from § 930.210 to this section and change the period to 52 weeks to be consistent with the waiting period for pay increases for judges at level AL–3 and before transfer to a different agency. We also propose to grant agencies the discretion to require 52 weeks of service at either the AL–2 or AL–3 level when filling a position at AL–1. This change will enable an agency to consider its own administrative law judges when filling a chief judge position at AL–1.

In addition, we clarify that an agency has the authority to promote a current administrative law judge when an existing managerial position at AL–1 or AL–2 is vacated or a new managerial position is established.

Section 930.211 Pay (Formerly § 930.210)

An agency may pay, with OPM approval, an above-the-minimum rate to a candidate with superior qualifications who is appointed from a certificate of eligibles to a position at level AL–3. We propose to expand this authority in paragraph (g)(2) to include reinstatement eligibles with superior qualifications.

We added a new paragraph to clarify that an agency may reduce the level or pay of an administrative law judge for good cause only after the Merit Systems Protection Board has specified such action.

In addition, we deleted paragraphs (j) through (m). These paragraphs provided instructions for implementing the current pay system authorized by the Federal Employees Pay Comparability Act of 1990. Since all administrative law judges have been converted to the current pay system, these paragraphs are no longer needed.

Section 930.214 Use of Administrative Law Judges on Detail From Other Agencies (Formerly § 930.213)

This section provides for the detail of judges from one agency to another one that is occasionally or temporarily insufficiently staffed with judges. We propose to clarify this authority to include agencies with insufficient work to detail an administrative law judge to conduct and complete the hearing of one or more specified cases and issue decisions. We also propose a one-year limit on all interagency details, with the possibility of an extension of up to one additional year. This maximum limit should be sufficient to satisfy agency needs.

Section 930.216 Reduction in Force (Formerly § 930.215)

We propose permitting an additional flexibility to agencies when administrative law judges affected by reductions in force are on OPM's priority referral list for geographic locations where agencies wish to fill vacant positions. This change would give agencies the option of filling the vacant positions either from OPM's priority referral list or by selection of administrative law judges currently employed by the hiring agency. At the present time, agencies are allowed to fill the vacant positions only through the priority referral list. OPM would still retain the authority to grant exceptions to this order of selection. This change will allow agencies to better manage their administrative law judge workforce by giving them the flexibility to make intra-agency reassignments when vacancies arise.

Miscellaneous

We made the following additional changes:

- Moved the provision specifying the proper title for administrative law judges to § 930.201 from § 930.203b, which is abolished. A statement that administrative law judge positions are in the competitive service is added to § 930.201.
- Moved the prohibition against awards from § 930.210(b) to § 930.212.
- Made revisions throughout the subpart to clarify in certain situations that an applicant must meet the minimum qualification requirements for administrative law judge positions rather than take the examination.
- Clarified throughout the subpart that administrative law judges are given "career absolute" appointments.
- Deleted reference in § 930.215(c)(4) to Standard Form 171, Application for Federal Employment, which was abolished in 1994. Application may be by resume, the Optional Form 612-Optional Application for Federal Employment, or other written format.
- Made various editorial changes.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM proposes to amend 5 CFR part 930 as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

1. Subpart B is revised to read as follows:

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

Sec.

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521.

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

§ 930.201 Coverage.

(a) This subpart applies to employment of administrative law judges appointed under 5 U.S.C. 3105 for proceedings required to be conducted in accordance with 5 U.S.C. 556 and 557.

(b) Administrative law judge positions are in the competitive service. Except as otherwise provided in this subpart, the rules and regulations applicable to positions in the competitive service apply to administrative law judge positions.

(c) In accordance with 5 U.S.C. 1104(a)(2), OPM shall conduct competitive examinations for administrative law judge positions, and agencies employing administrative law judges shall reimburse OPM for the cost of developing and administering such examinations. Each employing agency's share of reimbursement shall be based on its relative number of administrative law judges as of March 31 of the preceding fiscal year. OPM will work with employing agencies to review the examination program for effectiveness and efficiency and identify needed improvements, consistent with statutory requirements. Subsequently, OPM will annually compute the cost of the examination program and notify each agency of its share, along with a full accounting of the costs, and payment procedures.

(d) The title "administrative law judge" is the official class title for an administrative law judge position. Each agency will use only this official class title for personnel, budget, and fiscal purposes.

§ 930.202 Definitions.

In this subpart—

(a) *Agency* has the same meaning as given in 5 U.S.C. 551.

(b) *Detail* means the temporary assignment of an employee from one position to another position without change in civil service or pay status.

(c) *Administrative law judge position* means a position in which any portion of the duties requires the appointment of an administrative law judge under 5 U.S.C. 3105.

(d) *Promotion* means a change from a lower to a higher level position.

(e) *Reinstatement* means reemployment authorized on the basis of the appointee's absolute status as administrative law judge after an earlier separation from an administrative law judge position.

(f) *Removal* means discharge of an administrative law judge from the

position of administrative law judge or involuntary reassignment, demotion, or promotion to a position other than that of administrative law judge.

§ 930.203 Examination.

(a) *Periodic open competition.* Applicants for administrative law judge positions will be examined periodically in open competition as announced by OPM. Applicants who demonstrate in their written applications and supporting materials that they meet the minimum qualifying experience requirements specified in the OPM examination announcement will be eligible to compete in further examination procedures.

(b) *Preparation of certificates.* When agencies request certificates of eligibles to consider in filling vacant administrative law judge positions, OPM will certify candidates from the top of the register. Candidates are ranked on the basis of assigned final ratings, augmented by veterans' preference points, if applicable. At least three eligible applicants, if available, will be certified to the employing agency for consideration for each vacancy.

(c) *Appeal of rating.* Applicants who obtain an ineligible rating or applicants who are dissatisfied with their final rating may appeal the rating to the Administrative Law Judge Rating Appeals Panel, Office of Personnel Management, Washington, DC 20415, within 30 days after the date of final action by the Office of Administrative Law Judges or such later time as may be allowed by the Panel.

§ 930.204 Appointment.

(a) Prior approval. An agency may make an appointment to an administrative law judge position only with the prior approval of OPM, except when it makes its selection from a certificate of eligibles furnished by OPM. When requesting OPM approval of an appointment to an administrative law judge position or the issuance of a certificate of eligibles, the requesting agency must demonstrate that its hearing workload requires the appointment of an additional administrative law judge(s) to get necessary work done. An appointment is subject to suitability investigation in accordance with subparts B and C of part 731 of this chapter and subject to conflict of interest and security clearance requirements by the appointing agency.

(b) *Probationary and career-conditional periods.* Administrative law judges are given career appointments (commonly called career absolute appointments) and placed in tenure group I. The requirements for probationary and career-conditional periods do not apply to an appointment to an administrative law judge position.

(c) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may give a career absolute appointment as an administrative law judge to an employee who is serving in a position at the time it is classified as an administrative law judge position on the basis of legislation, Executive order, or decision of a court, if—

(1) The employee is serving under a career or career-conditional appointment or an excepted appointment without time limit;

(2) The employee is serving in the position on the date of the legislation, Executive order, or decision of the court, on which the classification of the position is based;

(3) OPM receives a recommendation for the employee's appointment from the agency concerned; and

(4) OPM finds that the employee meets the minimum qualification requirements for the position.

(d) *Appointment of incumbents of nonadministrative law judge positions.* Except as provided in paragraph (c) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position other than by selection from a certificate of eligibles furnished by OPM from the open competitive register.

§ 930.205 Promotion.

(a) When OPM places an occupied administrative law judge position at a higher level, OPM will direct the promotion of the incumbent administrative law judge. The promotion will be effective on the date named by OPM.

(b) When OPM places an administrative law judge position at level AL–1 or AL–2 on the basis of the position's managerial and administrative responsibilities, or an agency has a vacant position at AL–1 or AL–2, the employing agency may promote one of its administrative law judges to the position, provided the selection and/or promotion is in accordance with regular civil service procedures.

(c) Judges must serve at least 52 weeks in an AL level before advancing to a higher level. In filling a position in level AL–1, an agency has the discretion to determine whether to consider administrative law judges who have served at least 52 weeks in level AL–3 but not 52 weeks in AL–2. Service in an equivalent or higher grade level in other Federal civilian positions is creditable toward the 52-week requirement.

§ 930.206 Reassignment.

With the prior approval of OPM, an agency may, without competition, reassign an administrative law judge serving under career absolute appointment to another administrative law judge position at the same level in the same agency, provided the assignment is for bona fide management reasons and in accordance with regular civil service procedures and merit system principles.

§ 930.207 Transfer.

(a) With the prior approval of OPM, an agency may, without competition, appoint an administrative law judge by transfer from an administrative law judge position in another agency in accordance with regular civil service procedures, provided the administrative law judge maintains a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution.

(b) An agency may not transfer a person from one administrative law judge position to another administrative law judge position under paragraph (a) of this section sooner than 52 weeks after the person's last appointment, unless the gaining and losing agencies agree to the transfer.

§ 930.208 Reinstatement.

With the prior approval of OPM, an agency may reinstate a former administrative law judge who has served with career absolute status under 5 U.S.C. 3105 in accordance with regular civil service procedures, provided the former judge maintains a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution. Reinstatement is subject to investigation by OPM in accordance with part 731 of this chapter.

§ 930.209 Restoration.

Parts 352 and 353 of this chapter governing reemployment rights and restoration to duty after uniformed service or recovery from compensable injury apply to reemployment and restoration to administrative law judge positions.

§ 930.210 Detail and assignment to other duties within the same agency.

(a) An agency may not detail an employee who is not an administrative law judge to an administrative law judge position.

(b) An agency may assign an administrative law judge (by detail or otherwise) to perform duties that are not the duties of an administrative law judge without prior approval of OPM only when—

(1) The other duties are consistent with the duties and responsibilities of an administrative law judge;

(2) The assignment is to last no longer than 120 days; and

(3) The administrative law judge has not had an aggregate of more than 120 days of those assignments or details within the preceding 12 months.

(c) On a showing by an agency that it is in the public interest to do so, OPM may authorize a waiver of paragraphs (b) (2) and (3) of this section.

(d) An agency may detail an administrative law judge from one administrative law judge position to another in the same agency, without the prior approval of OPM, provided the detail is in accordance with regular civil service procedures.

§ 930.211 Pay.

(a) OPM will place each administrative law judge position in one of the three grades or levels of basic pay, AL–3, AL–2 or AL–1, of the Administrative Law Pay System established for such positions under 5 U.S.C. 5372 in accordance with this section. AL–3 will have six rates of basic pay, A, B, C, D, E, and F, ranging respectively in 5 percent intervals from 65 percent of level IV of the Executive Schedule (EX–IV) to 90 percent of EX–IV. AL–2 will have one rate of basic pay equal to 95 percent of EX–IV. AL–1 will have one rate of basic pay equal to 100 percent of EX–IV.

(b) AL–3 is the basic pay level for administrative law judge positions filled through competitive examination, as provided in § 930.204 of this part.

(c) Subject to the approval of OPM, agencies may establish administrative law judge positions at pay levels AL–2 and AL–1. Administrative law judge positions may be placed at such levels when they involve significant administrative and managerial responsibilities.

(d) For promotion to a higher level, see § 930.205 of this part.

(e) Except as provided in paragraph (g) of this section, upon appointment to an administrative law judge position placed in AL–3, an administrative law judge shall be paid at the minimum rate A of AL–3, and shall be automatically advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate. Time in a nonpay status is generally creditable service in the computation of a waiting period only in so far as it does not exceed 2 weeks per year for each 52 weeks of service. However, absence due to uniformed service or compensable injury is fully creditable upon reemployment as provided in part 353 of this chapter.

(f) Upon appointment to a position at AL–3, an administrative law judge will be paid at the minimum rate A, unless the administrative law judge is eligible for a higher rate B, C, D, E, or F because of prior service or superior qualifications, as follows—

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate, without obtaining the prior approval of OPM in order to pay the rate that is next above the applicant's highest previous Federal rate of pay, up to the maximum rate F.

(2) With the prior approval of OPM, an agency may offer a higher than minimum rate to an applicant with superior qualifications who is within reach for appointment from an administrative law judge certificate of eligibles or is eligible for reinstatement under § 930.208. The agency may pay that rate of pay that is next above the applicant's existing pay or earnings up to the maximum rate F. "Superior qualifications" for applicants includes having legal practice before the hiring agency, having practice in another forum with legal issues of concern to the hiring agency, or having an outstanding reputation among others in the field. OPM will approve such payment of higher than minimum rates for applicants with superior qualifications only when it is clearly necessary to meet the needs of the Government.

(g) With the prior approval of OPM, an agency may on a one-time basis, advance an administrative law judge in a position at AL–3 with added administrative and managerial duties and responsibilities one rate beyond that allowed under current pay rates for AL–3, up to the maximum rate F.

(h) Upon appointment to an administrative law judge position placed at AL–2 or AL–1, administrative law judges will be paid at the established rates for those levels.

(i) An employing agency may reduce the grade, level, or pay of the administrative law judge only upon a finding of good cause for such action as determined by the Merit Systems Protection Board pursuant to 5 U.S.C. 7521.

§ 930.212 Performance rating and awards.

(a) An agency shall not rate the performance of an administrative law judge.

(b) An agency may not grant a monetary or honorary award under 5 U.S.C. 4503 for superior accomplishment by an administrative law judge.

§ 930.213 Rotation of administrative law judges.

Insofar as practicable, an agency shall assign its administrative law judges in rotation to cases.

§ 930.214 Use of administrative law judges on detail from other agencies.

(a) An agency that is occasionally or temporarily insufficiently staffed with, or has insufficient work for, administrative law judges may ask OPM to provide for the temporary use by the agency of the services of an administrative law judge of another agency to conduct and complete the hearing of one or more specified cases and issue decisions therein. The agency request must:

(1) Identify and describe briefly the nature of the case(s) to be heard (including parties and representatives when available);

(2) Specify the legal authority under which the use of an administrative law judge is required; and

(3) Demonstrate, as appropriate, that the agency has no administrative law judge available to hear the case(s).

(b) OPM, with the consent of the agency in which an administrative law judge is employed, will select the administrative law judge to be used, and will name the date or period for which the administrative law judge is to be made available for detail to the agency in need of his or her services. OPM will approve a detail for a period not to exceed 1 year with a possible extension not to exceed 1 additional year.

(c) Such details generally will be reimbursable by the agency requesting the detail.

§ 930.215 Actions against administrative law judges.

(a) *Procedures.* An agency may remove, suspend, reduce in grade or level, reduce in pay, or furlough for 30 days or less, an administrative law judge only for good cause established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board as provided in 5 U.S.C. 7521 and

§§ 1201.131 through 1201.136 of this title. Procedures for adverse actions by agencies under part 752 of this chapter are not applicable to actions against administrative law judges.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances in which the retention of an administrative law judge in his or her position, pending adjudication of the existence of good cause for his or her removal, would be detrimental to the interests of the Government, the agency may either:

(1) Assign the administrative law judge to duties consistent with his or her normal duties in which these conditions would not exist;

(2) Place the administrative law judge on leave with his or her consent;

(3) Carry the administrative law judge on appropriate leave (annual or sick leave, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the agency; or

(4) If none of the alternatives in paragraphs (b) (1), (2) and (3) of this section is available, agencies may consider placing the administrative law judge in a paid, non-duty or administrative leave status.

(c) *Exceptions from procedures.* The procedures in this subpart governing the removal, suspension, reduction in grade or level, reduction in pay, or furlough of 30 days or less of administrative law judges do not apply in making dismissals or taking other actions requested by OPM under §§ 5.2 and 5.3 of this chapter; nor to dismissals or other actions made by agencies in the interest of national security under 5 U.S.C. 7532; nor to reduction-in-force action taken by agencies under 5 U.S.C. 3502; nor any action initiated by the Special Counsel of the Merit Systems Protection Board under 5 U.S.C. 1215.

§ 930.216 Reduction in force.

(a) *Retention preference regulations.* Except as modified by this section, the reduction-in-force regulations in part 351 of this chapter apply to reductions in force of administrative law judges.

(b) *Determination of retention standing.* In determining retention standing in a reduction in force, each agency will classify its administrative law judges in groups and subgroups according to tenure of employment, veteran preference, and service date in the manner prescribed in part 351 of this chapter. However, as administrative law judges are not given performance ratings, the provisions in part 351 of this chapter referring to the effect of performance ratings on retention standing are not applicable to administrative law judges.

(c) *Placement assistance.* (1) Administrative law judges who are reached by an agency reduction in force and who are notified they are to be separated are eligible for placement assistance under—

(i) Agency reemployment priority lists established and maintained by agencies under subpart B of part 330 of this chapter for all agency tenure group I career employees displaced in a reduction in force;

(ii) Agency and OPM priority placement programs under subparts C, F, and G of part 330 of this chapter for all agency tenure group I career employees displaced in a reduction in force.

(2) On request of administrative law judges who are reached by an agency in a reduction in force and who are notified they are to be separated, furloughed for more than 30 days, or demoted, OPM will place their names on OPM's priority referral list for administrative law judges displaced in a reduction in force for the level in which they last served and for all lower levels.

(3) An administrative law judge may file a request under paragraph (c)(2) of this section, for placement on the OPM priority referral list, at any time after the receipt of the specific reduction-in-force notice but not later than 90 days after the date of separation, furlough for more than 30 days, or demotion. Placement assistance through the OPM priority referral list continues for 2 years from either the effective date of the reduction-in-force action, or the date assistance is requested if a timely request is made. Eligibility of the displaced administrative law judge for the OPM priority referral list is terminated earlier upon the administrative law judge's written request, acceptance of a non-temporary, full-time administrative law judge position, or declination of more than one offer of full-time employment as an administrative law judge at or above the grade level held when reached for reduction in force at geographic locations previously indicated as acceptable.

(4) The displaced administrative law judge will file with the request for priority referral by OPM an employment application or resume and a copy of the reduction-in-force notice. Also, the displaced administrative law judge may ask OPM to limit consideration for vacant positions to any pay level for which qualified and to specific geographic areas.

(5) When there is no administrative law judge on the agency's reemployment priority list, but there is an administrative law judge who has been placed on the OPM priority referral list for the location where a vacant administrative law judge position exists, the agency may fill the position with a candidate from outside the agency only by selection from the OPM priority referral list, unless it obtains the prior approval of OPM for filling the vacant position under § 930.204(a), (c), and (d); § 930.205; § 930.207; or § 930.208 of this subpart. OPM will grant such approval only under the extraordinary circumstance that the proposed candidate from outside the agency who is not on the OPM priority referral list possesses experience and qualifications superior to the displaced administrative law judge(s) on the list. In addition, the agency retains the option to select from within the agency to fill the vacant position by reassignment, as defined in § 930.206.

(6) Referral, certification, and selection of administrative law judges from OPM's priority referral list are made without regard to selective certification or special qualification procedures which may have been applied in the original appointment.

§ 930.217 Temporary reemployment: senior administrative law judges.

(a)(1) Subject to the requirements and limitations of this section, OPM may authorize an agency that has temporary, irregular workload requirements for conducting proceedings in accordance with 5 U.S.C. 556 and 557 to temporarily reemploy as administrative law judges those annuitants, as defined by 5 U.S.C. 8331 and 8401, who are receiving an annuity from the Civil Service Retirement and Disability Fund, and:

(i) Have served with career absolute status as administrative law judges under 5 U.S.C. 3105; and

(ii) Maintain a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution.

(2) These retired administrative law judges who are so reemployed will be known as senior administrative law judges.

(b) Retired administrative law judges who meet the requirements of paragraph (a) of this section and who are available for temporary reemployment must notify OPM in writing of their availability, providing pertinent information as requested by OPM. OPM will maintain a master list of such retired administrative law judges for use

in responding to agency requests for such administrative law judges.

(c) An agency that wishes to temporarily reemploy administrative law judges must submit a written request to OPM. The request must—

(1) Identify the statutory authority under which the administrative law judge is expected to conduct proceedings;

(2) Demonstrate that the agency is occasionally or temporarily understaffed;

(3) Specify the tour of duty, location, period of time, or particular case(s), for the requested reemployment; and

(4) Describe any special qualifications desired in the retired administrative law judge that it wishes to reemploy, such as experience in a particular field, agency, or substantive area of law.

(d) OPM will approve agency requests for temporary reemployment of retired administrative law judges for a specified period or periods provided—

(1) The requesting agency fully justifies the need for an administrative law judge for formal proceedings and demonstrates that it is occasionally or temporarily understaffed; and

(2) No other administrative law judge with the appropriate qualifications is available through OPM under § 930.216(c)(5) of this subpart to perform the occasional or temporary work for which reemployment is requested.

(e) Upon approval of an agency request to reemploy a retired administrative law judge, OPM will select from its master list of retired administrative law judges, in rotation to the extent practicable, those retired judges who it determines meet agency requirements. OPM will then provide a list of such individuals to the requesting agency and the agency must then select from that list a retired administrative law judge for reemployment.

(f) Reemployment of retired administrative law judges is subject to suitability investigation in accordance with subparts B and C of part 731 of this chapter. It is also subject to conflict of interest and security clearance requirements by the appointing agency.

(g) Reemployment as senior administrative law judges will be for either a specified period not to exceed 1 year or such periods as may be necessary for the reemployed administrative law judge to conduct and complete the hearing of one or more specified cases and issue decisions therein. Upon agency request, OPM may either reduce or extend such period of reemployment, as necessary, to coincide with changing staffing requirements. All reemployment is authorized for periods of 1 year or less.

(h) An agency may assign its senior administrative law judges to either:

(1) Hear one or more specific cases; or

(2) Hear, in normal rotation to the extent practicable, a number of cases on its docket and issue decisions therein.

(i) Hours of duty, administrative support services, and travel reimbursement for senior administrative law judges will be determined by the employing agency in accordance with the same rules and procedures that are generally applicable to employees.

(j) The reemployment of a senior administrative law judge is terminated on the date specified by OPM. Otherwise, a senior administrative law judge serves subject to the same limitations as any other administrative law judge employed under this subpart and 5 U.S.C. 3105. An agency will not rate the performance of a senior administrative law judge. Reduction-in-pay or removal actions may not be taken against senior administrative law judges during the period of reemployment, except for good cause established and determined by the Merit Systems Protection Board after opportunity for a hearing on the record before the Board as provided in 5 U.S.C. 7521 and §§ 1201.131 through 1201.136 of this title.

(k) A senior administrative law judge will be paid by the employing agency the current rate of pay for the level at which the duties to be performed have been placed and at the lowest rate of the level that is nearest (when rounded up) to the highest previous pay rate attained by the appointee as an administrative law judge before retirement. An amount equal to the annuity allocable to the period of actual employment will be deducted from his or her pay and deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

[FR Doc. 98–4498 Filed 2–20–98; 8:45 am]
BILLING CODE 6325–01–P

COMMODITY CREDIT CORPORATION

7 CFR Part 1499

RIN 0551–0035

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation proposes to amend the rules governing foreign donations of agricultural commodities. This proposed rule contains changes, corrections and clarifications to the final regulations to achieve more effective management of foreign donations of agricultural commodities.

DATES: Submit comments on or before April 24, 1998.

ADDRESSES: Address all comments concerning this proposed rule to Ira D. Branson, Director/Commodity Credit Corporation, Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031, Washington, D.C. 20250–1031; telephone (202) 720–3573.

You may submit comments and data by sending electronic mail (E-mail) to: pebreports@fas.usda.gov.

FOR FURTHER INFORMATION CONTACT: Juanita Lambert, Chief/Program Evaluation Branch, Commodity Credit Corporation Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031, Washington, D.C. 20250–1031; telephone (202) 720–2465.

SUPPLEMENTARY INFORMATION: This rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The information collection requirements imposed by this proposed

rule have been previously submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). OMB has assigned control number 0551–0035 for this information collection. This proposed rule change would not require collection of additional information; however, the proposed rule includes a requirement to use new forms for the semiannual logistics and monetization reports. These report forms have been submitted to OMB for review.

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The rule would have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

Rules governing Commodity Credit Corporation's ("CCC") donation of agricultural commodities under section 416(b) of the Agricultural Act of 1949 and the Food for Progress Act of 1985 appear at 7 CFR part 1499. This proposed rule would review the regulations to address certain issues that have arisen since the rules were first published on November 29, 1996, and, additionally, make no-substantive corrections.

Program Operation Budgets

The regulations require cooperating sponsors to submit a Program Operation Budget in order to obtain CCC funding of certain administrative expenses and overseas internal transportation or handling cost. The Program Operation Budget details the costs for which CCC funding is requested. Currently, the regulations (7 CFR § 1499.7(e)) provide that a cooperating sponsor may make adjustments to individual line items in an approved Program Operation Budget up to 20 percent of the total approved budget, or $1,000, whichever is less. This provision has limited cooperating sponsor's flexibility in meeting unanticipated circumstances during implementation of activities. Consequently, cooperating sponsors have needed to prepare numerous budget amendments thereby increasing their paperwork burden and imposing additional administrative burdens on CCC.

CCC proposes to permit cooperating sponsors to make adjustments in line items of the Program Operation Budget of up to 20 percent of the total budget or $5,000, which ever is less. This increase will allow CCC to maintain effective oversight of the use of its funding while eliminating paperwork and administrative burdens.

Payment Documentation

If CCC agrees to pay ocean transportation for donated commodities, CCC will pay the ocean freight directly to the ocean carrier. The regulations specify the documentation required to be submitted to CCC before payment will be made.

In accordance with requirements of the Debt Management Improvement Act of 1994, CCC is moving towards a system whereby all payments of CCC funds will be by electronic transfer. Therefore, this rule includes a proposed new section (7 CFR 1499.8(h)(3)) listing the information that ocean carriers and cooperating sponsors must submit to CCC in order to receive funds. Recipients must submit the information with every request for payment. This will speed processing by ensuring that payment information is kept current.

The proposed rule also clarifies that certain specified documents must be signed when submitted to CCC for payment. Additionally, CCC would require a copy of the tariff pages applicable to any liner shipments to enable CCC to check liner rates.

Termination of Program Activities

This proposed rule adds a new § 1499.10(d) to address the disposition of donated commodities and local currency proceeds by a non-governmental cooperating sponsor in the event that the cooperating sponsor's participation in the program terminates for any reason prior to completion of approved activities. The proposed rule would add a requirement that the cooperating sponsor take reasonable steps to secure any undistributed commodities or sales proceeds and notify CCC of their status. The commodities or proceeds would then be disposed of as directed by CCC. Given the varied situations that may arise to cause termination, the rule cannot set forth, in advance, any standard disposition procedures.

Reports

The proposed regulation would establish a standard date for submission of all semiannual logistic and monetization reports and a standardized reporting period. Also, as mentioned above FAS proposes the use of specific reporting forms for these reports. Currently, each agreement set forth the reporting date and period. This uniformity should ease administration for both the cooperating sponsors and CCC.

Miscellaneous

The proposed regulation would also make a number of nonsubstantive changes intended for clarification only or to update office references.

List of Subjects in 7 CFR Part 1499

Agricultural commodities, Exports, Foreign aid.

Accordingly, CCC proposes to amend 7 CFR part 1499 as follows:

PART 1499—FOREIGN DONATION PROGRAMS

1. The authority citation for part 1499 continues to read as follows:

Authority: 7 U.S.C. 1431(b); 7 U.S.C. 1736o; E.O. 12752.

§ 1499.1 [Amended]

2. Section 1499.1 is amended by removing "*KCFMO*—Kansas City Financial Management Office" and adding, in its place, "*KCMO/DMD*—Kansas City Management Office/Debt Management Division".

3. Section 1499.7(e) is amended by revising the third and fourth sentences to read as follows:

§ 1499.7 Apportionment of costs and advances.

* * * * *

(e) * * * The non-government Cooperating Sponsor may make adjustments between line items of an approved Program Operations Budget up to 20 percent of the total amount approved or $5,000, whichever is less without any further approval. Adjustments beyond these limits must be specifically approved by the Director, PDD.

* * * * *

§ 1499.7 [Amended]

4. Section 1499.7(i) is amended by deleting "Director, CCCPSD" and adding in its place, "Director, PDD."

5. In § 1499.8, the introductory text of paragraph (b) and the headings of paragraph (g) and (g)(1) are revised, paragraph (g)(1)(vii) is redesignated as paragraph (g)(1)(viii), and new

paragraphs (g)(1)(vii) and (g)(1)(ix) are added, to read as follows:

§ 1499.8 Ocean transportation.

* * * * *

(b) *Freight procurement requirements.* When CCC is financing any portion of the ocean freight, whether on U.S.-flag or non-U.S. flag vessels, and the Cooperating Sponsor arranges ocean transportation:

* * * * *

(g) *Documents required for payment of freight—(1) General rule.* * * *

* * * * *

(vii) For all liner cargoes, a copy of the tariff page.

* * * * *

(ix) Each request to CCC for payment must provide a document, on letterhead and signed by an official or agent of the requester, the name of the entity to receive payment, the bank ABA number to which payment is to be made; the account number for the deposit at the bank; the requester's taxpayer identification number; and the type of account into which funds will be deposited.

* * * * *

1499.8 [Amended]

6. In section 1499.8, paragraph (8) is amended by deleting "One copy" wherever it appears and adding "One signed copy" in its place, and paragraph (g)(1)(vi) is amended by deleting "a notice" and adding, in its place, "a signed notice".

7. Section 1499.10 is amended by adding a new paragraph (d) to read as follows:

§ 1499.10 Restrictions on commodity use and distribution.

* * * * *

(d) In the event that its participation in the program terminates, the non-government cooperating sponsor will safeguard any undistributed commodities and sales proceeds and dispose of such commodities and proceeds as directed by CCC.

8. Section 1499.14(b)(2) is amended by deleting "KCFMO" and adding, in its place "KCMO/DMD."

9. Section 1499.15, is amended by removing "KCFMO" wherever it appears and add, in its place "KCMO/DMD", revising the last sentence of paragraphs (d)(2) and (f)(3), and adding paragraphs (d)(2)(i) through (d)(2)(vi) to read as follows:

§ 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

* * * * *

(d) * * *

(2) * * * In the event of a declaration of general average:

(i) The Cooperating Sponsor shall assign all claim rights to CCC and shall provide CCC all documentation relating to the claim, if applicable;

(ii) CCC will be responsible for settling general average and marine salvage claims;

(iii) CCC has sole authority to authorize any disposition of commodities which have not commenced ocean transit or of which the ocean transit is interrupted;

(iv) CCC will receive and retain any monetary proceeds resulting from such disposition;

(v) CCC will initiate, prosecute and retain all proceeds of cargo loss and damage against ocean carriers and any allowance in general average; and

(vi) CCC will pay any general average or marine salvage claims determined to be due.

* * * * *

(f) * * *

(3) * * * If the Agricultural Counselor or Attache approves a Cooperating Sponsor's decision not to take further action on the claim, the Cooperating Sponsor shall assign the claim to CCC and shall forward all documentation relating to the claim to KCMO/DMD.

* * * * *

10. In section 1499.16, the second and third sentences of (c)(1) and the second and third sentences of (c)(2) are revised to read as follows:

§ 1499.16 Records and reporting requirements.

* * * * *

(c) *Reports.* (1) * * * Cooperating Sponsors must submit reports on Form CCC–620 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31 or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all commodities have been distributed or sold and such distribution or sale reported to CCC. * * *

(2) * * * Cooperating Sponsors must submit reports on Form CCC–621 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31 or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all funds generated from commodity sales have been distributed and such distribution reported to CCC. * * *

* * * * *

Dated: November 20, 1997.

Christopher E. Goldthwait,

General Sales Manager, FAS, and Vice President, Commodity Credit Corporation.

[FR Doc. 98–4424 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–199–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require replacement of certain wheel tie bolts with new bolts; and placing a life limit on these wheel tie bolts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent metal fatigue failure of the wheel tie bolts, which could result in a tire burst or loss of the main wheel/tire assembly, and consequent reduced controllability of the airplane.

DATES: Comments must be received by March 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be

examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–199–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace (Jetstream) Model 4101 airplanes. The CAA advises that it has received reports indicating that the main wheel tie bolts are failing due to metal fatigue after repeated installations and removals during normal tire changes. This condition, if not corrected, could result in a tire burst or loss of the main wheel/tire assembly, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Jetstream Service Bulletin J41–32–058, dated May 9, 1997, which describes procedures for replacement of wheel tie bolts having part number BAC–B30M516 (DSR4528–1216) with new bolts; and establishing a life limit of five installations for those wheel tie bolts.The CAA classified this service bulletin as mandatory and issued British airworthiness directive 002–05–97 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD; however, wheel tie bolts must be removed and reinstalled during each tire change, therefore no additional workhours would be required as a result of this AD. The required parts would be supplied by the manufacturer at no charge. Based on this information, the cost impact of the proposed AD on U.S. operators is estimated to be negligible.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 97–NM–199–AD.

Applicability: Jetstream Model 4101 airplanes equipped with main wheels having part number (P/N) AHA1837, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent metal fatigue failure of the wheel tie bolts, which could result in a tire burst or loss of the main wheel/tire assembly, and consequent reduced controllability of the airplane, accomplish the following:

(a) At the next tire change after the effective date of this AD, remove main wheel tie bolts having P/N BAC–B30M516 (DSR4528–1216), and replace them with new tie bolts in accordance with Jetstream Service Bulletin J41–32–058, dated May 9, 1997. Repeat this replacement thereafter at every fifth tire change.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 002–05–97.

Issued in Renton, Washington, on February 17, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4464 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–217–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require a one-time inspection for corrosion of electrical connectors in certain areas on the pressure bulkhead and rear baggage bay areas, and repair, if necessary; and installation of improved sealing. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the accumulation of moisture inside the electrical connectors, which could result in a short circuit and consequent autopilot disconnect, or a latent failure of the stick pusher system.

DATES: Comments must be received by March 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–217–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace (Jetstream) Model 4101 airplanes. The CAA advises that moisture has been found at the electrical connectors on the rear pressure bulkhead, in the ceiling area of the rear baggage bay, and in the auxiliary power unit (APU) area. This moisture has been attributed to accumulation of condensation on the soundproofing material used in these areas. This condition, if not corrected, could result in a short circuit and consequent autopilot disconnect, or a latent failure of the stick pusher system.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin J41–24–027, dated July 8, 1997, as

revised by Erratum No. 1, dated August 8, 1997, which describes procedures for a one-time inspection for corrosion of the electrical connectors on the rear pressure bulkhead, the rear baggage area, and the APU area; and repair, if necessary. The service bulletin also describes procedures for installation of new boot lip adaptors and heat shrink boots, and application of new sealant, in order to improve the sealing of the electrical connectors. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–07–97, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 37 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $714 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $93,018, or $2,514 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 97–NM–217–AD.

Applicability: Jetstream Model 4101 airplanes, constructors numbers 41004 through 41079 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of moisture inside the electrical connectors, which could result in a short circuit and consequent autopilot disconnect, or a latent failure of the stick pusher system, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time inspection for corrosion of the electrical connectors on the rear pressure bulkhead, the ceiling area of the rear baggage bay, and the auxiliary power unit area; and improve the sealing of the electrical connectors for these areas; in accordance with Jetstream Service Bulletin J41–24–027, dated July 8, 1997, as revised by Erratum No. 1, dated August 8, 1997. If any corrosion is found, prior to further flight, repair in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–07–97.

Issued in Renton, Washington, on February 13, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4411 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–51–AD]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to AlliedSignal Inc. TFE731 series turbofan engines, that currently requires the installation of a clamp assembly to support the rigid fuel tube. This action would require installation of an improved flexible (flex) fuel tube. This proposal is prompted by reports of fuel leaks from a cracked fuel tube in engines that have already installed a clamp assembly in accordance with the current AD. The actions specified by the proposed AD are intended to prevent cracking of the fuel tube and the subsequent leakage of fuel on or around electrical components, which can cause an engine fire.

DATES: Comments must be received by April 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5246, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–51–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On June 3, 1993, the Federal Aviation Administration (FAA) issued airworthiness directive AD 93–10–10, Amendment 39–8589 (58 FR 32835, June 14, 1993), applicable to Allied-Signal Aerospace Company, Garrett Engine Division (now AlliedSignal Inc.) TFE731 series turbofan engines, to require the installation of a clamp assembly to support the fuel line. Installation of the clamp assembly was to minimize excessive vibration and possible cracking of the fuel line due to starter generator bearing failure. That action was prompted by reports of fuel lines cracking and failing, resulting in inflight engine shutdowns and fuel spillage on and around electrical components in the engine accessory gearbox area. That condition, if not corrected, could result in a cracked fuel tube and the subsequent leakage of fuel on and around electrical components, which can cause an engine fire.

Since the issuance of that AD, the FAA has received an additional 11 reports of continued cracking of the rigid fuel tube in engines that have already installed a clamp assembly in accordance with the current AD. Eighteen of 19 tube failures which occurred before and after the implementation of AD 93–10–10 resulted from starter generator bearing failures. This AD does not affect the AlliedSignal engine Model TFE731–2–2B and engine series TFE731–3A and –3AR installed on Learjet Models 35, 36, and 55 because starter generators are not used on these aircraft. In addition, for this application, there have been no reported fuel line failures.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–3128, dated February 26, 1997, and AlliedSignal Inc. ASB No. TFE731–A73–3132, dated April 9, 1997, that describe procedures for installing an improved flex fuel tube.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93–10–10 and require the installation of an improved flex fuel tube.

There are approximately 3,325 engines of the affected design in the worldwide fleet. The FAA estimates that 2,319 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2.0 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $973,980.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8589 (58 FR 32835, June 14, 1993) and by adding a new airworthiness directive to read as follows:

ALLIEDSIGNAL INC.: Docket No. 97–ANE–51–AD. Supersedes AD 93–10–10, Amendment 39–8589.

Applicability: AlliedSignal Inc. (formerly Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Turbine Engine Co.) TFE731–2, –3, and –4 series turbofan engines with fuel tubes, part numbers (P/Ns) 3071051–1, 3073729–1, or 3072886–1, installed. These engines are installed on but not limited to the following aircraft: Avions Marcel Dassault Falcon 10, 50, and 100 series; Cessna Model 650, Citation III, VI, and VII; Learjet 31 (M31) 35, 36 and 55 series, Raytheon British Aerospace HS–125 series; and Sabreliner NA–265–65.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracked fuel tubes and the subsequent leakage of fuel on and around electrical components, which can cause an engine fire, accomplish the following:

(a) Within 160 hours time in service (TIS) after the effective date of this AD, or prior to December 20, 1999, whichever occurs first, install an improved flexible fuel tube, as follows:

(1) For engines installed on Cessna aircraft, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–3132, dated April 9, 1997.

(2) For engines installed on all other aircraft except for the Learjet 35, 36 and 55 series, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. ASB No. TFE731–A73–3128, dated February 26, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 11, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–4406 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–07–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require modification of the airplane wiring to separate the electrical inputs sent by the engine interface units (EIU's) to certain probe heat computers (PHC's). This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent simultaneous loss of heating to both pitot probes, which could result in incorrect airspeed indications to both the primary and secondary airspeed indication systems. Loss of these systems could result in reduced controllability of the airplane.

DATES: Comments must be received by March 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–07–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that it received a report indicating that one operator experienced two airspeed discrepancy events due to pitot probes 1 and 3 not heating. The condition originated from isolation defects caused by internal corrosion of probe heat computer (PHC) 3. The existing PHC's 1 and 3 receive the same discrete information from engine interface units (EIU's) 1 and 2 to automatically control the pitot probe heating. This condition, if not corrected, could result in simultaneous loss of heating to both pitot probes, which could lead to incorrect airspeed indications to both the primary and secondary airspeed indication systems. Loss of these systems could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–30–1036, dated May 9, 1997, which describes procedures for modification of the airplane wiring to separate the electrical inputs sent by the EIU's to PHC's 1 and 3. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 97–203–102B, dated August 27, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 150 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $45,000, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98–NM–07–AD.

Applicability: Model A319, A320, and A321 series airplanes, on which Airbus Modification 26403 or Airbus Service Bulletin A320–30–1036 has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent simultaneous loss of heating to both pitot probes, which could result in incorrect airspeed indications to both the primary and secondary airspeed indication systems, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the airplane wiring to separate the electrical inputs sent by the engine interface units (EIU's) to probe heat computers 1 and 3 in accordance with Airbus Service Bulletin A320–30–1036, dated May 9, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–203–102B, dated August 27, 1997.

Issued in Renton, Washington, on February 13, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4410 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 349

[Docket No. 98N–0002]

RIN 0910–AA01

Ophthalmic Drug Products for Over-The-Counter Human Use; Proposed Amendment of Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) ophthalmic drug products. The amendment adds a new warning and revises an existing warning for ophthalmic vasoconstrictor drug products. These products contain the ingredients ephedrine hydrochloride, naphazoline hydrochloride, phenylephrine hydrochloride, or tetrahydrozoline hydrochloride; and they are used to relieve redness of the eye due to minor eye irritations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit written comments by May 26, 1998; written comments on the agency's economic impact determination by May 26, 1998. FDA is proposing that any final rule that may issue based on this proposal become effective 12 months after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 4, 1988 (53 FR 7076), FDA published a final monograph for OTC ophthalmic drug products in part 349 (21 CFR part 349). That monograph included four ophthalmic vasoconstrictor active ingredients in § 349.18. Section 349.3(i) defines an ophthalmic vasoconstrictor as "A pharmacologic agent which, when applied topically to the mucous membranes of the eye, causes transient constriction of conjunctival blood vessels." Paragraphs (a) and (b) of § 349.75 provide that these products are labeled with the statement of identity "redness reliever" or "vasoconstrictor (redness reliever)" "eye" or "ophthalmic" "insert (dosage form, e.g., drops)" and with the indication for use "Relieves redness of the eye due to minor eye irritations." Section 349.75(c)(2) requires these products to bear the warning statement: "If you have glaucoma, do not use this product except under the advice and supervision of a doctor."

II. Recent Developments

In the last 3 years, FDA has approved three new drug applications (NDA's) (Ref. 1) for ophthalmic drug products containing pheniramine maleate and naphazoline hydrochloride. These products are used for eye allergy relief to relieve itching and redness of the eye due to pollen, ragweed, grass, animal hair, and dander. These products are not covered by the OTC ophthalmic drug products monograph because the ingredient pheniramine maleate is not included in that monograph.

The agency has received more than 400 adverse drug experience (ADE) reports involving these three products (Ref. 1) in which consumers have reported pupil dilatation (enlarged pupils) after using the eye drops (Ref. 2). Because of the vasoconstrictor action of naphazoline hydrochloride (and the other active ingredients included in § 349.18), pupil dilatation is a known pharmacologic effect of these drugs. The Advisory Review Panel on OTC Ophthalmic Drug Products (the Panel), in its report (May 6, 1980, 45 FR 30002 at 30033), stated that, even at the low concentrations used in OTC drug products, vasoconstrictors occasionally may cause some dilation of the pupil, especially in people who wear contact lens, whose cornea is abraded, or who have lightly colored irides. However, the Panel did not recommend any labeling warning based on this pharmacologic effect of these drugs. The agency also did not include a labeling warning in the past because the enlargement of the pupil(s) is not clinically significant (usually persists for 1 to 4 hours) and does not affect pupil reactivity. As a result, the agency did not mention this pharmacologic side effect in product labeling. Thus, OTC ophthalmic drug products marketed under the monograph or under NDA's do not contain this type of information in their labeling.

The more than 400 ADE reports that have been received have caused the agency to rethink its position on including information about pupil enlargement in the labeling of these OTC vasoconstrictor drug products. The agency now believes that it would be beneficial and informative to consumers to inform them that their pupils may become dilated (enlarged). The agency believes this information in product labeling will reduce the number of ADE reports and will enable consumers to continue using these products and not discontinue use after one or two instillations because they do not expect this pupil enlargement to occur. Accordingly, the agency is proposing to add the following warning in new § 349.75(c)(5) to state: "Pupils may become dilated (enlarged)."

The agency recognizes that space on OTC ophthalmic drug product labeling is limited, but it considers these additional five words worthwhile because of the number of consumers who have reported this pupil

enlargement as a problem. The agency questions whether it would be additionally beneficial to add several more words, i.e., "This is temporary and not serious," after the first statement so that consumers will not be alarmed if this pupil enlargement occurs and will not discontinue use of the product for this reason. These additional words could be required or optional, if the manufacturer wishes to include them. The agency invites specific comment on the wording of both statements, and the desirability of including the second statement (even if optional).

The Panel also noted that the dilation of the pupil caused by the ophthalmic vasoconstrictor drug may in turn trigger an attack of narrow-angle glaucoma in a susceptible individual (45 FR 30002 at 30033). The Panel recommended the following glaucoma warning for ophthalmic vasoconstrictors: "If you have glaucoma, do not use this product except under the advice and supervision of a physician." (See 45 FR 30002 at 30033.) The agency included this warning in § 349.75(c)(2) of the final monograph for OTC ophthalmic drug products (with the word "physician" changed to "doctor").

In the three NDA's for the pheniramine maleate-naphazoline hydrochloride eye drop products approved in the last several years, the agency has changed the glaucoma warning to state: "Do not use this product if you have * * * narrow angle glaucoma unless directed by a physician." This was done because the potential risk only applies to people with narrow angle glaucoma, a condition where it is not desirable to use a drug of this type that could cause mid-dilation of the pupil. The agency believes that a number of physicians inform their patients what type of glaucoma they have. Further, it is beneficial for consumers to know this information, and the agency encourages consumers to ask their physician in order to be fully informed and knowledgeable.

III. The Agency's Tentative Conclusions and Proposal

The agency is proposing to add the following new warning in § 349.75(c)(5) to state: "Pupils may become dilated (enlarged)." The agency invites comment whether to expand this warning to also state: "This is temporary and not serious." This second statement could be a required or optional statement (because of the limited space available in ophthalmic drug product labeling), added if the manufacturer desires.

The agency is proposing to amend § 349.75(c)(2) to add the words "narrow angle" before "glaucoma." The warning would then read: "If you have narrow angle glaucoma, do not use this product except under the advice and supervision of a doctor."

The agency is proposing that any final rule that may issue based on this proposal become effective 12 months after its date of publication in the **Federal Register**. The agency considers this new labeling an improvement to the current labeling of OTC ophthalmic vasoconstrictor drug products, but it recognizes that existing products have used the current monograph labeling for over 9 years. Therefore, to reduce relabeling costs for manufacturers of these specific products, the agency might consider an 18-month effective date for any final rule that may issue based on this proposal. This longer effective date would enable manufacturers to use up existing labeling and implement the new labeling in the normal course of reordering labeling for these products. The agency invites specific comment on this extended effective date.

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. Approved labeling from NDA's 20–065, 20–226, and 20–485.

2. Center for Drug Evaluation and Research, FDA, "Adverse Drug Experience Report for OTC Ophthalmic Drug Products Containing Pheniramine Maleate and Naphazoline Hydrochloride, May 29, 1997.

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). 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). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to add a new warning and to revise an existing warning for OTC ophthalmic vasoconstrictor drug products. These warning statements should improve consumers' self-use of these drug products and enable some consumers with glaucoma to self-medicate when necessary.

Manufacturers of these products will incur costs to relabel their products to include the new labeling information. The agency has been informed that relabeling costs of the type required by this proposed rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). The agency is aware of 50 manufacturers that together produce about 100 SKU's of OTC ophthalmic vasoconstrictor drug products marketed under the monograph. There may be a few additional small manufacturers or products in the marketplace that are not identified in the sources FDA reviewed. Assuming that there are about 100 affected OTC SKU's in the marketplace, total one-time costs of relabeling would be $200,000 to $300,000. The agency believes the actual cost could be lower for several reasons. Most of the label changes will be made by private label manufacturers that tend to use simpler and less expensive labeling. In addition, the agency is considering and inviting public comment on an 18-month effective date for the final rule, rather than the standard 12-month effective date. This extended effective date may allow the new labeling to be implemented concurrently with the general labeling changes that may be required by the new OTC drug labeling format. (See the **Federal Register** of February 27, 1997, 62 FR 9024.) The agency believes that these actions provide substantial flexibility and reductions in cost for small entities.

The agency considered but rejected several labeling alternatives, such as: (1) A shorter implementation period, and (2) an exemption from coverage for small entities. While the agency would like to have this new labeling in place as soon as possible, it considers a period less than 1 year difficult for manufacturers to implement and not critical in this situation. The agency

does not consider an exemption for small entities appropriate because consumers who use these manufacturers' products would not have the most recent information for the safe and effective use of these OTC ophthalmic vasoconstrictor drug products.

This analysis shows that this proposed rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden to small entities. Nevertheless, some entities may incur some impacts, especially private label manufacturers that provide labeling for a number of the affected products. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Act does not apply to the proposed rule because it would not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed warning statements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that is categorically excluded from the preparation of an environmental assessment because these actions, as a class, will not result in the production or distribution of any substance and therefore will not result in the production of any substance into the environment.

VIII. Request for Comments

Interested persons may, on or before May 26, 1998, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before May 26, 1998. Three copies of all 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 and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 349

Labeling, Ophthalmic goods and services, Over-the-counter drugs.

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 349 be amended as follows:

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

1. The authority citation for 21 CFR part 349 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 349.75 is amended by revising paragraph (c)(2) and adding paragraph (c)(5) to read as follows:

§ 349.75 Labeling of ophthalmic vasoconstrictor drug products.

* * * * *

(c) * * *

(2) "If you have narrow angle glaucoma, do not use this product except under the advice and supervision of a doctor."

* * * * *

(5) "Pupils may become dilated (enlarged)."

* * * * *

Dated: January 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–4531 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–105162–97]

RIN 1545–AV41

Treatment of Changes in Elective Entity Classification; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations regarding the classification of entities for federal tax purposes.

DATES: The public hearing originally scheduled for Tuesday, February 24, 1998, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Lanita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 7701 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Tuesday, October 28, 1997 (62 FR 55768), announced that the public hearing on proposed regulations under section 7701 of the Internal Revenue Code would be held on Tuesday, February 24, 1998, beginning at 10:00 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C.

The public hearing scheduled for Tuesday, February 24, 1998, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–4383 Filed 2–20–98; 8:45 am]

BILLING CODE 4830–01–U

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Rules Regarding Standardized Remedial Provisions in Board Unfair Labor Practice Decisions and the Appropriateness of Single Location Bargaining Units in Representation Cases

AGENCY: National Labor Relations Board.

ACTION: Withdrawal of proposed rulemakings.

SUMMARY: The NLRB is indefinitely withdrawing from active consideration two rulemaking proceedings: (1) The Notice of Proposed Rulemaking issued on March 5, 1992 entitled Codification of Standardized Remedial Provisions in Board Decisions Regarding Offers of Reinstatement, Make-Whole Remedies, Computation of Interest, and Posting of Notices (57 FR 7897); and (2) the Advanced Notice of Proposed Rulemaking and Notice of Proposed

Rulemaking issued on June 2, 1994 (59 FR 28501) and September 28, 1995 (60 FR 50146), respectively, entitled Appropriateness of Requested Single Location Bargaining Units in Representation Cases. The Board [1] has decided to take this action given that no action has been taken by the Board on either rulemaking proceeding for several years [2] and the Board's determination to focus its time and resources on reducing the backlog of adjudicated cases pending before the Board.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Room 11600, Washington, D.C. 20570. Telephone: (202) 273–1940.

Dated: Washington, D.C., February 18, 1998.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 98–4543 Filed 2–20–98; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is proposing to clarify three final rule decisions, to remove a required amendment, and to vacate its retroactive approval of amendments to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The clarifications concern West Virginia statutes pertaining to administrative appeals and the State Environmental Quality Board, and the required amendment pertains to termination of jurisdiction. The proposed actions are intended to comply with a settlement agreement reached in *West Virginia Mining and Reclamation Association (WVMRA)* v. *Babbitt*, No. 2: 96–0371 (S.D. W.Va.).

DATES: Written comments must be received on or before 4:00 p.m. on March 25, 1998. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on March 20, 1998. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on March 10, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the West Virginia program, the program amendment decision that is the subject of this notice, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515.

In addition, copies of the amendments that are the subject of this notice are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15 and 948.16.

II. Discussion of the Proposed Amendment

In a series of three letters dated June 28, 1993, and July 30, 1993 (Administrative Record Nos. WV–888, WV–889 and WV–893), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program that included numerous revisions to the West Virginia Surface Coal Mining and Reclamation Act (referred to herein as "the Act", WVSCMRA § 22A–3–1 *et seq.*) and the West Virginia Surface Mining Reclamation Regulations (CSR § 38–2–1 *et seq.*). OSM approved the proposed revisions on durable rock fills on August 16, 1995, (60 FR 42437–42443) and approved with exceptions, the proposed revisions on bonding on October 4, 1995, (60 FR 51900–51918). OSM approved, with exceptions, the remaining amendments on February 21, 1996, (61 FR 6511–6537). See 30 CFR 948.15 for the provisions that were partially approved by OSM. See 30 CFR 948.16 for required amendments.

On April 18, 1996, the WVMRA, the West Virginia Coal Association, and the Tri-State Coal Operators Association, Inc. filed an appeal, pursuant to section 526(a)(1) of SMCRA, 30 U.S.C. 1276(a)(1), challenging certain OSM decisions contained in the February 21, 1996, **Federal Register** Notice, including the decision to make approval of the amendment retroactive. (Administrative Record Number WV–1027) On October 29, 1997, the parties reached a settlement agreement with respect to six of the seven counts contained in the above referenced case. (Administrative Record Number WV–1077). The other count, pertaining to the use of passive treatment systems after final bond release, was decided by the United States District Court for the Southern District of West Virginia in OSM's favor. *See WVMRA* v. *Babbitt*, No. 2: 96–0371 (S.D. W.Va. July 11, 1997) (Administrative Record Number WV–1072). This rulemaking is proposed in order that OSM may fulfill its obligations with respect to five of the six counts of the appeal which are addressed by settlement agreement. The remaining count addressed in the settlement agreement, pertaining to the

[1] Members Fox, Liebman, Hurtgen and Brame. Chairman Gould agrees with his colleagues as to the notice of proposed rulemaking regarding standardized remedial orders in Board unfair labor practice decisions, but dissents from the withdrawal of the notice of proposed rulemaking regarding the appropriateness of single location bargaining units in representation cases.

[2] A Congressional rider attached to each of the NLRB's 1996, 1997, and 1998 appropriations bills has prohibited the Agency from expending any funds to promulgate a final rule regarding the appropriateness of single location bargaining units in representation cases.

windrowing of materials on the downslope in steep slope areas, is the subject of another proposed rulemaking, announced in the June 10, 1997, **Federal Register**. *See* 62 FR 31543, 32545.

1. Proposed Clarifications

Section 22B–1–7(d) Administrative Appeals

As announced in the **Federal Register** on February 21, 1996 (61 FR at 6516, 6536) OSM did not approve language at § 22B–1–7(d) concerning allowing temporary relief where the appellant demonstrates that the executed decision appealed from will result in the appellant suffering an "unjust hardship." OSM stated that the provision was disapproved because the exception is inconsistent with SMCRA section 514(d) and 525(c). Further, OSM required, at 30 CFR 948.16(nnn), that § 22B–1–7(d) be amended to be consistent with SMCRA sections 514(d) and 525(c). In accordance with the settlement agreement in *WVMRA* v. *Babbitt, supra*, OSM is proposing to clarify its February 21, 1996, decision by stating that § 22B–1–7(d) is not approved only to the extent that it includes unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the West Virginia Code, which is the West Virginia counterpart to SMCRA. OSM is also proposing to revise the required amendment at 30 CFR 948.16(nnn) to require West Virginia to amend its program to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the West Virginia Code.

Section 22B–1–7(h) Administrative Appeals

As announced in the **Federal Register** on February 21, 1996 (61 FR at 6516, 6536), OSM did not approve language at § 22B–1–7(h) to the extent that the provision would allow the West Virginia Surface Mining Board to decline to order an operator to treat or control discharges due to economic considerations. In addition, OSM required, at 30 CFR 948.16(ooo), that the State further amend § 22B–1–7(h) to be no less stringent than SMCRA section 515(b)10 and no less effective than the Federal regulations at 30 CFR 816.42 by requiring that discharges be controlled or treated without regard to economic feasibility.

In accordance with the settlement agreement in *WVMRA* v. *Babbitt, supra*, OSM is proposing to clarify that § 22B–1–7(h) is approved only to the extent that it references Article 3, Chapter 22 of the West Virginia Code. OSM is also proposing to revise the required amendment, at 30 CFR 948.16(ooo), to require West Virginia to amend its program by removing the reference, in § 22B–1–7(h), to Article 3, Chapter 22.

Section 22B–3–4 Environmental Quality Board

As announced in the **Federal Register** on February 21, 1996 (61 FR at 6517), OSM approved the provisions at § 22B–3–4 concerning the Environmental Quality Board's rulemaking authority. Under the State's S.B.287, the Board is authorized, with certain restrictions, to promulgate procedural rules granting site-specific variances for water quality standards for coal remining operations. In approving the provision, OSM also stated that any such procedural rules that grant variances must be submitted to OSM for approval prior to their implementation.

In accordance with the settlement agreement in *WVMRA* v. *Babbitt, supra*, OSM is proposing to clarify that it does not have approval authority over rules developed by the Environmental Quality Board under the authority of the Clean Water Act. Therefore, OSM is stating that the Environmental Quality Board is not required to submit to OSM for approval procedural rules for the implementation of site specific variances for water quality standards for remining operations.

2. Proposed Amendment Findings Revisions

CSR 38–2–1.2(c)(1) Termination of Jurisdiction

As announced in the **Federal Register** on February 21, 1996 (61 FR at 6517, 6536), OSM found § 38–2–1.2(c)(1) to be less effective than the Federal regulations at 30 CFR 700.11(d)(1)(i) to the extent that subsection (c)(1) does not require compliance with the Federal initial program regulations at Subchapter B or the West Virginia permanent regulatory program as a prerequisite to the termination of jurisdiction over an initial program site. In addition, OSM required, at 30 CFR 948.16(ppp), that the State further amend subsection (c)(1) to require compliance with the Federal initial program regulations at Subchapter B or the West Virginia permanent regulatory program regulations as a prerequisite to the termination of jurisdiction over an initial program site.

By letter dated December 12, 1996 (Administrative Record Number WV–1052), the West Virginia Division of Environmental Protection (WVDEP) stated its commitment to require that initial program sites in West Virginia meet the West Virginia program's permanent program requirements as a precondition of the termination of regulatory jurisdiction over such sites.

In recognition of the acknowledgment contained in the December 12, 1996, WVDEP letter, and in accordance with the settlement agreement in *WVMRA* v. *Babbitt, supra*, OSM is proposing to accept the WVDEP December 12, 1996 letter as satisfying the requirements of 30 CFR 700.11(d)(1)(i), and is proposing to delete the required amendment codified at 30 CFR 948.16(ppp).

3. Vacating Retroactive Approval of Amendments

As published in the **Federal Register** on February 21, 1996 (61 FR 6533), OSM stated that with respect to laws and regulations being approved in the notice, that OSM was making the effective date of the approval retroactive to the date upon which each provision took effect in West Virginia for purposes of State law. However, as stated in the settlement agreement in *WVMRA* v. *Babbitt, supra*, OSM has agreed to vacate the retroactive effect of its approval of the program amendment which was the subject of the February 21, 1996, **Federal Register** notice. Therefore, OSM is hereby announcing its intention to vacate the retroactive approval of the amendments discussed and approved in the February 21, 1996, **Federal Register** notice, 61 FR 6511, 6535. In addition, OSM is proposing to change the effective dates of all the amendments approved in the February 21, 1996 notice to February 21, 1996.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed clarifications, the proposed removal of the required amendment codified at 39 CFR 948.16(ppp), and the proposed change of the effective dates of the amendments currently codified at 30 CFR 948.15(p)(1) to February 21, 1996. Comments should address whether the proposed clarifications, the proposed deletion of the required amendment at 30 CFR 948.16(ppp), and the change of the effective dates of the amendments codified at 30 CFR 948.15(p)(1) to February 21, 1996, satisfy the applicable program approval criteria of 30 CFR 732.15. If the clarifications, deletion of the required amendment, and change of the effective date of approval are deemed adequate, they will become part of the West Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this notice and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on March 10, 1998. If no one requests an opportunity to testify at the public hearing by that date, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate remarks and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person or group requests to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed clarification, removal of the required amendment, or change in the effective dates of the approval may request a meeting at the OSM Charleston Field Office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of the rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 12, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–4471 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 501

Manufacture, Distribution, and Use of Postage Meters

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would clarify and expand the sources of and uses of applicant information derived from PS Form 3601–A and PS Form 3601–C, both printed and electronic versions.

DATES: Comments must be received on or before March 25, 1998.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Metering Technology Management, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza SW Washington DC 20260–2444. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268–5311.

SUPPLEMENTARY INFORMATION: To provide greater specificity regarding uses of the information derived from the meter license applications received by the United States Postal Service ("Postal Service") from meter users and authorized meter manufacturers. Such information is hereafter referred to as "Applicant Information." Applicant information is derived from postal forms, both printed and electronic versions.

Notice of Proposed Changes in Regulations

Appropriate amendments to 39 CFR part 501 to reflect these changes will be published if the proposal is adopted.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b, c,)) regarding proposed

rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Code of the Federal Regulations.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure.

For the reasons set forth above, the Postal Service proposes to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURER AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a): 39 U.S.C. 101, 401, 410, 2610, 2605; Inspector General Act of 1978, as amended (pub L. 95–452, as amended), 5 U.S.C. App 3.

2. Section 501.22 is amended by revising paragraph (b) to read as follows:

§ 501.22 Distribution controls.

* * * * *

(b) On behalf of applicants, transmit electronically copies of completed PS Forms 3601-A, Application for a License to Lease and Use Postage meters, to the designated Postal Service central data processing facility. The Postal Service may use Applicant Information for the following purposes in the administration of postage meter and related activities:

(1) Issuance (including re-licensing, renewal, transfer, revocation or denial, as applicable) of a meter license to a postal patron that uses a postage meter, and communications with respect to the status of such license.

(2) Disclosure to a meter manufacturer of the identity of any meter required to be removed from service by that meter manufacturer, and any related licensee data, as the result of revocation of a meter license, questioned accurate registration of that meter, or de-certification by the Postal Service of any particular class or model of postage meter.

(3) Use for the purpose of tracking the movement of meters between a meter manufacturer and its customers and communications to a meter manufacturer (but not to any third party other than the applicant/licensee) concerning such movement. The term "meter manufacturer" includes a meter manufacturer's dealers and agents.

(4) To transmit general information to all meter customers concerning rate and rate category changes implemented or proposed for implementation by the United States Postal Service.

(5) To advertise Postal Service services relating to the acceptance, processing, delivery, or postage payment of mail matter to all meter customers.

(6) Any internal use by Postal Service personnel, including identification and monitoring activities relating to postage meters, provided that such use does not result in the disclosure of Applicant Information to any third party or will not enable any third party to use Applicant Information for its own purposes; except that the Applicant Information may be disclosed to other governmental agencies for law enforcement purposes as provided by law.

(7) Identification of authorized meter manufacturers or announcements of de-authorization of an authorized meter manufacturer, or provision of currently available public information, where an authorized meter manufacturer is identified, all authorized meter manufacturers will be identified, and the same information will be provided to all meter customers.

(8) To promote and encourage the use of postage meters, including remotely set postage meters, as a form of postage payment, provided that the same information is provided to all meter customers, and no particular meter manufacturer will be recommended by the Postal Service.

(9) To contact meter customers in cases of revenue fraud or revenue security except that any meter customer suspected of fraud shall not be identified to other meter customers.

(10) Disclosure to a meter manufacturer of Applicant Information pertaining to that meter manufacturer's customers that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes.

(11) To a meter manufacturer of all applicant and postage meter information pertaining to that manufacturer's customers and postage meters that may be necessary to synchronize the computer files of the manufacturer with the computer files of the Postal Service including but not limited to computerized data that reside in Postal Service meter management databases.

(12) Subject to the conditions stated herein, to communicate in oral or written form with any or all applicants any information that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–4382 Filed 2–20–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL147–1a, IL156–1a; FRL–5965–2]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve two Illinois site-specific State Implementation Plan revision requests, dated January 23, 1996, and January 9, 1997, submitted to EPA to revise or delay certain reasonably available control technology requirements to control volatile organic compound emissions at Solar Corporation's manufacturing facility located in Libertyville, Lake County, Illinois. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse written comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, the direct final rule will be withdrawn and all written public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments on this proposed rule must be received on or before March 25, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: January 28, 1998.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 98–4377 Filed 2–20–98; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 63, No. 35
Monday, February 23, 1998

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

Agricultural Research Service

Notice of Intent To Grant Exclusive License; Correction Notice

AGENCY: Agricultural Research Service, USDA.

ACTION: Correction to notice of intent to grant exclusive license.

SUMMARY: In notice document published in the issue of Friday, January 23, 1998 (63 FR 3533) which was to correct the issue of Wednesday, December 31, 1997 (62 FR 68248) the publication date of the FR Notice of Availability was still erroneous. This notice corrects the exclusive grant license (for Integrated BioControl Systems, Inc.) information to Serial No. 08/863,261 as follows:

On page 3533, in the first column, second paragraph of the USDA notice the **Federal Register** publication date for the Notice of Availability for Serial No. 08/404,779 was specified as May 27, 1995. The date should be changed to December 14, 1995.

Dated: February 12, 1998.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–4425 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a federally owned invention, U.S. Patent Application Serial No. 08/806,592, entitled "Passive Self-Contained Camera Protection and Method for Fire Documentation" is available for licensing and that the U.S. Department of Agriculture, Forest Service, intends to grant to Timberwolf Corporation, DBA Timberline Tool and Casting of Whitefish, Montana, an exclusive license for U.S. Patent Application Serial No. 08/806,592.

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: Send comments to: USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the Madison address given above; telephone: 608–231–9502.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Timberwolf Corporation, DBA Timberline Tool and Casting has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–4427 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–122–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of activities to prevent the introduction and spread of diseases and parasites harmful to honeybees.

DATES: Comments on this notice must be received by April 24, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–122–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–122–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding exotic bee diseases and parasites, honeybees, and honeybee semen, contact Dr. Robert Flanders, Senior Entomologist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231, (301) 734–5930. For copies of more detailed information on the information collection, contact Mr. Gregg Ramsey, Information Collection Coordinator, at (301) 734–5682.

SUPPLEMENTARY INFORMATION:

Title: Exotic Bee Diseases & Parasites, Honeybees, and Honeybee Semen.

OMB Number: 0579–0072.

Expiration Date of Approval: August 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing the introduction and spread of diseases and parasites harmful to honeybees, the introduction of genetically undesirable germ plasm of honeybees, and the introduction and spread of undesirable species or subspecies of honeybees.

The introduction and establishment of new honeybee diseases, parasites, and undesirable honeybee strains in the United States could cause multimillion dollar losses to American agriculture. Diseases or parasites can weaken or kill honeybees, thereby causing substantial reductions in the production of honey and other honeybee products, as well as a reduction in pollination activity. Pollination is necessary for the production of many important crops, including forages, fruits, vegetables, and vegetable oils.

To protect the health of the U.S. honeybee population, we engage in a number of information collection activities designed to allow us to determine whether shipments of honeybees, honeybee semen, or bee-related items (such as beekeeping equipment) represent a possible risk of introducing exotic bee diseases, parasites, or undesirable honeybee strains into the United States.

Our primary means of obtaining this vital information is requiring importers to apply to us for an import permit. The permit application contains such information as the amount of bee semen to be imported and the species or subspecies of honeybee from which the semen was collected; the country or locality of origin; and the intended port of entry in the United States.

We also require importers and shippers to adhere to a number of marking and shipping requirements that enable us to easily identify and process shipments of honeybees, honeybee semen, and other restricted articles when they arrive at U.S. ports of entry.

These information gathering procedures help us prevent the entry of shipments that pose a potential health risk to the U.S. honeybee population.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) 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;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .269 hours per response.

Respondents: Importers and shippers of honeybees, honeybee semen, and other regulated articles.

Estimated annual number of respondents: 91.

Estimated annual number of responses per respondent: 1.2637.

Estimated annual number of responses: 115.

Estimated total annual burden on respondents: 31 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–4493 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–119–1]

AgrEvo USA Co.; Receipt of Petition for Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance and Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for corn designated as Transformation Event CBH–351, which has been genetically engineered for insect resistance and tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk.

DATES: Written comments must be received on or before April 24, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–119–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–119–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4886. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On September 22, 1997, APHIS received a petition (APHIS Petition No. 97–265–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for corn designated as

Transformation Event CBH–351 (event CBH–351), which has been genetically engineered for insect resistance and tolerance to the herbicide glufosinate. The AgrEvo petition states that the subject corn should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, event CBH–351 corn has been genetically engineered to express a Cry9C insecticidal protein derived from the common soil bacterium, *Bacillus thuringiensis* subsp. *tolworthi (Bt tolworthi)*. The petitioner states that the Cry9C protein is effective in controlling the larvae of the European corn borer during the complete growing season. The subject corn also contains the *bar* gene derived from the bacterium *Streptomyces hygroscopicus*. The *bar* gene encodes the phosphinothricin acetyltransferase (PAT) protein, which confers tolerance to the herbicide glufosinate. Expression of these added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens*. Microprojectile bombardment was used to transfer the added genes into the recipient inbred corn line (PA91 × H99) × H99. While the subject corn contains the *bla* selectable marker gene, which is normally expressed in bacteria, tests indicate that this gene is not expressed in the plant.

Event CBH–351 corn has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This corn has been field tested since 1995 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa, *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136, *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301, *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. A pesticide petition has been filed with EPA to establish a regulation for an exemption from the requirement of a tolerance for residues of *Bt tolworthi* Cry9C and the genetic material necessary for its production in or on all raw agricultural commodities.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. The petitioner has begun consultation with FDA on the subject corn.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's insect resistant and glufosinate-tolerant corn event CBH–351 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 18th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–4492 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agencies to request an extension for the currently approved information collection in support of the servicing of Community and Insured Business Programs Loans and Grants.

DATES: Comments on this notice must be received by April 24, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Sharon R. Douglas, Loan Specialist, Community Programs Division, Rural Housing Service, U.S. Department of Agriculture, Stop 3222, 1400 Independence Avenue SW., Washington, DC 20250–3222. Telephone (202) 720–1506.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1951, subpart O, "Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Community and Business Programs."

OMB Number: 0575–0103.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The following Community and Insured Business, Indian Tribal Land Acquisition, Grazing, Association, Irrigation and Drainage, and Water and Waste Disposal programs are serviced by this currently approved regulation: The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

The Economic Opportunity Act of 1964, Title 3 (Pub. L. 88–452), authorizes Economic Cooperative loans to assist incorporated and unincorporated associations in providing to low-income rural families essential processing, purchasing, or marketing services, supplies, or facilities.

The Water and Waste Disposal program is authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) to provide basic human amenities, alleviate health hazards, and promote the orderly growth of the rural areas of the Nation by meeting the need for new and improved water and waste disposal systems.

The Business and Industry program is authorized by Section 310 B (7 U.S.C. 1932) (Pub. L. 92–419, August 30, 1972) of the Consolidated Farm and Rural Development Act to improve, develop, or finance business, industry, and employment and to improve the economic and environmental climate in rural communities, including pollution abatement and control.

The Food Security Act of 1985, Section 1323 (Pub. L. 99–198), authorizes loan guarantees and grants to Nonprofit National Corporations to provide technical and financial assistance to for-profit or nonprofit local businesses in rural areas.

The Powerplant and Industrial Fuel Use Act of 1978, Section 601 (42 U.S.C. 8401), authorizes Energy Impact Assistance Grants to states, councils of local government, and local governments to assist areas impacted by coal or uranium development activities. Assistance is for the purposes of growth management, housing planning, and acquiring and developing sites for housing and public facilities.

The Consolidated Farm and Rural Development Act, Section 310 B(c) (7 U.S.C. 1932 (c)), authorizes Rural Business Enterprise Grants to public bodies and nonprofit corporations to facilitate the development of private businesses in rural areas.

The Consolidated Farm and Rural Development Act, Section 310 B(f)(i) (7 U.S.C. 1932 (c)), authorizes Rural Technology and Cooperative Development Grants to nonprofit institutions for the purpose of enabling such institutions to establish and operate centers for rural technology or cooperative development.

The Indian Tribal Land Acquisition program is authorized under 25 U.S.C., 488, et seq. to make direct loans to Indian Tribes or tribal corporations within tribal reservations and Alaskan communities. The Consolidated Farm and Rural Development Act, as amended, also gives the authority for grazing, other irrigation and drainage projects, and association irrigation and drainage loans.

The purpose of the loan and grant servicing function for the above programs is to service cases where unauthorized assistance was received by a borrower or grantee for which there was not regulatory authorization or for which the recipient was not eligible. This assistance may be in the form of a loan or grant where the recipient did not meet the eligibility requirements set forth in program regulations or where the recipient qualified for assistance but interest subsidy benefit was erroneously granted and the loan was closed.

Supervision by the Agencies include, but is not limited to: review of financial data such as facts and written records to assist in the determination that the assistance received was unauthorized and the necesssary account adjustments can be made. The borrower submits the information requested on Rural Development forms or on other forms, if desired. The information collected is evaluated by the local Rural Development or Farm Service Agency servicing office.

Information will be collected by the field offices from applicants and borrowers. Under the provisions of this regulation, the information collected will be primarily financial data.

Failure to collect information could result in improper servicing of these loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.86 hours per response.

Respondents: State, local or tribal Governments, Not-for-profit institutions.

Estimated Number of Respondents: 14.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, (202) 690–1065.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0743, 1400 Independence Avenue SW., Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 12, 1998.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

Dated: February 17, 1998.

Wilber T. Peer,

Acting Administrator Business-Cooperative Rural Service.

Dated: February 13, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

Dated: February 13, 1998.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 98–4485 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Seek Approval to Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the Fruit and Nut Wildlife Damage Survey.

DATES: Comments on this notice must be received by April 29, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117 South Building, Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Fruit and Nut Wildlife Damage Survey.

Type of Request: Intent to seek approval to conduct an information collection.

Abstract: A sample of U.S. producers of selected fruits and nuts will be surveyed. The primary goal of the survey is the collection and development of valid statistical data reflecting the percentage of U.S. fruit and nut growers experiencing loss of product or resources caused by vertebrate wildlife. An accurate measurement of dollar losses due to vertebrate wildlife will also be obtained.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Fruit and Nut Growers.

Estimated number of Respondents: 15,000.

Estimated total Annual Burden on Respondents: 2,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: 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 will have practical utility; (b) 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) 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 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. Comments may be sent to:

Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4162 South Building, Washington, DC 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, January 22, 1998.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 98–4426 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Hackberry Draw Watershed, Eddy County, NM; Notice of a Finding of No Significant Impact

AGENCY: Natural Resources Conservation Service.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environment Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Rules (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the repair of Floodwater Retarding Structure 1 and Floodwater Diversion 2 in the Hackberry Draw Watershed.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Leiting, Acting State Conservationist, National Resources Conservation Service, 6200 Jefferson, NE, Albuquerque, NM 87109–3734; telephone 505–761–4400.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kenneth B. Leiting, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood prevention. The action includes the repair of one floodwater retarding dam and one floodwater diversion.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Kenneth B. Leiting.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Kenneth B. Leiting,

Acting State Conservationist.

[FR Doc. 98–4395 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

National Sheep Industry Improvement Center; Solicitation of Nominations of Board Members

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice: invitation to submit nominations.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces that it is accepting nominations for the Board of Directors of the National Sheep Industry Improvement Center for two directors' positions whose terms are expiring on February 13, 1999. The two positions are for active producers of

sheep or goats, at least one of whom should be involved in goat production. Board members manage and oversee the Center's activities. Nominations may only be submitted by National organizations that consist primarily of active sheep or goat producers in the United States and who have as their primary interest the production of sheep or goats in the United States. Nominating organizations should submit:

(1) Substantiation that the nominating organization is national in scope,

(2) The number and percent of members that are active sheep or goat producers,

(3) Substantiation of the primary interests of the organization, and

(4) An Advisory Committee Membership Background Information form (Form AD–755) for each nominee.

This action is taken to carry out section 759 of the Federal Agriculture Improvement and Reform Act of 1996 for the establishment of a National Sheep Industry Improvement Center.

DATES: The closing date for acceptance of nominations is June 23, 1998. Nominations must be received by, or postmarked, on or before, this date.

ADDRESSES: Submit nominations and statements on qualifications to Cooperative Services, RBS, USDA, 1400 Independence Ave., SW, Stop 3252, Room 4204, Washington, DC 20250–3252, Attn.: National Sheep Improvement Center, Nominations.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, 1400 Independence Ave, SW, Stop 3252, Washington, DC 20250–3252, telephone (202) 690–0368 (this is not a toll free number), FAX 202–690–2723, or e-mail thomas.stafford@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Agriculture Improvement and Reform Act of 1996, known as the 1996 Farm Bill, established a National Sheep Industry Improvement Center. The Center shall: (1) Promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States; (2) optimize the use of available human capital and resources within the sheep or goat industries; (3) provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research; (4) advance activities that empower and build the capacity of the United States sheep or goat industry to design unique responses to special needs of the sheep or goat industries on both a regional and national basis; and (5) adopt flexible and innovative approaches to solving the long-term needs of the United States sheep or goat industry. The Center has a Revolving Fund established in the Treasury to carry out the purposes of the Center. Management of the Center is vested in a Board of Directors, which has hired an Executive Director and other staff to operate the Center.

The Board of Directors is composed of seven voting members of whom four are active producers of sheep or goats in the United States, two have expertise in finance and management, and one has expertise in lamb, wool, goat or goat product marketing. The two open positions are the producer seats, with at least one designated as representing goat producers. The Board also includes two non-voting members, the Under Secretary of Agriculture for Rural Development and the Under Secretary of Agriculture for Research, Education, and Economics. Board members will not receive compensation for serving on the Board of Directors, but shall be reimbursed for travel, subsistence, and other necessary expenses.

The Secretary of Agriculture shall appoint the voting members from the submitted nominations. Member's term of office shall be three years. Voting members are limited to two terms. The two positions for which nominees are sought are currently held by members serving their first term, thus are eligible to be re-nominated. The Board shall meet not less than once each fiscal year, but are likely to meet at least quarterly.

The statement of qualifications of the individual nominees is being obtained by using Form AD–755, "Advisory Committee Membership Background Information." The requirements of this form are incorporated under OMB number 0505–0001.

Dated: February 13, 1998.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 98–4428 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Lincoln-Pipestone Rural Water; Existing System North/Lyon County Phase and Northeast Phase Expansion Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing a Draft Environmental Impact Statement (EIS) for the Lincoln-Pipestone Rural Water Existing System North/Lyon County Phase and Northeast Phase Expansion Project. The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508) and Agency regulations (7 CFR 1940–G). RUS invites comments on the Draft EIS.

The purpose of the EIS is to evaluate the potential environmental impacts of a project proposal located in southwestern Minnesota. The proposal to which the Agency is responding to involves providing financial assistance for the development and expansion of a public rural water system and a review of the environmental impacts from previous expansion phase activities. The applicant for this proposal is a public body named Lincoln-Pipestone Rural Water (LPRW). LPRW's main offices are located in Lake Benton, MN. Specific project activities are and have included the development of groundwater sources and production well fields and the construction of water treatment facilities and water distribution networks. The counties in Minnesota affected by this proposal include Yellow Medicine, Lincoln, and Lyon Counties and Deuel County in South Dakota.

DATES: Written comments on the Draft EIS will be accepted on or before April 24, 1998.

ADDRESSES: To send comments or for more information, contact: Mark S. Plank, USDA, Rural Utilities Service, Engineering and Environmental Staff, 1400 Independence Avenue, Stop 1571, Washington, DC 20250, telephone (202) 720–1649, fax (202) 720–0820, or e-mail: mplank@rus.usda.gov.

A copy of the Draft EIS or an Executive Summary can be obtained over the Internet at http://www.usda.gov/rus/water/ees/environ.html. The files are in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Acrobat Reader. The Acrobat Reader can be obtained from http://www.adobe.com/prodindex/acrobat/readstep.html.

Copies of the Draft EIS will be available for public review during

normal business hours at the following locations:

USDA Service Center, Rural Development, 1424 E. College Drive, Suite 500, Marshall, MN 56258; (507) 532–3234, Ext. 203.

Limited copies of the Draft EIS will be available for distribution at this address.

Marshall Public Library, 301 W. Lyon, Marshall, MN 56258; (507) 537–7003.

Ivanhoe Public Library, P.O. Box 54, Ivanhoe, MN 56142; (507) 694–1555.

Canby Public Library, 110 Oscar Ave. N, Canby, MN 56220; (507) 223–5738.

Deuel County Extension Service, 419 3rd Ave. S, P.O. Box 350, Clear Lake, SD 57226; (605) 874–2681.

Lincoln County Extension Service, 402 N. Harold, Ivanhoe, MN 56142; (507) 694–1470.

Lyon County Extension Service, 1400 E. Lyon St., Marshall, MN 56258; (507) 537–6702.

Yellow Medicine County Extension Service, 1000 10th Ave., Clarkfield, MN 56223.

SUPPLEMENTARY INFORMATION: Some of the issues evaluated in this EIS date back to previous decisions made in funding one of the phases of a multi-phase system expansion project initiated by LPRW in 1991. Due to Congressional funding cycles, Rural Utilities Service (RUS) and LPRW have administratively pursued LPRW's requests for financial assistance of this expansion project in discrete fundable phases. As part of the last construction phase, known as the Existing System North/Lyon County (ESN/LC) Phase project, a water source was developed along with the construction of a Water Treatment Plant that was designed to provide potable water to the northern portion of LPRW's service area. The water source developed in this phase was the Burr Well Field. The Burr Well Field is located close to Burr, MN, between Clear Lake, SD, and Canby, MN, and is within ½ mile of the South Dakota-Minnesota state line. The water-bearing formations utilized at this well field underlie portions of both South Dakota and Minnesota.

During construction of the Burr Well Field (started on April 19, 1993) and subsequent to its operations, public and regulatory concerns were raised and continue to be raised regarding potential environmental effects of groundwater appropriations from one of the water-bearing formations (called the Burr Unit) utilized by the well field. The second aquifer utilized at the Burr Well Field is called the Altamont aquifer. The Altamont is a deeper formation that appears to be hydraulically isolated from the Burr Unit.

Because of geologic factors and the topographic position of the Burr Unit in relation to ground surface elevations, groundwater from the Burr Unit discharges onto the land surface in both South Dakota and Minnesota as springs or seeps creating unique wetland features called patterned calcareous fens. In addition after performing geologic investigations in the area, the South Dakota Department of Environment and Natural Resources (SDDENR) concluded that one of the lakes in the area, Lake Cochrane, was also receiving groundwater discharges from the Burr Unit aquifer.

An Environmental Assessment (EA) was prepared for the ESN/LC Phase project by the Farmers Home Administration (FmHA) in accordance with its Environmental Policies and Procedures (7 CFR Part 1940–G). FmHA published a Finding of No Significant Impact for the project on February 7, 1992. Because of concerns raised regarding the Burr Well Field, the EA was amended to address these concerns by an agency newly created by a 1993 USDA reorganization, the Rural Development Administration (RDA). RDA published a draft copy of the amended EA for public review and comment on October 14, 1994. Upon receipt of the public comments, it was decided to prepare an EIS. During the time this decision was being made USDA again reorganized its programs and the RDA programs were combined with the utility programs of the Rural Electrification Administration to form a new agency—the Rural Utilities Service.

RUS announced its intent to prepare an EIS and hold public scoping meetings in a Notice of Intent published in the **Federal Register** on June 8, 1995.

The primary issues evaluated in the EIS included the outstanding concerns from the earlier 1992 EA, that is, the environmental effects on fens and Lake Cochrane (herein referred to as surface water resources) from groundwater appropriations at the Burr Well Field, and the potential environment impacts from the construction of the Northeast Phase Expansion proposal. The primary objective of the Northeast Phase Expansion proposal is to provide rural water service to rural residents (240 rural users) who have requested service and to the rural communities of Hazel Run and Echo, Minnesota. The proposal includes the installation of 170 miles of 2- to 8-in pipelines, an elevated water storage tank near Minneota, and a booster station near Green Valley. The overall purpose of this and previous actions by LPRW is to assist citizens in southwestern Minnesota in obtaining a consistent, reliable and safe supply of high-quality, affordable drinking water in an area that has difficulty in obtaining good quality drinking water.

Because all of the decisions and funding obligations have been made on the previous ESN/LC Phase project, the only decision facing the Agency at this time is whether or not to provide financial assistance to LPRW for the construction of the Northeast Phase Expansion proposal. All decisions regarding the issuance and disposition of the Water Appropriation Permit authorizing groundwater appropriations at the Burr Well Field are subject to the regulatory authority of the Minnesota Department of Natural Resources (MNDNR), Division of Water.

After the Agency made the decision to prepare an EIS, the Agency requested, pursuant to 40 CFR 1501.6, "Cooperating Agencies", that the U.S. Environmental Protection Agency (USEPA), Region 8 in Denver, CO, serve in the capacity of a cooperating agency. This request was made because of USEPA's specialized expertise in groundwater issues. USEPA agreed to the Agency's request, therefore, RUS is the lead agency for this action and was responsible for the preparation of the EIS, and USEPA provided technical assistance to RUS through its role as a cooperating agency.

For purposes of this EIS, the proposed action to which the Agency is responding to and for which all of the environmental impacts of past and present actions were evaluated, is the application LPRW submitted to the Agency to fund the Northeast Phase Expansion. In addition to this application, LPRW submitted a Water Appropriation Permit application to the MNDNR to increase groundwater appropriation rates from the present 750 gallons per minute (gpm) and 400 million gallons per year (Mgpy) to 1,500 gpm/800 Mgpy. Both of these actions encompass what was termed the "proposed action."

The Agency evaluated six alternatives to meeting the water supply needs of the LPRW system. The following table lists the alternatives considered.

LIST OF THE ALTERNATIVES CONSIDERED

Alternative	Northeast phase expansion status	Burr Well Field status
Current Status	LPRW submitted application to RUS to fund construction of the Northeast Phase Expansion.	LPRW is authorized under their current Water Appropriation Permit to appropriate groundwater at the rate of 750 gpm/400 Mgpy. LPRW submitted an application to the MNDNR to increase groundwater appropriations to 1,500 gpm/800 Mgpy.
Proposed Action	Fund the Northeast Phase Expansion.	Increase groundwater appropriations at the Burr Well Field to 1,500 gpm/800 Mgpy.
Alternative 1	Fund the Northeast Phase Expansion.	Discontinue use of Burr Well Field.
Alternative 2	Fund the Northeast Phase Expansion.	Discontinue use of Burr Well Field. Supplement water needs from other sources: Adjacent rural water systems, Lewis and Clark system, Altamont aquifer, Canby aquifer, other aquifers.
Alternative 3	Fund the Northeast Phase Expansion.	Maintain current appropriations at Burr Well Field.
Alternative 4	Fund the Northeast Phase Expansion.	Maintain current or reduce appropriations at Burr Well Field; fund and construct new well field and Water Treatment Plant in the Wood Lake area.
Alternative 5	Do not fund the Northeast Phase Expansion; finance Point-of-Use systems in Northeast Phase Expansion area.	Maintain current appropriations at Burr Well Field.
Alternative 6—No Action Alternative.	Do not fund the Northeast Phase Expansion.	Maintain current appropriations at Burr Well Field.

Of the six alternatives considered, the Agency performed an economic analysis on three of the alternatives determined to be reasonable. In addition, an economic analysis was performed on Agency's preferred alternative. The only alternatives considered to be economically and technically viable included continuing to appropriate groundwater from the aquifers utilized at the Burr Well Field. Therefore, the EIS focussed its analyses on evaluating the potential environmental effects on surface water resources from continued pumping at the Burr Well Field.

Based on the analyses performed in the EIS concerning the relationship of surface water resources and pumping at the Burr Well Field, the Agency concludes the following:

As a result of detailed investigations of water chemistry, changes in hydraulic head during production pumping and pump tests, tritium content and age-dating of aquifer water and water being discharged at two of the area's fens that were monitored—the Fairchild and Sioux Nation Fens—it has been clearly demonstrated and established that a hydraulic connection exists between the Burr Unit and the fens. In addition, further evidence indicates that reductions in the potentiometric surface caused by pumping the Burr Unit at the Burr Well Field causes reciprocal responses in the hydraulic head measured in observation wells and piezometers installed in and adjacent to selected fens. No evidence of a similar hydraulic connection between the Altamont aquifer and the fens was observed.

Drawing conclusions based on limited information concerning Lake Cochrane was not as conclusive. However, based on the information that is available, the Agency has concluded that all lines of evidence indicate that it is likely Lake Cochrane is receiving a groundwater contribution to its water budget from both shallow and deeper (Burr Unit) aquifers. The information that would be necessary to quantify the overall percentage of groundwater contribution in relation to surface water inputs to Lake Cochrane's water budget and the percentage of the contribution from shallow aquifers versus the Burr Unit is incomplete and unavailable. The cost and technical difficulty of obtaining such information for evaluating reasonably foreseeable impacts by the Agency has been determined to be exorbitant and unreasonable.

Based on a systematic and objective evaluation of the environmental and economic issues related to the remaining alternatives, the Agency has concluded that the proposed action (to appropriate groundwater at 1,500 gpm/800 Mgpy from the Burr Unit at the Burr Well Field) poses an unreasonable environmental risk to surface water resources in the area. Because of the uncertainty and potential for long-term environmental impacts on surface water resources in the area around the Burr Well Field, the Agency has concluded that pumping at the proposed appropriation rate under drought conditions is likely to cause significant adverse environmental impacts to these resources.

Conversely, in analyzing the information available, the Agency has concluded that through mitigation and a groundwater appropriation rate lower than the proposed action, adverse environmental effects could be avoided or minimized. Therefore, it could be feasible to continue using the Burr Well Field at certain appropriation rates without causing significant adverse environmental effects.

Attempting to establish an appropriation rate that could avoid or minimize adverse environment effects to the fens and Lake Cochrane was the major dilemma of the EIS. Because of limited baseline data and period of record, the only information that can be evaluated is data that has been collected since 1992. The entire time period since 1992 to the present has been dominated by a sustained period of relatively high precipitation. Therefore, these climatic conditions have prevented detailed observations of aquifer responses from pumping during a drought cycle or what effects current pumping has had on surface water resources. Because of this uncertainty and the reality of periodic and cyclic drought conditions, it is prudent to manage this aquifer system and withdrawals from it in a conservative manner.

Notwithstanding a lack of long-term data, taking into account current data sets and through consultations with state and federal agencies and experts in the field of hydrogeology, the Agency has concluded the following:

1. There could be effects to Lake Cochrane from long-term pumping from the Burr Unit at the Burr Well Field.

Based on data collected from the various pump tests and in consultation with experts in the field of hydrology and geology, it is the Agency's opinion that effects to Lake Cochrane from the continuation of pumping from wells screened in the Burr Unit at the Burr Well Field at the rate of 400–525 gpm would not have significant environmental impacts. That is not to say that Lake Cochrane could not be affected, but that in the range of 400–525 gpm it is unlikely that any effects would have significant consequences. In addition, at these appropriation rates it would be extremely difficult to distinguish any impacts from reduced groundwater inputs into the lake from the biological effects of ongoing management practices or human influences at the lake.

2. During all of the pump tests and production pumping for the last three years at current and maximum pumping rates of 400–525 gpm (1997 appropriations from the Burr Unit equaled 274 million gallons for an average of 521 gallons per minute), the effects from pumping at the Burr Well Field at the fens, as represented by the Sioux Nation Fen and measured by three piezometers installed at various depths in the fen dome, have been minor. At no time did the hydraulic head or water table elevations in the fens or potentiometric surface fall close to or below the surface elevations of the peat domes. Therefore, the Agency has concluded that as long as the hydraulic gradient remains above the surface elevation of the fen dome and the dome itself remains under saturated conditions it appears unlikely that appropriation rates between the range of 400–525 gpm will adversely affect the fens.

In order to avoid or minimize any adverse environmental effects to surface water resources, the Agency has developed mitigation measures it believes could be protective of surface water resources and at the same time support LPRW in its need to secure a reliable water supply for the northern portions of its service area. The mitigation measures listed below constitute the Agency's preferred alternative. It is estimated that if these mitigation measures are implemented, user rates for the overall system would increase approximately 21 percent. Although this rate increase is higher than the proposed action, LPRW concludes that its membership would be able to sustain this increase. The Agency believes that implementing the preferred alternative will help meet LPRW and its customers' long-term water supply needs, but yet be protective of the area's surface water resources.

The Agency's preferred alternative includes:

1. Continue to maintain the Burr Well Field as a primary water source. The Agency supports reducing or limiting ground water appropriations at the Burr Well Field from each of the two aquifers—the Burr Unit and Altamont aquifer—to 400–525 gpm with a corresponding annual appropriation rate.

2. Supplement existing wells at the Burr Well Field with a new well field in an area south-southeast of the current Burr Well Field. This new well field could utilize both the Burr Unit and Altamont aquifers in a configuration similar to that at the Burr Well Field. Water from the new wells could be transported to the Burr Water Treatment Plant for treatment and distribution to LPRW customers.

3. The Agency recommends that the appropriation rates of the supplemental wells be similar to those permitted at the Burr Well Field or higher in the case of the Altamont aquifer. This configuration would give LPRW two well fields and enable it to continue utilizing the existing treatment capacity at the Burr Water Treatment Plant to meet the primary and secondary needs in the northern portion of its service area. This recommendation would likely "spread out" the effects or reductions in the potentiometric surface of the Burr Unit caused by production pumping, thus potentially avoiding or minimizing any adverse effects to surface water resources in the area.

4. The Agency recommends that MNDNR establish, as part of its permitting requirements for LPRW, protocols and standard operating procedures for well field operations that are designed to minimize drawdowns in the potentiometric surface in the Burr Unit. These protocols could include regulating pumping rates and annual withdrawals for each well and aquifer.

5. Formalize a water resource management plan that will continue to use existing monitoring points at fen locations and observation wells in the Burr Unit in Minnesota and South Dakota. This monitoring plan would enable LPRW and natural resource management agencies in both Minnesota and South Dakota to monitor and develop a long-term strategy for evaluating groundwater appropriations and their effects on surface water features in the area.

The Agency will condition approval on LPRW's application for financial assistance for the Northeast Phase Expansion and other associated costs on successful completion of the following terms. This approval is subject to LPRW's being able to obtain the appropriate water appropriation permit(s) from the MNDNR.

1. Explore the development of a supplemental well field in the area south of the Burr Well Field determined by various geologic exploration efforts as containing aquifer materials that would be capable of supplying municipal quantities of water. The new well field should utilize both the Burr Unit and the Altamont aquifer providing for more reliance on the Altamont than it does at the Burr Well Field. Raw water from this well field should be transported to the existing Burr Water Treatment Plant to take advantage of the facility's existing water treatment capacity.

2. LPRW shall formalize a water resource management plan with the MNDNR to establish monitoring procedures and protocols to evaluate the effects of pumping the Burr Unit on surface water resources in Minnesota. Included within this plan LPRW shall develop standard operating procedures to manage and implement groundwater appropriations from the Burr Unit at both the new well field and Burr Well Field to minimize drawdown of the potentiometric surface from production pumping.

3. LPRW shall formalize an agreement with SDDENR to establish monitoring procedures and protocols to evaluate the effects of pumping the Burr Unit on surface water resources in South Dakota.

Provided these conditions are met and LPRW has formalized all the above with the appropriate regulatory authorities, the Agency is prepared to approve LPRW's application for construction of the Northeast Phase Expansion proposal, subject to the availability of funding.

All direct construction related activities associated with the funding of the Northeast Phase Expansion by themselves will have no significant environmental impact. The environmental effects of constructing an elevated water storage tank near Minneota, booster stations near Minneota and Green Valley, and 170 miles of pipeline will be minimal consisting of temporary disturbances consistent with standard construction practices. All environmental impacts will be mitigated as is appropriate for these individual construction activities.

No historic or cultural resources or threatened and endangered species will be affected by the Northeast Phase Expansion action. Less than 2 acres of important farmland will be converted at the water storage and booster station

sites. However, the majority of the land within the Northeast Phase Expansion area has been identified as important farmland, so the overall impact to this resource will be minimal.

For a detailed analysis of the data supporting the above conclusions, see the Draft EIS.

Dated: February 12, 1998.

John P. Romano,

Deputy Administrator, Water and Environmental Program.

[FR Doc. 98–4484 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Export of Parcels Through the Postal Service; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Persons exporting through the U.S. Postal Service must place on the parcel the authorization for the export—either the validated export license number or the General License symbol, as appropriate. If a General License is utilized, the exporter must also show on the parcel the phrase "Export License Not Required".

II. Method of Collection

Submitted on parcel.

III. Data

OMB Number: 0694–0095.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit, and not-for-profit institutions.

Estimated Number of Respondents: 8,000,000.

Estimated Time Per Response: 5 seconds per response.

Estimated Total Annual Burden Hours: 11,110.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

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 (including hours and cost) 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 or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4476 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Five-Year Record Retention Period; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Exporters are required to maintain records of export transactions. The recordkeeping requirement corresponds with the five-year statute of limitations for criminal actions brought under the Export Administration Act of 1979 and predecessor acts, and the five-year statute for administrative compliance proceedings. Without this authority, potential violators could discard records demonstrating violations of the EAR prior to the expiration of the five-year statute of limitations.

II. Method of Collection

Recordkeeping.

III. Data

OMB Number: 0694–0096.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit, and not-for-profit institutions.

Estimated Number of Respondents: 154,816.

Estimated Time Per Response: 10 seconds per response.

Estimated Total Annual Burden Hours: 259.

Estimated Total Annual Cost: $0—no capital expenditures are required.

IV. Request for Comments

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 (including hours and cost) 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

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4477 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Destination Control Statement; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Destination Control Statement serves as a notice to all foreign parties in an export transaction that further shipment to any country not authorized is prohibited. In any Office of Export Enforcement proceeding, evidence of the sending of the commercial invoice, bill of lading or other form of notice of the prohibition against diversion will serve as proof of that person's receipt of the notice.

II. Method of Collection

Notice on shipping document.

III. Data

OMB Number: 0694–0097.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit, and not-for-profit institutions.

Estimated Number of Respondents: 647,000.

Estimated Time Per Response: 10 seconds per response.

Estimated Total Annual Burden Hours: 1,759.

Estimated Total Annual Cost: $0—no capital expenditures are required.

IV. Request for Comments

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 (including hours and cost) 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 or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4478 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Procedures For Acceptance or Rejection of a Rated Order; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notification requirement is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and the Selective Service Act of 1948 (50 U.S.C. App. 468). Any person (supplier) who receives a priority rated order under the Defense Priority Allocation System (DPAS) regulation (15 CFR 700) must notify the customer of acceptance or rejection of that order within a specified period of time. Also, if shipment against a priority rated order will be delayed, the supplier must immediately notify the customer.

II. Method of Collection

Written or electronic notification.

III. Data

OMB Number: 0694–0092.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 25,000.

Estimated Time Per Response: 1 to 15 minutes per response.

Estimated Total Annual Burden Hours: 31,500.

Estimated Total Annual Cost: $630,000.

IV. Request for Comments

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 (including hours and cost) 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 or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4479 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Procedure for Voluntary Self-Disclosure of Violations of the Export Administration Regulations (EAR); Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Ave., NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

BXA has established procedures for voluntary self-disclosure of export violations. Exporters provide a narrative statement which outlines the violation involved. The information is needed to detect violations of the Export Administration Act and to determine if an investigation or prosecution is necessary. The information is used to reach settlement with violators. The respondents are likely to be export-related businesses.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0058.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 67.

Estimated Time Per Response: 10 hours per response.

Estimated Total Annual Burden Hours: 670.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

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 (including hours and cost) 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 or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4480 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Import Certificates and End-User Certificates; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is the certification of the overseas importer to the U.S. government that he/she will import specific commodities from the U.S. and will not reexport such commodities except in accordance with U.S. export regulations.

II. Method of Collection

Written documentation is required.

III. Data

OMB Number: 0694–0093.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 4,576.

Estimated Time Per Response: 15 minutes per response.

Estimated Total Annual Burden Hours: 1,144 hours.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

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 (including hours and cost) 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 or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4481 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final court decision and amended final results of administrative reviews.

SUMMARY: On October 15, 1997, the United States Court of Appeals for the Federal Circuit affirmed the Department of Commerce's final remand results affecting final assessment rates for the second administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan (except NSK), Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. As there is now a final and conclusive court decision in these actions (with the exception noted above), we are amending our final results of reviews and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to these reviews.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, the Department published its final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, covering the period May 1, 1990 through April 30, 1991 (AFBs II) (57 FR 28360). These final results were amended on July 24, 1992, and December 14, 1992, to correct clerical errors (see 57 FR 32969 and 57 FR 59080, respectively). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Subsequently, two domestic producers, the Torrington Company and Federal-Mogul, and a number of other interested parties, filed lawsuits with the U.S. Court of International Trade (CIT) challenging the final results. These lawsuits were litigated at the CIT and the United States Court of Appeals for the Federal Circuit (CAFC). In the course of this litigation, the CIT issued a number of orders and opinions of which the following have resulted in changes to the antidumping margins calculated in AFBs II:

Federal-Mogul Corp. v. *United States,* 862 F. Supp. 384 (CIT 1994), 872 F. Supp. 1011 (CIT 1994), and Slip Op. 95–184 (November 20, 1995) with respect to France, Germany, Italy, Japan, Sweden, and the United Kingdom;

Torrington Company v. *United States,* 881 F. Supp. 622 (CIT 1995) and 926 F. Supp. 1151 (CIT 1996) with respect to France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom;

Koyo Seiko Company Ltd. v. *United States,* Slip Op. 96–168 (October 17, 1996) with respect to Japan;

SKF USA Inc. v. *United States,* 874 F. Supp. 1395 (CIT 1995) with respect to Italy;

SKF USA Inc. v. *United States,* 875 F. Supp. 847 (CIT 1995) with respect to Germany;

SKF USA Inc. v. *United States,* Slip Op. 95–11 (January 31, 1995) with respect to the United Kingdom;

SKF USA Inc. v. *United States,* 876 F. Supp. 275 (CIT 1995) with respect to France;

SKF USA Inc. v. *United States,* Slip Op. 95–124 (July 5, 1995) with respect to Sweden;

Societe Nouvelle de Roulements v. *United States,* 927 F. Supp. 1558 (CIT 1996) with respect to France.

In the context of the above-cited litigation, the CIT (in some cases based on decisions by the CAFC) ordered the Department to make methodological changes and to recalculate the antidumping margins for certain firms under review. Specifically, the CIT ordered the Department *inter alia:* (1) To change its methodology to account for value-added taxes with respect to the comparison of U.S. and home market prices, (2) not to deduct pre-sale inland freight incurred in the home market if the Department determined that there was no statutory authority to make such a deduction, (3) to develop a methodology which removes post-sale price adjustments and rebates paid on out-of-scope merchandise from any adjustment made to foreign market value or to deny such an adjustment if a viable method could not be found, and (4) to correct certain clerical errors.

On October 15, 1997, the CAFC affirmed the Department's final remand results affecting final assessment rates for all the above cases (except the reviews involving NSK Ltd. of Japan which are still subject to further litigation). See *Torrington Co.* v. *United States,* 127 F.3d 1077 (Fed. Cir. 1997). As there are now final and conclusive court decisions in these actions, we are amending our final results of review in these matters and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to these reviews.

Amendment to Final Results

Pursuant to 516A(e) of the Tariff Act, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction

bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, and the period May 1, 1990, through April 30, 1991. The revised weighted-average margins are as follows:

Company	BBs	CRBs	SPBs
France			
SKF	8.56	(1)	(3)
SNR	8.08	18.37	(2)
Germany			
FAG	20.10	7.83	1.05
INA	19.90	1.23	(1)
SKF	12.08	5.10	0.82
Italy			
FAG	7.50	(1)	.....
SKF	8.78	(3)	.....
Japan			
Fujino	1.83	(2)	(2)
IJK	1.89	(3)	(2)
Izumoto	12.14	(2)	(2)
Koyo Seiko	6.95	1.39	(3)
Nachi	7.90	22.61	(1)
Nakai	6.47	(2)	(2)
Nankai	9.41	(2)	(2)
NTN	2.42	2.78	0.51
Showa	7.51	(2)	(2)
Singapore			
NMB/Pelmec	4.49	.....	.....
Sweden			
SKF	7.67	4.18	.....
Thailand			
NMB/Pelmec	0.498	.....	.....
United Kingdom			
Barden Corporation	0.85	(1)	.....
FAG	48.97	(3)	.....
RHP Bearings	16.75	50.39	.....
SKF	8.33	(1)	.....

(1) No U.S. sales during the review period.
(2) No review requested.
(3) No change to the last published margin. See AFBs II, 57 FR 28360, as amended by 57 FR 32969 and 57 FR 59080.

The above rates will become the new antidumping duty deposit rates for firms that have not had a deposit rate established for them in subsequent reviews.

Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by these reviews. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department has already issued appraisement instructions to the Customs Service for certain companies whose margins have not changed from those announced in AFBs II and the two previous amendments. For companies covered by these amended results, the Department will issue appraisement instructions to the U.S. Customs Service after publication of these amended final results of reviews.

This notice is published pursuant to section 751(a) of the Tariff Act.

Dated: February 11, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4542 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan

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

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson at (202) 482–1776, or David Genovese at (202) 482–0498,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1996).

Final Determination

We determine that static random access memory semiconductors (SRAMs) from Taiwan are being 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

Since the preliminary determination in this investigation on September 23, 1997 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors from Taiwan*, 62 FR 51442 (Oct. 1, 1997)), the following events have occurred:

In September 1997, we issued supplemental questionnaires to Integrated Silicon Solution Inc. (ISSI) and United Microelectronics Corporation (UMC). We received responses to these questionnaires in October 1997.

On October 14, 1997, Taiwan Semiconductor Manufacturing Company Ltd. (TSMC) requested that the Department reconsider its preliminary determination to exclude TSMC as a respondent in this investigation. On October 29, 1997, we informed TSMC that we were not altering our decision and that we would not verify the information submitted by TSMC. For further discussion of this issue, see the memorandum to the file from James Maeder, dated October 29, 1997, and *Comment 4* in the "Interested Party Comments" section of this notice.

On October 15, 1997, a U.S.-based producer of subject merchandise, Galvantech, Inc. (Galvantech), requested that the Department accept and verify a questionnaire response from it. On October 22, 1997, we denied Galvantech's request. For further discussion, see *Comment 3* in the "Interested Party Comments" section of this notice.

On October 17, 1997, an interested party in this investigation, Texas Instruments-Acer Incorporated (TI-Acer), claimed that it had not received the antidumping duty questionnaire issued to it in April 1997. Thus, TI-Acer requested that the Department make no final determination for it on the basis of facts available. On October 22, 1997, we provided TI-Acer with a copy of the courier's delivery record which indicated that TI-Acer had, in fact, received the questionnaire.

In October and November 1997, we verified the questionnaire responses of the following respondents: Alliance Semiconductor Corp. (Alliance), ISSI, UMC, and Winbond Electronics Corporation (Winbond).

In November and December 1997, the respondents submitted revised sales databases at the Department's request. In addition, Alliance, ISSI and UMC submitted revised cost databases.

On November 19, 1997, TI-Acer submitted its case brief in which it reiterated its assertion that it did not receive a questionnaire. On December 9, 1997, we provided TI-Acer with an additional copy of the courier's delivery record demonstrating that the questionnaire had been received by a TI-Acer official. TI-Acer responded to this letter on December 18, 1997. For further discussion, see *Comment 5* in the "Interested Party Comments" section of this notice.

The petitioner (*i.e.*, Micron Technology, Inc.), the four respondents, Galvantech, and TSMC submitted case briefs on December 23 and 24, 1997, and rebuttal briefs on January 7 and 8, 1998. In addition, five interested parties, Compaq Computer Corporation (Compaq), Cypress Semiconductor Corporation (Cypress), Digital Equipment Corporation (Digital), Integrated Device Technology (IDT), and Motorola Inc. (Motorola) submitted rebuttal briefs on January 7, 1998.

On January 7, 1998, the authorities on Taiwan submitted comments on the appropriate treatment of stock distributions to company employees. The petitioner responded to these comments on January 12, 1998. The Department held a public hearing on January 13, 1998.

Scope of Investigation

The products covered by this investigation are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, 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 Taiwan are not included in the scope.

The scope of this investigation includes modules containing SRAMs. Such modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), dual in-line memory modules (DIMMs), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board.

We have determined that the scope of this investigation does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). For a detailed discussion of our determination on this issue, see *Comment 2* in the "Interested Party Comments" section of this notice and the memorandum to Louis Apple from the Team dated February 13, 1998.

The SRAMs within the scope of this investigation are currently classifiable under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 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 scope of this investigation is dispositive.

Period of Investigation

The period of this investigation (POI) for all respondents is January 1, 1996, through December 31, 1996.

Facts Available

Three interested parties in this investigation, Advanced Microelectronics Products Inc. (Advanced Microelectronics), Best Integrated Technology, Inc. (BIT), and TI-Acer, failed to provide timely responses to the Department's requests for information. Specifically, Advanced Microelectronics and BIT did not respond at all to the Department's questionnaire issued in April 1997, while TI-Acer provided a partial response five months after the due date.

TI-Acer informed the Department after the preliminary determination that it had not received the questionnaire. Moreover, TI-Acer asserted that it is not a producer of subject merchandise. As such, TI-Acer argued that it should not be assigned a margin based on facts available. However, because there is evidence on the record which

demonstrates that the questionnaire was delivered to TI-Acer's offices in Taiwan and that a TI-Acer company official actually signed for this document, and because TI-Acer filed its partial response five months after the original due date, we do not find TI-Acer's arguments persuasive. For further discussion, see *Comment 5* in the "Interested Party Comments" section of this notice, below.

Section 776(a)(2) of the Act provides that if an interested party 1) withholds information that has been requested by the Department, 2) fails to provide such information in a timely manner or in the form or manner requested, 3) significantly impedes a determination under the antidumping statute, or 4) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Because Advanced Microelectronics, BIT, and TI-Acer failed to respond to the Department's questionnaire in a timely manner and because subsections (c)(1) and (e) do not apply with respect to these companies, we must use facts otherwise available to calculate their dumping margins.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA). The failure of Advanced Microelectronics, BIT, and TI-Acer to reply to the Department's questionnaire or to provide a satisfactory explanation of their conduct demonstrates that they have failed to act to the best of their ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to these companies, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning to Advanced Microelectronics, BIT, and TI-Acer the higher of: 1) the highest margin stated in the notice of initiation; or 2) the highest margin calculated for any respondent in this investigation. In this case, this margin is 113.85 percent, which is the highest margin stated in the notice of initiation.

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. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. *See* Initiation Checklist, dated March 17, 1997. These estimated dumping margins were based on a comparison of constructed value (CV) to U.S. price, the latter of which was based on price quotations offered by two companies in Taiwan. The estimated dumping margins, as recalculated by the Department, ranged from 93.54 to 113.85 percent. For purposes of corroboration, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it has probative value. *See* the memorandum to Louis Apple from the Team dated September 23, 1997, for a detailed explanation of corroboration of the information in the petition.

Time Period for Cost and Price Comparisons

Section 777A(d) of the Act states that in an investigation, the Department will compare the weighted average of the normal values to the weighted average of the export prices or constructed export prices. Generally, the Department will compare sales and conduct the sales below cost test using annual averages. However, where prices have moved significantly over the course of the POI, it has been the Department's practice to use shorter time periods. *See, e.g., Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read Only Memories (EPROMs) from Japan*, 51 FR 39680, 39682 (Oct. 30, 1986) (*EPROMs from Japan), Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of* Korea, 58 FR 15467, 15476 (Mar. 23, 1993) (*DRAMs from Korea*).

We invited comments from interested parties regarding this issue. An analysis of these comments revealed that the petitioner and three of the four respondents agreed that the SRAM market experienced a significant and consistent price and cost decline during the POI. Accordingly, in recognition of the significant and consistent price decline in the SRAM market during the POI, the Department has compared prices and conducted the sales below cost test using quarterly data [1]. *See Comment 10* in the "Interested Party Comments" of this notice for further discussion.

Fair Value Comparisons

To determine whether sales of SRAMs from Taiwan to the United States were made at less than fair value, we compared the EP or CEP, as appropriate, to the Normal Value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

In order to determine whether we should base price-averaging groups on customer types, we conducted an analysis of the prices submitted by the respondents. This analysis does not indicate that there was a consistent and uniform difference in prices between customer types. Accordingly, we have not based price comparisons on customer types.

On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. *See* section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this investigation, we have not had sufficient time to evaluate and apply the decision to the facts of this post-URAA case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

Consequently, in making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market fitting the description specified in the "Scope of Investigation" section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Regarding

[1] In accordance with section 773(b)(2)(D) of the Act, we conducted the recovery of cost test using annual cost data.

ISSI and UMC, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product, based on the characteristics listed in Sections B and C of the Department's antidumping questionnaire. Regarding Winbond, we were unable to make price-to-price comparisons involving non-identical products because Winbond did not provide reliable difference in merchandise (difmer) information. Therefore, we based the margin for U.S. products with no corresponding identical home market match on facts available. As facts available, we used the highest non-aberrant margin calculated for any of Winbond's other U.S. sales. *See Comment 25* in the "Interested Party Comments" section of this notice for further discussion. Regarding Alliance, because we found no home market sales at prices above the COP, we made no price-to-price comparisons. *See* the "Normal Value" section of this notice, below, for further discussion.

Moreover, Alliance and ISSI did not report certain costs of production which were contemporaneous (*i.e.*, in the same or a prior quarter) with their U.S. sales, and ISSI did not report cost or difmer information for one product sold in the United States. Because there is insufficient information on the record to calculate a margin for these products, we based the margin for them on facts available. As facts available, we used the highest non-aberrant margin calculated for any of that respondent's other sales. For further discussion, see *Comment 7* in the "Interested Party Comments" section of this notice.

Level of Trade and Constructed Export Price Offset

In the preliminary determination, the Department determined that there was sufficient evidence on the record to justify a CEP offset for each of the four respondents. We found no evidence at verification to warrant a change from that preliminary determination. Accordingly, we have made a CEP offset for each of the respondents in this final determination. For further discussion, see *Comment 6* in the "Interested Party Comments" section of this notice and the memorandum to the file from the Team, dated February 13, 1998.

Export Price and Constructed Export Price

For UMC and Winbond, we used the EP methodology, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise indicated.

In addition, for all companies, where sales to the first unaffiliated purchaser took place after importation into the United States, we used CEP methodology, in accordance with section 772(b) of the Act.

We made the following company-specific adjustments:

A. Alliance

We calculated CEP based on packed, FOB U.S. warehouse prices to unaffiliated purchasers in the United States. We adjusted gross unit price for billing adjustments and freight revenue. We made deductions, where appropriate, for discounts. We also made deductions for international freight (including air freight and U.S. Customs merchandise processing fees) and U.S. inland freight to the customer, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

In accordance with section 772(d) of the Act, we made additional deductions for commissions, warranty and credit expenses, indirect selling expenses, inventory carrying costs, U.S. repacking expenses and U.S. further manufacturing costs.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

With regard to modules which were further-manufactured in the United States, we have based CEP on the net price of the modules rather than the net price of the individual SRAMs included in the modules.

B. ISSI

We calculated CEP based on packed, FOB U.S. warehouse prices to unaffiliated purchasers in the United States. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, pre-sale warehousing expenses, foreign and U.S. inland insurance, foreign brokerage and handling, and international freight (including air freight, U.S. customs merchandise processing fees, and U.S. inland freight to ISSI's U.S. office), where appropriate, pursuant to section 772(c)(2)(A) of the Act.

In accordance with section 772(d) of the Act, we made additional deductions for commissions, credit expenses, indirect selling expenses, inventory carrying costs, and U.S. repacking expenses. Regarding credit expenses, we found that ISSI had not received either full or partial payment for certain sales as of the date of verification. Consequently, we used the last day of ISSI's U.S. sales verification as the date of payment for any unpaid amount and recalculated credit expenses accordingly. For further discussion, see *Comment 11* in the "Interested Party Comments" section of this notice.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

C. UMC

We calculated EP and CEP based on packed, FOB prices to unaffiliated purchasers in the United States. We adjusted the gross unit price for billing adjustments and freight charges. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, foreign brokerage and handling, and international freight, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, in accordance with section 772(d) of the Act, for commissions, warranty and credit expenses, indirect selling expenses, and inventory carrying costs. Regarding credit expenses, we found that UMC had not received payment for certain sales as of the date of verification. Consequently, we used the last day of UMC's U.S. sales verification as the date of payment for those sales and recalculated credit expenses accordingly.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

D. Winbond

We calculated EP and CEP based on packed, FOB or delivered prices to unaffiliated purchasers in the United States. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, pre-sale warehousing expenses, foreign inland insurance, foreign brokerage and handling, international freight (including air freight, U.S. inland freight from the port to Winbond's U.S. warehouse, and U.S. brokerage and handling fees), international insurance, U.S. Customs merchandise processing fees, and U.S. inland freight to customer, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, in accordance with section 772(d) of the Act, for commissions, credit expenses, advertising expenses, warranty expenses, technical service expenses, indirect selling expenses,

inventory carrying costs, and U.S. repacking expenses.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C)(i) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that there was a sufficient volume of home market sales.

Because UMC and Winbond reported home market sales to affiliated parties, as defined by section 771(4)(B) of the Act, during the POI, we tested these sales to ensure that the affiliated party sales were made at "arm's-length" prices, in accordance with our practice. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (Appendix II) (July 9, 1993).) To conduct this test, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, discounts, rebates, and packing, where appropriate. Based on the results of that test, we disregarded sales from UMC and Winbond to their affiliated parties when they were not made at "arm's-length" prices.

Based on the cost allegation contained in the petition, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A) and packing costs, in accordance with section 773(b)(3) of the Act. General expenses include items such as research and development (R&D) expenses, and interest expenses.

Where possible, we used the respondents' reported weighted-average COPs for each quarter of the POI, adjusted as discussed below. In cases where there was no production within the same quarter as a given sale, we referred to the most recent prior quarter for which costs had been reported. In cases where there was no cost reported for either the same quarter as the sale, or a prior quarter, we based the margin for those sales of the products in question on facts available. *See Comment 7* in the "Interested Party Comments" of this notice for further discussion.

We compared the weighted-average quarterly COP figures to home market prices of the foreign like product, less any applicable movement charges and discounts, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below their respective COPs.

In determining whether to disregard home market sales made at prices below the COP, we examined: (1) whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the ordinary course of trade.

Where 20 percent or more of a respondent's sales of a given foreign like product were made at prices below the COP, we found that the below-cost sales of that model were made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) and (C) of the Act. To determine whether prices were such as to provide for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit COP at the time of the sale were above the weighted-average per-unit COP for the POI, in accordance with section 773(b)(2)(D) of the Act. If such sales were found to be below the weighted-average per-unit COP for the POI, we disregarded them in determining NV.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication costs, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Where respondents made no home market sales in the ordinary course of trade (*i.e.*, all sales were found to be below cost), we based SG&A and profit on one of the alternatives under section 773(e)(2)(B) of the Act. Specifically, we based SG&A and profit on the weighted-average of the SG&A and profit computed for those respondents with home market sales of the foreign like product made in the ordinary course of trade. For further discussion, *see Comment 11* in the "Interested Party Comments" section of this notice.

Company-specific calculations are discussed below.

A. Alliance

We relied on the reported per-unit COPs and CVs except as follows.

1. For COP, we revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*).

2. For CV, we based SG&A and profit on the weighted-average SG&A and profit experience of the three other respondents (*see Comment 11*).

Because all of Alliance's home market sales were made at prices below the COP, we based NV on CV. In addition to the adjustments to CV reported above, in accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced CV by the amount of weight-averaged home market indirect selling expenses and commissions incurred by those respondents with sales above the COP up to the amount of indirect expenses which were deducted from the starting price under section 772(d)(1)(D) of the Act.

B. ISSI

We relied on the reported per-unit COPs and CVs except as follows.

1. We revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*). Additionally, we offset R&D expenses with R&D revenue (*see Comment 16*).

2. We revised the reported general and administrative (G&A) expense ratio to include physical inventory loss and loss from disposal of property, plant and equipment (*see Comment 14*) and to eliminate the double counting of marine insurance (*see Comment 15*).

3. We revised the cost of sales denominator used for the G&A and R&D expense ratios by using the cost of sales from the audited income statement.

For those comparison products for which there were sales made at prices

above the COP, we based NV on delivered prices to home market customers. We made deductions for discounts, foreign inland freight, and insurance, where appropriate, pursuant to section 773(a)(6)(B) of the Act. We also made circumstance-of-sale adjustments for credit expenses and bank charges, pursuant to section 773(a)(6)(C)(iii) of the Act.

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR section 353.57. Where applicable, in accordance with 19 CFR section 353.56(b)(1), we offset any commission paid on a U.S. sale by reducing the NV by any home market commissions and indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

Where NV was based on CV, we deducted from CV the weighted-average home market direct selling expenses. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced NV by the amount of commissions and indirect selling expenses incurred by ISSI in Taiwan on sales of SRAMs in Taiwan, up to the amount of commissions and indirect selling expenses incurred on U.S. sales which were deducted from the starting price.

C. UMC

We relied on the reported per-unit COPs and CVs except as follows.

1. We increased the cost of manufacturing (COM) to include the market value of bonuses paid to directors, supervisors, and employees (*see Comment 8*).

2. We revised the reported costs for wafers supplied by an affiliated party to reflect the COP of the affiliate and the startup adjustment claimed by UMC (*see Comment 20*).

3. We revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*).

4. We removed from G&A foreign exchange gains and losses generated by accounts receivable and another source.

5. We added bonuses to the cost of sales used in the denominator in the G&A, R&D and interest expense ratios.

For those comparison products where there were sales made at prices above the COP, we based NV on delivered and FOB prices to home market customers. For home market price-to-EP comparisons, we adjusted the gross unit price for billing adjustments, where appropriate. We made deductions, where appropriate, for discounts, export duties, and foreign inland freight, in accordance with section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR section 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in warranty and credit expenses. We did not allow an adjustment for home market commissions because we determined that they were not made at "arm's length." See the memorandum to Louis Apple from the Team dated September 23, 1997, for a detailed explanation.

For home market price-to-CEP comparisons, we adjusted the gross unit price for billing adjustments, where appropriate. We made deductions, where appropriate, for discounts, export duties, and foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. We also made deductions for warranty and credit expenses. We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR section 353.56(b), we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. In addition, where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with 773(a)(6)(C)(ii) of the Act and 19 CFR section 353.57.

Where CV was compared to EP, we made circumstance-of-sale adjustments, where appropriate, for credit and warranty expenses and U.S. commissions in accordance with sections 773(a)(6)(C)(iii) and (a)(8) of the Act. In accordance with 19 CFR section 353.56(b)(i), we reduced NV by the amount of indirect selling expenses incurred by UMC in Taiwan on sales of SRAMs in Taiwan, up to the amount of U.S. commissions.

Where CV was compared to CEP, we made circumstance-of sale adjustments, where appropriate, for credit and warranty expenses. We also deducted indirect selling expenses, up to the amount of commissions and indirect selling expenses incurred on U.S. sales, in accordance with 773(a)(7)(B) of the Act.

D. Winbond

We relied on the reported per-unit COPs and CVs except as follows.

1. We increased the COM to include the market value of bonuses paid to directors, supervisors, and employees (*see Comment 8*).

2. We revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*).

3. We adjusted G&A expenses to include the unrecovered fire loss (*see Comment 27*), bank charges, and other miscellaneous expenses. Additionally, we excluded foreign exchange gains and losses on sales transactions.

4. We added bonuses to the cost of sales used in the denominators in the G&A, R&D and interest expense ratios (*see Comment 28*).

5. We increased Winbond's second quarter COM to include an unreconciled difference between its accounting records and its reported costs (*see Comment 24*).

6. We revised the COM for two products to reflect the standard cost and variance at the time of production.

Furthermore, we found at verification that, for all products, Winbond had misclassified certain variable overhead costs as fixed overhead. Because we do not have sufficient data on the record to appropriately reclassify these costs, we are unable to make difmer adjustments based on Winbond's reported variable costs. Therefore, we based the margin for all sales requiring a difmer adjustment on facts available. For further discussion, *see Comment 25* in the "Interested Party Comments" section of this notice.

Regarding EP sales, because there were no identical comparison products sold in the home market at prices above the COP, we made no EP to home market price or EP to CV comparisons. Regarding CEP, for those identical comparison products for which there were sales made at prices above the COP, we based NV on delivered prices to home market customers. We made deductions from gross unit price for discounts, import duties and development fees paid on sales to

customers outside of duty free zones. We deducted home market movement charges including pre-sale warehouse expenses, foreign inland freight, brokerage and handling charges, and inland insurance, where appropriate, in accordance with section 773(a)(6)(B) of the Act. We also made circumstance-of-sale adjustments for credit expenses (offset by the interest revenue actually received by the respondent), direct advertising expenses, warranty expenses, and post-sale payments to a third-party customer, pursuant to section 773(a)(6)(C)(iii) of the Act. We made no separate adjustment for technical service expenses, as they were included as part of R&D expenses. *See Comment 30.*

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR section 353.56(b), we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission. In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where CV was compared to CEP, we deducted from CV the weighted-average home market direct selling expenses. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced normal value by the amount of indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales which were deducted from the starting price.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. *See Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan Dollar did not undergo a sustained movement.

Verification

As provided in section 782(i) 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 and original source documents provided by the respondents.

Interested Party Comments

General Issues

Comment 1: U.S. Companies as Producers

Alliance, ISSI, and Galvantech argue that, as U.S. producers of subject merchandise, they should be excluded from this investigation. Specifically, these companies contend that: 1) the Department has found that the design is the essential component of the SRAMs under investigation; and 2) because their designs are developed in the United States, the SRAMs incorporating these designs are necessarily of U.S. origin.

Furthermore, Alliance, ISSI, and Galvantech maintain that the decision on origin of the subject merchandise set forth in the current scope definition (*i.e.*, where the wafer is produced) clearly conflicts with the Department's preliminary decision on who constitutes the producer in this case (*i.e.*, who controls the design). These companies state that continuing to define what constitutes subject merchandise by the origin of the wafer would lead to the treatment of U.S. companies as foreign producers, even when their home market is indisputably the United States and they have no foreign facilities. According to these companies, this result is contrary to the plain language of the dumping law, which was intended to reach foreign, not U.S., producers.

Alliance argues that the Department should harmonize its respondent and scope determinations by narrowly amending the scope of the case to exclude SRAMs from Taiwan that are imported by a U.S. design company that: 1) designed the chips in the United States; 2) controlled their production from the United States; and 3) either will use them itself or will market them from the United States. Alliance contends that this exclusion would not create a loophole that would diminish the effectiveness of any order in this case, because firms meeting the above requirements would add significant value in the United States.

According to the petitioner, Alliance, ISSI, and Galvantech have confused the Department's practice on two separate issues: 1) determining country of origin for dumping purposes; and 2) selecting the proper producer and exporter. The petitioner notes that, in past semiconductor cases, the Department has consistently based country of origin for dumping purposes on the place of wafer fabrication. Moreover, the petitioner states that the Department has not hesitated to include U.S. companies as respondents provided, as here, the elements of the Department's test for tolling are satisfied. As support for this contention, the petitioner cites several cases including *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064 (Mar. 29, 1996) (*PVA from Taiwan*) and *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium from the Russian Federation*, 60 FR 27957 (May 26, 1995) (*Ferrovanadium from Russia*).

According to the petitioner, the Department dealt with an identical issue in the 1993–1994 administrative reviews of the antidumping duty orders on carbon steel flat products. Specifically, the petitioner cites a December 1994 memorandum issued in those cases, where the Department stated that "the choice of respondent would be based on the party which controls the sale of the subject merchandise, including U.S. parties which subcontract part of the production process in a foreign country . . ." *See* "Discussion Memorandum: A Proposed Alternative to Current Tolling Methodology in the Current Antidumping (AD) Reviews of Carbon Steel Flat Products" from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance to Susan G. Esserman, Assistant Secretary for Import Administration, dated December 12,

1994. The petitioner further notes that the analysis in those cases was consistent with the current regulation on tolling, which states that the Department will not consider a subcontractor to be the manufacturer or producer, regardless of the proportion of production attributable to the subcontracted operation or the location of the subcontractor or owner of the goods. *See* 19 CFR section 351.401(h).

DOC Position

We agree with the petitioner. The Department's current policy on subcontracted operations is to consider as the manufacturer the entity which controls the production and sale of the subject merchandise. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value. Certain Forged Stainless Steel Flanges from India,* 58 FR 68853, 68855 (Dec. 29, 1993) (*Flanges from India*). Although the new regulations are not in effect for purposes of this case, they codify this practice. According to 19 CFR 351.401(h), the Department—

> * * * will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale, of the subject merchandise or foreign like product.

Nowhere in either our practice or in this regulation is there a prohibition against selecting U.S. companies as producers, nor is this the first case where we have treated U.S. companies as such.[2] Indeed, we note that Alliance agreed with our respondent selection analysis at the public hearing in this case, when it stated that U.S. companies can be respondents in dumping cases if their products are within the scope. *See* page 92 of the transcript of the public hearing, dated January 22, 1998. Because the U.S. design houses control the production of the subject merchandise, as well as its ultimate sale, we find that they are the appropriate respondents here. *See* the memorandum to Louis Apple from the Team, dated September 23, 1997, regarding Treatment of Foundry Sales and the Elimination of TSMC as a Respondent for a more detailed analysis concerning this issue.

Regarding the respondents' arguments on the country of origin of their products, we disagree that the design alone confers origin. At the design stage, the SRAMs in question are merely ideas, not physical products (*i.e.*, merchandise). These designs do not become actual merchandise until they are translated onto wafers. As such, while the design may be the essential component in the finished product, the design itself is *not* merchandise.

Consistent with our past practice, we find that the place of wafer fabrication is determinative as to country of origin. *See, e.g., DRAMs from Korea.* Because the wafers in question are fabricated in Taiwan, we find that they constitute subject merchandise within the meaning of the Act. Consequently, we are continuing to treat them as such for purposes of the final determination.

Comment 2: Scope of the Investigation

The petitioner argues that the Department should clarify that the scope of the order on SRAMs from Taiwan includes the SRAM content of motherboards for personal computers. The petitioner contends that if SRAMs incorporated on motherboards are not included in the scope of the order, the respondents will shift a significant volume of SRAMs into the production of motherboards in Taiwan that are destined for the United States, thereby avoiding paying duties on the SRAMs.

In addition, argues the petitioner, while motherboards viewed as a whole may be considered to fall within a class or kind of merchandise separate from SRAMs, the placement of SRAMs on a motherboard does not diminish their separate identity or function, and should not insulate them from antidumping duties. The petitioner contends that its position is supported by: 1) the Department's practice regarding combined or aggregated products; 2) analogous principles of Customs Service classification; and 3) the Department's inherent authority to craft an antidumping order that forestalls potential circumvention of an order.

The petitioner also argues that the Customs Service can administer, without undue difficulty, an antidumping duty order that covers SRAMs carried on non-subject merchandise.

At the public hearing held by the Department, the petitioner asserted that there are fundamental differences between the scope language in *DRAMs from Korea* and the scope language in this investigation that distinguish the two cases. The petitioner first argues that the scope language in DRAMs from Korea "said that the modules had to be limited to where the function of the board was memory. That limitation does not exist in this case." *See* the transcript of the public hearing, dated January 22, 1998, at page 162. The petitioner further argues that "[i]n the DRAM case, it says that 'modules which contain additional items which alter the function of the module to something other than memory are not covered modules.' That's a fundamental difference between these two scopes that was very carefully written and very carefully put into the scope of these two cases." *See* the hearing transcript at page 163.

IDT and Cypress agree with the petitioner, arguing that SRAMs on a motherboard are no less SRAMs than those imported separately and that the Department's failure to cover such imports would provide an incentive to foreign SRAM producers to shift their sales to motherboard producers in Taiwan and elsewhere.

Alliance, ISSI, UMC, Winbond, Motorola, Compaq, and Digital oppose the petitioner's position. Alliance, Compaq, and Digital argue that the petitioner's circumvention concerns are unfounded. They note that the Department determined in *DRAMs from Korea* that DRAMs physically integrated with the other components of a motherboard in a manner that made them part of an inseparable amalgam posed no circumvention risk and that the same holds true in this case.

In addition, Alliance, Compaq, Digital, UMC, and Winbond argue that, contrary to the petitioner's assertion, SRAMs affixed to a motherboard do not retain their separate functional identities. Rather, explains Alliance, SRAMs are integrated onto motherboards by soldering, are interconnected with other motherboard elements by intricate electronic circuitry, and become part of a complex electronic processing unit representing an inseparable amalgam constituting a different class or kind of merchandise that is outside the scope of the investigation.

Finally, UMC, Compaq and Digital argue that the petitioner's proposal is unworkable from an administrative standpoint, since it would require motherboard manufacturers to track all SRAMs placed in every motherboard throughout the world. Compaq and Digital note that they cannot determine the value of Taiwan SRAMs incorporated in a particular motherboard. In addition, ISSI, Compaq, and Digital argue that the petitioner's proposal would be unadministrable by the Customs Service because the SRAM content of a motherboard cannot be determined by physical inspection and also because the petitioner has provided no realistic proposition as to how the Customs Service might carry out the petitioner's proposal on an entry-by-entry basis, given the enormous volume of trade in motherboards.

With regard to the petitioner's assertion that the scope of the language

[2] *See, e.g., PVA from Taiwan.*

in *DRAMs from Korea* is fundamentally different from the scope language in this investigation, Compaq and Digital argue that the language is quite similar and that there is no "doubt that literally the language in this Notice of Investigation and in the preliminary referred to certain modules, and those are memory modules, not any kind of board on which other elements are stuffed." *See* the hearing transcript at page 172.

DOC Position

We disagree with the petitioner. The petitioner's argument that the scope of the investigation as defined in the preliminary determination should be interpreted to encompass the SRAM content of motherboards is unpersuasive for three basic reasons. First, the SRAM content of motherboards (when affixed to the motherboard) was not expressly or implicitly referenced in the scope language used in this investigation. Second, just as we found in the investigation of *DRAMs from Korea*, the petitioner's claims about potential circumvention of the order with SRAMs soldered onto motherboards are inseparable. Third, it is not appropriate for an antidumping duty order to cover the input content of a downstream product. As the Department found in *DRAMs from Korea*, a case in which a nearly identical proposal was rejected by the Department, when a DRAM is physically integrated with a motherboard, it becomes a component part of the motherboard (an inseparable amalgam). As there has been no request to include motherboards within the scope of this investigation, the SRAM content of motherboards (when physically integrated with the motherboard) cannot be covered.

As to the first point, we disagree with the petitioner's assertion that the differences between the scope language in *DRAMs From Korea* and the language in this case are so fundamental that the differences can be interpreted to mean that SRAMs soldered onto motherboards are included within the scope of this investigation. The SRAM scope language relied upon by the petitioner includes within the scope of this investigation "other collection[s] of SRAMs;" as the petitioner notes in its argument, this refers specifically to modules whether mounted or unmounted on a circuit board. There is similar scope language in *DRAMs From Korea*. In that case, we interpreted the language as not extending to modules which contain additional items which alter the function of the module to something other than memory. Such an interpretation, applied to this case, indicates clearly that the SRAM content of motherboards is not within the scope of this investigation.

We found in *DRAMs From Korea* that memory boards whose sole function was memory were included within the definition of memory modules; however, we further concluded that other boards, such as video graphic adapter boards and cards were not included because they contained additional items which altered the function of the modules to something other than memory. Consequently, at the time of the final determination, we added language to the *DRAMs From Korea* scope in order that these other, enhanced, boards be specifically excluded. Since the issue of such enhanced boards was not raised in this case, we did not find it necessary to include an express exclusion for such products. Thus, the absence of such language should not be interpreted to permit the inclusion of products which do not fall under the rubric of "other collections of SRAMs."

As to the second point, the petitioner argued in *DRAMs from Korea* that unremovable DRAMs on motherboards should be included in the scope of the order to counter the potential for circumvention of the order. We stated in our determination that we considered it "infeasible that a party would import motherboards with the intention of removing the integrated DRAM content and, therefore, consider it unreasonable to expect that any order arising from this investigation could be evaded in such a fashion." *See* the memorandum to Joseph Spetrini from Richard Moreland, dated March 15, 1993, at page 13, attached as Exhibit 1 to Winbond's submission of January 7, 1998. We find it equally infeasible that an importer would import SRAMs soldered onto a motherboard for the sole purpose of removing those SRAMs for individual resale thereby circumventing the antidumping duty order.

As to the third point, our statute does not provide a basis for assessing duties on the input content of a downstream product. *See* Senate Rep. 100–71, 100th Congress, 1st Sess. 98 (1987) (in which the report notes both the general rule and the "major input" exception, which applies only in an investigation or review of a downstream product). Thus, where an SRAM loses its separate identity by being incorporated into a downstream product, and where the investigation covers SRAMs but does not cover the downstream product, there can be no basis for assessing duties against the SRAMs incorporated in the downstream product.

For a more detailed discussion regarding this issue, see the memorandum to Louis Apple from the Team, dated February 13, 1998.

Comment 3: Selection of Dumping Margin for Galvantech

Galvantech argues that, if the Department does not exclude its products from the scope of the investigation, the Department should assign Galvantech the margin calculated for ISSI for purposes of the final determination. According to Galvantech, 19 U.S.C. § 1677(e) requires the Department to determine an importer's margin based on the most reliable information available. Galvantech asserts that, in this case, ISSI's margin is the most reliable information applicable to Galvantech because both companies fabricate wafers using the same foundry under similar foundry agreements. Galvantech asserts that the all others rate is less reliable because it does not contain any information related to either Galvantech or its foundry.

The petitioner asserts that Galvantech is not entitled to ISSI's margin as facts available. According to the petitioner, Galvantech provides no compelling reason for the Department to abandon its standard practice in this investigation and assign one individual respondent's rate to a non-participating producer. The petitioner notes that, because Galvantech neither submitted a questionnaire response nor participated in verification, the Department has no basis to determine that Galvantech is more similarly situated to ISSI than to Alliance, another design house without a fabrication facility (*i.e.*, "fabless") that received a preliminary dumping margin which exceeded the all others rate.

DOC Position

We agree with the petitioner that Galvantech should not be assigned ISSI's margin. The Department's practice in this area is to assign the all others rate to any company not specifically investigated in a proceeding. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9742 (Mar. 4, 1997) (*Rebar from Turkey*). Consistent with this practice, we have assigned Galvantech the all others rate because it was not a respondent in this investigation.

We note that the all others rate is not intended to set the rate at which antidumping duties are ultimately assessed on entries of subject merchandise. Rather, the all others rate merely establishes the level of antidumping duty deposits required on future entries. Prior to the time that

actual duty assessments are made, each exporter, importer or producer of subject merchandise has the right to request that the Department conduct an administrative review of its actual entries and determine its dumping liability on a company-specific basis. In the event that an antidumping duty order is issued in this case, Galvantech will have an opportunity to request such an administrative review.

Comment 4: Exclusion of TSMC as a Respondent

TSMC argues that the decision to exclude it as a respondent in this investigation is not supported by evidence on the record, and is contrary to applicable laws, regulations, precedent, and requirements for procedural fairness.

Specifically, TSMC cites 19 CFR section 351.401(h),[3] stating that TSMC qualifies as both a manufacturer and an interested party because evidence on the record establishes that TSMC acquires ownership of the subject merchandise and that design houses do not control TSMC's sales of subject merchandise.[4]

In addition, TSMC contends that the Department based its decision on erroneous information, including the following: (1) design houses perform all of the R&D for SRAMs; (2) design houses tell the foundries what and how much to produce; (3) TSMC has no right to sell wafers to any party other than the design house unless it fails to pay for the wafers; (4) design houses own and provide masks for the production process; and (5) masks are considered to be inputs into the production of SRAMs. TSMC argues that it is a proper respondent because it performs all process R&D, freely negotiates production quantities and types, freely contracts to supply merchandise exclusively to particular design houses, and makes and maintains possession of virtually all masks used in its fabrication facilities (also known as "fabs"). Moreover, TSMC characterizes masks as equipment used in the wafer fabrication process, rather than raw material inputs.

TSMC also states that, based on the facts on the record and the Department's practice of granting manufacturer status to, and calculating individual margins for, producers that manufacture and sell custom-made products, it should be considered the producer of the subject merchandise. TSMC cites the following cases in support of its position: *Flanges from India, Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394 (May 5, 1997), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 54 FR 18992, 19012 (May 3, 1989) (*AFBs*), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081 (Jan. 15, 1997), *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Reviews*, 61 FR 51891 (Oct. 4, 1996), *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139 (July 23, 1996), *Mechanical Transfer Presses from Japan; Final Results of Antidumping Administrative Review*, 62 FR 11820 (Mar. 13, 1997), and *Large Power Transformers from Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 29215 (June 26, 1991). In addition, TSMC cites *Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 58 FR 32644 (June 11, 1993), claiming that, as in that case, the Department should grant TSMC manufacturer status because it bought raw materials used to produce subject merchandise, controlled the process of manufacture, and performed processing on the subject merchandise.

TSMC claims that, by making the decision to exclude it at the preliminary determination and, therefore, to not verify it, the Department denied any meaningful opportunity for TSMC to present its case. Finally, TSMC argues that, if the Department upholds its decision that the design house is the producer of the subject merchandise, the Department should also find that TSMC's products (*i.e.*, SRAM wafers) are of U.S. origin. Accordingly, TSMC argues that the Department should exclude its wafers from the scope of the investigation.

The petitioner states that the Department properly excluded TSMC as a respondent for the following reasons: (1) the Department properly determined that TSMC is not a proper producer or exporter based on applicable law and regulations regarding "tolling"; (2) the Department's decision is fully grounded in the record with respect to each element of an affirmative finding of tolling between TSMC and its design houses; (3) the cases cited by TSMC are distinguishable from the instant case, as described in the memorandum to Louis Apple from the Team, dated September 23, 1997; and (4) TSMC was afforded due process not only because the memorandum to Louis Apple from the Team, dated May 15, 1997, regarding respondent selection, implied that TSMC would not be considered a proper respondent if all of its sales were made through foundry agreements, but also because all interested parties were given an opportunity to comment on this issue after the preliminary determination.

DOC Position

We agree with the petitioner. The preliminary determination to exclude TSMC as a respondent in this investigation was made after taking into account the evidence on the record, and was in accordance with applicable law, regulations, and precedent. Regarding TSMC's claim that the Department based its decision on erroneous information, we continue to reach the central conclusions set forth in our decision memorandum on this issue. See the memorandum to Louis Apple from the Team, dated September 23, 1997, regarding Treatment of Foundry Sales and the Elimination of TSMC as a Respondent. As we stated in this memorandum,

> Regarding control over production in this case, after reviewing and analyzing the information submitted by respondents, including the contracts between the design houses and the foundries, we believe that the entity controlling the wafer design in effect controls production in the SRAMs industry. The design house performs all of the research and development for the SRAM that is to be produced. It produces, or arranges and pays for the production of, the design mask. At all stages of production, it retains ownership of the design and design mask. The design house then subcontracts the production of processed wafers with a foundry and provides the foundry with the design mask. It tells the foundry what and how much to make. The foundry agrees to dedicate a certain amount of its production capacity to the production of the processed wafers for the design house. The foundry has no right to sell those wafers to any party other than the design house unless the design house fails to pay for the wafers. Once the design house takes possession of the processed

[3] TSMC cites to the new regulations as a codification of current Department practice.

[4] TSMC considers the relevant sale to be its sale of SRAM wafers to its design house customers in the United States and Taiwan. However, the Department preliminarily determined that the relevant sale in a foundry agreement is the ultimate sale of SRAMs made by the design house.

wafers, it arranges for the subsequent steps in the production process. The design of the processed wafer is not only an important part of the finished product, it is a substantial element of production and imparts the essential features of the product. The design defines the ultimate characteristics and performance of the subject merchandise and delineates the purposes for which it can be used. The foundries manufactured processed SRAMs wafers using the proprietary designs of the design houses during the POI. As such, they did not control the production of the wafers in question, but merely translated the design of other companies into actual products.

We agree with TSMC that there are certain factual errors in the memorandum of September 23, 1997, but disagree as to the significance of these errors. With regard to the first alleged "error" identified by TSMC, we agree that the process R&D is performed by the foundry, but note that the design houses are responsible for all product-related R&D as well as the proprietary designs. These steps impart the essential features of the product and define its ultimate characteristics and performance. With regard to the second alleged "error," we agree that the production quantities and types are negotiated between the foundry and the design houses; this fact neither supports nor undermines a finding that the design houses are the producers of the subject merchandise. With regard to the third alleged "error," we note that TSMC does not dispute the finding that the foundry has no right to sell wafers to any party other than the design house unless the design house fails to pay for the wafers. With regard to the fourth alleged "error," while it may be true that the masks are produced and retained for a limited time by the foundry, the party that provides the design imparts the essential features of both the mask and the product; indeed, the design house controls the use of the mask just as much as it controls the use of the finished product (in that TSMC is obligated at some point to destroy the mask to prevent unauthorized reuse). With regard to the fifth alleged "error," we do not find the characterization of the masks as either "inputs" or "equipment" to be a relevant distinction in this case.

With regard to TSMC's argument that this case is analogous to cases in which the Department has found the manufacturer of a "custom-made" product to be the producer, we note that the decision memorandum concluded with the finding that "[t]he design of the processed wafer is not only an important part of the finished product, it is a substantial element of production and imparts the essential features of the product. The design defines the ultimate characteristics and performance of the subject merchandise and delineates the purposes for which it can be used." This case is not analogous to cases in which the purchaser merely provides product specifications to the manufacturer. Moreover, we find unpersuasive TSMC's reference to *AFBs*. The issue discussed by the Department in the cited portion of the notice was whether certain custom-designed bearings were within the scope of the investigation. The Department did not discuss the question of whether the bearing designer, as opposed to the bearing manufacturer, should be considered to be the respondent.

Finally, with regard to TSMC's argument that its wafers should not be covered by the scope of the investigation, we find that these wafers constitute subject merchandise. As subject merchandise, we find that they are properly included in the scope. For further discussion, see *Comment 1*, above.

Comment 5: Facts Available for TI–Acer

For the preliminary determination, the Department assigned TI–Acer a margin based on adverse facts available because it did not respond to the antidumping questionnaire. TI–Acer argues that the Department should not assign it a dumping margin based on adverse facts available because TI–Acer has no record of receiving the questionnaire. Rather, TI–Acer asserts that the Department should apply the all others rate, consistent with both previous legal decisions and the Department's treatment of other companies in this investigation. (*See Queen's Flowers de Colombia v. United States*, Slip Op. 97–120 (CIT Aug. 25, 1997) (*Queen's Flowers*), where the Court of International Trade found that the use of facts available was unwarranted when a respondent did not receive the questionnaire, and the Department's preliminary determination in this investigation, where the Department applied the all others rate to a company that could not be located.) TI–Acer claims that it should be subject to the all others rate because it is not a producer of subject merchandise and section 735(c)(1)(B)(i)(II) of the Act states that the all others rate is applied to all exporters and producers not individually investigated.

DOC Position

We disagree with TI–Acer's assertion that the Department should assign it the all others rate. In *Queen's Flowers*, the Department found that the application of facts available was unwarranted because the questionnaire was delivered to the wrong address. However, in this case the questionnaire was sent to TI–Acer's correct address and, according to records obtained from the courier, was accepted by TI–Acer. *See* the Department's letters addressed to TI–Acer dated October 22 and December 9, 1997.

Regarding TI–Acer's assertion that it should be assigned the all others rate under section 735(c)(1)(B)(i)(II) of the Act because it was not individually investigated, we note that our investigation of TI–Acer began with the issuance of the questionnaire. Because TI–Acer did not file a timely questionnaire response, we were unable to determine that it was not a significant producer or exporter of subject merchandise and, consequently, to determine that it did not warrant individual investigation. For this reason, we found that TI–Acer failed to act to the best of its ability and applied adverse facts available to it for the preliminary determination. Since the time of the preliminary determination we have not received any information which would cause us to change this decision. Accordingly, we have assigned a dumping margin to this company based on adverse facts available for purposes of the final determination. This margin, 113.85 percent, is the highest margin stated in the notice of initiation.

Comment 6: CEP Offset

The petitioner contends that the Department should make no CEP offset adjustment for any respondent for purposes of the final determination. The petitioner asserts that the Department's practice of determining the number and comparability of levels of trade after making all adjustments to CEP, but before adjusting NV, makes CEP offsets virtually automatic. According to the petitioner, under both the plain terms of the statute and the intent of Congress, such adjustments should be the exception, not the rule. The petitioner notes that it raised the same argument in another case and that the issue is being litigated. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 62 FR 965 (Jan. 7, 1997) (*1994–1995 DRAMs Review*).

In addition to this general argument, the petitioner asserts that the Department specifically erred in granting a CEP offset adjustment to UMC because UMC neither requested an adjustment nor demonstrated that it was entitled to one. According to the

petitioner, the Department's practice is to require respondents to affirmatively request adjustments in their favor and to demonstrate entitlement for these adjustments. As support for this position, the petitioner cites *Mechanical Transfer Presses From Japan; Final Results of Antidumping Administrative Review*, 61 FR 52910 (Oct. 9, 1996) (*Mechanical Transfer Presses*) and *Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Administrative Review*, 62 FR 18476 (April 15, 1997) (*Cold-Rolled Carbon Steel Flat Products*).

The respondents disagree, noting that the statute requires that a level of trade analysis be performed only after adjustment is made for U.S. selling expenses. *See* 19 U.S.C. § 1677b(a)(7)(A). The respondents further state that the Department's practice in this area is both clear and consistent with the statute. As support for this proposition, the respondents cite the *1994–1995 DRAMs Review*, where the Department stated that the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. The respondents maintain that there is nothing new in the law or the facts of this investigation to suggest that the Department should reexamine its practice of beginning its level of trade analysis after adjusting for U.S. expenses.

The respondents further assert that the Department properly interpreted its statutory mandate by granting CEP offset adjustments in this case. Specifically, the respondents assert that they have supported their claims for these adjustments in their questionnaire responses and the Department verified the basis for these claims.

Regarding the offset granted to UMC, UMC argues that nothing in the statute imposes an obligation on a respondent to claim a CEP offset. Nonetheless, UMC states that it effectively asked the Department for the equivalent of an offset when it requested that the Department find two levels of trade in the home market and the United States.

Moreover, UMC asserts that the cases cited by the petitioner (*i.e.*, *Mechanical Transfer Presses* and *Cold-Rolled Carbon Steel Flat Products*) do not apply here, as the former involved a company which submitted no information showing a difference in selling functions and the latter involved a company which made inconsistent statements involving level of trade in its questionnaire responses. UMC states that, since the beginning of the case, it has consistently provided information showing that it qualifies for a CEP offset. Consequently, UMC states that the statute leaves the Department with no choice but to grant one.

DOC Position

We agree with the respondents. As we stated in the *1994–1995 DRAMs Review*, the Department has—

> consistently stated that, in those cases where a level of trade comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act (see *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan; Notice of Final Determination of Sales at Less Than Fair Value*, 61 FR 38139, 38143 (July 23, 1996). In every case decided under the revised antidumping statute, we have consistently adhered to this interpretation of the SAA and of the Act. *See, e.g., Aramid Fiber Formed of Poly para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 15766, 15763 (April 9, 1996); *Certain Stainless Steel Wire Rods from France; Preliminary Result of Antidumping Duty Administrative Review*, FR 8915, 8916 (March 9, 1996); *Antifriction Bearings (Other Than Tapered Roller Bearings) and parts Thereof from France, et. al., Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 25713, 35718–23 (July 8, 1996).

The Department's practice in this area is clear. Accordingly, consistent with this practice, we performed our level of trade analysis only after adjusting for selling expenses deducted from CEP starting price pursuant to section 772(d) of the Act. Based on our analysis, we determined that each respondent sold SRAMs during the POI at a level of trade in the home market which was different, and more advanced, than the level of trade at which it sold SRAMs in the United States.

Because there is insufficient information on the record to make a level of trade adjustment for any respondent in this case, we have granted a CEP offset adjustment for purposes of the final determination, in accordance with section 773(a)(7)(B) of the Act. Each of the respondents, including UMC, provided sufficient data to justify this adjustment,

Comment 7: Use of Production Costs Incurred After the Quarter of Sale

The petitioner argues that the Department should compare home market sales with quarterly costs for the same or a prior quarter when performing the cost test, rather than using costs incurred in subsequent quarters. The petitioner asserts that use of actual production costs is particularly important in this case, because the Department found that there was a significant and consistent price and cost decline which requires the use of quarterly data. The petitioner contends that the Department should use facts available for those sales where the respondents have not provided actual cost data. As facts available, the petitioner argues that the Department should use the weighted-average dumping margin calculated for all other sales by that respondent.

ISSI does not dispute the use of quarterly costs incurred in the same or a prior quarter as the quarter of sale. However, ISSI contends that, when those costs are not on the record, the Department should use either: (1) The reported costs from the closest subsequent quarter in which production occurred (*i.e.*, the methodology employed in the preliminary determination); or (2) the weighted-average margin calculated for ISSI's other sales. According to ISSI, the latter methodology is the Department's practice when adverse facts available is not warranted.

Alliance argues that the petitioner's arguments do not apply, because it supplied all of the data requested by the Department.

DOC Position

We agree with the petitioner, in part. We requested that all respondents provide cost data in the same quarter as the quarter of their home market and U.S. sales, or, when production did not occur in that quarter, to provide cost data for the most recent prior quarter in which production did occur. UMC and Winbond complied with these requests. Accordingly, we have used their cost data for purposes of the final determination. However, Alliance and ISSI did not submit production costs on this basis for a small number of products. Moreover, ISSI did not report production costs at all for one product. Because we afforded respondents the opportunity to report their actual costs for these products and Alliance and ISSI failed to do so, we have based the dumping margins for the associated sales on facts available.

Regarding Alliance, as facts available, we have used the weighted-average dumping margin calculated for all of Alliance's other sales. We have determined that this methodology is appropriate, given that, after the preliminary determination, Alliance was not given an express opportunity (unlike the other respondents, including ISSI) to provide the necessary data.

Regarding ISSI, we have determined that, contrary to the petitioner's neutral facts available methodology, an adverse assumption is appropriate. Because ISSI

has not explained why it was unable to provide the requested data, we find that ISSI has failed to cooperate to the best of its ability in complying with our requests for this information. Accordingly, as adverse facts available, we have used the highest non-aberrant margin calculated for any of ISSI's other U.S. sales, consistent with our treatment of ISSI's unreported costs in the preliminary determination.

Comment 8: Cash and Stock Bonus Distributions to Directors, Supervisors, and Employees

UMC and Winbond argue that cash and shares of company stock given to their employees are distributions of profits that should not be included in the calculations of COP or CV. These respondents argue that these distributions are not recorded on their audited financial statements as an expense, but as direct reductions to retained earnings. In addition, Winbond argues that its distributions are paid out of post-tax earnings and are, therefore, not tax-deductible. The respondents note that section 773(f)(1)(A) of the Act states that COP and CV shall normally be calculated based on the books and records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country, and if such records reasonably reflect the costs associated with the production of the merchandise under investigation. The respondents claim that these requirements are met by their consistent treatment of these stock distributions as reductions to retained earnings, in accordance with Taiwan GAAP.

The respondents argue that the distributions are analogous to dividends, which the Department has previously excluded from COP and CV. Specifically, Winbond maintains that, as with dividends, the company shareholders alone have the ability to authorize these payments. In support of its position, Winbond presented a letter from its Taiwanese attorneys which argues that cash and stock distributions to employees are treated as equivalent to dividends. Winbond also claims that English versions of its financial statements refer to the employee stock distributions as "bonus shares" in a short-hand, casual manner, which is factually inaccurate and prejudicial. Winbond argues that readers of its financial statements understand that such distributions are actually a transfer of wealth from shareholders to employees. Winbond also presented a letter from its auditing firm which stated that the distributions were issued from equity, rather than company capital, and, as such, are more akin to preferred stock than bonuses under U.S. GAAP.

Winbond argues that the Department has consistently held that payments made by a company on behalf of its owners are not costs of production, even if they are carried on the company's books. In support of its position, Winbond cites to *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980, 7000 (Feb. 6, 1995) (*Colombian Roses*) and *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand*, 57 FR 13695, 13704 (April 17, 1992) (*New Zealand Kiwifruit*). Winbond also cites to *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria*, 60 FR 33551, 33557 (June 28, 1995) (*Austrian OCTG*), claiming that the bonus distributions are similar to dividends which were recorded in the equity section of the balance sheet rather than on the income statement.

Likewise, UMC argues that the recipients of its distributions are in a similar position to shareholders who receive dividends. UMC notes that the value of company stock varies with its performance and the recipients of distributions and dividends both share the economic risk the company faces. UMC argues that company stock distributed to employees represents a conveyance of ownership rights, and thus these distributions are more akin to dividends than to the cash distributed as bonuses to employees in *Porcelain-on-Steel Cookware from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 25908, 25914 (May 12, 1997) (*Mexican Cookware*).

The respondents claim that treating employee stock distributions as a cost of production would be contrary to Department practice. UMC cites *Notice of Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil*, 62 FR 43504, 43511 (August 14, 1997) (*Ferrosilicon from Brazil*), where the Department treated "social contributions" for employees as a type of federal income tax and excluded the costs from the calculation of G&A expenses. Similarly, Winbond cites the Department's treatment of the enterprise tax in *Final Determination of Sales at Less Than Fair Value: High Information Content Flat Panel Display Screen and Glass Therefor from Japan*, 56 FR 32376, 32392 (July 16, 1991) (*Flat Panel Displays from Japan*), where the tax was levied on the basis of corporate income and unrelated to the COP.

Finally, the respondents argue that, should the Department decide to include employee stock distributions in COP and CV, the stock should be valued at par rather than at market value. The respondents claim that the par value more accurately reflects the cost of the transaction, as reflected in their accounting records. However, UMC asserts that, if the Department uses market value, it should discount the value of the distributions for associated risk factors because to do otherwise would overstate their value. Finally, arguing that the Department's calculation was incorrect under U.S. GAAP, Winbond presented a calculation prepared by its auditors setting forth their calculation of the market value of the distributions.

The authorities on Taiwan argue that the record in this case provides substantial evidence that stock distributions bear no relationship to production costs and have been properly classified as adjustments to retained earnings. The authorities on Taiwan state that this evidence includes: (1) A clear record of prior accounting treatment; (2) the fact that the existence and amount of stock distributions are ultimately controlled by shareholders; (3) the fact that stock bonuses are not tax deductible; and (4) the fact that the market value of the stock can and has fluctuated significantly.

The petitioner argues that the Department correctly classified the stock distributions in question as bonuses and properly included them in COP and CV. The petitioner points out that the Department's questionnaire requires respondents to report all compensation to employees, including bonuses. Moreover, the petitioner argues that, not only does U.S. GAAP prohibit companies from excluding stock bonuses from the income statement, but also excluding a significant portion of employee remuneration from the cost calculation fails to reasonably reflect the costs associated with the production of subject merchandise. Therefore, according to the petitioner, it is appropriate for the Department to adjust the costs as recorded in the respondents' normal books and records.

The petitioner points to an article prepared by ING Barings in March 1996 which states that net margins for some Taiwan electronics corporations "are deceptively high * * * due to the way employee bonus shares are distributed and the way accounting is treated." *See* the petitioner's letter dated September 3, 1997. According to the petitioner, the ING Barings report notes that the Taiwan GAAP treatment of such

bonuses permits companies to retain key employees while giving the appearance of high profitability, and characterizes such bonuses as a hidden cost not reflected in the income statement.

The petitioner asserts that the respondents' arguments regarding the control and authorization of bonuses by company shareholders are irrelevant and that such arguments do not change the fact that these amounts represent a cost of labor. The petitioner claims that stock and cash payments represent compensation by UMC and Winbond to their employees because they are paid in return for work performed for the company. The petitioner notes that U.S. GAAP states that, with regard to stock options, "Employees provide services to the entity—not directly to the individual stockholders—as consideration for their options * * * To omit such costs would give a misleading picture of the entity's financial performance." *See* Statement of Financial Accounting Standards (SFAS) No. 123, issued by the Financial Accounting Standards Board (FASB) in October 1995, at paragraph 90.

The petitioner argues that the Department has previously found that payments to employees, in whatever form, are a part of the compensation paid to employees and should be treated no differently than salaries or other employee benefits because they flow directly to a factor of production. *See Mexican Cookware.* The petitioner claims that the Department did not conclude in *Mexican Cookware* that if the bonuses had been made in the form of stock then they should be excluded from cost, despite the respondents' arguments to the contrary.

According to the petitioner, stock bonuses should be included in COP and CV at the market value. The petitioner argues that the par value of stock is purely nominal, with no relationship to the stock's actual value. The petitioner notes that the par value of stock for all companies in Taiwan is set at NT$10 and that the use of par value ignores the economic substance of the transaction. The petitioner points out that U.S. GAAP rejects the use of par value and instead requires that bonuses be recorded at the market value on the date the stock or stock option is granted.

DOC Position

We agree with the petitioner. The amounts distributed by UMC and Winbond to their directors, supervisors, and employees, whether in the form of stock or cash, represent compensation for services which 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 that is not reflected in the reported COPs and CVs.

Specifically, we disagree with the respondents' classification of these payments as dividends. First, we note that they are identified on the respondents' English version audited financial statements as bonuses. Second, we note that the distribution arrangement is set forth in each company's articles of incorporation, is known to the individuals that seek employment at UMC or Winbond and is considered by each company's management when setting wage and salary levels.[5]

Authorization by the stockholders does not mean that the distributions are not a cost to the company; we note that the company is foregoing the opportunity to acquire capital by issuing or selling those shares to investors at the market price. The economic substance of the distributions is that the directors, supervisors and employees have performed services for the company and the stock and cash distributions are provided to them as additional compensation for their services. Under U.S. GAAP, these distributions would be reported as an expense on the income statement and not as a deduction from retained earnings.

We disagree with the respondents' claims that the inclusion of these amounts in COP and CV contradicts Department's normal practice and is contrary to our findings in *Mexican Cookware.* The Department addressed the issue of profit-sharing in *Mexican Cookware*, where profit-sharing was accounted for in a similar manner. In *Mexican Cookware* we stated that profit-sharing is distinct from dividends in that the profit-sharing distributions represent a legal obligation to a productive factor in the manufacturing process and not a distribution to the owners of the company. Dividends paid to shareholders would not be considered a cost by the Department. In *Mexican Cookware*, as in this case, the distributions were to employees in exchange for their services on behalf of the company. It is irrelevant that company employees who receive stock bonuses obtain ownership rights and will thereafter share an economic risk with other shareholders.

Furthermore, we disagree with Winbond's interpretation of the Department's practice, as presented in *Colombian Roses*, *New Zealand Kiwifruit*, and *Austrian OCTG.* In *Colombian Roses*, the amounts paid out by the respondent were excluded because the recipient of the payments did not perform any service for the company. In the instant case, however, the stock distributions made by UMC and Winbond are compensation to company employees for their services. Similarly, in *New Zealand Kiwifruit* the Department excluded from COP costs which were determined to be the owner's personal expenses. Contrary to Winbond's claim, the *New Zealand Kiwifruit* decision does not indicate that the Department excluded costs which were recorded in the respondent's accounting records. Finally, we note that *Austrian OCTG* supports the Department's decision in this case, because in *Austrian OCTG* the Department noted that "profit sharing plans are directly related to wages and salaries. Profit distributions to employees are treated in a manner similar to bonuses * * * these mandatory payments represent compensation to the employees for their efforts in the production of merchandise and the administration of the company." The same circumstances exist here and our treatment of employee stock distributions is entirely consistent with the decision made in *Austrian OCTG.* Finally, regarding Winbond's attempts to compare its stock distributions to the dividends paid out in *Austrian OCTG*, we note that stock distributions can be easily distinguished from dividends, as discussed in *Mexican Cookware.*

We find that the respondents' cites to *Ferrosilicon from Brazil* and *Flat Panel Displays from Japan* are equally misplaced. In those cases the amounts were charges by the government to the company, rather than amounts authorized by the board of directors and paid by the company to its employees.

Regarding the respondents' claim that we should value the stock distributions at par value (which reflects the amount at which they are recorded in the

[5] For example, UMC announces on its Internet home page, under the heading of "Employment opportunities—Compensation" that a "fixed portion of surplus profit is passed to employees as either cash or UMC shares." Winbond announces on its home page that its compensation and benefits include "holiday bonuses" and "profit sharing."

companies' financial statements), we disagree. Because the par value of company stock in Taiwan is set under the Company Law at NT$10 for each company, we find that the stock's par value does not represent the value of the distribution to the employees. As described in Intermediate Accounting (8th Edition, Kieso & Weygandt, 1995) at 739, par value "has but one real significance; it establishes the maximum responsibility of a stockholder in the event of insolvency or other involuntary dissolution. Par value is thus not 'value' in the ordinary sense of word."

We agree with the petitioner that these distributions should be valued at fair market value. Under U.S. GAAP, as directed by the FASB in SFAS No. 123, shares of stock awarded to employees should be valued at the fair value of the stock at the grant date. The SFAS also directs that, "If an award is for past services, the related compensation cost shall be recognized in the period in which it is granted." In the instant case, the stock distributed by UMC and Winbond in the current year was for service of the prior year. Under U.S. GAAP, it is appropriate to recognize the compensation cost in the period when it was granted. Therefore, the stock bonus granted during 1996 for 1995 service should be recognized as a cost during 1996.

As to the determination of fair market value, because the employee stock bonuses were authorized by UMC and Winbond shareholders at the annual shareholders' meetings, our preference would be to value the stock at the market price on those dates. However, since the dates of those meetings are not on the case record, we have valued the stock distributions on the dates of issuance. This is a reasonable surrogate because employees do not receive the stock until the date of issuance and, thus, the value of what they are receiving is not fixed until that date. We note that using the closing stock price on the date of issuance accounts for market risk associated with the distribution. We disagree with the calculation prepared by Winbond's auditors because that calculation incorrectly values Winbond stock at the company's fiscal year end, rather than the grant date specified under U.S. GAAP.

We also disagree with the arguments raised by the authorities on Taiwan. The record supports the Department's determination that the cash and stock distributions represent compensation to directors, supervisors, and employees and, therefore, they are a cost within the meaning of section 773(f)(1)(A) of the Act, despite the accounting treatment prescribed by Taiwan GAAP. We acknowledge the existence of the specific items that the government of Taiwan points to as evidence, but we disagree with the government of Taiwan's conclusion that these items support the exclusion of the cash and stock distributions from the respondents' COP and CV.

Comment 9: Research and Development Expenses

Each of the four respondents argues that the Department improperly allocated semiconductor R&D expenses to all semiconductor products in the preliminary determination.

Alliance claims that such an allocation is inappropriate because companies without fabrication facilities, such as Alliance, engage in R&D for circuit design of new products, rather than in the process R&D pursued by companies that fabricate SRAM wafers. Alliance refers to a letter from Professor Bruce A. Wooley which states that, "[I]n the case of circuit design techniques there is virtually no cross-fertilization among various classes of memories." *See* exhibit one of Alliance's submission dated September 15, 1997. Alliance claims that the articles proffered by the petitioner to support its claim that R&D conducted in one area benefits other areas mainly relate to process technology which may benefit a variety of products and to the incorporation of separate designs on a single chip; they do not address whether design technology from one type of memory product benefits the design of another. Alliance argues that both its verified R&D information and the fact that the company separates product-specific R&D for accounting purposes demonstrate that the R&D conducted by Alliance is product-specific design R&D, which does not benefit all products. Alliance argues that, if the Department determines that cross-fertilization of design R&D among memory products does occur, it should still not aggregate product-specific R&D for logic products with product-specific R&D for memory products.

In addition, argues Alliance, if the Department allocates R&D expenses over all SRAM products, it should calculate the R&D expense factor using the costs incurred during the POI, rather than the company's fiscal year. Alliance claims that the Department's intention in the preliminary determination was to "allocate the total amount of semiconductor R&D for the POI over the total cost of sales of semiconductor products sold during the POI, using an annual ratio." Alliance argues that the Department incorrectly calculated its R&D ratio using data from its fiscal year, rather than the expenses incurred during the POI.

ISSI claims that the methodology followed by the Department in previous cases where it allocated all semiconductor R&D expenses to all semiconductor products does not apply to ISSI because it is a non-integrated, U.S.-owned and controlled, fabless semiconductor producer. *See e.g., Dynamic Random Access Memory Semiconductors from Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR, 20216, 20217 (May 6, 1996). ISSI asserts that the Department should accept its R&D expense allocation methodology because ISSI performs largely design R&D which, unlike process R&D, is specific to a given product category and has no application or benefit to other product groups. ISSI notes that it separated and allocated design R&D expenses into the distinct, non-overlapping product areas of volatile memory (*i.e.*, DRAMs and SRAMs), non-volatile memory, and logic.

UMC argues that the Department should allocate process and design R&D only for memory products to SRAMs, not total semiconductor R&D to all semiconductors. UMC contends that, while it may be appropriate to allocate process R&D across all semiconductor products in some instances, it is not appropriate to use this methodology with product-specific design R&D. Moreover, UMC argues that the Department's practice is to use product-specific costs and cites to the Court of International Trade's decision in *Micron Technology, Inc.* v. *U.S.* 893 F. Supp. 21, 27 (CIT, 1995) (*Micron Technology*). UMC argues that the CIT stated in *Micron Technology* that R&D costs may not be allocated on an aggregate basis unless there is substantial evidence demonstrating that the subject merchandise benefits from R&D expenditures earmarked for non-subject merchandise. UMC states that, in this case, there is no credible evidence on the record demonstrating that the subject merchandise benefits from non-subject R&D (*i.e.*, there are no specific instances on the record of cross-fertilization of R&D across product lines). In addition, UMC claims that a number of detailed statements on the record by semiconductor experts unanimously conclude that there is virtually no benefit accruing to memory products from R&D performed on non-memory products.

Furthermore, argues UMC, the Department should differentiate the Taiwan SRAM industry from its Korean counterpart, in that most Korean firms

are highly integrated, while much of the Taiwan industry consists of segmented production. UMC argues that product design R&D is far more likely to lead to cross-fertilization among products when it is performed by an integrated firm rather than by a non-integrated firm. Accordingly, UMC argues that a finding of cross-fertilization of R&D in the Korean industry may have little or no application here. Moreover, UMC maintains that in its accounting records it segregates process R&D from product design R&D which relates only to specific types of integrated circuits. UMC claims that there is no cross-fertilization between its R&D for SRAM product design and R&D for product design for other types of integrated circuit devices. UMC argues that, if the Department determines that design R&D costs for non-subject merchandise do, in fact, cross-fertilize SRAM design R&D, then a distinction must be drawn between design R&D for memory and design R&D for non-memory (*i.e.*, logic) products.

Winbond asserts that the Department's R&D allocation at the preliminary determination significantly overstated its COP. According to Winbond, its other product lines have an entirely different engineering focus and are segregated from Winbond's SRAM R&D activities both organizationally and in its accounting system. Winbond asserts that it tracks in its accounting records all R&D expenses by category, such as product design or process R&D, and further by product type and project.

Winbond argues that the antidumping law requires the use of product-specific costs. Winbond argues further that, as a legal matter, there is no evidence on the record to overcome the verified fact that cross-fertilization does not occur at Winbond. Winbond contends that the allocation of R&D on a company-wide basis fails to account for the fluctuation of logic R&D and the stability of SRAM R&D. In addition, Winbond notes that the focus of logic product R&D is the end product's specific function, whereas SRAM R&D focuses on the reduction in cell size, a completely different and more discrete goal. Moreover, Winbond asserts that it is unreasonable to include Winbond's logic product R&D costs in the allocation factor since R&D spending on logic products was vastly higher in 1996 than R&D spending for SRAMs.

The petitioner agrees with the Department's treatment of R&D expenses in its preliminary determination. The petitioner argues that contrary to ISSI's and Alliance's assertions, the allocation methodology used in Korean DRAMs applies in this case. The petitioner states that the respondents fail to appreciate that in Korean DRAMs, process R&D was considered to be part of overhead and that only product R&D of the type incurred by ISSI and Alliance was at issue. Furthermore, in Korean DRAMs, the Department allocated all product semiconductor R&D over all semiconductor production.

The petitioner criticizes the letters submitted on behalf of the respondents, stating that each is entitled to no more weight on the basis of their credentials than are those submitted on behalf of the petitioner or the Department. The petitioner claims that information on the record, such as the expert testimony of Mr. Cloud of Micron and Dr. Murzy Jhabvala of the National Aeronautics and Space Administration (NASA), as well as numerous magazine articles, supports its claim that cross-fertilization occurs among R&D projects conducted for various semiconductor products. The petitioner notes that ISSI itself allocated SRAM and DRAM R&D over memory cost of sales, thereby implicitly assuming cross-fertilization of SRAM and DRAM R&D.

In addition, the petitioner maintains that the Department's methodology was appropriate because R&D is supported by revenues from the complete range of products sold, not solely by the revenues of a particular product on which an R&D project is focused. Accordingly, the petitioner argues, it is most appropriate to allocate all semiconductor R&D over the base that sustains it (*i.e.*, over all semiconductor production). Moreover, the petitioner argues that the respondents' maintenance of product-specific accounting categorization by project does not prove that R&D conducted for one type of semiconductor cannot benefit the development of another type.

DOC Position

We agree with the petitioner. We find that there is cross-fertilization of scientific ideas between the R&D activities of semiconductor products. Processing advancements for one semiconductor product can benefit other types of semiconductor products (including logic and memory). Furthermore, design improvements, although undertaken for a specific product, can, and often do, become incorporated into the design of other semiconductors, whether they are logic or memory devices. We find that it is appropriate to allocate the cost of all semiconductor R&D to all semiconductor products, given that scientific ideas developed in one semiconductor area can be and have been utilized in the development of other semiconductor products. Therefore, for purposes of the final determination, we have calculated R&D for SRAMs using the ratio of total semiconductor R&D to total semiconductor cost of sales for the annual period that most closely corresponds to the POI.

Due to the forward-looking nature of R&D activities, the Department cannot identify every instance where SRAM R&D may influence logic products or where logic R&D may influence SRAM products, but the Department's own expert has identified areas where R&D from one type of semiconductor product has influenced another semiconductor product. Dr. Murzy Jhabvala, a semiconductor device engineer at NASA with twenty-four years of experience, was invited by the Department to express his views regarding cross-fertilization of R&D efforts in the semiconductor industry. He has stated that "it is reasonable and realistic to contend that R&D from one area (*e.g.*, bipolar) applies and benefits R&D efforts in another area (*e.g.*, MOS memory)." Dr. Jhabvala went on to state that—

> SRAMs represent along with DRAMs the culmination of semiconductor research and development. Both families of devices have benefitted from the advances in photolithographic techniques to print the fine geometries (the state-of-the-art steppers) required for the high density of transistors. . . . Clearly, three distinct areas of semiconductor technology are converging to benefit the SRAM device performance. There are other instances where previous technology and the efforts expended to develop that technology occurs in the SRAM technology. Some examples of these are the use of thin film transistors (TFTs) in SRAMs, advanced metal interconnect systems, anisotropic etching and filling techniques for trenching and planarization (CMP) and implant technology for retrograde wells.

See memo from Peter Scholl to the file dated September 16, 1997, placing letters from Dr. Jhabvala on the record.[6]

The Department has also identified through published magazine articles examples of cross-fertilization in the semiconductor industry. *See, e.g.*, "A 250–MHz Skewed-Clock Pipelined Data

[6] In letters dated January 23 and 28, 1998, the respondents expressed concern that the Department might consider information from the Korean SRAM record or a memorandum from Dr. Jhabvala placed on the record on January 15, 1998, (*i.e.*, after the public hearing in this case) which the parties did not have any opportunity to comment upon. We agree that the parties have not had an opportunity to comment upon this memorandum. Therefore, we have not considered it or any information on the Korean SRAMs record in our final determination. We note that we have quoted from Dr. Jhabvala's pre-verification comments on the record in this case.

Buffer," *Institute of Electrical and Electronics Engineers Journal of Solid State Circuits*, March 1996; and "A 1–Mb 2 Tr/b Nonvolatile CAM Based on Flash Memory Technologies," *Institute of Electrical and Electronics Engineers Journal of Solid State Circuits*, November 1996. We also noted numerous published articles in the *Institute of Electrical and Electronics Engineers Journal of Solid State Circuits* which described how significant advancements in the advanced semiconductor integrated circuit (ASIC)/logic product area have had important ramifications for chip design in the memory areas. The articles described how multilayer metal design development categorized as logic/ASIC R&D will permit companies to build chips that are smaller, faster and more power-efficient. The articles concluded that the research will be used in the future to improve microprocessors, memory and mixed-signal devices. As an example, one article entitled "The Challenges of Embedded DRAM in ASICs: A Manufacturing Economics Point of View," *Dataquest Interactive*, August 25, 1997, discussed the technical challenges of embedding memory into ASICs, which illustrated the overlap in design and process technology between logic and memory circuits. This article noted on page two that "[b]oth the fast SRAM and the 'pseudo-DRAM' structures are actually subsets of the process flow for advanced logic, so designing and constructing SLI ASICs are a natural extension and do not really add much to the per-wafer cost of the process." The articles were attached as exhibits to the letter submitted by the petitioner on October 15, 1997.

We reviewed the views of the respondents' expert on this subject and found them to be of less probative value than the cases cited above, as the published articles refute Dr. Wooley's assertion that there is no cross-fertilization among circuit design techniques. In fact, Dr. Wooley, writing on behalf of ISSI, agrees that there can be cross-fertilization in the development of process technologies among various classes of memories. This assertion also refutes the other respondents' claims that there is no cross-fertilization in the development of process technologies.

Moreover, contrary to the respondents' assertion, the methodology we are applying does calculate product-specific costs. Where expenditures benefit more than one product, it is the Department's practice to *allocate* those costs to all the products which are benefitted. Therefore, as semiconductor R&D benefits all semiconductor products, we have allocated semiconductor R&D to all semiconductor products.

We also disagree with the respondents' assertion that the methodology employed by the Department should be based on respondents' normal accounting records. While we do not disagree that each R&D project is accounted for separately in each of the respondents' respective books and records, we note that the existence of separate accounting records does not necessarily preclude the phenomenon of cross-fertilization of scientific ideas. Since accounting records do not address the critical issue of whether ideas from research in one area benefit another area, we do not find this argument persuasive.

We also found unpersuasive the following arguments presented by respondents: (1) That SRAMs are a mature product that cannot benefit from R&D performed in other areas; (2) that logic R&D is more complex than memory R&D; (3) that logic R&D is unique to an application; and (4) that logic R&D involves high level architecture and functionality which is different from SRAM R&D (which focuses on shrinking cell size, increasing capacity and efficiency). The record shows that the primary focus for SRAM and DRAM R&D is reducing die size and increasing speed, which will benefit from the metal multilayer design R&D being conducted in connection with logic/ASIC products. Moreover, the issue is not whether application-specific design R&D for logic products can be used for SRAMs, but rather whether what is learned from logic/ASIC product R&D can be used to improve SRAM performance. We also disagree with Winbond's arguments that, since it has more logic product lines than memory product lines, more employees for logic R&D than SRAM R&D and proportionally more expenses for the logic product line than the SRAM product line, it follows that no logic R&D should be assigned to SRAMs. When applied to the cost of manufacturing, the ratio of total semiconductor R&D to the total semiconductor cost of sales results in proportional amounts of R&D for each specific product. Our methodology assigns R&D costs to products in proportion to the amount sold during the period. If 75 percent of the cost of products sold were logic products then logic products would receive 75 percent of the R&D costs incurred during the period. This in no way assigns SRAMs an unreasonable portion of R&D costs.

Based on the foregoing, for purposes of the final determination, we have calculated R&D for SRAMs using the ratio of total semiconductor R&D to total semiconductor cost of sales for the annual period that most closely corresponds to the POI.

Company-Specific Issues

A. Alliance

Comment 10: Time Period for Cost and Price Comparisons

In the preliminary determination, the Department compared prices and conducted the sales below cost test using quarterly data. Alliance argues that for the final determination the Department should compare prices and conduct the sales below cost test using annual data. Alliance gives three reasons in support of its argument.

First, Alliance argues that there is no regulatory requirement that the Department compare prices and costs on a quarterly basis and that it is clearly envisioned that the Department will use annual averages unless there is a strong reason to do otherwise. Alliance argues that, in this case, there is no such reason. Moreover, Alliance argues, while the Department has used quarterly data in some previous semiconductor cases, the Department has recognized that it must apply the most reasonable methodology for each respondent based upon its price and cost trends. Alliance cites to *DRAMs From Korea* at 15476, where the Department used monthly averages for one respondent and POI averages for another.

Second, Alliance argues that its structure as a fabless company that subcontracts various phases of SRAM production makes the use of annual costs appropriate. Alliance states that integrated producers have large fixed costs that tend to mute changes in total costs from one quarter to another and that they tend to have declining costs over time due to the learning curve. By contrast, argues Alliance, its costs of production consist almost completely of variable costs, which vary greatly from quarter to quarter according to volume and other factors. Moreover, Alliance maintains that, because its costs consist primarily of payments to subcontractors, they do not steadily trend downward over time.

Third, Alliance argues that the Department has established that, where cost or pricing factors vary erratically from quarter to quarter, it is more appropriate to use annual comparisons to smooth out the aberrational results. In support of this argument, Alliance cites to a number of cases, including *Color Television Receivers From the Republic of Korea; Final Results of Antidumping*

Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990), *Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Canada*, 52 FR 44161, 44167 (Nov. 18, 1987), *Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Japan*, 52 FR 44171, 44182 (Nov. 18, 1987), and *Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or In Chief Weight of Man-Made Fiber From Taiwan*, 55 FR 34585, 34598 (Aug. 23, 1990).

Moreover, Alliance also notes that the Department often uses annual averages in seasonal industries to avoid magnifying the impact of costs that vary from quarter to quarter. Alliance cites to *Grey Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 47255 (Sept. 8, 1993), and *Circular Welded Non-Alloy Steel Pipe and Tube From Mexico; Final Results of Antidumping Duty Administrative Review*, 62 FR 37014, 37020 (July 10, 1997), in support of this contention.

Accordingly, Alliance argues that, given the extreme variability of its prices and costs in different quarters, it is more reasonable for the Department to use annual, rather than quarterly, figures for Alliance, regardless of whether prices declined in general over the POI.

Finally, Alliance notes that the Department's statement in its preliminary determination that "all parties agree" that there was "a significant and consistent price decline during the POI" is false. Alliance contends that its position has always been that its costs and prices during the POI were marked by aberrational, short-term price or cost fluctuations.

The petitioner argues that the Department's decision to use quarterly rather than annual averages was both in accordance with the regulations and based on an established dynamic in the semiconductor industry—that costs and prices generally decline from quarter to quarter. According to the petitioner, all of the parties in this investigation except Alliance have accepted this principle. The petitioner contends that the Department is not obligated to deviate from a rational, well-established industry benchmark simply on the basis that a particular respondent prefers an alternative approach that may lower its margin. The petitioner notes that declining market prices affect all of the respondents (including Alliance) and that, therefore, the Department's approach at the preliminary determination was fair and reasonable.

With regard to Alliance's argument that, as a fabless company, its costs are mostly variable, and hence vary more than the costs of integrated producers, which are mostly fixed, the petitioner notes that ISSI, another fabless company, did not share Alliance's views. The petitioner states that the Department's decision was based on an established consensus regarding declining market prices and that this phenomenon affected the behavior of all of the respondents (including Alliance), as well as the petitioner. The petitioner further states that basing the Department's decision on such a broad phenomenon of market behavior is an eminently fair and reasonable approach, and that the Department acted well within its discretion.

In addition, the petitioner notes that none of the cases cited by Alliance to demonstrate that the Department uses annual comparisons when costs or prices vary from quarter to quarter involve the semiconductor industry, which tends to exhibit discernible price and cost declines. Rather, the petitioner notes that many of the cases Alliance cites involve industries impacted by seasonal price or cost fluctuations, patterns not present in the semiconductor industry.

DOC Position

We disagree with Alliance. The Department's practice is to calculate weighted-averages over a shorter period of time when normal values, export prices, or constructed export prices have moved significantly over the POI. *See, e.g., EPROMs from Japan* and *DRAMs from Korea;* see also 19 CFR section 351.414(d)(3) of the Department's new regulations. In this case, demand for SRAMs decreased dramatically during the POI, causing worldwide SRAM prices to decrease dramatically. As SRAM producers, all respondents, including Alliance, were directly affected by this decrease in prices, whether they were fabless or integrated producers. Moreover, while Alliance may not have agreed with the other respondents that there was a significant and consistent price decline during the POI, Alliance concedes that there was a "worldwide drop in demand and falling prices that occurred in 1996" for SRAMs. *See* Alliance's submission of December 23, 1997, at page 47.

In addition, none of the cases cited by Alliance involve instances in which prices and cost were declining over the POI. Rather, they focus on instances where the Department used annual averages to smooth out quarterly or seasonal fluctuations in costs. Moreover, none of those cases involved the semiconductor industry, which, as the Department has recognized through its practice of using shorter averaging periods, is subject to declining prices and costs. Indeed, Alliance fails adequately to distinguish the cases relied on by the Department at the preliminary determination (*i.e., EPROMs from Japan* and *DRAMs from Korea*) from the facts in this case. Alliance does cite to *DRAMs from Korea* to argue that the Department recognizes that it must apply the methodology that makes the most sense for each respondent, based upon its price and cost trends. However, in that case, the Department determined that it was more appropriate to use monthly weighted-average prices for foreign market value (*i.e.*, normal value) for one respondent since those averages were more representative of its pricing than POI averages. *See DRAMs from Korea*, comment 29. Similarly, in this case, given the significant decrease in the price of SRAMs that occurred throughout the POI, we have determined that quarterly averages result in a more accurate comparison of pricing behavior during the POI than do annual averages.

Accordingly, we made quarterly weighted-average price and cost comparisons for all respondents, including Alliance, for the final determination.

Comment 11: General Expenses and Profit for Constructed Value

Alliance argues that the methodology employed by the Department to calculate Alliance's CV value at the preliminary determination was contrary to the letter and intent of the statute. Alliance notes that the statue provides three alternatives for determining SG&A and profit when a respondent's own data may not be used and argues that the lack of a hierarchy implies that the chosen methodology should produce the most accurate and fair result possible. Alliance claims that, because it has cooperated fully in this investigation, the Department's selected methodology should not be adverse in nature.

Alliance argues that the Department's use of the weighted-average SG&A expenses of the other three respondents to calculate CV is unreasonable. Alliance claims that the statute requires the use of actual SG&A expense data, that such data is available for Alliance, and that this data was verified by the Department.

Alliance argues that the fact that all of its home market sales were found to be below cost does not suggest that its SG&A expenses would have been higher

had these sales been above cost. Alliance argues that its cost data was considered acceptable for purposes of the below-cost test and should also be accepted for purposes of calculating CV. Alliance claims that the costs incurred by UMC and Winbond are very different from its own SG&A expenses because they perform more steps in the SRAM production process, including wafer fabrication, and have a larger corporate bureaucracy to manage those facilities. Additionally, Alliance argues that its R&D activities are for product development alone, while UMC and Winbond have both product and process R&D activities. Alliance argues that the process R&D costs reported by other respondents are part of their cost of manufacturing and that these costs would already be included in the price paid by Alliance for wafers, since it does not have its own wafer fabrication facilities. Alliance argues that, if the Department calculates Alliance's R&D expenses using cost data from the other Taiwan respondents, it should also exclude that portion of R&D expenses incurred on behalf of wafer fabrication process developments since Alliance's costs would not include such activities.

Alliance also claims that the Department's use of the weighted-average profit rate of the other three respondents to calculate CV is likewise unreasonable. According to Alliance, the rationale behind basing profit on the data of other respondents appears to be that the other respondents are similarly situated and that their profits reflect those which Alliance would earn in the home market if its sales were made in the ordinary course of trade. However, Alliance claims that neither the results of its relatively few sales to its developing Taiwan export market, nor the profits of Taiwan producers operating in their own home market, are indicative of Alliance's normal profit experience. Moreover, Alliance claims that the profit rate assigned by the Department includes the profits of two companies, UMC and Winbond, which have entirely different cost structures. Alliance argues that the foundry operations of UMC and Winbond involve high fixed costs, whereas Alliance's costs are largely variable. Alliance maintains that basing its profit rate on the experience of UMC and Winbond, both of which fabricate their own SRAM wafers, has the effect of double-counting profit; UMC and Winbond earn a higher profit because their costs do not include the profit markup that Alliance, a fabless producer, must pay for fabricated wafers. Finally, Alliance argues that its costs are based on accounting under U.S. GAAP, while UMC and Winbond follow Taiwan GAAP. Accordingly, Alliance claims that the only reasonable method for determining CV profit is to use the profit of either its own SRAM product line or the overall company, for the fiscal year ending March 30, 1996. Alliance argues that both of these approaches would be consistent with the Department's methodology, contemporaneous to the POI, and reasonably specific to subject merchandise.

The petitioner argues that the Department is not required to justify the methodology selected for determining Alliance's SG&A expenses and profit as the most reasonable alternative. The petitioner claims that the statute clearly indicates a preference for the Department to base SG&A expenses and profit, if possible, on amounts normally incurred or realized on above-cost home market sales. Moreover, the petitioner maintains that the statute intends for CV profit to correspond to normal rates of profit for the respondent or industry in the comparison foreign market and that Alliance's suggested methodology fails to meet this requirement. Specifically, the petitioner notes that Alliance's overall company profits result from sales to all markets, with the United States representing Alliance's dominant market.

According to the petitioner, there is no evidence that the differences in corporate strategy identified by Alliance render the other companies' profit rates unrepresentative of Taiwan SRAM producers in the context of this case. Moreover, the petitioner claims that Alliance has not suggested any means to establish that a profit rate that includes the integrated producers' profits somehow "double-counts" profits. Consequently, the petitioner argues that it is proper to include all types of SRAM producers in the calculation of the weighted-average profit rate. Finally, the petitioner notes that Alliance's 1996 fiscal year data only overlaps with three months of the POI and, thus, is only marginally contemporaneous.

The petitioner argues that Alliance's arguments regarding the methodology to be used for SG&A expenses depend on the assertion that Alliance would have incurred the same level of expenses on its home market sales irrespective of whether those sales were made at prices above or below COP. The petitioner contends that such an argument flies in the face of the statutory scheme, which directs the Department to use SG&A expenses for sales made in the ordinary course of trade. Moreover, the petitioner claims that Alliance's argument is flawed because it allocates its reported home market indirect selling expenses among semiconductor products on the basis of sales revenue. The petitioner notes that, if Alliance's home market sales had been made at significantly higher prices, then the allocated selling expenses would have been proportionately increased.

DOC Position

We disagree with Alliance, in part. Pursuant to section 773(e)(2)(A) of the Act, the Department will calculate SG&A expenses and profit based on the actual amounts incurred and realized by the company in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the home market. Where a respondent's own SG&A expense and profit data are not available, section 773(e)(2)(B) of the Act provides the Department with three alternatives for calculating CV. In the instant case, Alliance's own SG&A expense and profit data may not be used because all of its home market sales failed the cost test, and hence, pursuant to section 771(15) of the Act, are not sales in the ordinary course of trade.

For purposes of the preliminary determination, we calculated Alliance's CV using the alternative methodology described in section 773(e)(2)(B)(ii) of the Act. This approach involved basing SG&A expenses and profit on the weighted-average data of the other three respondents. Because R&D expenses are included in general expenses, we also based R&D expenses on the same methodology used to determine SG&A expenses.

For our final determination, we have considered several alternatives which are available for calculating Alliance's CV under section 773(e)(2)(B) of the Act, including the methodology used for the preliminary determination and the alternatives proposed by Alliance. The SAA at 840 (170) indicates that the Act does not establish a hierarchy or preference among the alternatives under section 773(e)(2)(B) of the Act and that the selection of an alternative will be made on a case-by-case basis. The methodology which we used for the preliminary determination is one of the three alternatives provided for in the Act and provides a reasonable basis on which to base SG&A expenses and profit for Alliance's CV.

As discussed below, Alliance's proposed alternatives have significant flaws that make them less desirable choices for use as Alliance's SG&A expenses and profit. The method we used in the preliminary determination provides a reasonable methodology on

which to base Alliance's SG&A expenses and profit. Accordingly, we have used this approach for calculating Alliance's CV for the final determination because it reflects the experience of the other Taiwanese SRAM producers. Although we recognize that there may be differences in organizational structure and strategy among the respondents, the differences identified by Alliance do not preclude us from choosing one of the alternatives provided for in the Act.

We believe that the methodologies offered by Alliance for calculating profit have significant flaws. First, with respect to Alliance's suggestion that the Department use Alliance's own SRAM product line data for the fiscal year ended March 31, 1996, we verified cost and price information for the three months of this period, January through March 1996, that fell within the POI and found significant quantities of below-cost sales. Based on these findings, we have no reason to believe that the amounts reported by Alliance as SRAM profits for the March 31, 1996, fiscal year would provide a reasonable measure of profit due to the fact that the figure includes a number of sales known to be outside the ordinary course of trade, as well as significant potential for other such sales during the first nine months of the fiscal year. Moreover, data is available for the profit calculation that is more contemporaneous than the respondent's proposed period. Second, with respect to Alliance's suggestion that we base profit on its overall operations for the fiscal year ended March 31, 1996, this data includes sales to markets other than the home market. In addition, this data includes sales of products which are outside the general category of SRAMs. Again, we have data that is more contemporaneous than the data offered under this proposal.

We disagree with Alliance's assertion that the Department should use its SG&A expenses for the calculation of CV. The Act directs the Department to use an alternative methodology for these expenses when a respondent's actual data are not available. As stated above, Alliance did not make any home market SRAM sales in the ordinary course of trade and therefore its actual data may not be used.

With respect to Alliance's argument regarding our treatment of process R&D expenses, we believe that including these expenses in the weighted-average SG&A rate calculated for our final determination would double count the actual amount of the expense. Process R&D costs would normally be accounted for as part of the cost of the wafer which Alliance purchases from its supplier. Thus, for our final determination, we have excluded process R&D expenses from Alliance's SG&A expenses.

B. ISSI

Comment 12: Commission Expenses

According to the petitioner, the Department discovered at verification that ISSI failed to report commission expenses on sales to its U.S. distributor customers. The petitioner maintains that the Department should base the amount of the commissions for these customers on facts available because the information presented at verification was not a minor correction. As facts available, the petitioner argues that the Department should use the highest commission rate paid on sales to any other customer.

ISSI contends that its failure to report distributor commissions was a ministerial error of small magnitude. Specifically, ISSI asserts that these commissions: 1) represent only a fraction of the total commissions paid; 2) are recorded in a different manner in its accounting system; and 3) were thoroughly verified by the Department. Moreover, ISSI argues that it is a cooperative respondent that has done nothing in this investigation that would justify adverse inferences. As such, ISSI contends that the Department should use the commission expense data on the record for purposes of the final determination.

DOC Position

We agree with ISSI. We find that ISSI's failure to report commissions on sales to distributor customers was the result of an inadvertent error which was minor in nature. Because it is the Department's practice to accept such minor corrections arising from verification, we have used ISSI's verified commission rate for purposes of the final determination. *See, e.g., Rebar from Turkey* and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19044 (April 30, 1996) *(Bicycles from the PRC)*.

Comment 13: Date of Payment

The Department noted at verification that ISSI had not received full or partial payment for a small number of U.S. sales. According to ISSI, the Department should assign these sales the average payment period for ISSI's other U.S. sales, rather than using the date of the final determination. Alternatively, ISSI asserts that the Department should calculate a weighted-average payment date for each sale where partial payment was received, using both the date of the partial payment and the date of verification. ISSI argues that to use the date of the final determination would be inappropriate because to do so would be to make the adverse assumption that its outstanding receivables have not been collected.

The petitioner asserts that the Department's standard practice in situations involving unpaid sales is to calculate the credit period using the date of the final determination as a proxy for the actual date of payment. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods From France*, 58 FR 68865 (Dec. 29, 1993). According to the petitioner, the Department should follow its standard practice in this case because ISSI has provided no compelling reason to depart from it. Specifically, the petitioner notes that ISSI has provided no reason to assume that the payments in question will be received prior to the final determination. Indeed, the petitioner maintains, it is equally likely that payment will be received after this date. Moreover, the petitioner asserts that, given the long time since the end of the POI, it is unclear that using the date of the final determination represents an adverse inference.

Regarding ISSI's suggestion that the Department use an average payment period, the petitioner asserts that this method would be no more accurate. The petitioner notes that the sales in question have unusually long payment periods which would be excluded entirely from the calculation of the average.

DOC Position

The Department's recent practice regarding this issue has been to use the last day of verification as the date of payment for all unpaid sales. *See Brass Sheet and Strip from Sweden; Final Results of Antidumping Administrative Review* 60 FR 3617, 3620 (Jan. 18, 1995). Accordingly, we have used the last day of ISSI's U.S. verification as the date of payment for all unpaid transactions or portions thereof.

Comment 14: Non-operating expenses

The petitioner argues that the Department should include non-operating expenses incurred by ISSI-Taiwan in the calculation of ISSI's G&A expense. The petitioner argues that failure to include these expenses in ISSI's total G&A expenses conflicts with the Department's established practice concerning the classification of such expenses and results in a distortion of the reported cost of production for ISSI.

ISSI does not dispute that the Department should capture the loss on

disposal of property, plant and equipment and physical inventory loss, but argues that the cost should be included as part of financial expense. ISSI stated that the expenses were classified with other non-operating expenses in its audited records. Therefore, ISSI contends that the Department should follow its normal practice of adhering to a firm's recording of costs in its financial statements, in accordance with the GAAP of its home country, when such principles are not distortive.

DOC Position

We agree with the petitioner that these expenses should be included in the calculation of ISSI's total G&A expenses. We disagree with the respondent that these expenses should be classified as financial expenses because disposal of property, plant, and equipment and physical inventory losses relate to the general activities of the company and not to financing activities. *See Notice of 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, 31989 (June 19, 1995). Inclusion of these expenses in financing expense would not reasonably reflect the costs associated with the production of the merchandise. Accordingly, we have adjusted the G&A expense ratio to include these items.

Comment 15: Double-Counting of Marine Insurance Expenses

According to ISSI, the Department discovered during verification that ISSI reported marine insurance expenses both as part of G&A and as a separate movement expense in its U.S. sales listing. ISSI asserts that the Department should reduce G&A by the amount of these expenses in order to avoid double-counting.

The petitioner disagrees, stating that the burden is on the respondent to submit accurate information. According to the petitioner, the discovery of this error at verification indicates that ISSI's response may contain additional errors which were not discovered due to the limited time available at verification. Consequently, the petitioner asserts that the Department should make no adjustment to G&A for purposes of the final determination because it is unable to adjust for the undetected inaccuracies in ISSI's response.

DOC Position

The Department conducted thorough verifications of ISSI's sales and cost data. Based on these verifications, we have deemed the respondent's data to be reliable for use in the final determination. We do not believe that these data contain material inaccuracies, as the petitioner suggests.

Because it is the Department's practice to correct minor errors found during the course of verification *(see, e.g., Rebar From Turkey* and *Bicycles From the PRC)*, we have made the appropriate correction to ISSI's G&A expenses for purposes of the final determination.

Comment 16: Offset to R&D Expenses

ISSI argues that the Department should include an offset for R&D revenue in its calculation of ISSI's R&D expense.

DOC Position

We agree with ISSI that the R&D revenue should be included as an offset in the R&D expense ratio calculation, because the corresponding costs are included in ISSI's R&D expense. Consequently, we have granted this offset for purposes of the final determination.

C. UMC

Comment 17: Calculation of the CV Profit Rate

UMC argues that the Department erred in its choice of methodology for the computation of profit in calculating CV. UMC explains that the Department computed UMC's CV profit by first calculating a profit percentage for each home market transaction in the ordinary course of trade, then weight-averaging the percentages by quantity to determine the overall CV profit rate. UMC argues that this methodology was a departure from the Department's normal practice of calculating a CV profit rate based on the total revenue and total cost of home market sales transacted in the ordinary course of trade. In support of its position, UMC cites to *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 62 Fed. Reg. 7206, 7209–7210 (Feb. 18, 1997) *(SSWR from France)* and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 61 Fed. Reg. 56514, 56514 (Nov. 1, 1996) (Lead and Bismuth from the U.K.). UMC contends that in *Lead and Bismuth from the U.K.* the Department recognized that weight-averaging individual profit percentages by quantity introduces serious distortions into the calculation of CV profit.

The petitioner argues that the methodology used at the preliminary determination does not produce a serious distortion of the CV profit in this case. The petitioner contends that use of this methodology is appropriate, because a small number of expensive-to-produce, low profit sales of higher-density SRAMs will not artificially pull down the overall profit rate that applies to the large majority of sales. Thus, the petitioner argues that this methodology more realistically calculates a per-unit profit rate that is applied to all CV sales comparisons.

DOC Position

We agree with UMC. It is the Department's normal practice to divide total home market profits by total home market costs when calculating the profit ratio. As noted in *SSWR from France* and *Lead and Bismuth from the U.K.*, the methodology employed by the Department in the preliminary determination has the effect of distorting the respondent's CV profit rate. Accordingly, for the final determination, we calculated profit based on total home market profits and total home market costs for sales made in the ordinary course of trade.

Moreover, because CV profit was calculated in the same fashion for ISSI at the preliminary determination, we have also made the corresponding change to ISSI's calculations.

Comment 18: Substantial Quantities Test

UMC argues that the Department made an error in performing the substantial quantities portion of the sales below cost test. UMC maintains that, in a case where quarterly costs are used, sales can only be disregarded if: (1) the sale price is below the quarterly average cost; (2) the sale price is below the annual average cost; and (3) the quantity of such sales meets the substantial quantities threshold of 20 percent on a product-specific basis. UMC alleges that the Department failed to correctly apply the third part of this test. Specifically, UMC states that the Department conducted the substantial quantities test only on an annual average cost basis when in fact it should have conducted the test on an annual average cost *and* quarterly average cost basis.

According to the petitioner, UMC's assertion that the Department is required, under section 773(b)(1) of the Act, to examine the volume of sales against the 20 percent threshold on the basis of the volume of sales made in each quarter is without merit. The petitioner states that section 773(b)(2)(C)(i) of the Act provides that the substantial quantities test is satisfied

if the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value. The petitioner notes that section 773(b)(2)(B) of the Act provides that the term "extended period of time" means a period that is normally one year, but not less than six months. Thus, argues the petitioner, the Department correctly determined that a given product was below cost in substantial quantities if the volume of below cost sales was at least 20 percent of the volume during the twelve-month POI.

DOC Position

We agree with the petitioner. Section 773(b) of the Act states that the Department will disregard sales made at less than the cost of production if such sales were made within an extended period of time in substantial quantities (*see* section 773(b)(1)(A)). The Act defines "extended period of time" as normally one year but not less than six months (*see* section 773(b)(2)(B) of the Act). Because the Act states that "an extended period of time" can not be less than six months, we cannot follow UMC's recommendation and perform the substantial quantities test on a quarterly basis.

Accordingly, we have made no changes to the substantial quantities test for purposes of the final determination.

Comment 19: Startup Adjustment

UMC claims that the Department should continue the approach taken in its preliminary determination in accepting its claimed startup adjustment, because it has met the threshold criteria. According to UMC, the technical factors limiting production at its affiliate's new facility included process qualification to qualify both new equipment technology and new process technology. Additionally, UMC notes that the startup period involved the qualification of individual products and the fine tuning of new equipment to allow it to work efficiently with the existing equipment.

UMC claims that a company will not meet its practicable level of operations until the fab has achieved the level of "cleanness" to operate properly (which requires a certain amount of time) and it also has achieved a critical mass of product qualifications. UMC argues that the initial product qualification phase, which involves test runs and evaluations to build a stable of products that the new fab is qualified to produce, is a significant technical factor which impedes production during the startup phase.

Although UMC's claimed startup adjustment reflects a startup period that does not include the entire year, UMC argues that the new fab was actually in a startup phase at least through the end of 1996. UMC bases its claim on the quantity of wafer starts and wafers out in relation to the quantity of wafers processed in May 1997 and at the time of the cost verification. UMC notes that low product yields are one of a number of factors that the Department can consider as evidence of the extent to which technical factors affect production levels. UMC also argues that, although the same number of production processes were available for sale to customers in December 1996 as were in place in June of that year, the number available at September 1997 demonstrates that the company was still in startup mode at the end of 1996 and that the startup adjustment claimed is conservative.

The petitioner asserts that UMC's request for a startup adjustment should be denied since UMC failed to demonstrate that its production levels were limited by technical factors. The petitioner acknowledges that the product qualification process contributed to UMC's low production levels, but claims that the qualification process does not represent a "technical difficulty." The petitioner argues that the statute directs the Department to "consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles" in determining whether commercial production levels have been achieved. *See* section 773(f)(1)(C)(ii) of the Act. The petitioner claims that customer demand was the only factor that may have limited production volumes and points out that demand is not a technical factor. The petitioner notes that the SAA at 836 (166) states that "to determine when a company reaches commercial production levels, Commerce will consider first the actual production experience of the merchandise in question. Production levels will be measured based on units processed." The petitioner claims that yields improve continually throughout a product's life cycle beyond the point at which commercial production can be said to have begun and thus yields are irrelevant to the startup analysis. Finally, the petitioner argues that, even if technical factors did limit production to some extent, commercial production at the new facility began sooner than claimed by UMC.

DOC Position

We have accepted UMC's claimed startup adjustment. UMC produced subject merchandise during the POI using SRAM wafers obtained from its affiliate's new facility and provided the Department with a number of technical factors that limited the new facility's production levels, including the development of process parameters, cleaning of the fabrication facility, and installation, adjustment, calibration, and testing of new equipment. These technical factors appear to have restricted production of SRAM wafers through the startup period, after which time the new facility achieved commercial production levels that are characteristic of the producer. Although UMC claims that product qualification represents another technical factor that limited production levels during the startup period, we agree with the petitioner that this process is a normal part of operations that is often performed for new products the company plans to produce. Moreover, it does not appear that product qualification, which involved UMC's producing small quantities of products for customer approval while bringing the new facility up to normal levels of production, represents a technical difficulty that resulted in the underutilization of the facility.

While we agree with UMC that production yields may indicate the existence of technical factors that limited production output, the SAA at 836 (166) directs us to examine the units processed in determining the claimed startup period. Accordingly, our determination of the startup period was based, in large part, on a review of the wafer starts at the new facility during the POI, which represents the best measure of the facility's ability to produce at commercial production levels. We concluded that the number of wafer starts during the startup period did not meet commercial production levels that are characteristic of the producer. Consequently, we determined that the claimed startup period did, in fact, end when commercial production reached a level that was characteristic of UMC's non-startup experience.

While the petitioner argues that an absence of customer demand may have contributed to the low production levels during the claimed startup period, evidence on the record suggests that the demand for the type of SRAM wafers produced at the new facility was as high during the claimed startup period as it was during the remainder of the POI. Moreover, even if demand had been greater during the claimed startup period, there is no evidence that UMC could have more quickly achieved production levels at the new facility that are characteristic of the producer, merchandise, or industry.

Comment 20: Calculation of Credit Expense

UMC argues that the Department incorrectly computed UMC's imputed credit expense adjustment using a 365 day year. In its response, UMC reported its imputed credit expense based on a 360 day year. UMC alleges that the Department's computation of UMC's imputed credit expense based on a 365 day year was inconsistent with section 773(f)(1)(A) of the Act and the Department's longstanding practice as outlined in the *Import Administration Antidumping Manual* ((1994) Chapter 8, p. 36).

DOC Position

We disagree with UMC. Section 773(f)(1)(A) of the Act directs the Department to calculate costs based on the records of the exporter or producer of the merchandise. The expense in question, however, is an imputed expense which is not kept by UMC in its records. Thus, we note that UMC does not record imputed credit expense in its accounting system based on a 360 day year. The Department is not required to compute this expense based on 360 days, instead of the standard 365, merely because UMC chose to report it in that manner in its submissions.

In addition, we note that UMC itself was inconsistent in its credit calculations, in that it calculated its accounts receivable turnover rate using a 365 day year. Accordingly, for the final determination, we have continued to calculate UMC's imputed credit expense using a 365 day year.

Comment 21: Ministerial Errors Acknowledged by the Department

UMC notes that in its memorandum of October 20, 1997, the Department acknowledged that it made several ministerial errors in the calculations performed at the preliminary determination for UMC. UMC requests that the Department correct these ministerial errors in its final determination.

DOC Position

We agree. We have made the appropriate corrections for purposes of the final determination.

D. Winbond

Comment 22: Treatment of Winbond's EP sales

Winbond argues that its EP transactions were outside the ordinary course of trade and should be disregarded for purposes of the final determination. Winbond cites to *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from France*, 56 FR 56380 (Nov. 4, 1991) (*Coated Groundwood Paper*) and *Colombian Roses* at 7004 as instances where the Department disregarded U.S. sales when the volume of such sales was insignificant or when the sales were atypical and not part of the respondent's ordinary business practice. Including such sales, according to Winbond, has the potential to undermine the fairness of the dumping comparisons.

According to the petitioner, the term "outside the ordinary course of trade" applies only to home market sales, and, nonetheless, Winbond has not demonstrated that its EP sales are outside the ordinary course of trade. The petitioner asserts that, although it is true that the Department may disregard certain U.S. sales if the volume of such sales is insignificant, Winbond has not demonstrated that these particular sales were low volume sales. Furthermore, the petitioner maintains that Winbond has not established, as required in *Colombian Roses*, that the inclusion of these sales would undermine the fairness of the comparison. The petitioner states that the Department should use its discretionary authority and retain Winbond's EP sales.

DOC Position

We agree with the petitioner. Although the ordinary course of trade provision does not apply to U.S. transactions, the Department does have the discretion to exclude U.S. sales from its analysis. *See, e.g., Coated Groundwood Paper* and *Colombian Roses*. However, there is no requirement in either the Act or the regulations that we do so merely because there are small quantities of a particular type of sale. In this case, Winbond has no provided compelling reason to disregard its EP sales. Accordingly, we have used them for purposes of the final determination.

Comment 23: Reliance on Winbond's Cost Data

According to the petitioner, the cost verification report raises substantial questions regarding the overall reliability of Winbond's cost response. Specifically, the petitioner argues that: (1) Winbond failed to provide the reconciliation between its reported total cost of manufacturing and the costs in its cost accounting system, as requested in the cost verification outline; and (2) Winbond first revealed at the cost verification that, contrary to the explicit questionnaire instructions, not only had it reported sales quantities rather than production quantities, but it also was unable to provide the requested production quantity data at verification. The petitioner argues that, due to these limitations, the Department should consider using partial facts available in calculating Winbond's COP and CV.

Winbond argues that it was cooperative and that the Department successfully verified the overall reliability of its submitted sales and cost data, including the requested reconciliations. Winbond argues that it successfully reconciled its total reported COM to its total costs in its accounting system and that the importance of certain reconciling amounts has been over-emphasized. Winbond maintains that it was entirely appropriate to report sales quantities rather than production quantities, because, if it had used the finished goods input quantity, it would have overstated production volumes and distorted costs.

DOC Position

We agree with the petitioner, in part. We agree that the unsubstantiated reconciling item found at verification should be included in the cost for that quarter and we have done so. Not only did we request in the verification agenda that Winbond reconcile the total costs in its cost accounting system to total COM reported on its cost tapes, but we also requested numerous times during the verification process that Winbond reconcile its costs. We compared the submitted costs to the costs recorded in Winbond's normal books and records and found the difference noted above. Although Winbond attempted to explain this difference, it was unable to provide requested documentation (*e.g.*, invoices) to support its assertion.

However, we disagree with the petitioner that the sales quantities reported in the COP and CV data warrant an adjustment to Winbond's reported per-unit COPs and CVs. Because the variances Winbond applied to its standard costs were correctly calculated using production quantities, Winbond's per-unit COPs and CVs were not affected by the incorrect quantities. Consequently, we have not adjusted COP or CV to account for the quantity difference. For further discussion, see the memorandum to Louis Apple from the Team, dated February 13, 1998.

Comment 24: Winbond's Difmer Adjustment

Winbond argues that the Department should accept its submitted difmer data without adjustment, because these difmer data were appropriate and classified in accordance with its cost accounting system. Winbond argues that, contrary to statements in the Department's cost verification report, it

could only report its fixed costs based on uniform budgeted ratios and that such ratios were the most valid and manageable approach for segregating cost elements. Winbond argues that its methodology separates the cost elements and does not significantly alter the amount of the difmer adjustment. Moreover, Winbond states that the vast majority of its U.S. sales had identical matches in the home market, making the distinction between variable and fixed costs less important than in cases involving more comparisons with similar merchandise.

DOC Position

We disagree. Although Winbond's accounting system classifies all costs other than direct materials and labor as fixed costs, at verification we were able to calculate the depreciation expense for specific products from Winbond's standard cost sheets. A comparison of the depreciation expense calculated at verification to those reported by Winbond shows that the reported depreciation amounts, and therefore the difmer data, were not accurate.

Because the reported difmer data cannot be relied upon, we have based the margin for all U.S. sales without an identical home market match on adverse facts available. As adverse facts available, we have selected the highest non-aberrant margin from the price-to-price or price-to-CV comparisons which were performed for Winbond. In selecting this margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of Winbond's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected a margin for sales of a product that involved a substantial commercial quantity and fell within the mainstream of Winbond's transactions based on quantity. Finally, we found nothing on the record to indicate that the sales of the product we selected were not transacted in a normal manner.

Comment 25: Use of Annual Profit for CV

Winbond claims that the Department should have used quarterly, rather than annual, profit in calculating CV. Winbond asserts that using annual profit creates the same distortions that the Department tried to avoid by using quarterly price and cost comparisons. Winbond cites to page 843 of the SAA which indicates that, when CV is used for normal value and "costs are rapidly changing, it may be appropriate to use shorter periods, such as quarters or months, which may allow a more appropriate association of costs with sales prices." Winbond claims that the Department's use of annual profit in conjunction with quarterly cost and sales data overstates profit significantly in the down-market periods.

The petitioner argues that an annual profit rate is appropriate because it reflects not only the quarterly cost of manufacture but also those annual, often non-recurring costs such as G&A, interest and selling expenses, which must be calculated on an annual basis to ensure that all such costs are captured in the COP. The petitioner notes that neither the statute nor the SAA specifies the period over which profit should be calculated.

Moreover, the petitioner asserts that the use of quarterly averages to capture the lower profits in quarters where more sales are made below cost, as suggested by Winbond, could lead to the use of a zero profit rate if all of the respondent's sales in a given quarter were below cost. This approach, according to the petitioner, is contrary to the clear statutory intent that the Department include a positive profit figure for CV.

DOC Position

We agree with the petitioner. The Department applies the average profit rate for the POI or period of review (POR) even when the cost calculation period is less than a year. *See, e.g., 1994–1995 DRAMs Review, Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53295 (Oct. 14, 1997) and *Silicon Metal from Brazil; Final Results of Antidumping Duty Administration Review*, 61 FR 46763, 46774 (Sept. 5, 1996).

We disagree with Winbond that the use of annual profit distorts the analysis. First, a difference between the quarterly profits and the annual average profit does not automatically mean that a distortion exists. In fact, there is no evidence on the record that indicates such a distortion. Second, profit remains a function of the relationship between price and cost, regardless of whether there is a downward trend of prices or a stable period of prices and costs. The parties commented on matching sales on a quarterly basis (*see* the "Time Period for Cost and Price Comparisons" section of this notice, above). In their comments, the parties indicated that both prices and costs generally decreased during the POI. The profit figures used by the Department measure the weighted-average amount by which prices exceeded costs. Third, the use of annual profit mitigates fluctuations in profits and, therefore, represents a truer picture of profit.

Furthermore, we disagree that the SAA at page 843 (173) provides any guidance. The SAA indicates that "shorter periods may allow for a more appropriate association of *costs* with sales prices," but is silent as to the profit to be added to those costs.

Comment 26: Unrecoverable Fire Loss Expenses

Winbond argues that the Department distorted its G&A expenses by including expenses associated with a fire at an incomplete facility which is now being reconstructed to produce DRAMs. Winbond argues that it recorded the unrecovered portion of the fire loss as a non-operating expense; that the facility was not operational; and that, therefore, the costs associated with the fire are not relevant to the COP and CV of subject merchandise. Winbond asserts that, even if the Department were to conclude that the fire loss was related to 1996 SRAM production, the costs should be excluded from G&A because they were extraordinary.

The petitioner argues that the Department correctly included Winbond's unrecovered portion of the fire loss in Winbond's cost of production. The petitioner argues that Winbond's assertion that the facility was not being constructed to produce the subject merchandise is contrary to strong evidence on the record. The petitioner cites two published articles which state that the facility was constructed for the production of SRAMs. The petitioner argues that the unrecoverable fire loss was appropriately included in G&A because, under Winbond's own standard accounting practice, the uncompensated fire loss was recorded as a current cost. The petitioner argues further that the Department has included in COP and CV losses which were not reimbursed by insurance. *See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661, 7670 (Hofa Comment 5) (Feb. 15, 1991) (*Salmon from Norway*).

DOC Position

We agree with the petitioner. The uncompensated fire loss should be included in Winbond's G&A expense for this period because the expense incurred (*i.e.*, the capital) relates to the company as a whole. The fact that

Winbond is reconstructing the facility to produce DRAMs is irrelevant.

Moreover, we disagree with Winbond's assertion that the fire was an extraordinary event. Winbond has offered no support for this assertion. Moreover, evidence on the record contradicts this claim. Fires at semiconductor production facilities have been neither unusual nor infrequent. Specifically, we note that fires occurred at the following semiconductor facilities during the past 16 months: (1) United Integrated Circuits Company, January 1998; (2) Advanced Microelectronics, November 1997; (3) United Integrated Circuits Company, October 1997; (4) Charted Semiconductor Manufacturing Pte. Ltd., September 1997; and (5) Winbond, October 1996. Thus, we are unconvinced that the fire at Winbond's facility was an extraordinary event. As in other cases, we are including the unrecovered or uninsured portion of loss as a G&A expense. *See e.g., Salmon from Norway.*

Comment 27: Denominator for G&A and Interest Expense

Winbond argues that the Department erred by not revising the denominator used to calculate its G&A, R&D and interest expense rates to reflect the bonuses and royalties which were added to COM.

DOC Position

We agree. In the preliminary determination, we increased Winbond's reported COM to include bonuses and royalty expenses. However, we failed to revise the denominator used to calculate Winbond's G&A and interest expense rates which we applied to the revised COM. We have made the appropriate correction for purposes of the final determination.

Comment 28: Net Interest Expense

Winbond argues that the Department failed to account for its actual net interest income in the preliminary determination. Winbond argues that the Department deprived it of the benefit of its actual net interest income, and, thus, overstated its COP and CV. Winbond asserts that the statute does not require the Department to disregard cost offsets merely because the results benefit the respondent.

The petitioner argues that there is no basis for the Department to allow Winbond to offset its actual production costs with net financial income. The petitioner argues that the Department followed its long-standing practice by treating Winbond's negative financial cost as zero.

DOC Position

We agree with the petitioner. It is the Department's normal practice to allow short-term interest income to offset financial costs up to the amount of such financial costs. *See Porcelain on Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 54616, 54621 (Oct. 21, 1996). Using total short-term interest income to reduce production costs, as suggested by Winbond, would permit companies with large short-term investment activity to sell their products below COP. The application of excess interest income to production costs would distort a company's actual costs. When calculating COP and CV, the Department includes interest earned on working capital, not interest earned on long-term financing activities. *See Final Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico,* 60 FR 2378, 2379, (Jan. 9, 1995); *Final Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico,* 58 FR 43327, 43332, (Aug. 16, 1993); *Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Korea,* 58 FR 11029, 11038, (Feb. 23, 1993); and *Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil,* 55 FR 26721, (June 29, 1990).

Comment 29: Royalty Payments and Technical Services

Winbond argues that in the preliminary dumping analysis the Department double-counted its royalty and technical service expenses.

DOC Position

We agree. We double counted these expenses at the preliminary determination by adding both the royalty and the revised total R&D (which included both the royalty and technical service expenses) in COP and CV. Consequently, we have corrected this error for purposes of the final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SRAMs from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after October 1, 1997 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Advanced Microelectronics	113.85
Alliance	50.58
BIT	113.85
ISSI	7.59
TI-Acer	113.85
UMC	93.87
Winbond	102.88
All Others	41.98

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded the margins determined entirely under section 776 of the Act from 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 Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4360 Filed 2–20–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–828]

Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From the Republic of Korea

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

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Blankenbaker or Thomas F. Futtner, Office of AD/CVD Enforcement 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0989 or (202) 482–3814.

APPLICABLE STATUTE: 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, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 353 (April 1, 1996).

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that static random access memory semiconductors (SRAMs) from the Republic of Korea are being 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

Since the preliminary determination in this investigation (Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors from the Republic of Korea, 62 FR 51437 (October 1, 1997)), the following events have occurred: In November and December of 1997, we verified the Samsung Electronics Co. Ltd. ("Samsung"), and Hyundai Electronics Industries Co. Ltd. ("Hyundai"), questionnaire responses. On December 17, 1997, the Department issued its report on the verification findings for Hyundai. On December 18, 1997, the Department issued its report on the verification findings for Samsung.

The petitioner and the respondents, Hyundai, Samsung and LG Semicon Co. Ltd. ("LGS"), submitted case briefs on December 30, 1997, and rebuttal briefs on January 5, 1998. In addition, five interested parties, Compaq Computer Corporation ("Compaq"), Cypress Semiconductor Corporation ("Cypress"), Digital Equipment Corporation ("Digital"), Integrated Device Technology ("IDT"), and Motorola, Inc. ("Motorola"), submitted rebuttal briefs on January 7, 1998. We held a public hearing on January 16, 1998.

Scope of Investigation

The products covered by this investigation are synchronous, asynchronous, and specialty SRAMs from Korea, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die, and cut die. Processed 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.

The scope of this investigation includes modules containing SRAMs. Such modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), dual in-line memory modules ("DIMMs"), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board.

We have determined that the scope of this investigation does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). For a detailed discussion of our determination on this issue, see *Comment* 6 in the "Interested Party Comments" section of this notice and the memorandum to Louis Apple from Tom Futtner dated February 13, 1998.

The SRAMs within the scope of this investigation are currently classified under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 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 scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1996, through December 31, 1996.

Facts Available

On June 16, 1997, LGS, notified the Department that it was withdrawing from further participation in this investigation. For purposes of the preliminary determination, the Department assigned an adverse facts available rate of 55.36 percent. This margin was higher than the preliminary margin calculated for either respondent in this investigation.

Section 776(a)(2) of the Act provides that "if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition. (See also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA).) The failure of LG to reply to the Department's questionnaire or to provide a satisfactory explanation of their conduct demonstrates that they have failed to act to the best of their ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to these companies, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning to LG the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation. In this case, this margin is 55.36 percent, which is the highest margin stated in the notice of initiation.

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. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. (See Initiation Checklist, dated March 17, 1997.) These estimated dumping margins were based on a comparison of constructed value (CV) to U.S. price, the latter of which was based on price quotations offered one company in Korea. The estimated dumping margin, as recalculated by the Department, was 55.36 percent. For purposes of corroboration, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it has probative value. (See the Memorandum to Tom Futtner from the Team dated September 23, 1997, for a detailed explanation of corroboration of the information in the petition.)

Time Period for Cost and Price Comparisons

Section 777A(d) of the Act states that in an investigation, the Department will compare the weighted average of the normal values to the weighted average of the export prices or constructed export prices. Generally, the Department will compare sales and conduct the sales below cost of production test using annual averages. However, when prices have moved significantly over the course of the POI, it has been the Department's practice to use shorter time periods. See, e.g., Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read Only Memories (EPROMs) from Japan, 51 FR 39680, 39682 (October 30, 1986), Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 FR 15467, 15476 (March 23, 1993) ("DRAMs Final Determination").

We invited comments from interested parties regarding this issue. An analysis of these comments revealed that all parties agreed that the SRAMs market experienced a significant and consistent price decline during the POI. Accordingly, in recognition of the significant and consistent price declines in the SRAMs market during the POI, the Department has compared prices and conducted the sales below cost of production test using quarterly instead of annual data.

Normal Value Comparisons

To determine whether sales of SRAMs from the Republic of Korea to the United States were made at less than normal value, we compared the Constructed Export Price (CEP) and Export Price (EP) to the Normal Value (NV), as described in the "Constructed Export Price", "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs and EPs for comparison to weighted-average NVs.

In order to determine whether we should base price-averaging groups on customer types, we conducted an analysis of the prices submitted by the respondents. This analysis does not indicate that there was a consistent and uniform difference in prices between customer types. Accordingly, we have not based price comparisons on customer types.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. The Uruguay Round Agreements Act (URAA) amended the definition of sales outside the ordinary course of trade to include sales below cost. See Section 771(15) of the Act. Because the court's decision was issued so close to the deadline for completing this final determination, we have not had sufficient time to evaluate and apply the decision to the facts of this post-URAA case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

In making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the "Scope of Investigation" section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics listed in Sections B and C of the Department's antidumping questionnaire.

Level of Trade and Constructed Export Price Offset

In the preliminary determination, the Department determined that there was sufficient evidence on the record to establish a distinction in level of trade between the U.S. CEP sales and the home market sales used for normal value as well as to justify a CEP offset for each of the two respondents. We found no evidence at verification to warrant a change from that preliminary determination. Accordingly, we have made a CEP offset for each of the respondents in this final determination. For further discussion, see "General Comment 5" in the "Interested Party Comments" section of this notice.

Constructed Export Price

A. Hyundai

We used CEP in accordance with section 772(b) of the Act, because the sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices, f.o.b. the U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price ("gross unit price"): foreign inland freight, brokerage and handling; international freight; and U.S. brokerage, handling and inland freight. We made additional deductions, in accordance with section 772(d) (1) and (2) of the Act, for: commissions; credit, inventory carrying costs, and other indirect and direct selling expenses; and bank and extended test charges. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit, to arrive at the CEP. The amount of profit deducted was calculated in accordance with section 772(f) of the Act.

B. Samsung

We used CEP in accordance with section 772(b) of the Act, because the sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices, f.o.b. the U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price ("gross unit price"): Foreign inland freight, brokerage, handling, and banking charges; international freight and insurance; and U.S. inland freight, brokerage, handling, insurance, and banking charges. We made additional deductions, in accordance with section 772(d) (1) and (2) of the Act for commissions, credit, advertising, and royalty expenses; inventory carrying costs and other direct and indirect

selling expenses. We also deducted U.S. repacking costs. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit, to arrive at the CEP. The amount of profit deducted was calculated in accordance with section 772(f) of the Act.

Export Price

For the Export Price (EP) sales by Samsung, we made deductions from the gross unit price for the following expenses: foreign inland freight, brokerage, handling, and banking charges; international freight and insurance; and U.S. inland freight, brokerage, handling, and banking charges.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's aggregate volume of home market sales of the foreign like product to the aggregate volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Accordingly, we determined that the home market was viable for each respondent.

Based on a cost allegation presented in the petition, the Department found reasonable grounds to believe or suspect that home market sales by Samsung and Hyundai were made at prices below their respective costs of production ("COPs"). As a result, the Department initiated an investigation to determine whether either respondent made home market sales during the POI at prices below its COP, within the meaning of section 773(b) of the Act.

We calculated COP as the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act. We used the respondents' reported COPs, adjusted as discussed below, to compute quarterly weighted-average COPs for the POI. We compared the weighted-average COPs to home market sales of the foreign like product as required under section 773(b) of the Act in order to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared COPs to the home market prices, less any applicable movement charges, discounts, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. When 20 percent or more of a respondent's sales of a given product during the POI were at prices below the COP, we found that sales of that model were made below cost in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2) (B) and (C) of the Act. To determine whether prices provided for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per unit cost of production at the time of the sale were above the weighted average per unit cost of production for the POI, in accordance with section 773(b)(2)(D) of the Act. When we found that a substantial quantity of sales during the POI were below cost and not at prices that provided for recovery of costs within a reasonable period of time, we disregarded the below cost sales in the calculation of NV.

When NV was based on prices, we made appropriate adjustments to those prices. First, we deducted home market inland freight and home market packing costs and we added U.S. packing costs.

When there were differences in the merchandise to be compared, we made adjustments in accordance with section 773(a)(6)(C)(ii) of the Act to account for those differences. When appropriate, we made circumstance-of-sale adjustments in accordance with section 773(a)(6)(C)(iii) of the Act. For purposes of CEP sales comparisons, we deducted home market indirect expenses.

When there were no above cost home market sales for comparison, NV was based on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Although we generally relied, in our COP and CV calculation, on the data submitted by respondents, we made adjustments in the allocation of both research and development ("R&D"), the treatment of foreign exchange gains and losses, G&A expenses and interest expense as discussed below.

Hyundai

For those comparison products for which there were sales above the COP, we based NV on delivered prices to home market customers. We made deductions for inland freight, imputed credit expenses and banking charges, and home market direct and indirect selling expenses. As indirect selling expenses, we included inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. In addition, where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with 773(a)(6)(C)(ii) of the Act and 19 CFR 353.57.

For price-to-CV comparisons, we made deductions, where appropriate, for credit expenses and banking charges. We also deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Samsung

For those comparisons for which there were sales above the COP, we based NV on delivered prices to home market customers. We made deductions for inland freight, imputed credit, advertising, and royalty expenses, and home market direct and indirect selling expenses. For indirect selling expenses, we included inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses and commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2). In the case of letter-of-credit sales, we added in the amount of any duty drawback.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the home market.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. See Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Korean Won did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Hyundai and Samsung for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents. The verification team included a semiconductor product expert. The Department has placed on the record in Room B–099 the following verification reports: (1) December 19, 1997, "Verification of Cost of Production and Constructed Value Data Less Than Normal Value Investigation of Static Random Access Memory Semiconductors (SRAMS) from Korea-Samsung Electronics Co. Ltd." (Samsung Cost Verification Report); (2) December 18, 1997, "Verification of Home Market Sales Response of Samsung Electronics Company (SEC) in the Antidumping Investigation of Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea" (Samsung Home Market Sales Verification Report); (3) December 12, 1997, "Verification of U.S. Sales Response of Samsung Semiconductor, Inc. in the Antidumping Investigation of Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea" (Samsung U.S. Sales Verification Report); (4) December 16, 1997, "Verification of Cost of Production and Constructed Value Data Less Than Normal Value Investigation of Static Random Access Memory Semiconductors (SRAMS) from Korea-Hyundai Electronics Industries Co. Ltd." (Hyundai Cost Verification Report); (5) December 16, 1997, "Verification of Home Market Sales Questionnaire Responses of Hyundai Electronics Industries in the Antidumping Investigation of Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea" (Hyundai Home Market Sales Verification Report); and (6) December 16, 1997, "Verification of the U.S. Sales Questionnaire of Hyundai Electronics Industries, Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea" (Hyundai U.S. Sales Verification Report).

General Comments

Comment 1: Depreciation. The petitioner contends that the Department should continue to use the same depreciation adjustment used in the preliminary determination because of the following: (1) Samsung and Hyundai avoided losses on their income statements by changing the amount of depreciation recorded; and (2) the auditors notes to the financial statements for both respondents confirms that their reported depreciation understates their actual costs. As argued by the petitioner, the object of making such an adjustment is to counteract the effort by respondents to appear to be showing a profit when prices fell below costs during 1996.

Samsung states that the Department adjusted the reported depreciation expenses based on an erroneous assumption that Samsung changed its depreciation methodology for equipment and machinery in 1996. As argued by Samsung, the change was only a change in accounting estimate, and not a change in accounting principle. Samsung also states that the adjustment is not warranted since the reported expenses reasonably reflected costs and were appropriately reported in the audited financial statements as required by and consistent with the Korean generally accepted accounting principles (GAAP). Since its reported depreciation expenses are conservative compared with depreciation expenses taken by other semiconductor manufacturers, Samsung contends these expenses cannot be considered unreasonable and distortive of costs. Further, Samsung maintains that the accounting methods used to estimate the change in useful life of the equipment are prospective, under both U.S. and Korean GAAP. They also do not require any adjustment for the cumulative effect of the change from the date of purchase since there has been no change in accounting principle, which would require that the value of the assets be restated. If the Department does continue to adjust depreciation, Samsung argues that it must cumulatively restate the effect of the change based on the data submitted before verification which was fully verified.

Hyundai argues that the Department should not have adjusted the company's depreciation expense and methodology. According to Hyundai, the reported depreciation expenses and methodology are fully consistent with Korean GAAP. Specifically, Hyundai maintains that if the auditor's opinion attached to its financial statements documents that all elements of the financial statement, including depreciation, were fully prepared in accordance with Korean GAAP. As further claimed by Hyundai, the reported depreciation expenses also reasonably reflected the cost of producing SRAMS. For example, the five year useful life period used by Hyundai in 1996 is appropriate for semiconductor equipment. Finally, Hyundai claims the depreciation expenses as reported are fully consistent with the company's historical accounting methodology.

DOC Position. We agree with the petitioner in part. Historically both respondents have been inconsistent in their approach to special depreciation. For example, both respondents took advantage of the special depreciation option available to them under the Korean Corporate Income tax law in 1995. However, no special depreciation was taken during this current investigation.

It is the Department's normal practice to use costs recorded in the books and records of the respondent. Section 773(f)(1)(A) of the Act states that cost "shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with production and sale of the

merchandise." Further, as explained in the SAA, "[t]he exporter or producer will be expected to demonstrate that it has historically utilized such allocations, particularly with regard to the establishment of appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs." (SAA at 834.)

In contrast to the previous year, both respondents, for this POI, elected not to take special depreciation. This represents a failure to report depreciation expenses in a systematic and rational matter. As a result, disproportionately greater costs were attributed to products manufactured from when the special depreciation was taken than subsequent period when it was not taken. See DRAMs Final Determination. Therefore, for the final determination, we are making an adjustment to the respondents' reported depreciation. We are adding only special depreciation to the reported cost of production.

Comment 2: Interest expense. The petitioner maintains that using tangible fixed assets as the basis for allocating interest expenses is more appropriate to measure costs than using either total assets or cost of sales because of the respondents' heavy use of debt to finance the purchase of tangible fixed assets and because a larger proportion of total fixed assets is related to the semiconductor line of business than to other lines of business.

Samsung and Hyundai state that the Department incorrectly allocated interest expenses on the basis of fixed assets and not on the cost of goods sold. As argued by both respondents, the Department has a long-standing practice of allocating interest expense based on the cost of goods sold. Samsung argues that allocating interest based on fixed assets overstates financing costs since it does not account for income generated by the semiconductor division. Samsung contends that if the Department continues to allocate interest based on assets, it should use total assets rather than fixed assets because the Department would fail to account for the total investment required by its various business units by limiting the allocation base to fixed assets and would not account for the value of fixed assets used up in prior years by allocating interest based on the historical value of fixed assets. Hyundai also maintains that if the Department continues to allocate interest based on fixed assets, the Department, first, should use Cost of Goods Sold ("COGS") to allocate total consolidated corporate interest to Hyundai, then Hyundai's total interest can be allocated to SRAMs based upon the ratio of semiconductor fixed assets to total fixed assets based on the net book value of the assets rather than the acquisition cost.

DOC Position. We agree with the respondents that interest expense should be allocated based on COGS. In our preliminary determination, we allocated interest expense among the various operating units according to the proportional share of fixed assets. We have reconsidered this issue for the final determination and concluded that because the COGS includes a proportional amount of the depreciation of the assets used in the production of the merchandise, allocation of financing expenses on the basis of COGS distributes proportionately more interest expense to those products having higher capital investment. Moreover, we note that it has been the Department's longstanding policy to allocate interest expense on the basis of the COGS of the merchandise subject to investigation. We also note that, for the 1995–1996 administrative review of DRAMs, we have allocated interest expenses based on COGS consistent with the methodology in this case. Therefore, interest expense will be allocated over COGS since it reasonably apportions the interest expenses between SRAMs and other products.

Comment 3: Research & Development. Hyundai argues that the Department overstated R&D expenses by allocating a portion of non-memory R&D expense to SRAMs. According to Hyundai, the preliminary determination deviates from the long-standing practice of calculating product-specific R&D and of excluding R&D relating to non-subject merchandise from its CV calculations. Additionally, the antidumping statute precludes the Department from attributing expenses relating to non-subject merchandise to SRAMs. Moreover, Hyundai states that the *Micron* case requires the Department to provide substantial evidence justifying its departure from its practice. As such, Hyundai argues that the record in the instant case does not support the Department's preliminary determination. For example, Hyundai claims the September 8, 1997, Memorandum from Dr. Murzy Jhabvala to Thomas Futtner, "Cross Fertilization of Research and Development of Semiconductor Memory Devices" ("September 8, 1997 Jhabvala Memo") and the Micron submissions, used by the Department in the Preliminary Determination, do not support an assumption of cross-fertilization.

Hyundai also asserts that its organizational structure and accounting records clearly distinguish between R&D expenditures for memory and non-memory products. Hyundai maintains that cross fertilization of memory and non-memory R&D is extremely unlikely considering the fundamental differences in product design, marketing and production.

Samsung argues that R&D costs related to non-memory products should be excluded because R&D performed for micro and logic products do not benefit memory products such as SRAMs. Samsung disagrees with the Department's position, stated in the preliminary determination, that all R&D conducted for semiconductor products benefits all semiconductor products and, therefore, aggregate R&D costs should be allocated to all semiconductor products for purpose of determining the cost of production and CV. Samsung cites the cases Carbon Steel Flat Products From France (See Certain Carbon Steel Flat Products from France; Final Determination of Sales at Less than Fair Value 58 FR 37125 (July 9, 1993) and Cell Site Transceivers from Japan (see Cell Site Transceivers From Japan; Final Determination of Sales at Less than Fair Value 49 FR 43080 (October 26, 1984), as examples of past cases that the Department has required R&D be calculated on a product-specific basis. Samsung also cites *Micron*, in which the court ordered the Department to "recalculate Samsung's Cost of Production for the LTFV by allocating Research & Development costs on a product-specific basis." (See *Micron Technology, Inc.* v. *U.S.* 893 F.Supp 21 (CIT 1995)). Furthermore, Samsung contends the Department's finding that R&D expenses incurred for non-memory merchandise benefits SRAMs is not supported by the record.

Samsung argues that the R&D costs relating to SRAMs consist of efforts to apply state-of-the art technology to reduce the size of circuits utilized in the subject merchandise. Samsung further states that only after a new generation of memory products has been developed are the technologies developed for memory products applied to develop customer and market specific logic devices. These later devices use existing, mature, process and manufacturing technologies. The R&D that Samsung conducts to develop new memory products might benefit the later developed micro products. Thus, the flow of R&D may be from memory to micro and application specific products, but not vice-versa. Samsung asserts that it is primarily a memory products company, with a one-way flow of R&D from memory to micro products.

Samsung disagrees with the statement prepared by Dr. Murzy Jhabvala of the National Aeronautics and Space Administration. Samsung claims that the statement does not provide enough evidence to refute what the CIT has already ruled upon. Samsung claims that Dr. Jhabvala's assertion that R&D in a given area of semiconductors, such as micro devices, is widely disseminated and read by all micro engineers, says nothing about whether the results of that research benefit development or production of memory products. Samsung further contends that his memorandum does not explain how "cross fertilization" takes place and purportedly benefits the development or production of DRAMs (or SRAMs).

Furthermore, Samsung argues that Dr. Jhabvala's December 18, 1997 memorandum does not support the Department's view that R&D expenses on ASIC and logic devices could benefit the development or production of SRAMs. Samsung claims that the issue before the Department is how to allocate the pool of R&D costs, and whether some or all of the expenses should be allocated to SRAMs production. Moreover, Samsung asserts, Dr. Jhabvala's memorandum does not demonstrate how the work performed on non-memory projects benefit SRAMs.

Samsung concludes that because non-memory R&D does not benefit SRAMs or any other memory products, those expenses cannot be properly allocated to the cost of producing SRAMs. Samsung recognizes that there is limited cross-fertilization of R&D within memory products and its methodology already accounts for any possible cross fertilization concerns. Samsung states that there is no need to include totally unrelated R&D undertaken for micro or logic products in the memory related production costs.

Samsung refers to a letter from Professor Bruce A. Wooley which states that, "[I]n the case of circuit design techniques there is virtually no cross-fertilization among various classes of memories." (See Samsung submission dated September 29, 1997.) Samsung claims that the articles proffered by the petitioner to support its claim that R&D conducted in one area benefits other areas mainly relate to process technology which may benefit a variety of products and to the incorporation of separate designs on a single chip; they do not address whether design technology from one type of memory product benefits the design of another. Samsung argues that both its verified R&D information and the fact that the company separates product-specific R&D for accounting purposes demonstrate that the R&D conducted by Samsung is product-specific design R&D, which does not benefit all products. Samsung argues that, if the Department determines that cross-fertilization of design R&D among memory products does occur, it should still not aggregate product-specific R&D for logic products with product-specific R&D for memory products.

In response to Samsung's and Hyundai's assertions, the petitioner states that the Department properly allocated all semiconductor R&D over all semiconductor production. As argued by the petitioner, there is already sufficient evidence on the record to support the Department's determination that there is significant cross-fertilization among the different areas of semiconductor design and development. Moreover, petitioner contends that logic R&D benefits SRAMs R&D expenses. Petitioner also claims that since new R&D expenses for application-specific integrated circuits (ASICs) do not benefit current production of any product, it must be allocated over all current semiconductor production. Finally, petitioner states that the presence of separate accounts for separate R&D projects does not contradict cross-fertilization.

DOC Position. We agree with the petitioner and have allocated all semiconductor R&D expenses over the total semiconductor cost of goods sold. In the DRAMs Final Determination, the Department recalculated respondents' reported R&D expense based on the ratio of each company's total semiconductor expenses to the total semiconductor costs of goods sales. As we stated in the DRAMs Final Determination:

> * * * Semiconductors present unique problems related to R&D. Because the general underlying technology is the same for all semiconductor products, the benefits from the results of R&D, even if intended to advance the design or manufacture of a specific product, provide an intrinsic benefit to other semiconductor products. It is impossible to measure the extent to which R&D benefits one semiconductor product relative to another. Thus, identification of specific R&D costs with any one product causes overstating or understating of these costs in relation to the benefits that product derived from the total R&D expenditures for semiconductors * * *.
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> (See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Determination of Sales at Less Than Fair Value 58 FR 15470 (March 23, 1993.))

Subsequent to the Department's final determination, Micron and the three respondents, Samsung, LG and Hyundai filed lawsuits with the Court of International Trade challenging that determination. Thereafter, in *Micron Technologies, Inc.* v. *United States*, 893 F.Supp. 21 (CIT 1995), the Court remanded to the Department the allocation of R&D expenses. The Court stated that the Department had failed to place on the record any evidence of cross-fertilization in the semiconductor industry. Therefore, the Court instructed the Department to recalculate respondents' cost of production by allocating research and development (R&D) expenses on a product-specific basis. In the remand results, the Department did so and the remand was affirmed. CIT No. 93–06–00318, Slip Op. 95–175 (October 27, 1995).

In the 1992–1994 DRAMs review, LG Semicon (LG) argued that the Department should not have included R&D expenses of non-DRAM products in the DRAM R&D. See Dynamic Random Access Memory Semiconductor of One Megabit or Above From the Republic of Korea; Final Results of Review 61 FR 20217 (May 6, 1996) ("1992–1994 DRAMs review"). According to LG, the Department identified and verified product-specific expenses in its accounting system. Therefore, LG argued that the Department's decision to include non-DRAM R&D was inconsistent with the *Micron* decision. In the 1992–1994 DRAMs Review final results, the Department stated:

> * * * At verification, we confirmed that each R&D project is accounted for separately in each of the respondent's respective books and records. Separate accounting, however, does not necessarily mean that cross-fertilization of scientific ideas does not occur. Moreover, the CIT specifically stated in *Micron Technology* that the Department did not "direct the court to any record evidence of R&D cross-fertilization in the semiconductor industry." *Micron Technology*, 893 F. Supp., at 27. In this review, the Department has provided such information. See Memorandum from Karen Park to Holly Kuga regarding Cross-Fertilization of R&D for DRAMs, August 14, 1995 (cross-fertilization memo). The cross-fertilization memo includes pages from verification exhibits, a memorandum from a non-partisan expert from the semiconductor industry, as well as information from certain articles widely read by experts in the DRAM R&D field demonstrating the existence of cross-fertilization of R&D in the DRAM industry * * *
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> Dynamic Random Access Memory Semiconductor of One Megabit or Above From the Republic of Korea; Final Results of Review 61 FR 20218 (May 6, 1996).

Due to the forward-looking nature of the R&D activities, the Department, in this investigation, cannot identify every instance where SRAM R&D may influence logic products or where logic R&D may influence SRAM products, but

the Department's own semiconductor expert has identified areas where R&D from one type of semiconductor product has influenced another semiconductor product in the past. Dr. Murzy Jhabvala, a semiconductor device engineer at NASA with twenty-four years experience, was asked by the Department to state his views regarding cross-fertilization of R&D efforts in the semiconductor industry. In a July 14, 1995 Memorandum to Holly Kuga, " Cross Fertilization of Research and Development Efforts in the Semiconductor Industry," Dr. Jhabvala stated that "it is reasonable and realistic to contend that R&D from one area (*e.g.*, bipolar) applies and benefits R&D efforts in another area (*e.g.*, MOS memory)." Dr. Jhabvala also stated that:

> SRAMs represent along with DRAMs the culmination of semiconductor research and development. Both families of devices have benefitted from the advances in photo lithographic techniques to print the fine geometries (the state-of-the-art steppers) required for the high density of transistors * * *. Clearly, three distinct areas of semiconductor technology are converging to benefit the SRAM device performance. There are other instances where previous technology and the efforts expended to develop that technology occurs in the SRAM technology. Some examples of these are the use of thin film transistors (TFTs) in SRAMs, advanced metal interconnect systems, anisotropic etching and filling techniques for trenching and planarization (CMP) and implant technology for retrograde wells.

(See "September 8, 1997 Jhabvala Memo.")

Furthermore, Dr. Jhabvala also participated in the verification of Samsung's R&D expenses. After interviewing several of Samsung's R&D engineers, Dr. Jhabvala concluded that "the most accurate and most consistent method to reflect the appropriate R&D expense for any semiconductor device is to obtain a ratio by dividing all semiconductor R&D by the cost to fabricate all semiconductor sold in a given period." (December 19, 1997, Memorandum from Murzy Jhabvala to the File, "Examination of Research and Development Expenses and Samsung Electronic Corporation ").

We reviewed the views of Samsung's expert on this subject and found them to be of less probative value than the cases cited above, as Jhabvala's articles refute Dr. Wooley's assertion that there is no cross-fertilization among circuit design techniques. In fact, Dr. Wooley agrees that there can be cross-fertilization in the development of process technologies among various classes of memories. This assertion also refutes the claims that there is no cross-fertilization in the development of process technologies.

The respondents argue we should follow their normal accounting records which categorize R&D expenses by project and product. While we do not disagree that each R&D project is accounted for separately in each of the respondents' respective books and records, we do not find this argument persuasive since accounting records do not address the critical issue of whether R&D in one area benefits another area. Therefore, we do not believe that the R&D expenses associated with these records reasonably reflect the appropriate cost of producing the subject merchandise.

Finally, contrary to the respondents' assertion, the methodology we are applying does calculate product-specific costs. It is the Department's practice where costs benefit more than one product to allocate those costs to all the products which they benefit. This practice is consistent with section 773(f)(1)(A) of the Act because we have determined that the product-specific R&D accounts do not reasonably reflect the costs associated with the production and sale of SRAMs. Therefore, as semiconductor R&D benefits all semiconductor products, we allocated semiconductor R&D to all semiconductor products.

Comment 4: Foreign exchange loss. The petitioner argues that current period foreign exchange losses on long-term debt should be included in cost of production since the Department's practice and U.S. and international accounting standards all require that current period foreign exchange losses on long-term debt be included in cost of production and the Department's past practice has been to disregard Korea's local accounting standard that called for deferring current period foreign exchange losses on long-term debt.

Samsung contends that its methodology is consistent with Korean GAAP and with the Department's past practice of amortizing foreign exchange losses relating to debt over the life of the loan. Samsung further maintains that its methodology does not exclude the foreign exchange losses but rather amortizes them over the life of the loans and does not distort the dumping calculation. Samsung argues that foreign exchange losses should not be treated like interest because they are not functionally equivalent to interest.

Hyundai maintains that its treatment of unrealized foreign exchange losses is in accordance with Korean GAAP and reasonably reflects the cost of production. Hyundai argues that Korean GAAP provides for the recognition of such gains or losses when they are actually incurred and unrealized long-term foreign currency translation losses do not represent an actual cost to them. Hyundai further contends that the Department should reject Micron's contention that the losses be treated as interest expenses and be allocated over fixed assets because such foreign exchange losses on long-term debt are not current interest expenses, but rather reflect fluctuations in exchange rates associated with year end valuation of foreign currency liabilities.

DOC Position. We agree with the petitioner, in part, and have included the amortized portion of foreign exchange losses on long-term debt in the cost of production as part of interest expense. The translation gains and losses at issue are related to the cost of acquiring and maintaining debt. These costs are related to production and are properly included in the calculation of financing expense as a part of COP. In previous cases, we have found that translation losses represent an increase in the actual amount of cash needed by respondents to retire their foreign currency denominated loan balances. (See Notice of Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Ecuador, 24 FR 7019, 7039, (Feb. 6, 1995).) Furthermore, the Department has amortized these expenses over the remaining life of the companies' loans in the past. (See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey, 62 FR 9737, 9743, (March 4, 1997).) We have verified deferred foreign exchange translation gains and losses for both respondents. See Samsung Cost Verification Report and Hyundai Cost Verification Report. To reasonably reflect the cost of producing and selling the subject merchandise, it is necessary that the respondents' cost reflect the additional financial burden represented by the additional cash need to retire foreign currency denominated loans. Therefore, for the final determination, the Department amortized deferred foreign exchange translation gains and losses over the average remaining life of the loans on a straight-line basis and included the amortized portion in net interest expense.

Comment 5: CEP Offset. The petitioner contends that the Department should make no CEP offset adjustment for any respondent for purposes of the final determination. The petitioner asserts that the Department's practice of determining the number and comparability of levels of trade after making all adjustments to CEP, but before adjusting NV, makes CEP offsets virtually automatic. According to the petitioner, under both the plain terms of

the statute and the intent of Congress, such adjustments should be the exception, not the rule. The petitioner notes that it raised the same argument in another case and that the issue is now before the courts. (See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review 62 FR 965 (Jan. 7, 1997) ("DRAMs 1994–1995 review").

Hyundai disagrees, noting that the statute requires that a level of trade analysis be performed only after adjustment is made for U.S. selling expenses. Hyundai further states that the Department has rejected similar arguments made in the second and third review of DRAMS. As support for this proposition, Hyundai cites to the second review, where the Department stated that the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Tariff Act. Hyundai maintains there is nothing new in the law or the facts of this investigation to suggest that the Department should reexamine its practice of beginning its level of trade analysis after adjusting for U.S. expenses

Samsung also disagrees with the petitioners' argument that the Department should not grant the CEP offset. Samsung cites to the second and third reviews of DRAMs in which the Department rejected identical arguments by the petitioner and stated "while the petitioner is correct in noting that the starting price for calculating the Constructed Export Price (CEP) is that of the subsequent resale by the affiliated importer to an unaffiliated buyer, the Act, as amended by the URAA, and the SAA clearly specifies that the relevant sale for our level of trade (LOT) analysis is the CEP transaction between the exporter and the importer." (See Dynamic Random Access Memory from Korea, 62 FR 39809, 39821 (July 24, 1997) ("DRAMs 1995–1995 review"). Samsung states that the statute, the SAA, the Department's regulations and the Department's practice in every case decided under the new law all mandate that in making the LOT determination, the Department should compare normal value to CEP.

Samsung also claims that the new regulations issued by the Department formally codify this policy. 19 CFR 351.412 (c) (ii) states that for purposes of the LOT analysis, the Department will "[i]n the case of constructed export price, the export price as adjusted under section 772(d) of the Act." (See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27414 (May 19, 1997). Samsung contends that the SAA instructs the Department "to establish normal value based on home market sales at the same LOT as the CEP or the starting price for the export price". Samsung asserts that the petitioner has failed to offer any evidence that the Department's level of trade analysis is incorrect and should disregard the petitioner's argument.

Samsung further claims that for CEP sales, use of the starting price, which is the sale to the first unaffiliated customer in the United States, is inappropriate because the starting price of CEP sales includes expenses associated with economic activity in the United States.

DOC Position. The statute and SAA both support analyzing the level of trade of CEP sales at the constructed export level price, i.e. after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. As we stated in the second *DRAMs* review, the Department has:

> * * * Consistently stated that, in those cases where a level of trade comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act (see Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan; Notice of Final Determination of Sales at Less Than Fair Value, 61 FR 38139, 38143 (July 23, 1996). In every case decided under the revised antidumping statute, we have consistently adhered to this interpretation of the SAA and of the Act. See, e.g., Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 15766, 15768 (April 9, 1996); Certain Stainless Steel Wire Rods from France; Preliminary Result of Antidumping Duty Administrative Review, FR 8915, 8916 (March 9, 1996); Antifriction Bearings (Other Than Tapered Roller Bearings) and parts Thereof from France, et al., Preliminary Results of Antidumping Duty Administrative Review, 61 FR 25713, 35718–23 (July 8, 1996)'.
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> Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review 62 FR 965, January 7, 1997).)

Consistent with this practice, we performed our level of trade analysis of CEP sales only after adjusting for selling expenses incurred in the United States. Based on our analysis, we determined that each respondent sold SRAMs during the POI at a level of trade in the home market which was different, and more advanced, than the level of trade of the CEP sales of SRAMs in the United States. In addition, we did not have the data necessary to consider whether a level of trade adjustment was appropriate.

Because Samsung and Hyundai provided sufficient data to justify CEP offset adjustments, we have continued to grant these adjustments.

Comment 6: Scope of the Investigation. The petitioner argues that the Department should clarify that the scope of the order on SRAMs from Korea includes the SRAM content of motherboards for personal computers. The petitioner contends that if SRAMs incorporated on motherboards are not included in the scope of the order, the respondents will shift a significant volume of SRAMs into the production of motherboards in Korea that are destined for the United States, thereby avoiding paying duties on the SRAMs.

In addition, argues the petitioner, while motherboards viewed as a whole may be considered to fall within a class or kind of merchandise separate from SRAMs, the placement of SRAMs on a motherboard does not diminish their separate identity or function, and should not insulate them from antidumping duties. The petitioner contends that its position is supported by: (1) The Department's practice regarding combined or aggregated products; (2) analogous principles of Customs Service classification; and (3) the Department's inherent authority to craft an antidumping order that forestalls potential circumvention of an order.

The petitioner also argues that the Customs Service can administer, without undue difficulty, an antidumping duty order that covers SRAMs carried on non-subject merchandise.

At the public hearing held by the Department, the petitioner asserted that there are fundamental differences between the scope language in the DRAMs Final Determination and the scope language in this investigation that distinguish the two cases. The petitioner first argues distinguishes this investigation from the DRAMs Final Determination, because in this case there "is no limitation to the function of memory." See January 16, 1998, Hearing on SRAMs from Korea, Transcript dated January 22, 1998, at page 225. The petitioner further argues that, in the DRAM case the function of the product was memory, which is not the case in this investigation. See January 16, 1998, Hearing on SRAMs from Korea, Transcript dated January 22, 1998, at page 225.

IDT and Cypress agree with the petitioner, arguing that SRAMs on a motherboard are no less SRAMs than

those imported separately and that the Department's failure to cover such imports would provide an incentive to foreign SRAM producers to shift their sales to motherboard producers in Taiwan and elsewhere.

Hyundai, Motorola, Compaq, and Digital opposed the petitioner's position. Compaq, and Digital argue that the petitioner's circumvention concerns are unfounded. They note that the Department determined in the DRAMs Final Determination that DRAMs physically integrated with the other components of a motherboard in a manner that made them part of an inseparable amalgam (*i.e.*, a motherboard) posed no circumvention risk and that the same holds true in this case.

In addition, Compaq and Digital argue that, contrary to the petitioner's assertion, SRAMs affixed to a motherboard do not retain their separate functional identities. In this case, SRAMs are integrated onto motherboards by soldering, are interconnected with other motherboard elements by intricate electronic circuitry, and become part of a complex electronic processing unit representing an inseparable amalgam (*i.e.*, a motherboard) constituting a different class or kind of merchandise that is outside the scope of the investigation.

Hyundai disputes petitioner's contention that the memory function of SRAMs is not altered by the placement of chips on a motherboard. According to Hyundai, the same statement could be made of any product installed in a finished product. For example, Hyundai argues that the Department has not determined that the scope of the antifriction bearings antidumping duty orders should be extended to include the ball bearing content of imported automobiles. Finally, Compaq and Digital argue that the petitioner's proposal is unworkable from an administrative standpoint, since it would require motherboard manufacturers to track all SRAMs placed in every motherboard throughout the world. Compaq and Digital note that they cannot determine the value of Korea SRAMs incorporated in a particular motherboard. In addition, Compaq, and Digital argue that the petitioner's proposal would be unadministrable by the Customs Service because the SRAM content of a motherboard cannot be determined by physical inspection and because the petitioner has provided no realistic proposition as to how the Customs Service might carry out the petitioner's proposal on an entry-by-entry basis, given the enormous volume of trade in motherboards.

With regard to the petitioner's assertion that the scope of the language in DRAMs Final Determination is fundamentally different from the scope language in this investigation, Compaq and Digital argue that the language is quite similar and that there is no "doubt that literally the language in this Notice of Investigation and in the preliminary referred to certain modules, and those are memory modules, not any kind of board on which other elements are stuffed." See January 16, 1998, Hearing on SRAMs from Korea, Transcript dated January 22, 1998, at page 203.

DOC Position. We disagree with the petitioner. The petitioner's argument that the scope of the investigation as defined in the preliminary determination should be interpreted to encompass the SRAM content of motherboards is unpersuasive for three basic reasons. First, the SRAM content of motherboards (when affixed to the motherboard) was not expressly or implicitly referenced in the scope language used, to date, in this investigation. Second, just as we found in the DRAMs Final Determination, the petitioner's claims about potential circumvention of the order are groundless. Third, it is not appropriate for an antidumping duty order to cover the input content of a downstream product. As the Department found in DRAMS Final Determination, a case in which a nearly identical proposal was rejected by the Department, when a DRAM is physically integrated with a motherboard, it becomes a component part of the motherboard (an inseparable amalgam). As there has been no request to include motherboards within the scope of this investigation, the SRAM content of motherboards (when physically integrated with the motherboard) cannot be covered.

As to the first point, we disagree with the petitioner's assertion that the differences between the scope language in DRAMs From Korea and the language in this case are so fundamental that the differences can be interpreted to mean that SRAMs soldered onto motherboards are included within the scope of this investigation. The SRAM scope language relied upon by the petitioner includes within the scope of this investigation "other collection[s] of SRAMs;" as the petitioner notes in its argument, this refers specifically to modules whether mounted or unmounted on a circuit board. There is similar scope language in DRAMs From Korea. In that case, we interpreted the language as not extending to modules which contain additional items which alter the function of the module to something other than memory. Such an interpretation, applied to this case, indicates clearly that the SRAM content of motherboards is not within the scope of this investigation.

We found in DRAMs From Korea that memory boards whose sole function was memory were included within the definition of memory modules; however, we further concluded that other boards, such as video graphic adapter boards and cards were not included because they contained additional items which altered the function of the modules to something other than memory. Consequently, at the time of the final determination, we added language to the DRAMs From Korea scope in order that these other, enhanced, boards be specifically excluded. Since the issue of such enhanced boards was not raised in this case, we did not find it necessary to include an express exclusion for such products. Thus, the absence of such language should not be interpreted to permit the inclusion of products which do not fall under the rubric of "other collections of SRAMs."

As to the second point, the petitioner argued in DRAMS Final Determination that unremovable DRAMs on motherboards should be included in the scope of the order to counter the potential for circumvention of the order. We stated in that determination that we considered it "infeasible that a party would import motherboards with the intention of removing the integrated DRAM content and, therefore, consider it unreasonable to expect that any order arising from this investigation could be evaded in such a fashion." (See DRAMS Final Determination, Case Number A–580–812, "Memorandum to Joseph Spetrini from Richard Moreland", dated March 15, 1993, at page 13). We find it equally infeasible that an importer would import SRAMs soldered onto a motherboard for the sole purpose of removing those SRAMs for individual resale thereby circumventing the antidumping duty order.

As to the third point, our statute does not provide a basis for assessing duties on the input content of a downstream product. See Senate Rep. 100–71, 100th Congress, 1st Sess. 98 (1987) (in which the report notes both the general rule and the "major input" exception, which applies only in an investigation or review of a downstream product). Thus, where an SRAM loses its separate identity by being incorporated into a downstream product, and where the investigation covers SRAMs but does not cover the downstream product, there can be no basis for assessing

duties against the SRAMs incorporated in the downstream product.

For a more detailed discussion regarding this issue, see the Memorandum to Louis Apple from the Team, dated February 13, 1998.

Comment 7: Calculation of CV Profit. Petitioner maintains that the Department erroneously included in its calculation of CV profit sales that failed both prongs of the cost test. Samsung disagrees and argues that the Department, for the purposes of calculating CV profit, should not have disregarded sales below costs which have not otherwise been excluded from the calculation of normal value. Furthermore, petitioner argues that the Department should revise its computer program to ensure that only sales that are above quarterly costs at the time of sale are included in the calculation. According to petitioner, sales that fail the cost test, but pass the "cost recovery test" under section 773(b)(2)(D), are deemed to have zero profit even if they are not excluded from normal value. As a result, an erroneous CV profit rate was calculated by the Department. Therefore, the Department should correct the programming language.

Samsung asserts that the Department inadvertently included sales of models that were found to be one hundred percent below costs in the calculation of CV profit. It argues that the Department's longstanding practice is to exclude from the pool of sales used to calculate CV profit only those sales which have been disregarded in the cost test.

DOC Position. We agree with Samsung. It is the Department's practice to exclude any home market sales that failed the cost test from the pool of sales used to calculate CV profit. According to the SAA, the Department "will base amounts for SGA and profit only on amounts incurred and realized in connection with sales in the ordinary course of trade . . . Commerce may ignore sales it disregards as a basis for normal value, such as those sales disregarded because they are made at below-cost prices." *See* SAA at 839. The Department has revised its preliminary calculations to include in the CV profit only those sales which have not been disregarded as the basis for normal value.

Company Specific Issues

A. Petitioner

Comment 1: Untimely Clerical Error Allegation. Petitioner alleges that the Department accepted an untimely clerical error submission from Samsung. Samsung's clerical error allegation was that the Department inadvertently set inventory carrying costs to zero.

DOC Position. We agree with the petitioner. Samsung's submission was dated after the deadline to submit any allegations for clerical errors pursuant to the preliminary determination. However, the Department had already determined that inventory carrying cost had been set to zero prior to the Samsung submission. Therefore, for this final determination, we have revised the computer program, accordingly.

Comment 2: Cost Test Methodology. Petitioner claims that the Department inappropriately compared U.S. models to the next most similar model in the home market when all of the home market sales of the identical or most similar product made during a given quarter failed the cost test. Petitioner claims that if all of the sales made during a given quarter fail the cost test, the Department should make comparisons to CV, rather than going to the next most similar model, even if more than 80 percent of the sales of that home market model were made above cost during the POI.

DOC Position. Section 773(b)(1) instructs the Department to disregard sales below cost when they "(A) have been made within an extended period of time in substantial quantities; and (B) were not at prices which permit recovery of all costs within a reasonable period of time." To measure cost recovery of each below-cost sale, the Department compares each below-cost price to the annual cost of production of that model, and disregards those sales whose price is lower than the annual cost of production. The Department defines the extended period of time and the cost recovery period as the POI. To measure whether sales have been made in substantial quantities over an extended period of time, the Department determines the quantity of sales that were made below cost during the POI. If 80 percent or more of the sales during the POI were made above cost, then the Department uses all sales, above and below cost, to determine normal value. If less than 80 percent of the sales during the POI were above cost, then the Department uses only the above-cost sales to determine normal value.

Therefore, in cases where comparisons are made on a POI-basis, the Department calculates a weighted-average normal value for all models that had at least one sale above cost during the POI. It resorts to CV only when there are no sales of identical or similar merchandise or when all sales of a comparison product fail the cost test.

Comment 3: Depreciation Ratio Adjustment. Petitioner claims that the Department applied the wrong depreciation ratio adjustment for components to Samsung's modules.

DOC Position. We agree with petitioner. We inadvertently applied the wrong depreciation ratio and therefore, have made the adjustment for the final determination. (See Comment 1.)

Comment 4: Overwritten Data. Petitioner alleges, and Hyundai and Samsung concur, that the cost test results are applied to the original sales database in such a way that the cost test data set inappropriately overwrites the data in the original data set.

DOC Position. We agree with petitioner, Hyundai and Samsung, and have made the appropriate corrections to our calculations.

Comment 5: Adjustment to Fabrication Costs. Petitioner argues that the evidence on the record clearly has demonstrated that Samsung shifted costs from the production of SRAMs to the production of non-subject merchandise. Therefore, petitioner requests that the Department make an adjustment to Samsung's fabrication costs. Petitioner claims the verification team missed the demonstrable under-reporting of costs of the SRAMs. The team did not do the following: (1) Verify the entire production of a sample cost center; (2) ask to see the entire production quantities of subject and non-subject merchandise; (3) examine all costs; (4) determine if the allocation of costs between subject and non-subject merchandise was reasonable. Petitioner also developed a cost model to demonstrate how Samsung's costs were allocated away from SRAMs to uncovered merchandise. In a parallel argument, petitioner also alleges that Samsung was unable to provide contemporaneous "written" records of its non letter-of-credit home market sales. Although it contained price and quantity information, Samsung's computer-generated sales listing does not constitute a verifiable document and permits the manipulation of past prices.

Samsung argues that it did not shift costs from SRAMs to non-subject merchandise. Citing the verification report, Samsung argues that the Department did the following: (1) Examined and differentiated between the allocation of costs for SRAMs and non-subject merchandise; (2) reconciled the allocation of the processing costs between subject and non-subject merchandise using actual data from the cost system and the cost submission; (3) tied the reported product costs to the financial statements; (4) tested the allocations and the standard machine and labor hours; and (5) summarized

that all costs were reconciled to the financial statements.

DOC Position. We agree with Samsung and have not made an adjustment to fabrication costs. Regarding Samsung's costs, the Department conducted an extensive verification. See Samsung Cost Verification Report. Moreover, contrary to the petitioner's allegation, the Department verified the entire cost of several cost centers as well as production quantities. We determined that the allocation of costs between subject and non-subject merchandise was reasonable, as based on Samsung's actual accounting records. We examined these issues during the overall cost reconciliation and the verification of major cost components, such as materials, labor, and overhead. Furthermore, the Department reconciled the total accumulated costs for each cost center to the total cost of manufacturing for Samsung. Therefore, the Department fully verified and reconciled all reported costs.

In regard to petitioner's cost model, we note that it was based on three faulty assumptions: (1) That all models produced on a given line have the same processing times; (2) that all models produced on the same line have the same yields; and (3) that the total products processed on a given line will equal the rated capacity for the product. The Department examined standard times and yields in detail and verified that there are differences among products. Also, actual throughput will vary from rated capacity depending on the operation and utilization of the resources of the line. For these reasons, we do not find that petitioner's cost model provides a substantial basis for disregarding our verification findings

With respect to the sales verification allegation, the Department examined at length Samsung's computerized record keeping system. The fact that Samsung did not state the price of the merchandise on the shipping orders is irrelevant. The Department successfully conducted extensive sales traces on both pre-selected and surprise sales to verify prices and received voluminous documentation for each sale, from shipping orders to bank receipts, which were then tracked into the sales ledgers and then tied to the audited financial statements. This process was clearly described in the verification report. As noted in the verification report, the Department found no discrepancies or omissions in Samsung's reporting. See Samsung Cost Verification Report. For these reasons, we are not making changes to Samsung's sales response except as noted elsewhere in this notice.

B. Samsung

Comment 1: Double-Counting of Duty Drawback. Samsung claims that the Department double-counted the duty drawback for local letter of credit sales by adding duty drawback to the sales value in the determination of revenue in the CEP profit calculation. Samsung argues, that the Department, however, also reduced direct selling expenses, which were deducted from Korean revenues, by the amount of duty drawback. As a result, duty drawback was double-counted.

DOC Position. We disagree with Samsung. We did not inadvertently double-count duty drawback in the calculation for U.S. and home market revenue.

Comment 2: Use of Consolidated Financial Statements. Samsung argues that the Department's use of its unconsolidated financial statements for determining interest expense is appropriate in this case since the use of the unconsolidated financial statements is consistent with the DRAMs Final Determination investigation and the first administrative review of 1992–1994 DRAMs review. It further contends that calculating the interest expense based on the consolidated financial statements would distort the interest expense calculation because it is not possible for Samsung to break out the short-term interest income which would be used to offset interest expense on the consolidated basis. However, Samsung maintains that the requisite data is on the record and has been verified if the Department decides to use the consolidated financial statements to calculate the interest expense.

DOC Position. We disagree with Samsung. It is a longstanding Department policy to use consolidated interest expense because this practice recognizes the fungible nature of invested capital resources within a consolidated group of companies. See Kaplan, Kamarck and Parker Cost Analysis under the Antidumping Law, 21 Geo. Wash. J. Int'l L & Econ., 357, 387 (1988). The Department previously used the unconsolidated financial statements for the DRAMs investigation and the first and second reviews because the consolidated financial statements were not available at that time. For this final determination, we have used the used the interest expense as recorded in Samsung's consolidated financial statement.

Comment 3: Guaranty Fees. Samsung maintains it did not include guaranty fees in its interest expense because these fees were included in the G&A calculation. If the fees are an interest expense, Samsung argues that they should be deducted from G&A to avoid double-counting.

DOC Position. We have not reclassified guaranty fees from G&A expense to interest expense as it would have no impact on the submitted costs.

Comment 4: Revised Interest Expense. Samsung claims that the Department erroneously calculated the revised interest expense as a percentage of the variable TOTAL, which includes the cost of manufacturing (COM), G&A and R&D. It maintains that the revised interest adjustment factor was based on COGS which does not include G&A or R&D, and, therefore, the revised interest factor should be calculated as a percentage of COM.

DOC Position. We agree and have revised our calculations in our computer program

Comment 5: CV Profit Rate Methodology. Samsung claims that the Department erroneously calculated the overall CV profit rate by first computing the transaction specific profit rate for each home market sale, then weight-averaging the transaction specific rates based on sale quantity to compute the overall CV profit rate. It claims that the Department's standard practice is to calculate the CV profit rate by dividing the total home market profit by the total home market cost to derive a profit ratio. It quotes Certain Stainless Steel Wire Rods from France, 62 FR 7206, 7209 (February 18, 1997) and Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 61 FR 56514 (November 1, 1996), as saying that the method used in the preliminary determination seriously distorts the dumping calculation. For the final determination, the Department should use its normal methodology for calculating CV profit.

Petitioner states that it is more appropriate to calculate CV profit using the methodology in the preliminary determination. Further, petitioner notes that the two cases cited by Samsung did not make a judgement as to the general applicability of the CV profit methodology. Instead, the Department in these two above-cited cases only acknowledged that it was changing the programming language and not revising its overall CV profit methodology.

DOC Position. We agree with Samsung. For this final determination, we have used the normal methodology used to calculate the CV profit rate for both Samsung and Hyundai. It measures more accurately the actual profit for sales of the foreign like product made in the ordinary course of trade. Therefore, for the final determination, the CV profit ratio was calculated by dividing total

home market profit by total home market costs, for each respondent, as both respondents had above-cost sales in the home market.

C. Hyundai

Comment 1: CV Profit on a Quarterly Basis. Hyundai argues that the Department must calculate CV profit on no longer than a quarterly basis. For the purposes of the preliminary determination, the Department recognized that prices during the POI declined significantly and, therefore, used quarterly data for the comparisons of prices and sales below cost test. However, the Department did not calculate profit for CV on a quarterly basis. Hyundai further argues that declining prices, in turn affect the profit rates earned on sales during the period of investigation. Since the antidumping comparison is based on matching comparable products in a comparable period, the Department should also apply the appropriate quarterly profit rates in the calculation of CV.

Petitioner contends that the Department properly used the annual profit figure in the CV calculation. The annual profit rate is the correct figure since it reflects not only the quarterly cost of manufacture but also those annual costs, such as general and administrative and financing expenses, which are non-recurring and must be calculated on an annual basis to ensure that all costs are captured in the cost of production.

DOC Position. We agree with the petitioner. The Department applies the average profit rate for the POI or period of review (POR) even when the cost calculation period is less than a year. See, e.g., Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 53287, 53295 (Oct. 14, 1997) and Silicon Metal from Brazil; Final Results of Antidumping Duty Administration Review, 61 FR 46763, 46774 (Sept. 5, 1996). The calculation of profit as an average for the period of investigation or review is implied by the statute's guidance as to the recovery of cost test. Section 773(e)(2)(A) of the Act mandates that the Department use the actual amounts for profit in connection with the production and sale of the foreign like product in the ordinary course of trade. Moreover, section 773(b)(2)(D) of the Act directs us to perform the recovery of cost test on a POI basis. Therefore, in order to be consistent we must calculate profit on the same basis as the basis used to determine whether sales were made in the ordinary course of trade.

Comment 2: Reversal of Bad Debt. Hyundai contends that the reversal of bad debt should be used to offset G&A expense. Hyundai submitted a revised G&A calculation at verification to reflect this reversal of bad debt. Hyundai states that the reversal of the allowance for bad debt is classified under non-operating income in its financial statements.

DOC Position. We agree with Hyundai. The allowance for bad debt is properly classified as a non-operating general expense. The revised G&A calculation was properly submitted prior to the beginning of verification. We have made the appropriate changes for the final determination.

D. LG Semicon

Comment 1: Facts Available. LG argues that the Department should not use a facts available rate based on information supplied by the petitioner that has been determined to be inaccurate in the course of the Department's investigation. LG contends that because the petition was based on Samsung's data, and since Samsung received an estimated margin in the preliminary determination significantly different than the petition rate, the petition data cannot be used as facts available. LG maintains that to assign it a rate of 55.36 percent nullifies the subsequent investigation which led to Samsung having a 1.59 percent margin. LG cites the case of *D & L Supply Co.* v *United States* 113 F.3d 1220 (1997), in which the Federal Circuit ruled that the Department should use the best information provisions of the Act "to determine current margins as accurately as possible."

Petitioner contends that the Department properly assigned a facts available rate to LG based on corroborated information from the petition since LG refused to participate in the investigation. The Department should not give preferential treatment to LG, a non-cooperative respondent, by assigning as facts available a margin calculated for a participating respondent. Petitioner disputes LG's contention that the petition data was "seriously flawed." Petitioner argues that the Department compared Samsung's actual prices with the petitioner's home market and U.S. price quotes, and found them sufficiently "close." LG had full opportunity to present its own data and receive its own calculated dumping margin based on that data if it disagreed with the data presented in the petition. LG chose not to cooperate.

DOC Position. We agree with petitioner. We have assigned an adverse facts available rate due to LG's refusal to provide information pursuant to the investigation. Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination. At the time of LG's withdrawal from the investigation, the Department did not consider LG to be an insignificant supplier to the U.S. market and did not excuse the company from responding to the questionnaire. Because LG failed to respond to the Department's questionnaire, we recommend using the facts otherwise available to calculate their dumping margins.

When a party fails to cooperate to the best of its ability, the Department may make an adverse inference when selecting from the facts otherwise available, and pursuant to Section 776(b) of the Act such an inference may be based on information in the petition. 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. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. These estimated dumping margins were based on a comparison of CV to U.S. price, the latter of which was based on price quotations offered by Samsung. For purposes of corroboration, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it had probative value. See September 23, 1997, Memorandum from the Team to Tom Futtner. In this case, the Department corroborated the sales information contained in the petition by comparing it to Samsung's actual data. The Department found that the petition prices reasonably reflected Samsung's actual reported prices during this investigation. While Samsung's calculated, weighted-average margin differs from the weighted-average

margin based on the petition information, that difference is a result of the more complete data-set provided by Samsung. Within that data-set, we have confirmed that some of Samsung's product-specific margins exceed the 55.36 percentage rate calculated in the petition. Thus, because the petition rate is not contradicted by the evidence gathered during the investigation, we continue to find it of probative value in drawing an adverse inference concerning dumping by LG.

LG's reliance on *D&L Supply* is misplaced. *D&L Supply* dealt with a situation in which the Department attempted to rely on a calculated margin from a prior review when that calculated margin had been revised as a result of litigation. The Federal Circuit held that continued use of the judicially invalidated rate was erroneous. That situation is significantly different from the present case. In this case, the petition was based on data from one respondent and the Department has calculated a different weighted-average dumping margin for that respondent. A petition rate is normally based on a limited selection of the products and prices at which subject merchandise has been sold during the period of the investigation. Only by participation in the investigation will the Department obtain, for each individual respondent, more complete data on the products and prices sold by the respondents throughout the period of investigation. Based on the complete universe of products and prices for each respondent, the Department calculates a weighted-average dumping margin for the respondent. Of course, each respondent's products and prices will be different and, typically, different from that contained in the petition. However, it is only by cooperating in the investigation that the Department obtains the data to determine the extent to which a respondent's product-mix and price-mix differs from the information contained in the petition. Finally, LG argues that Samsung's reported U.S. and home market prices were different from those used in the petition. It further maintains that had Samsung's reported prices been used, the result would have lowered the margin. However, the prices cited in the petition represented a reasonable estimate of Samsung's prices based on the information available at the time the petition was filed. Corroboration of the petition does not require the substitution if actual reported numbers where the Department finds that the information originally submitted has probative value. Because the Department has found that the petition prices were probative of the level of dumping which may have taken place during the period of investigation, we have continued to rely on it in this final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SRAMs from Korea that are entered, or withdrawn from warehouse, for consumption on or after October 1, 1997 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Samsung Electronics Co. Ltd ...	1.00
Hyundai Electronics Co. Ltd	5.08
LG Semicon Co. Ltd	55.36
All others rate	5.08

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 Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4537 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–813]

Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela

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

ACTION: Final determination of sales at less than fair value.

SUMMARY: The Department has made a final affirmative determination in this antidumping duty investigation. Because the respondent, C.V.G. Siderurgica del Orinoco, C.A., did not permit verification of its questionnaire responses, the margin in this determination is based on the facts available, in accordance with section 776(a)(2) of the Tariff Act of 1930, as amended. As facts available, we have applied the highest margin derived from the petition.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Daniel Manzoni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–1121, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296: May 19, 1997), do not govern this investigation, citations to those regulations are provided, where appropriate, to explain current Departmental practice.

Final Determination

We determine that steel wire rod ("SWR") from Venezuela is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(b) of the Act. The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation (Preliminary Determination and Postponement of Final Determination: Steel Wire Rod from Venezuela, 62 FR 51584, October 1, 1997), (Preliminary Determination) the following events have occurred:

On October 2, 1997, we issued a supplemental questionnaire regarding the cost of production questionnaire response to the respondent, C.V.G. Siderurgica del Orinoco, C.A. ("Sidor").

On October 28, 1997, Sidor advised the Department that it would not respond to the Department's October 2, 1997, supplemental questionnaire and it would not participate in verification of its questionnaire responses.

On January 5, 1998, the petitioners submitted a case brief and on January 12, 1998, Sidor submitted a rebuttal brief.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States ("HTSUS") definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods. The following products are also excluded from the scope of this investigation:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."
- Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50–1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10–0.35 percent. This product is free of injurious piping and undue segregation. The use of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as "Semifinished Class III Pipe Wrap Wire."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion of Pipe Wrap Wire

As stated in the Preliminary Determination, North American Wire Products Corporation ("NAW"), an importer of the subject merchandise from Germany, requested that the Department exclude steel wire rod used to manufacture Class III pipe wrapping wire from the scope of the investigations of steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela. On December 22, 1997, NAW submitted to the Department a proposed exclusion definition. On December 30, 1997, and January 7, 1998, the petitioners submitted letters concurring with the definition of the scope exclusion and requesting exclusion of this product from the scope of the investigation. We have reviewed NAW's request and petitioners' comments and have excluded steel wire rod for manufacturing Class III pipe wrapping wire from the scope of this investigation (see Memorandum to Richard W. Moreland dated January 9, 1998, and instructions to Customs dated January 13, 1998).

Period of Investigation

The period of investigation ("POI") is January 1, 1996, through December 31, 1996.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes an antidumping investigation, or (4) provides such information but the information cannot be verified, the Department is required to use facts otherwise available to make its determination (subject to subsections 782(c) (1) and (e)).

In addition, section 776 (b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences against an interested party if that party failed to cooperate by not acting to the best of its ability to comply with requests for information. See also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 ("SAA"). The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

Sidor's decision not to respond to the Department's October 2, 1997, supplemental cost of production questionnaire and refusal to permit the Department to verify the information it submitted for the record in this investigation demonstrates that it failed to act to the best of its ability in this investigation. Therefore, the Department has determined that, in selecting from among the facts available, an adverse inference is appropriate. Consistent with Department practice in cases where a respondent withdraws its participation in an investigation, as adverse facts available, we have applied a margin based on information in the petition (see, e.g., Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan, 62 FR 45623, August 28, 1997, ("Vector Supercomputers")). See also Comment 1.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as information contained in the petition) as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Corroborate means determine that the secondary information to be used has probative value. See SAA at 870.

The petitioners calculated the highest margin in the petition, 66.75 percent, based on a comparison of the petitioners' estimate of ex-factory export price to the petitioners' estimate of the constructed value ("CV"), as shown at Exhibit D of the petitioners' March 11, 1997, submission. The petitioners derived export price based on price quotations to U.S. purchasers. Because Sidor's questionnaire response data is unverified, we did not rely on this data for purposes of corroboration. Therefore, we have compared the petitioners' export price estimate to IM–145 Import Statistics. Our comparison of these prices showed them to be reasonably consistent (see Memorandum to the file dated February 6, 1998). Accordingly, we determine that this export price calculation set forth in the petition has probative value.

To calculate CV, the petitioners used manufacturing costs based on one petitioner's own production experience and publicly available industry data. When analyzing the petition, the Department reviewed all of the data the petitioners relied upon in calculating the estimated CV, and adjusted those calculations where necessary. For purposes of corroboration, we re-examined the data submitted by the petitioners and found it to be reasonable and of probative value. In addition, we note that no party has presented to the Department any information to support a challenge to the appropriateness of the information contained in the petition as the basis for a facts available margin for Sidor. See Vector Supercomputers, where the Department applied facts available margin in closely similar circumstances. In accordance with section 776(c) of the Act, we have corroborated the highest margin in the petition, which is secondary information upon which we have relied as facts available.

Interested Party Comment

Comment: Facts Available Rate for Sidor

The petitioners contend that, because Sidor refused to allow the Department to verify its questionnaire responses and refused to respond to the Department's October 2, 1997, supplemental questionnaire, the Department must assign Sidor a margin based on adverse facts available. Accordingly, the petitioners claim that the Department should assign the higher of the highest non-aberrational dumping margin calculated from Sidor's questionnaire responses, or the highest estimated dumping margin listed in the petition.

Sidor contends that the Department should apply the rate of 51.21 percent calculated for the preliminary determination as the appropriate facts available rate for this proceeding. However, Sidor has provided no support for its position.

DOC Position

We agree with the petitioners that the highest rate alleged in the petition, and as corroborated by the Department, is the appropriate facts available rate in this determination. Under section 782(i)(1) of the Act, the Department must rely on verified information for making a final determination in an antidumping duty investigation. Sidor's refusal to permit verification of its questionnaire responses prevents the Department from using Sidor's information for our final determination. Therefore, we did not use the margin calculated in the preliminary determination because it is based on unverified questionnaire response information. Using Sidor's unverified information as the basis for the final margin could possibly reward the respondent by assigning a margin lower than what would have been calculated using verified information. As noted above, in cases such as this one, the Department relies on the facts otherwise available, normally data from the petition, for making its determination. We have no basis in this instance to depart from this practice. Normally, the all-others rate is to be amount equal to the weighted average of the estimated weighted average dumping margins for exporters and producers individually investigated, excluding margins based entirely on facts available. Section 735(c)(5)(A). However, if all of the estimated dumping margins are based entirely on facts available, the statute permits the Department to use any reasonable method to establish the all others rate. Section 735(c)(5)(B). As discussed above, Sidor was the only respondent in this investigation and its margin was based entirely on facts available. The margin calculated for Sidor for purposes of the preliminary results of this investigation cannot serve as a reasonable all others rate because, as discussed above, it has not been verified. Further, there is no other information on which to base an all others rate. Accordingly, we have based the all others rate on Sidor's rate.

Suspension of Liquidation

On February 13, 1998, pursuant to section 734(b) the Act, the Department signed a suspension agreement, with SIDOR. Pursuant to section 734(f)(2)(A) of the Act, we are instructing Customs to terminate the suspension of liquidation of all entries of steel wire rod from Venezuela. Any cash deposits of entries of steel wire rod from Venezuela shall be refunded and any bonds released.

On February 13, 1998, we received a request from Sidor requesting that we continue the investigation. As a result of this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Exporter/manufacturer	Margin percentage
CVG Siderurgica Del Orinoco C.A. ("Sidor")	66.75
All Others	66.75

ITC Notification

In Accordance with section 734(d) of the Act, we have notified the ITC of our determination. If our determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC's injury determination is negative, the agreement will have no force or effect. See section 734(f)(3)(A) of the Act. If the ITC's injury determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force, the agreement continues to meet the requirements of subsections (b) and (d) of section 734 of the Act, and the parties to the agreement carry out their obligations under the agreement in accordance with its terms. See section 734(f)(3)(B) of the Act.

This determination is published pursuant to section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4538 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–813]

Suspension of Antidumping Duty Investigation: Steel Wire Rod From Venezuela

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

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving steel wire rod from Venezuela. The basis for this action is an agreement between the Department and C.V.G. Siderurgica del Orinoco, C.A. (Sidor) to revise their prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski, Lesley Stagliano, Elisabeth Urfer, or Edward Yang, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, DC 20230; telephone (202) 482–1385, (202) 482–0648, (202) 482–4236, or (202) 482–0406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1997, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of steel wire rod from Venezuela are being or are likely to be sold in the United States at less than fair value (62 FR 13854 (March 18, 1997)). On April 14, 1997, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation Nos. 701-TA–368–371 and 731-TA–763–766). On October 1, 1997, the Department preliminarily determined that steel wire rod is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 51584 (October 1, 1997) ("LTFV Prelim")).

The Department and Sidor initialed a proposed agreement suspending this investigation on January 14, 1998. On January 14, 1998, we invited interested parties to provide written comments on the agreement and received comments from Connecticut Steel Corporation, Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Company, North Star Steel Texas, Inc. and Northwestern Steel and Wire Company.

The Department and Sidor signed the final suspension agreement on February 13, 1998.

Scope of Investigation

The products covered by the investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States ("HTSUS") definitions for a) stainless steel; b) tool steel; c) high nickel steel; d) ball bearing steel; e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or f) concrete reinforcing bars and rods. The following products are also excluded from the scope of this investigation:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."
- Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50–1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10–0.35 percent. This product is free of injurious piping and undue segregation. The use of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as "Semifinished Class III Pipe Wrap Wire."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion of Pipe Wrap Wire

As stated in the LTFV Prelim, North American Wire Products Corporation ("NAW"), an importer of the subject merchandise from Germany, requested that the Department exclude steel wire rod used to manufacture Class III pipe wrapping wire from the scope of the investigations of steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela. On December 22, 1997, NAW submitted to the Department a proposed exclusion definition. On December 30, 1997, and January 7, 1998, the petitioners submitted letters concurring with the definition of the scope exclusion and requesting exclusion of this product from the scope of the investigation. We have reviewed NAW's request and petitioners' comments and have excluded steel wire rod for manufacturing Class III pipe wrapping wire from the scope of this investigation (*see* Memorandum to Richard W. Moreland dated January 9, 1998).

Suspension of Investigation

The Department consulted with parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734(b) of the Act, exporters of the subject merchandise who account for substantially all of the imports of that merchandise agree to revise their prices to eliminate completely any amount by which the normal value of the subject merchandise exceeds the export price or constructed export price of that merchandise. We are satisfied that suspension of the investigation pursuant to section 734(b) of the Act is in the public interest and have concluded that the agreement can be monitored effectively. See Public Interest Memorandum, February 13, 1998. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(b) of the Act have been met. The terms and conditions of this agreement, signed February 13, 1998, are set forth in Annex I to this notice.

Pursuant to section 734(f)(2)(A)(ii) of the Act, the suspension of liquidation of all entries of steel wire rod from Venezuela entered or withdrawn from warehouse, for consumption, as directed in our LTFV Prelim is hereby

terminated. Pursuant to section 734(f)(2)(A)(iii) and 733(d)(1)(B) of the Act, any cash deposits on entries of steel wire rod from Venezuela pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive a request for continuation of the investigation from an appropriate party in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice. In accordance with section 734(g) of the Act, if we receive such a request for continuation, we will complete the investigation and notify the ITC of our final determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (See section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force, the agreement continues to meet the requirements of subsections (b) and (d) of section 734 of the Act, and the parties to the agreement carry out their obligations under the agreement in accordance with its terms (see section 734(f)(3)(B) of the Act).

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: February 19, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Suspension Agreement Carbon Steel Wire Rod from Venezuela

Under section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(b)) (the Act), and 19 CFR 353.18, the U.S. Department of Commerce (the Department) and the signatory producers/exporters of carbon steel wire rod from Venezuela enter into this suspension agreement (the Agreement). On the basis of the Agreement, the Department shall suspend its antidumping investigation initiated on March 24, 1997(62 FR 13854), with respect to carbon steel wire rod from Venezuela, subject to the terms and provisions set out below.

(A) Product Coverage

The products covered by this Agreement ("subject merchandise") are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this Agreement:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50—1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10—0.35 percent. This product is free of injurious piping and undue segregation. The use of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as "Semifinished Class III Pipe Wrap Wire."

The products subject to this Agreement are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

(B) U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in Venezuela which, during the antidumping investigation of the merchandise subject to the Agreement, accounted for substantially all (not less than at least 85 percent) of the subject merchandise imported into the United States. The Department may at any time during the period of the Agreement require additional producers/exporters in Venezuela to sign the Agreement in order to ensure that not less than substantially all imports of subject merchandise into the United States are covered by the Agreement.

(C) Basis of the Agreement

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For all sales occurring on or after the effective date of the Agreement through June 30, 1998, each signatory producer/exporter agrees not to sell its merchandise subject to the Agreement, whether in the form imported or as further manufactured subsequent to importation, to unaffiliated purchasers in the United States; and

(2) For all sales occurring from July 1, 1998 through September 30, 1998, each signatory producer/exporter agrees not to sell its merchandise subject to the Agreement, whether in the form imported or as further manufactured subsequent to importation, to unaffiliated purchasers in the United States at prices that are less than its NV, as determined by the Department based on cost information for the period October 1, 1997 through December 31, 1997, and provided to parties not later than June 20, 1998; and

(3) For all sales occurring on or after October 1, 1998, each producer/exporter agrees not to sell its merchandise subject to the Agreement, whether in the form imported or as further manufactured subsequent to

importation, to any unaffiliated purchaser in the United States at prices that are less than its NV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in Section D of the Agreement and provided to parties not later than September 20, December 20, March 20, and June 20 of each year. This NV shall apply to sales occurring during the fiscal quarter beginning on the first day of the month following the date the Department provides the NV, as stated in this paragraph.

(D) Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale (which includes further manufactured sales) of the merchandise subject to the Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than October 15, 1998, and shall contain the specified sales information covering the period of July 1 through September 30, 1998. Each subsequent report of sales data shall be submitted to the Department not later than January 15, April 15, July 15, and October 15 of each year, and each report shall contain the specified sales information for the quarterly period ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than quarterly basis.

(2) Cost Information

Producers/exporters must request NVs for all subject merchandise that will be sold in the United States. For those products for which the producer/exporter is requesting NVs, the Department will require each producer/exporter to report: their actual cost of manufacturing; selling, general and administrative (SG&A) expenses; further manufacturing costs; and profit data on a quarterly basis, in the prescribed format and using the prescribed method of data compilation. Further manufacturing costs plus an allocable portion of profit, as provided in section 772(d)(2) and (3) of the Act, will be subtracted from the U.S. sale price to determine compliance with the NV. Each such producer/exporter also must report anticipated increases in production costs and may report anticipated decreases in production costs in the quarter in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities. Extraordinary cost items related to the privatization will be considered, consistent with the Department's regulations and policies. If they meet our statutory and regulatory criteria, such items may include shutdowns of facilities, environmental cleanups, and workforce reductions. (For example, see the Side Letter to the Suspension Agreement for Grey Portland Cement and Clinker from Venezuela (initialed version dated December 22, 1991, finalized February 11, 1992).)

The first report of cost data related to the relevant period of July 1, 1998, through September 30, 1998 shall be submitted to the Department not later than April 30, 1998, and shall contain the specified cost data covering the period October 1, 1997, through December 31, 1997. Each subsequent report shall be submitted to the Department not later than July 31, October 31, January 31, and April 30 of each year, and each report shall contain specified information for the quarter ending one month prior to the due date.

(3) Special Adjustment of Normal Value

If the Department determines that the NV it determined for a previous quarter was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information semi-annually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements

Producers/exporters agree not to circumvent the Agreement. In accordance with the date set forth in Section D(1) of the Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap, or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request the producers/exporters to provide, within 15 days, all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) the cumulative amount of the effective price discount resulting from such arrangement shall be reflected in NV in accordance with Section D(3), or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under Section F.

(6) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate fair value, NV, and/or U.S. price based on facts otherwise available, as it determines appropriate, unless the Department determines that Section F applies.

(E) Disclosure and Comment

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the

Department during the reporting period as well as the results of its analysis under section 773 of the Act.

(2) Not later than May 31, August 31, November 31, and the last day in February of each year, the Department will disclose to each producer/exporter the results and the methodology of the Department's calculations of its NV. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with this section.

(3) Not later than 7 days after the date of disclosure under paragraph E(2), the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its NV as provided in paragraph C(2). In addition, the Department may provide such information to domestic interested parties as specified in this section.

(F) Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734 (b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations.

(G) Other Provision

In entering into the Agreement, the signatory producer/exporter does not admit that any sales of the merchandise subject to the Agreement have been made at less than fair value.

(H) Termination

The Department will not consider requests for termination of this suspended investigation prior to February 13, 2003. Termination will be conducted in accordance with section 751(c) of the Act and the Department's regulations.

Any producer/exporter may terminate the Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(I) Definitions

For purposes of the Agreement, the following definitions apply:

(1) U.S. Price—means the export price or constructed export price at which merchandise is sold by the producer or exporter to the first unaffiliated party in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department under section 772 of the Act.

(2) Normal Value—means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations.

(3) Producer/Exporter—means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the affiliated person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(28) of the Act.

(4) Date of Sale—means the date on which the essential terms of the contract, including price and quantity, are agreed and determinable.

The effective date of the Agreement is the date on which it is published in the **Federal Register.**

For the Venezuelan Producers/Exporters.

Dated: February 13, 1998.

Oscar Montero,

Director for Strategic Planning.

For the U.S. Department of Commerce.

Dated: February 12, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix A—Carbon Steel Wire Rod from Venezuela Principles of Cost

General Framework

The cost information reported to the Department that will form the basis of the NV calculations for purposes of the Agreement must be:

- Comprehensive in nature and based on a reliable accounting system (i.e., a system based on well-established standards and can be tied to the audited financial statements);
- Representative of the company's costs incurred for the general class of merchandise;
- Calculated on a quarterly weighted-average basis of the plants or cost centers manufacturing the product;
- Based on fully-absorbed costs of production, including any downtime;
- Valued in accordance with generally accepted accounting principles;
- Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
- Reflective of the actual cost of producing the product.

Additionally, a single figure should be reported for each cost component.

Cost of Manufacturing (COM)

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility (including further manufacturing in the United States); based on the cost at each facility.

Direct materials—cost of those materials which are input into the production process and physically become part of the final product.

Direct labor—cost identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus, and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost or the actual costs incurred by the subcontractor when the corporation has influence over the contractor.

Factory overhead—overhead costs include indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line, an appropriate portion of those costs must be allocated to covered products, as well as any other products produced on that line. Acceptable cost allocations can be based on labor hours or machine hours. Overhead costs should also reflect any idle or downtime and be fully absorbed by the products.

Cost of Production (COP)

Is equal to the sum of materials, labor, and overhead (COM) plus SG&A expenses in the home market (HM).

SG&A—those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated over cost of goods sold.

Constructed Value (CV)

Is equal to the sum of materials, labor, and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States

Calculation of Suspension Agreement NVs

NVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

Export Price—Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sale is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the

trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

Constructed Export Price—Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect-selling expenses.

Home market direct-selling expenses—expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. The following direct-selling expenses are treated individually:

Commission expenses—payments to unaffiliated parties for sales in the HM.

Credit expenses—expenses incurred for the extension of credit to HM customers.

Movement expenses—freight, brokerage and handling, and insurance expenses.

U.S. direct-selling expenses—the same as HM direct-selling expenses except that they are incurred for sales in the United States.

Movement expenses—additional expenses incidental to importation into the United States. These typically include U.S. inland freight, insurance, brokerage and handling expenses, U.S. Customs duties, and international freight.

U.S. indirect-selling expenses—include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States. They may also include a portion of indirect expenses incurred in the HM for export sales.

For EP Transactions

+direct materials
+direct labor
+factory overhead
=Cost of Manufacturing
+home market SG&A
=Cost of Production
+U.S. packing
+Profit
=Constructed Value
+U.S. direct selling expense
+U.S. commission expense
+U.S. movement expense
+U.S. credit expense
– HM direct selling expense
– HM commission expense [1]
– HM credit expense
=NV for EP sales

For CEP Transactions

+direct materials
+direct labor
+factory overhead
=Cost of Manufacturing
+home market SG&A
=Cost of Production
+U.S. packing
+profit
=Constructed Value
+U.S. direct selling expense
+U.S. indirect selling expense
+U.S. commission expense
+U.S. movement expense
+U.S. credit expense
+U.S. further manufacturing expenses (if any)
+CEP profit
– HM direct selling expense
– HM commission expense [2]
– HM credit expense
=NV for CEP sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

[2] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–822]

Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Germany

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

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or John Brinkmann, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0192 or (202) 482–5288.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296; May 19, 1997), do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Final Determination

We determine that steel wire rod from Germany is being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on September 24, 1997, (62 FR 51577, October 1, 1997) ("Notice of Preliminary Determination"), the following events have occurred:

On September 29, 1997, we issued a second supplemental request for information covering all sections of the questionnaire to Ispat Hamburger Stahlwerke GmbH ("IHSW"), the only company to respond to the Department's original antidumping duty questionnaire. IHSW submitted its response to this supplemental questionnaire, including revised United States, home market, cost of production (COP), and constructed value (CV) databases, on October 14, 1997. At the Department's request, IHSW submitted clarifications of its response on October 23 and 24, 1997.

On October 14, 1997, Connecticut Steel Group, Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel & Wire Co. (collectively "petitioners") informed the Department that IHSW's parent company had purchased two units of Thyssen Stahl AG ("Thyssen") and requested that the Department collapse IHSW and Thyssen when determining the dumping margins for these companies (*see* Comment 3 below).

The Department conducted verifications of IHSW's cost and sales information in November 1997, in Hamburg, Germany. The Department issued the sales and cost verification reports on December 16 and 18, 1997, respectively, citing numerous deficiencies in IHSW's cost and sales information. Because it seemed at the time that the deficiencies could be corrected and that we would be able to confirm that corrections made to the databases were done completely and accurately, the Department allowed IHSW a final opportunity to submit revised cost and sales databases. On December 19, 1997, the Department transmitted to IHSW a list of specific revisions to be made to its databases (see December 19, 1997, Memorandum to Gary Taverman). IHSW submitted its revised response on January 9, 1998. On

January 12, 1998, IHSW notified the Department that there were certain errors in the January 9 submission.

Petitioners, IHSW, and Saarstahl AG ("Saarstahl") submitted case briefs on January 15, 1998. Petitioners and IHSW submitted rebuttal briefs on January 21, 1998.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."
- Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50–1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10–0.35 percent. This product is free of injurious piping and undue segregation. The use of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as "Semifinished Class III Pipe Wrap Wire."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion of Pipe Wrap Wire

As stated in the Notice of Preliminary Determination, North American Wire Products Corporation (NAW), an importer of the subject merchandise from Germany, requested that the Department exclude steel wire rod used to manufacture Class III pipe wrapping wire from the scope of the investigations of steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela. On December 22, 1997, NAW submitted to the Department a proposed exclusion definition. On December 30, 1997 and January 7, 1998, petitioners submitted letters concurring with the definition of the scope exclusion and agreeing to the exclusion of this product from the scope of the investigation. We have reviewed NAW's request and petitioners' comments and have excluded steel wire rod for manufacturing Class III pipe wrapping wire from the scope of the four concurrent investigations (see Memorandum to Richard W. Moreland dated January 9, 1998).

Period of Investigation

The period of investigation ("POI") is January 1 through December 31, 1996.

Facts Available

At the preliminary determination, the Department found that Brandenburg Elektrostahlwerk GmbH ("Brandenburg"), Saarstahl, and Thyssen "have clearly failed to cooperate to the best of their ability in this investigation, as they have not responded to the Department's antidumping questionnaire." See Notice of Preliminary Determination. Accordingly, the Department based the antidumping rate for these companies on facts otherwise available and assigned them the highest margin from the petition (as adjusted by the Department), 153.10 percent.

With regard to IHSW, the Department found that "despite the detailed requests for supplemental information issued by the Department and the extension of time granted to IHSW to file its responses, IHSW's questionnaire responses remained seriously deficient." See Notice of Preliminary Determination. In particular, IHSW's home market sales data and cost of production information were so deficient as to render them unreliable for conducting a proper LTFV analysis and sales-below-cost test. Because of these deficiencies, the Department was unable to use IHSW's responses to calculate a margin for the preliminary determination of sales at less than fair value and therefore relied on facts otherwise available. The Department stated that it would proceed with the investigation and verify IHSW's information if IHSW cooperated and provided "complete and accurate" information in response to a supplemental questionnaire. We further stated that "[i]f IHSW's reported information verified, we will use such information in making the final determination."

As stated in the "Case History" section above, the Department issued a second supplemental questionnaire to IHSW following the preliminary determination and conducted verification of IHSW's revised cost and sales information. During these verifications, numerous inconsistencies were found when we compared IHSW's reported cost and sales data to the company's records, as noted in the verification reports (see the December 16 sales verification report, the December 18 cost verification report, and the Memorandum to Gary Taverman dated December 19, 1997). After the verifications, the Department granted IHSW a final opportunity to correct the deficiencies in its cost and sales databases.

Despite allowing IHSW numerous opportunities to correct its questionnaire responses, the cost and sales information submitted by IHSW remains seriously deficient and unusable. The significant deficiencies in the information submitted by IHSW include: (1) Failure to calculate COP and CV in accordance with the Department's instruction with respect to the weighting factor; (2) the multiple counting of production quantities in deriving per unit COP; (3) failure to make specific changes to identified errors in the coding of reported product characteristics, resulting in the incorrect assignment of product control numbers;

the impact is particularly significant in the U.S. sales database where correcting the control numbers would affect 72 percent of the volume of reported U.S. sales; and (4) numerous errors and inconsistencies in IHSW's sales database which call into question the integrity of the entire response. (For a more detailed discussion of the deficiencies in the information IHSW has provided, *see* the February 13, 1998, Memorandum to Richard W. Moreland.) Despite specific instructions from the Department detailing what corrections should be made, IHSW's January 9 response contained numerous errors in the COP and CV databases. Without accurate COP and CV databases, we cannot perform a reliable sales-below-cost test and LTFV analysis. Further, given IHSW's repeated failure throughout the investigation to correct its deficiencies and its failure to submit an accurate response on January 9, we cannot be certain that the problems with IHSW's responses are limited to only those uncovered in our analysis of the January 9 submission.

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination (subject to subsections 782(d) and (e)). As detailed below, the Department has determined that all four respondents have failed to cooperate to the best of their ability in this investigation as defined under 776(a)(2) and that the use of facts otherwise available is applicable.

IHSW's questionnaire responses constituted deficient submissions within the meaning of section 782(d). Under these circumstances, section 776(a) directs the Department to use facts available subject to section 782(e). Section 782(e) provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination, but does not meet all the applicable requirements established by the Department, if—

(1) The information is submitted by the deadline established for its submission,

(2) The information can be verified,

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and

(5) The information can be used without undue difficulties.

Thus, if any one of these criteria is not met, the Department may decline to consider the information at issue in making its determination. IHSW's information has arguably satisfied the first two criteria. However, regarding the third criterion, whether the information may serve as a "reliable basis" for the Department's determination, as detailed above, IHSW's sales data and cost of production information is so deficient as to render it unusable. In particular, IHSW's failure to: (a) Correct those items on the December 19 list of required revisions completely and accurately; (b) submit the accurate revised cost and sales databases in proper SAS format; and (c) properly change the sales databases to reflect changes in the cost database, calls into question the integrity of the entire January 9 submission. As to criterion (4), IHSW has not demonstrated that it acted to the best of its ability in providing the requested information because IHSW failed to comply with the Department's specific instructions in the requests for information. Finally, as to criterion (5), while the Department may be able to correct some of the errors in IHSW's responses, this would be a difficult task involving significant changes to IHSW's information, including the restructuring of many of IHSW's product control numbers. To attempt to correct all of the errors in IHSW's responses would be burdensome. Moreover, even if the Department attempted to correct the responses, given the numerous errors in IHSW's information on the record, we cannot be certain that an accurate analysis could be conducted.

IHSW has failed to provide its sales and cost information in the form and manner requested under the terms of sections 782(d) and (e) of the Act. The information provided by IHSW is unreliable and inadequate for the purpose of calculating a LTFV margin. Section 776(a) thus requires the Department to use facts otherwise available in making its final determination with respect to IHSW.

Section 776(b) provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information (see also the Statement of Administrative Action ("SAA"), accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870). As discussed above, Brandenburg, IHSW, Saarstahl, and Thyssen have failed to act to the best of their ability to comply with requests for information and, therefore, adverse inferences are warranted with respect to all four companies. Consistent with Department practice in cases where respondents refuse to participate or provide seriously deficient information that precludes the Department from conducting its LTFV analysis, as facts otherwise available, we are basing their margins for the final determination on information in the petition. As facts otherwise available, the Department is continuing to assign to Brandenburg, Saarstahl, and Thyssen, the companies that did not respond at all to the Department's requests for information, the highest margin from the petition (as adjusted by the Department), 153.10 percent. Since IHSW made some effort to comply with the Department's requests for information, we are continuing to assign IHSW a facts available margin based on a simple average of the margins in the petition (as adjusted by the Department), 72.51 percent.

Section 776(c) provides that when the Department relies on secondary information (*e.g.*, the petition) as the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Department reviewed the adequacy and accuracy of the secondary information in the petition from which the margins were calculated during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose, (*e.g.*, import statistics, independent trade data, U.S. Bureau of Labor Statistics, International Energy Agency). (See Notice of Preliminary Determination and September 24, 1997, Memorandum to Richard W. Moreland).

At the preliminary determination, the Department reexamined the price information provided in the petition and found it to be of probative value (see the September 24, 1997, Memorandum to Richard W. Moreland). The parties did not comment on this issue. For purposes of the final determination, absent information to the contrary, we find that the information in the petition continues to be of probative value.

All foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5) of the Act provides that where the dumping margins established for all exporters and producers individually

investigated are determined entirely under section 776, the Department "* * * may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." This provision contemplates that we weight average the facts-available margins to establish the all-others rate. Where the data is not available to weight average the facts available rates, the SAA, at 873, provides that we may use other reasonable methods. Inasmuch as we do not have the data necessary to weight average the respondents' facts available margins, we are continuing to base the all-others rate on a simple average of the margins in the petition (as adjusted by the Department), 72.51 percent.

Interested Party Comments

Comment 1. The Application of Facts Available to Saarstahl

Saarstahl contends that the Department should not use an adverse inference in determining its antidumping margin. Saarstahl argues that it has acted to the best of its ability to respond to the Department's questionnaire, but that its financial situation has precluded it from participating in this proceeding. Even if an adverse inference is made in setting its margin, Saarstahl argues that the Department should use the Saarstahl-specific lower margin information contained in the petition rather than the 153.10% margin used in the preliminary determination.

Petitioners contend that Saarstahl's argument that the Department may not use the highest dumping margin alleged in the petition as adverse facts available is directly contradicted by the statute and Department precedent. Further, petitioners claim that factors such as Saarstahl's financial condition are immaterial to the issue of whether Saarstahl cooperated in this investigation (see, *e.g.*, Final Determination of Sales at Less than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany, 61 FR 38166, 38179 (July 23, 1996)). Petitioners insist that the Department acted appropriately in assigning the highest margin alleged in the petition to Saarstahl for the preliminary determination and should use the same rate for the final determination.

DOC Position. We disagree with Saarstahl's contention that it acted to the best of its ability, given its financial hardship, to comply with the Department's information requests. Under limited circumstances, such as where a company immediately informs the Department that it cannot comply with the Department's information requests due to the liquidation of its assets, it may be appropriate not to assign adverse facts available. However, where a respondent continues to produce the subject merchandise but fails altogether to provide information, we find that it has failed to act to the best of its ability. As we explained in Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 16772, 16775 (April 8, 1997), an adverse inference is warranted where a respondent states merely "that it was on the verge of bankruptcy" but provides no further information.

Section 782(c)(1) requires that the Department consider modifying its reporting requirements where a respondent promptly notifies the Department that it cannot submit information in the "requested form and manner" and suggests "alternative forms" in which to submit the requested information. Saarstahl made no such suggestions; it only informed the Department that it would supply the requested information in a letter dated June 11, 1997. Under these circumstances, we continue to find that Saarstahl failed to act to the best of its ability, and that an adverse inference is warranted.

Furthermore, we agree with petitioners that the continued use of the highest margin in the petition as adverse facts available for Saarstahl is warranted given Saarstahl's failure to supply the Department with any of the requested information. The use of the highest calculated rate in the petition as adverse facts available for Saarstahl is consistent with both the Act and Department practice. Section 776(b) of the Act explicitly states that the Department may rely upon information contained in the petition when making adverse inferences. See also SAA at 870. Recently, the Department employed this approach in Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan, 62 FR 51427, 51428 (October 1, 1997).

Comment 2. The Application of Facts Available to IHSW

Petitioners argue that IHSW's January 9 post-verification submission constitutes substantial new information and should be rejected by the Department in favor of facts available. Even if the Department accepts IHSW's January 9 submission, petitioners contend that the information submitted by IHSW remains incomplete and unreliable, and therefore, the Department must use facts available for the final determination.

IHSW argues that it has been cooperative with the Department to the best of its ability throughout the investigation and, as such, the Department has no basis to use an adverse facts available rate for the final determination. IHSW concedes that it encountered some difficulties in responding to the questionnaires, but claims that its difficulties in reporting information were not the result of IHSW failing to act to the best of its ability, but rather the result of clerical errors or how IHSW maintains its business records. Concerning the submission of data post-verification, IHSW asserts that the Department was properly within its discretion to request revised cost and sales databases from IHSW and that the January 9 submission did not constitute new information. Further, IHSW addresses the specific errors cited in petitioners' case brief, arguing that its January 9 submission is "sufficiently complete" to serve as the basis for calculating an antidumping margin. Finally, IHSW contends that the information in its January 9 submission has been verified and can be easily used by the Department.

DOC Position. In allowing IHSW to file its post-verification submission, the Department was not permitting the submission of new information, but rather permitting corrections to the information already on the record, based on the findings at verification. Further, the Department may request the submission of factual information at any time during the proceeding, as provided for at 19 CFR 353.31(b)(1). We have analyzed all of IHSW's information on the record for purposes of the final determination. However, as discussed in detail in the "Facts Available" section above, the Department has determined that: (1) IHSW has failed to act to the best of its ability to provide information; and (2) the information provided by IHSW remains unreliable and unusable for purposes of conducting an accurate cost of production or LTFV analysis (*see* also the February 13, 1998, Memorandum to Richard W. Moreland). Therefore, we are basing our final determination margin for IHSW on facts available.

Comment 3. Whether To Collapse IHSW and Thyssen and Assign Them a Single Margin Rate

IHSW argues that the Department should not consider collapsing IHSW with Thyssen, as alleged in petitioners' October 14, 1997, submission. IHSW asserts that petitioners' contention is unfounded because: (1) IHSW and Thyssen were completely unrelated during the POI and this issue would be more appropriately considered, if at all, in an administrative review; (2) the acquisition occurred after the POI and therefore, neither company could have exercised control over the other during the POI; and (3) there is no verified information on the record to determine whether the potential for shifting of production between IHSW and Thyssen exists.

Petitioners rebut IHSW's argument, stating that, for the reasons detailed in their October 14, 1997, submission, the Department should collapse IHSW and Thyssen and calculate a single margin rate for the two companies. Petitioners contend that the relationship between IHSW and Thyssen is such that it meets the criteria for collapsing the companies (*i.e.*, the producers are affiliated; the producers have similar manufacturing facilities such that production can be shifted between the two; and "there is significant potential for manipulation of price or production").

DOC Position. We disagree with petitioners. IHSW purchased Thyssen's steel wire rod-producing subsidiary six months or more after the POI. There is no evidence of any affiliation between these companies during the POI. Further, the limited evidence concerning this transaction is insufficient to determine that it established any affiliation between IHSW or Thyssen or, if they are affiliated, to determine that collapsing is warranted. Therefore, we have assigned the companies separate cash deposit rates in this final determination. The merits of petitioners' collapsing argument may be explored in the context of an administrative review, if an antidumping order is issued and a review requested, for the period during which the acquisition of Thyssen's rod-producing subsidiary took place.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rod from Germany, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after October 1, 1997, the date of publication of our preliminary determination in the **Federal Register**. For these entries, the Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. This suspension of liquidation will remain in effect until further notice.

MFR/producer/exporter	Margin percentage
Brandenburg Elektrostahlwerk GmbH	153.10
Ispat Hamburger Stahlwerke GmbH	72.51
Saarstahl AG	153.10
Thyssen Stahl AG	153.10
All-Others	72.51

The all-others rate applies to all entries of subject merchandise except for the entries of merchandise produced by the exporters/manufacturers listed above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry within 45 days of its receipt of this notification.

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 Customs officials 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 section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4541 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Princeton University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–096. *Applicant:* Princeton University, Princeton, NJ 08544–0033. *Instrument:* Crystal Growth Furnace, Model FZ–T–10000–HVP–II–P. *Manufacturer:* Crystal Systems Inc., Japan. *Intended Use:* See notice at 63 FR 809, January 7, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides optical melting of a polycrystalline rod to produce a single uncontaminated crystal along a moving float zone on the rod. The National Aeronautics and Space Administration advised on February 3, 1998 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–4540 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021798B]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held March 9–13, 1998.

ADDRESSES: These meetings will be held at the Hawk's Cay Resort & Marina, Mile Marker 61, Duck Key, FL; telephone: 305–743–7000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

March 11

8:30 a.m.—Convene.

8:45 a.m. - 5:30 p.m.—Receive public testimony on: (1) Reef Fish Amendment 16; (2) Draft Mackerel Amendment 9; and, (3) Control Date for Limited Access for Recreational For-Hire Vessels. Draft Reef Fish Amendment 16 contains the following alternatives: (1) Possible phase-out of the use of fish traps in 2 years or status quo - a 10-year phase out; (2) Possible restrictions on the commercial harvest from reef fish vessels tending spiny lobster and stone crab traps; (3) Possible implementation of a vessel monitoring system for fish trap vessels; (4) Possible additional reporting requirements for fish trap vessels; (5) Possible establishment of a slot limit, of 14 inches and 20 (or 22) inches fork length, for banded rudderfish and lesser amberjack; and possible prohibition on the sale of minor amberjack species that are smaller than 36 inches fork length; (6) Possible 5–fish bag limit for lesser amberjack and banded rudderfish; (7) Possible removal from the fishery management plan or management of sand perch, dwarf sand perch, Queen triggerfish, and hogfish; (8) Possible minimum size limits of 20 inches for scamp and yellowmouth grouper; 16 inches for mutton snapper; and 12 inches for blackfin snapper, cubera snapper, dog snapper, mahogany snapper, schoolmaster, silk snapper, mutton snapper, queen snapper, scamp, yellowmouth grouper, gray triggerfish, and hogfish; (9) Possible inclusion of the 5–fish red snapper bag limit as part of the 10–snapper aggregate snapper limit, and a 5–fish bag limit for hogfish, and 2 fish per vessel of cubera snapper over 30 inches total length; (10) Possible establishment of a 1–fish bag limit and commercial quotas for speckled hind and warsaw grouper, or a prohibition on harvest of these species.

Draft Mackerel Amendment 9 contains the following alternatives: (1) Possible changes to the fishing year for Gulf group king mackerel; (2) Possible prohibitions of sale of Gulf mackerel caught under the recreational allocation; (3) Possible reallocations of total allowable catch (TAC) for the commercial fishery for Gulf group king mackerel in the Eastern Zone; (4) Possible reallocations of TAC for Gulf group king mackerel between the recreational and commercial sectors to 70 percent recreational and 30 percent commercial; (5) Possible establishment of two (2) subdivisions of TAC for the commercial, hook-and-line allocation of Gulf group king mackerel by area for the Florida west coast; (6) Possible subdivisions of TAC for commercial Gulf group king mackerel in the Western Zone (Alabama through Texas) by area, season, or a combination of area and season; (7) Possible trip limits for vessels fishing for Gulf group king mackerel in the Western Zone; (8) Possible additional restrictions on the use of net gear to harvest Gulf group king mackerel off the Florida west coast; including a phase-out, a moratorium on additional net endorsements with requirements for continuing existing net endorsements, restrictions on the transferability of net endorsements, and restriction of the use of nets to primarily the waters off Monroe and Collier Counties; (9) Possible increase in the minimum size limit for Gulf group king mackerel to 24 or 26 inches fork length; (10) Possible re-establishment of an annual allocation or a TAC percentage of Gulf group Spanish mackerel for the purse seine fishery with consideration of trip limits and area restrictions; (11) Possible retention and sale of cut-off (damaged) legal-sized king and Spanish mackerel within established trip limits.

The control date for recreational-for-hire vessels (charter and head boats) would serve as notice that such vessels entering the reef fish and mackerel fisheries after that date (fall of 1998) may not be able to participate in the fisheries if the Council were to develop a limited entry system for such vessels.

March 12

8:30 a.m. - 12:00 p.m.—Receive a report of the Reef Fish Management Committee.

1:00 p.m. - 4:00 p.m.—Receive a report of the Mackerel Management Committee

4:00 p.m. - 4:30 p.m.—Receive a report of the Law Enforcement Committee.

4:30 p.m. - 5:30 p.m.—Receive reports of the Marine Reserves Committee and AP Selection Committee.

March 13

8:30 a.m. - 8:45 a.m.—Receive a report of the Vessel Monitoring Committee.

8:45 a.m. - 9:00 a.m.—Receive a report of the Personnel Committee.

9:00 a.m. - 9:15 a.m.—Receive a report of the Habitat Protection Committee.

9:15 a.m. - 9:30 a.m.—Receive a report from the South Atlantic Fishery Management Council Liaison.

9:30 a.m. - 9:45 a.m.—Receive a report on the Ecosystem Advisory Panel (AP).

9:45 a.m. - 10:00 a.m.—Receive Enforcement Reports.

10:00 a.m. - 10:15 a.m.—Receive a report on the Red Snapper Appeals Board.

10:15 a.m. - 10:45 a.m.—Receive Directors' Reports.

10:45 a.m. - 11:00 p.m.—Other business to be discussed. Under Other Business the Council will consider a provision regulating Ecological Reserves (ER) and Sanctuary Preservation Areas (SPA) by allowing vessels legally harvesting fish to transit the Gulf EEZ portion of SPAs and ERs in the Florida Keys National Marine Sanctuary.

Committees

March 9

9:00 a.m. - 10:00 a.m.—Convene the Personnel Committee to consider health insurance.

10:00 a.m. - 11:30 a.m.—Convene the Ad Hoc Marine Reserve Monitoring Committee to select Scientific and Statistical Committee (SSC) members.

12:30 p.m. - 2:00 p.m.—Convene the AP Selection Committee to consider the user group and geographic representation of the Red Snapper and Reef Fish APs.

2:00 p.m. - 5:30 p.m.—Convene the Law Enforcement Committee.

March 10

8:00 a.m. - 11:00 a.m.—Convene the Mackerel Management Committee to review summaries of comments from public hearings, the recommendations of its APs and SSCs and develop recommendations to the Council on the alternatives of Draft Mackerel Amendment 9.

11:00 a.m. - 12:00 noon—Convene the Ad Hoc Vessel Monitoring Management Committee to who will develop a policy on the use of vessel monitoring systems (VMS) on vessels and will hear a report on the use of VMS on vessels off Florida.

1:00 p.m. - 5:00 p.m.—Convene the Reef Fish Management Committee to review summaries of public comment from public hearings, the recommendations of the APs and SSCs, and develop recommendations to the Council on the alternatives of Draft Reef Fish Amendment 16. They will also

consider the need for a control date for recreational-for-hire vessels; and consider federal actions in approving the TAC for red snapper and need for further Council action.

5:00 p.m. - 5:30 p.m.—Convene the Habitat Protection Committee to consider a Corps of Engineers permit application for enlargement of the Gulfport, Mississippi harbor facility.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 2, 1998.

Dated: February 17, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4534 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021398E]

Mid-Atlantic Fishery Management Council; 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 (Council) and its Surfclam and Ocean Quahog Committee (with Economists); Dogfish Committee; Atlantic Mackerel, Squid, and Butterfish Committee; Habitat Committee; Large Pelagics Committee; Committee Chairmen; Executive Committee; Comprehensive Management Committee; and the Information & Education (I & E) Committee will hold public meetings.

DATES: The meetings will be held on Monday, March 9, 1998 to Thursday, March 12, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Wyndham Garden Hotel-Annapolis, 173 Jennifer Road, Annapolis, MD; telephone: 410–266–3131.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: On Monday, March 9, the Surfclam and Ocean Quahog Committee (with Economists) will meet from 10:00 a.m. until noon. The Dogfish Committee will meet from 1:00–5:00 p.m. On Tuesday, March 10, the Atlantic Mackerel, Squid, and Butterfish Committee will meet from 8:00 until noon. The Habitat Committee (with Advisors and the Science & Statistical Committee) will meet from 1:00–3:30 p.m. The Large Pelagics Committee will meet from 3:30–4:30 p.m. The Committee Chairmen will meet from 4:30–6:00 p.m. On Wednesday, March 11, the Executive Committee will meet from 8:00–9:00 a.m. The Comprehensive Management Committee will meet from 9:00–11:00 a.m. Council will meet from 11:00 a.m. until 5:00 p.m. On Thursday, March 12, Council will meet from 8:00 a.m. until 2:00 p.m. The I & E Committee will meet from 2:00–3:00 p.m.

Agenda items include surfclam and Ocean Quahog demand forecasting; review of potential surfclam and ocean quahog committee advisors; possible adoption to the Council's surfclam and ocean quahog quota setting policy; review results from the March 5 Dogfish Technical Committee meeting; discuss and possibly adopt goals and objectives for the Dogfish Fishery Management Plan (FMP); possible discussion of the dogfish definition of overfishing, possible discussion of qualifying criteria for limited entry for dogfish; possible adoption of dogfish control date; discuss alternative mackerel entry limitation programs; review progress of Atlantic Herring FMP development and limited entry programs being considered for the Herring FMP; possible review of fleet analysis and economic analyses of commercial Atlantic mackerel fishery; possible adoption of essential habitat criteria; possible delineation and specification of bluefish essential fish habitat; review possible management changes for large pelagics and comment on proposed rules; review of 1998 work schedule by committee chairs; vessel replacement criteria; comprehensive management matrix; possible adoption of the Monkfish FMP; view demonstration of the Council's web site; and amendment of Statement of Organization, Practices, and Procedures concerning the replacement of chairman and other matters.

The agenda items may not be taken in the order in which they appear and are subject to change as necessary; other items may be added. This meeting may also be briefly closed at any time to discuss employment or other internal administrative matters.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 17, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4536 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Commander, Navy Recruiting Command

AGENCY: Department of the Navy, DoD.

ACTION: Notice of proposed information collection.

SUMMARY: The Navy Recruiting Command announces the proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. 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 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 by April 24, 1998.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commander, Navy Recruiting Command (Code 10D), 801 N. Randolph Street, Arlington, VA 22203–1991.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mrs. Lambert at (703) 696–4185.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: "NROTC Applicant Questionnaire"; OMB Control Number 0703–0028.

Needs and Uses: Used by the Navy Recruiting Command to determine basic eligibility for the Four-Year NROTC Scholarship Program, and is necessary for the initial screening of prospective applicants. Use of this questionnaire is the only accurate and specific method to determine scholarship awardees. Each individual who wishes to apply for the scholarship program completes and returns the questionnaire.

Affected Public: Individuals or Households.

Annual Burden Hours: 10,000.

Number of Respondents: 40,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: February 11, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–4392 Filed 2–20–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DoD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The Patent Application entitled "Atmospheric Ozone Concentration Detector" filed March 29, 1996, Serial No. 08/625,506, is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the patent application number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Authority: 35 U.S.C. 207; 37 CFR Part 404.

Dated: February 5, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–4391 Filed 2–20–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Evalutech, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Evalutech, LLC, a revocable, nonassignable, exclusive license in the United States to practice the Government owned invention described in U.S. Patent No. 5,478,058, entitled "Shock Isolation Method and Apparatus," issued December 26, 1995.

DATES: Anyone wishing to object to the grant of this license must file written objections, along with any supporting evidence, not later than April 24, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Authority: 35 U.S.C. 207; 37 CFR Part 404.

Dated: February 5, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–4390 Filed 2–20–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 97–109–NG, 97–113–NG, 86–29–NG, 98–01–NG, 97–115–NG, 98–02–NG, 95–38–NG, 97–42–NG and 98–07–NG]

Office of Fossil Energy; New England Power Company, et al.; Orders Granting and Amending Blanket Authorizations To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders granting and amending various natural gas import and export authorizations. These Orders are summarized in the appendix that follows.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on February 12, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX—IMPORT/EXPORT BLANKET AUTHORIZATIONS GRANTED AND TRANSFERRED

Order No.	Date issued	Importer/exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1348	01/08/98	New England Power Company 97–109–NG.	47.5 Bcf	.....	Import from Canada beginning February 1, 1998, through January 31, 2000.

APPENDIX—IMPORT/EXPORT BLANKET AUTHORIZATIONS GRANTED AND TRANSFERRED—Continued

Order No.	Date issued	Importer/exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1349	01/08/98	WGR Canada, Inc. 97–113–NG	73 Bcf	73 Bcf	Import and export from and to Canada beginning on the date of first delivery of either.
145–A	01/08/98	Pan-Alberta Gas (U.S.) Inc. (Formerly NATGAS (U.S.), Inc. 86–29–NG.			Name change.
1350	01/09/98	El Paso Energy Marketing Company 98–01–NG.	200 Bcf		Import from Canada beginning on the date of first delivery.
1351	01/12/98	The Montana Power Trading & Marketing Company 97–115–NG.	40 Bcf		Import from Canada beginning on the date of first delivery after January 27, 1998.
1353	01/16/98	Cook Inlet Energy Supply, Limited Partnership 98–02–NG.		200 Bcf	Export to Mexico beginning on the date of first delivery.
1070–A	01/22/98	Sempra Energy Trading Corp. (Formerly AIG Trading Corporation) 95–38–NG.			Name change.
1276–A	01/22/98	Sempra Energy Trading Corp. (Formerly AIG Trading Corporation) 97–42–NG.			Name change.
1355	01/30/98	SEMCO Energy Services, Inc. 98–07–NG.	800 Bcf		Import from Canada beginning February 1, 1998, through January 31, 2000.

[FR Doc. 98–4503 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 98–08–NG]

Office of Fossil Energy, Vermont Gas Systems, Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Vermont Gas Systems, Inc. (Vermont Gas) authorization to import 8,000 Mcf of natural gas per day from Canada (or alternatively 12,355 Mcf per day should Vermont Gas exercise an option under its supply contract) for a ten-year term beginning on November 1, 1998, under the terms and conditions of its supply contract with Renaissance Energy Ltd. The natural gas will be imported at the international border between Canada and the United States near Philipsburg, Québec, and Highgate Springs, Vermont.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 11, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–4504 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1752–000]

Black Hills Corporation; Notice of Filing

February 17, 1998.

Take notice that on February 5, 1998, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Form Service Agreement with Platte River Power Authority.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective January 12, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4437 Filed 2–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1579–000]

Cinergy Services, Inc.; Notice of Filing

February 17, 1998.

Take notice that on January 26, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Sales Standard Tariff (the Tariff), entered into between Cinergy and Entergy Services, Inc. (Entergy).

Cinergy and Entergy are requesting an effective date of one day after the filing of the Power Sales Service Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 385.214). All such motions or protests should be filed on or before February 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4438 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–488–001]

Cinergy Services, Inc.; Notice of Filing

February 17, 1998.

Take notice that on January 23, 1998, Cinergy Services, Inc., tendered for filing its amended power service agreement in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4473 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–488–000]

Cinergy Services, Inc.; Notice of Filing

February 12, 1998.

Take notice that on January 23, 1998, Cinergy Services, Inc., filed an amendment in the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before February 26, 1998. Protests will be considered by the Commission 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4528 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–1292–000 and EL98–20–000]

Dayton Power and Light Company; Notice of Initiation of Proceeding and Refund Effective Date

February 17, 1998.

Take notice that on February 13, 1998, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL98–20–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL98–20–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4439 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–013]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1998.

Take notice that on February 11, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective January 1, 1998:

Substitute Sixth Revised Sheet No. 31

El Paso states that the above tariff sheet is being filed to revise a footnote reference regarding the charges related to a minimum take provision that was included in El Paso's Statement of Negotiated Rates filing made effective on January 1, 1998 by Commission order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4440 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–123–002]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1998.

Take notice that on February 10, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective March 1, 1998:

Fifth Revised Sheet No. 66

Equitrans states that the purpose of this filing is to comply with the Federal

Energy Regulatory Commission's Letter Order issued on February 5, 1998, the Commission found that the filing contained a duplicate numbered tariff sheet Fourth Revised Sheet No. 66 which should have been paginated Fifth Revised Sheet No. 66.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4441 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1532–000]

Florida Power & Light Company; Notice of Filing

February 17, 1998.

Take notice that on January 22, 1998, Florida Power & Light Company, tendered for filing its summary of transactions for the calendar quarter ending December 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4442 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1635–000]

Great Bay Power Corporation; Notice of Filing

February 17, 1998.

Take notice that on January 29, 1998, Great Bay Power Corporation, tendered for filing a summary of activity for the quarter ended December 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4443 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–144–008]

KN Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

February 17, 1998.

Take notice that on February 11, 1998, KN Wattenberg Transmission Limited Liability Co. (Wattenberg) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, to be effective June 1, 1997:

Substitute Original Sheet No. 66A

Wattenberg states that the above referenced tariff sheet is being filed to correct pagination of Sheet No. 66A. On July 28, 1997, an order was received directing Wattenberg to repaginate Sheet No. 66A in the June 9th filing as "First Revised Sheet No. 103". Wattenberg complied with this request in its August 12, 1997, filing. It has since been determined that Sheet No. 66A should have been filed as "Substitute Original Sheet No. 66A". Therefore, Wattenberg submits Substitute Original Sheet No. 66A, to become effective June 1, 1997.

Wattenberg states that copies of the filing were served upon Wattenberg's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4444 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1614–000]

Pacific Gas and Electric Company; Notice of Filing

February 17, 1998.

On January 29, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing several amendments to PG&E's Master Must-Run Agreements with the California Independent System Operator (ISO), originally filed on October 31, 1997, in Docket No. ER98–495–000. The amendments would add Black Start service from some units to the ancillary services already provided by PG&E under these agreements; modify billing, settlement and payment procedures to conform to current ISO practices; and update and correct some rates and unit performance data. PG&E has requested that these proposed changes be consolidated with the existing proceeding.

PG&E has served this filing on all parties listed on the official service list

in docket No. ER98–495–000, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 385.214). All such motions or protests should be filed on or before February 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4445 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1749–000]

PacifiCorp; Notice of Filing

February 11, 1998.

Take notice that PacifiCorp on February 5, 1998, tendered for filing in accordance with 19 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Termination of firm transmission service under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to PacifiCorp's Merchant Function, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 385.214). All such motions or protests should be filed on or before February 25, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4446 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1701–000]

Puget Sound Energy, Inc.; Notice of Filing

February 17, 1998.

Take notice that on February 2, 1998, Puget Sound Energy, Inc., as Transmission Provided, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with American Electric Power Service Corporation (AEPSC), as Transmission Customer.

A copy of the filing was served upon AEPSC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4447 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–230–000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

February 17, 1998.

Take notice that on February 13, 1998, Questar Pipeline Company (Questar), 180 East 100 South Salt Lake City, Utah 84145, filed a prior notice request with the Commission in Docket No. CP98–230–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase the maximum certificated storage capacity of its Clay Basin storage field (Clay Basin) in Daggett County, Utah, under Questar's blanket certificates issued in Docket Nos. CP82–491–000 and CP88–650–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Questar proposes to increase (1) the maximum certificated natural gas storage capacity at Clay Basin from 110.0 Bcf (46.3 Bcf of working gas) to 117.5 Bcf (51.3 Bcf of working gas) and (2) the maximum reservoir shut-in pressure from 2,360 psia to 2,517 psia, the original gas-in-place discovery pressure. Questar states that no new facilities would be required to increase the capacity of Clay Basin. Questar further states that the average depth of the storage formation is 5,800 feet and that the increased storage capacity would be used to provide open-access storage services.

Questar states that it would use 5.0 Bcf of the proposed increased capacity for working-gas inventory and 2.5 Bcf of the proposed increased capacity for cushion gas to support the additional working-gas inventory capacity. Questar also states that the additional 5.0 Bcf of working-gas capacity would increase the Minimum Required Deliverability (MRD) from 385 MMcf of natural gas per day to 427 MMcf of natural gas per day.

Questar explains that (1) the proposed 117.5 Bcf of storage inventory capacity equals the original natural gas volume determined to be in place at the time of discovery; (2) the increased storage inventory reservoir shut-in pressure would not exceed the original gas-in-place discovery pressure of 2,517 psia; (3) the required number of days needed to inject the increased working-gas inventory level of 51.3 Bcf would be 152 days, well within the 184-day injection season (May 1 to October 31) provided for in Questar's tariff; (4) the entire 5.0 Bcf of expanded working gas capacity

has been subscribed by two customers; (5) Questar currently has adequate pipeline take-away capacity to accommodate the increased working-gas inventory; and (6) the cost-of-service associated with the required 2.5 Bcf of cushion gas is not presently known but would be less than the revenues Questar would receive for storing the 5.0 Bcf of newly subscribed working-gas capacity and would be addressed in Questar's next Section 4 rate case.

Questar states that it would provide the increased working-gas storage service to two new customers who successfully bid for the expanded capacity during an open season held January 15 through January 30, 1998. Questar would provide the new customers firm service pursuant to Questar's FERC Gas Tariff Rate Schedule FSS.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4448 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1025–020]

Safe Harbor Water Power Corporation; Notice of Extension of Time

February 17, 1998.

In light of a recent filing requesting an extension of time to file comments in response to the Commission's Notice of Amendment of License (63 FERC 2383, January 15, 1998) issued January 9, 1998, in the above-docketed proceeding, the Commission hereby extends the comment date 28 days to and including March 27, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4431 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–134–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1998.

Take notice that on February 11, 1998, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to be effective January 30, 1998:

Sixth Revised Sheet No. 141
Second Revised Sheet No. 144
Second Revised Sheet No. 146

Viking states that the purpose of this filing is to revise Viking's Electronic Bulletin Board Access Service Agreement (EBB Agreement) in response to shipper requests that Viking clarify that any modification or termination of WebShipper will be in accordance with Section 284.10 of the Commission's Rules and Regulations (18 C.F.R. § 284.10), as applicable. Accordingly, Viking is modifying Section 7.7 of its EBB Agreement to state: "Pipeline reserves the right to modify or terminate WebShipper at any time, provided that in such event Pipeline complies with the requirements of Section 284.10 of the Commission's Rules and Regulations governing Electronic Bulletin Boards, as applicable."

Viking is also making the following changes to its EBB Agreement:

1. Viking is replacing "shall" with "may" in the second sentence of Article I; and

2. Viking is deleting the reference to Order No. 636 in Article V.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4449 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–900–000]

Western Resources, Inc.; Notice of Filing

February 17, 1998.

Take notice that on February 6, 1998, Western Resources, Inc., tendered for filing a response to the Commission's deficiency letter in this docket issued on January 8, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4450 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL98–21–000, et al.]

Consumers Energy Company, et al.; Electric Rate and Corporate Regulation Filings

February 12, 1998.

Take notice that the following filings have been made with the Commission:

1. Consumers Energy Company

[Docket No. EL98–21–000]

Take notice that on January 22, 1998, Consumers Energy Company (CECo), tendered for approval by the Federal Energy Regulatory Commission an order issued by the Michigan Public Service Commission dated January 14, 1998, approving CECo's proposed division between electric transmission and distribution facilities based upon Order No. 888 criteria. A copy of the filing was served upon the service list in CECo Docket No. OA96–77–000 and the Michigan Public Service Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Nevada Power Company

[Docket No. EL98–23–000]

Take notice that on January 26, 1998, Nevada Power Company (Nevada Power), tendered for filing an Application For Waiver requesting approval of a deviation of the standards contained in § 35.14, and requests that Nevada Power be permitted to recover estimated fuel costs for its purchases from Qualifying Facilities through its fuel adjustment clause (FAC). This would require a waiver of the requirement in 18 CFR 34.14 that only actual identifiable fuel costs be included in the FAC.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER97–3359–001]

Take notice that on December 31, 1997, Florida Power & Light Company filed a revision to the November 13, 1997, compliance filing made in this docket.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Howard/Avista Energy, LLC

[Docket No. ER98–181–001]

Take notice that on October 16, 1997, Howard/Avista Energy, LLC (Howard/Avista), filed a revised Statement of Policy and Code of Conduct in compliance with the Commission's Order Conditionally Accepting For Filing Proposed Market-Based Rates, issued December 15, 1997, in the above-captioned docket.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Long Island Lighting Company

[Docket No. ER98–381–001]

Take notice that on January 9, 1998, Long Island Lighting Company (LILCO), filed a Compliance Filing Refund Report pursuant to the Commission's Order dated December 9, 1997, in Docket No. ER98–381–000 in connection with the Electric Power Service Agreement entered into between LILCO and the Incorporated Village of Freeport.

LILCO has served a copy of this filing on the Incorporated Village of Freeport and on the New York State Public Service Commission.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–411–000]

Take notice that on January 30, 1998, Wolverine Power Supply Cooperative, Inc. (Wolverine), filed a Form of Service Agreement in compliance with the Commission's order in this docket. Wolverine will require customers under its market-based power sales tariff, FERC Electric Tariff No. 5, to execute the Service Agreement.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–426–001]

Take notice that on January 23, 1998, Ohio Edison Company and Pennsylvania Power Company (together Ohio Edison), tendered for filing an amendment to Ohio Edison's Power Sales Tariff (Tariff) which was accepted by the Commission's order dated March 27, 1997, in Docket No. ER97–664–000 and designated as OE Operating Companies FERC Electric Tariff Original Volume No. 2.

Ohio Edison states that a copy of the filing has been served on the public utility commissions of Ohio and Pennsylvania, current customers under the Tariff, and participants in Docket No. ER97–664–000.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–488–000]

Take notice that on January 23, 1998, Cinergy Services, Inc., filed an amendment in the above-captioned proceeding.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER98–702–001]

Take notice that on January 30, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively and each doing business as GPU Energy), filed a revised Market-based Sales Tariff in compliance with the Commission's January 15, 1998, order in this docket.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Company Services, Inc.

[Docket No. ER98–859–000]

Take notice that on February 2, 1998, Southern Company Services, Inc., acting on behalf of Gulf Power Company, tendered for filing an amendment to its previous filing of an amended Service Agreement by and among itself, as agent for Gulf Power Company, Gulf Power Company and the City of Blountstown, Florida (City of Blountstown), pursuant to which Gulf Power Company will make wholesale power sales to the City of Blountstown for a term in excess of one (1) year.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Company Services, Inc.

[Docket No. ER98–860–001]

Take notice that on February 2, 1998, Southern Company Services, Inc., acting on behalf of Gulf Power Company, tendered for filing an amendment to its previous filing of an amended Service Agreement by and among itself, as agent for Gulf Power Company, Gulf Power Company and the Florida Public Utilities Company (FPUC), on behalf of its Marianna Division, pursuant to which Gulf Power Company will make wholesale power sales to FPUC for a term in excess of one (1) year.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc.

[Docket No. ER98–1317–000]

Take notice that on January 26, 1998, Western Resources, Inc., tendered for filing revised firm transmission agreements between Western Resources and Duke/Louis Dreyfus L.L.C. Western Resources states that the purpose of the revised agreements is to clarify the actual points of receipt and delivery and specify which ancillary services are being provided.

Copies of the filing were served upon Duke/Louis Dreyfus L.L.C., and the Kansas Corporation Commission.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER98–1758–000]

Take notice that on February 2, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreements to provide Non-Firm Point-To-Point Transmission Service to the Constellation Power Source, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the Constellation Power Source, Inc.

NUSCO requests that the Service Agreement become effective February 2, 1998.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER98–1759–000]

Take notice that on February 2, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreements to provide Non-Firm Point-To-Point Transmission Service and Firm Point-To-Point Transmission Service to the Williams Energy Services Company under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the Williams Energy Services Company.

NUSCO requests that the Service Agreement become effective February 2, 1998.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The Detroit Edison Company

[Docket No. ER98–1763–000]

Take notice that on February 3, 1998, The Detroit Edison Company, tendered for filing its report of transactions for the quarter ending December 31, 1997.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Electric and Gas Company

[Docket No. ER98–1764–000]

Take notice that on February 3, 1998, Public Service Electric and Gas Company (PSE&G), tendered for filing a compliance refund report applicable to the offer of settlement in Docket No. ER96–1320–000. PSE&G states that, subsequent to the effective date of the rates pursuant to its settlement order issued on November 28, 1997 in the above referenced docket, PSE&G provided no transmission service at rates in excess of the settlement rates and, therefore, no refunds are due.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Bangor Hydro-Electric Company

[Docket No. ER98–1765–000]

Take notice that on February 3, 1998, Bangor Hydro-Electric Company (Bangor), tendered for filing initial filing Service Agreements with the following customers to receive service under Bangor's FERC Electric Rate Schedule, Original Volume No. 1:

Entergy Power Marketing Corp.
Green Mountain Power Corporation.
Constellation Power Source, Inc.
Northeast Energy Services, Inc.
CNG Power Services Corp.
AIG Trading Corporation
Public Service Electric and Gas Co.
The Power Company of America, L.P.
Niagara Mohawk Power Corp.
Baltimore Gas & Electric Co.
New Energy Ventures, Inc.
United Illuminating Co.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4435 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–26–000, et al.]

Nova Corporation, et al.; Electric Rate and Corporate Regulation Filings

February 13, 1998.

Take notice that the following filings have been made with the Commission:

1. Nova Corporation and TransCanada PipeLines Limited

[Docket No. EC98–28–000]

Take notice that on February 11, 1998, TransCanada PipeLines Limited and NOVA Corporation (Applicants) tendered for filing an Application requesting Commission approval for the proposed merger of applicants' energy services businesses.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Tenaska Frontier Partners, Ltd.

[Docket No. EG98–39–000]

On February 6, 1998, Tenaska Frontier Partners, Ltd., a Texas limited partnership, 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.

The applicant is proposing to construct and own an independent power production facility in Grimes County, Texas. Major plant equipment will consist of three combustion turbine-generators, three heat recovery steam generators and one steam turbine generator with a nominal net plant output of 830 MW. The primary fuel supply for the facility will be natural gas. Fuel oil will be used as a back-up fuel supply. Net capacity and electric energy will be sold to PECO Energy Company for resale and, under certain conditions, to others for resale.

Upon completion of construction, Applicant will be engaged directly and exclusively in the business of owning the facility and selling electric energy at wholesale. No rate or charge for, or in connection with, the construction of the Facility or for electric energy produced by the facility was in effect under the

laws of any state as of the date of enactment of Section 32 of the Public Utility Holding Company Act.

Comment date: March 5, 1998, 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. Transmission Agency of Northern California

[Docket No. EL98–26–000]

Take notice that on February 6, 1998, the Transmission Agency of Northern California (TANC), tendered for filing a Complaint And Motion For Expedited Consideration. The Transmission Agency of Northern California's (TANC) complaint against Pacific Gas and Electric Company (PG&E) for violation of the contract between TANC and PG&E entitled Principles for Tesla-Midway Transmission Service, known as the South Tesla Principles or SOTP, which contract, pursuant to orders of the Commission, is on file with the Commission as PG&E FERC Rate Schedule No. 143.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Company

[Docket Nos. ER96–334–003, ER96–334–001, and OA96–199–004]

Take notice that on January 30, 1998, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission in compliance to the FERC order dated December 18, 1996, in the above reference dockets a refund report.

A copy of the filing was served upon Idaho Power Company, Colstrip Project Division, and Montana Public Service Commission.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Ameren Services Company

[Docket Nos. ER96–677–004 and ER96–679–004]

Take notice that on February 2, 1998, Ameren Services Company (Ameren Services), acting on behalf of Union Electric Company and Central Illinois Public Service Company (Ameren Companies), filed a Compliance filing in accordance with the Commission's orders in authorizing the Ameren Companies' merger into a public utility holding company system owned by Ameren Corporation. Ameren Services states that the Ameren merger was consummated on December 31, 1997 and that the Ameren Companies' Open Access Tariff and Joint Dispatch Agreement, which are included in the Compliance filing, became effective on such date. Ameren Services also states that no refunds are due under the Compliance Filing.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Long Island Lighting Company

[Docket No. ER98–381–002]

Take notice that on January 9, 1998, Long Island Lighting Company (LILCO), filed a Compliance Filing Refund Report pursuant to the Commission's Order dated December 9, 1997 in Docket No. ER98–381–000 in connection with the Electric Power Service Agreement entered into between LILCO and the Niagara Mohawk Power Corporation.

LILCO has served a copy of this filing on Niagara Mohawk Power Corporation and on the New York State Public Service Commission.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket Nos. ER98–499–000, ER97–4421–000, OA97–608–000, ER97–3574–000, OA97–237–000, and ER97–1079–000]

Take notice that on January 30, 1998, the New England Power Pool (NEPOOL), Executive Committee submitted materials related to its filing on December 31, 1996 in the captioned dockets. These materials include waiver rules and auction procedures relating to Non-Use Charges for reservations of transmission service into New England.

The NEPOOL Executive Committee states that copies of these materials were sent to protestants and persons seeking intervention in the captioned dockets, the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Central and South West Services, as agent for Central Power & Light Company, West Texas Utilities Company, and Public Service Company of Oklahoma

[Docket No. ER98–542–002]

Take notice that on January 16, 1998, Central and South West Services, Inc. (CSW Services), as agent for Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company, submitted for filing a revised market-based power sales tariff and revised code of conduct in compliance with the Federal Energy Regulatory Commission's January 2, 1998, order in the above captioned proceeding.

CSW Services states that a copy of the filing has been served on all parties to the above captioned proceeding.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Citizens Utilities Company

[Docket No. ER98–1766–000]

Take notice that on February 6, 1998, Citizens Utilities Company filed a revised Attachment E, Index of Point-to-Point Transmission Service Customers to update the Open Access Transmission Tariff of the Vermont Electric Division of Citizens Utilities Company.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Tenaska Frontier Partners, Ltd.

[Docket No. ER98–1767–000]

Take notice that on February 6, 1998, Tenaska Frontier Partners, Ltd. (Tenaska Frontier), tendered for filing its initial FERC electric service tariff, Rate Schedule No. 1, which is a power marketing rate schedule.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER98–1769–000]

Take notice that on February 6, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Termination of PacifiCorp's Rate Schedule FERC No. 415.

Copies of this filing were supplied to the City of Anaheim, California; the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Tucson Electric Power Company

[Docket No. ER98–1770–000]

Take notice that on February 6, 1998, Tucson Electric Power Company (TEP), tendered for filing an updated Attachment E—Index of Point-to-Point Transmission Service Customers to its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requested waiver of the 60-day prior

notice requirement to allow the updated Attachment E to become effective as of February 6, 1998.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota)

[Docket No. ER98–1793–000]

Take notice that on February 9, 1998, Northern States Power Company-Minnesota (NSP), tendered for filing an Amendment executed by NSP and the City of Sioux Falls, South Dakota as a supplement to the December 17, 1997 filing. This supplement has been served on all recipients of the December 17th filing.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. OA96–42–001]

Take notice that on August 15, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission revisions to its Open Access Transmission Tariff consisting of tariff sheets to update the Index of Point-to-Point Transmission Customers and the Index of Network Integration Transmission Service Customers. MidAmerican states that the filing is made pursuant to the Commission's Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures in Allegheny Power Systems, Inc., *et al.*, 80 FERC ¶ 61,143 (1997), and requests an effective date of August 15, 1997.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Black Hills Power and Light Company

[Docket No. OA96–75–001]

Take notice that on August 15, 1997, Black Hills Power and Light Company, tendered for filing revised tariff sheets to its open access transmission tariff filed in Docket No. OA96–75–000 and an index of customers as required by the Commission's order, 80 FERC ¶ 61,143 (1997).

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Bangor Hydro-Electric Company

[Docket Nos. OA96–191–002, ER97–1170–000, OA97–645–000 (not consolidated)]

Take notice that on August 15, 1997, Bangor Hydro-Electric Company (Bangor), tendered for filing pursuant to the Commission's July 31, 1997, Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures, Allegheny Power System, Inc., et al., 80 FERC ¶ 61,143, Bangor's Open Access Transmission Tariff compliance filing. This filing contains the changes required by the Commission's July 31st Order.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Ohio Edison Company and Pennsylvania Power Company

[Docket Nos. OA96–197–004]

Take notice that on January 23, 1998, FirstEnergy Corp., parent of Ohio Edison Company and Pennsylvania Power Company, tendered for filing a compliance refund report pursuant to the Commission's October 17, 1997, Letter Order.

FirstEnergy Corp. states that a copy of the filing has been served on the parties in the above-referenced proceedings.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. OA96–208–001]

Take notice that on August 15, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an index of customers served since July 9, 1996, under its compliance tariffs or revised compliance tariffs. This filing is pursuant to the Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures, issued July 31, 1997.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. North West Rural Electric Cooperative

[Docket No. OA98–8–000]

Take notice that on January 8, 1998, North West Rural Electric Cooperative (North West), filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's Regulations. North West's filing is available for public inspection at its offices in Orange City, Iowa.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Minnkota Power Cooperative, Inc.

[Docket No. OA98–9–000]

Take notice that on January 22, 1998, Minnkota Power Cooperative, Inc., (Minnkota), tendered for filing an Application of Minnkota for Waiver of the Requirements of Order No. 889 reciprocity requirements to separate the operation of its transmission system function from the wholesale marketing function, and to submit standards of conduct.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4436 Filed 2–20–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1702–000, et al.]

Puget Sound Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 11, 1998.

Take notice that the following filings have been made with the Commission:

1. Puget Sound Energy, Inc.

[Docket No. ER98–1702–000]

Take notice that on February 2, 1998, Puget Sound Energy, Inc., as Transmission Provided, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement), and a Service Agreement for Non-firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement), with Coral Power L.L.C. (Coral), as Transmission Customer.

A copy of the filing was served upon Coral.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Service Corporation

[Docket No. ER98–1703–000]

Take notice that on February 2, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed service agreement under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2, AEPSC respectfully request the Commission to permit this service agreement to become effective for service billed on and after January 4, 1998.

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: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER98–1704–000]

Take notice that on February 2, 1998 Commonwealth Edison Company (ComEd), submitted for filing a Service Agreement establishing Griffin Energy Marketing, L.L.C., (Griffin), as a non-firm transmission customer under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of January 14, 1998, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Griffin, and the Illinois Commerce Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER98–1705–000]

Take notice that on February 2, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing its summary of quarterly activity for the calendar year quarter ending December 31, 1997.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER98–1706–000]

Take notice that PacifiCorp, on February 2, 1998, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a revised Exhibit 2 of the Amendment of Agreements between PacifiCorp and Moon Lake Electric Association (Moon Lake).

Copies of this filing were supplied to Moon Lake Electric Association, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER98–1707–000]

Take notice that on February 2, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer, Columbia Power Marketing. Service to the Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER98–1708–000]

Take notice that on January 29, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which SCANA Energy Marketing 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 January 23, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER98–1709–000]

Take notice that Orange and Rockland Utilities, Inc. (O&R), on January 29, 1998, 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 under which O&R will provide capacity and/or energy to Strategic Energy Limited (Strategic).

O&R requests waiver of the notice requirement so that the service agreement with Strategic becomes effective as of January 30, 1998.

O&R has served copies of the filing on The New York State Public Service Commission and Strategic.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Cleveland Electric Illuminating Company

[Docket No. ER98–1710–000]

Take notice that on January 30, 1998, Cleveland Electric Illuminating Company, tendered for filing its quarterly report of transactions for the period October 1, 1997 through December 31, 1997.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER98–1711–000]

Take notice that on January 30, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an amended service agreement under Cinergy's Power Sales Standard Tariff entered into between Cinergy and Edgar Electric Cooperative Association.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Houston Lighting & Power Company

[Docket No. ER98–1712–000]

Take notice that on February 2, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with Equitable Power Services Company for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of February 2, 1998.

Copies of the filing were served on Equitable and the Public Utility Commission of Texas.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Co.

[Docket No. ER98–1713–000]

Take notice that on February 2, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 19, 1998, between KCPL and Columbia Power Marketing, Inc. KCPL proposes an effective date of January 20, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Houston Lighting & Power Company

[Docket No. ER98–1714–000]

Take notice that on February 2, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with Western Power Services, Inc. (Western), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of February 2, 1998.

Copies of the filing were served on Western and the Public Utility Commission of Texas.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Kansas City Power & Light Co.

[Docket No. ER98–1715–000]

Take notice that on February 2, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 19, 1998, between KCPL and Columbia Power Marketing, Inc. KCPL proposes an effective date of January 20, 1998, and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER98–1716–000]

Take notice that on February 2, 1998, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (collectively referred to as Cinergy), tendered for filing a Service Agreement between Cinergy and CNG Energy Services Corporation (CNG), as a Service Agreement for a long-term market-based sale in fulfillment of requirements imposed on Cinergy by Order dated November 15, 1996 in Docket No. ER96–2506–000 or, in the alternative, as an original rate schedule.

Copies of the filing have been served on CNG.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Ocean State Power

[Docket No. ER98–1717–000]

Take notice that on February 2, 1998, Ocean State Power (Ocean State), tendered for filing the following supplements (the Supplements), to its rate schedules with the Federal Energy Regulatory Commission:

Supplements No. 22 to Rate Schedule FERC No. 1
Supplements No. 19 to Rate Schedule FERC No. 2
Supplements No. 18 to Rate Schedule FERC No. 3
Supplements No. 20 to Rate Schedule FERC No. 4

The Supplements to the rate schedules request approval of Ocean State's proposed rate of return on equity for the period beginning on February 1, 1998, the requested effective date of the Supplements, and ending on the effective date of Ocean State's updated rate of return on equity to be filed in February of 1999.

Copies of the Supplements have been served upon, among others, Ocean State's power purchasers, the Massachusetts Department of Public Utilities, and the Rhode Island Public Utilities Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Ocean State Power II

[Docket No. ER98–1718–000]

Take notice that on February 2, 1998, Ocean State Power II (Ocean State II), tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission:

Supplements No. 21 to Rate Schedule FERC No. 5
Supplements No. 21 to Rate Schedule FERC No. 6
Supplements No. 20 to Rate Schedule FERC No. 7
Supplements No. 21 to Rate Schedule FERC No. 8

The Supplements to the rate schedules request approval of Ocean State II's proposed rate of return on equity for the period beginning on February 1, 1998, the requested effective date of the Supplements, and ending on the effective date of Ocean State II's updated rate of return on equity to be filed in February of 1999.

Copies of the Supplements have been served upon, among others, Ocean State II's power purchasers, the Massachusetts Department of Public Utilities, and the Rhode Island Public Utilities Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Baltimore Gas and Electric Company

[Docket No. ER98–1719–000]

Take notice that on February 3, 1998, Baltimore Gas and Electric Company (BGE), filed Service Agreements with DTE Energy, Inc., dated January 19, 1998, and GPU Energy, dated January 19, 1998, under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreements, BGE agrees to provide services to the parties to the Service Agreements under the provisions of the Tariff. BGE requests an effective date of February 1, 1998, for the Service Agreements. BGE states that a copy of the filing was served upon the Public Service Commission of Maryland and parties to the Service Agreements.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. San Diego Gas & Electric Company

[Docket No. ER98–1720–000]

Take notice that on February 3, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing a notice of cancellation of Service Agreement with Enron Power Marketing, Inc., for Firm Point-to-Point Transmission Service under SDG&E's Open Access Transmission Tariff.

Notice of the proposed cancellation has been served upon Enron Power Marketing, Inc. SDG&E requests that this cancellation become effective March 31, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Atlantic City Electric Company

[Docket No. ER98–1721–000]

Take notice that on February 3, 1998, Atlantic City Electric Company (Atlantic Electric), tendered for filing service agreements under which Atlantic Electric will sell capacity and energy to Southern Company Energy Marketing, Inc. (Southern Energy), and El Paso Energy Marketing Company (El Paso), under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreement with Southern

Energy be accepted to become effective on June 23, 1997, and the agreement with El Paso be accepted to become effective on June 19, 1997.

Atlantic Electric states that a copy of the filing has been served on Southern Energy and El Paso.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Great Western Power Cooperatives Company

[Docket No. ER98–1722–000]

Take notice that on February 3, 1998, Great Western Power Cooperatives Company (GWPCC), tendered for filing a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority. The Petition requests acceptance of GWPCC Rate Schedule FERC No. 1, under which GWPCC will engage in wholesale electric power and energy transactions as a marketer, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain Commission Regulations.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. FirstEnergy System

[Docket No. ER98–1723–000]

Take notice that on February 3, 1998, FirstEnergy System filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Duquesne Light Company and Tenaska Power Services Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective dates under the Service Agreements is January 8, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Baltimore Gas and Electric Company

[Docket No. ER98–1724–000]

Take notice that on February 3, 1998, Baltimore Gas and Electric Company (BGE), submitted in accordance with § 205 of the Federal Power Act and Part 35 of the Rules and Regulations of the Federal Energy Regulatory Commission, 18 CFR Part 35, a Service Agreement between BGE and Constellation Power Source, Inc. (CPS), under which BGE may engage in sales of capacity and energy to its power marketing affiliate, CPS.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Western Resources, Inc.

[Docket No. ER98–1725–000]

Take notice that on February 4, 1998, Western Resources, Inc., tendered for filing a short-term firm transmission agreement between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective January 14, 1998.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Duquesne Light Company

[Docket No. ER98–1726–000]

Take notice that February 4, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated February 1, 1998, with New Energy Ventures, L.L.C., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds New Energy Ventures, L.L.C., as a customer under the Tariff. DLC requests an effective date of February 1, 1998, for the Service Agreement.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Interstate Power Company

[Docket No. ER98–1727–000]

Take notice that on February 4, 1998, Interstate Power Company (IPW), tendered for filing a Network Transmission Service and Operating Agreement between IPW and Southern Minnesota Municipal Power Agency (SMMPA). Under the Service Agreement, IPW will provide Network Integration Transmission Service to SMMPA for their Fairmont, Spring Valley, and Wells substations.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. The Toledo Edison Company

[Docket No. ER98–1728–000]

Take notice that on January 30, 1998, The Toledo Edison Company, tendered for filing its quarterly report of transactions for the period October 1, 1997 through December 31, 1997.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. UtiliCorp United Inc.

[Docket No. ER98–1730–000]

Take notice that on February 4, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Wyoming Municipal Power Agency for service under its Non-Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. UtiliCorp United Inc.

[Docket No. ER98–1731–000]

Take notice that on February 4, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Black Hills Power and Light Company for service under its Non-Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1732–000]

Take notice that on February 4, 1998, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Engage Energy US, L.P.

NSP requests that the Commission accept both the agreements effective January 7, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. The Washington Water Power Company

[Docket No. ER98–1733–000]

Take notice that on February 4, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Non-Firm Point-to-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with Power Fuels, Inc., and Tenaska Power Services Co. WWP requests the Service Agreements be given effective dates of February 1, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Commonwealth Edison Company

[Docket No. ER98–1734–000]

Take notice that on February 4, 1998, Commonwealth Edison Company (ComEd), filed with the Federal Energy Regulatory Commission its FERC Electric Rate Schedule, an application for blanket authorizations and for certain waivers of the Commission's Regulations. ComEd intends to engage in transactions in which ComEd sells electricity at rates and on terms and conditions that are negotiated with the purchasing party.

ComEd has requested expedited action on its filing so that the Commission may accept ComEd's rate schedule for filing to become effective as soon as possible. ComEd has also served a copy of the application on the state utility commissions that regulate its public utility affiliates, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. PP&L, Inc.

[Docket No. ER98–1735–000]

Take notice that on February 2, 1998, PP&L, Inc., formerly known as Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission one Corrected Borderline Service Agreement (Corrected Agreement) between PP&L and Pennsylvania Electric Company, d/b/a GPU Energy, dated January 19, 1998. The Corrected Agreement corrects a supplement to a borderline service umbrella tariff approved by the Commission in Docket No. ER93–847–000 by establishing the precise point of delivery, metering arrangements, and transmission losses associated with a new point of delivery under the umbrella tariff.

PP&L requests the Commission to make the Corrected Agreement effective as of September 11, 1997, the date of the Borderline Service Agreement that is now corrected by the Corrected Agreement, and which the Commission has already approved. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER93–847–008.

PP&L states that a copy of its filing was provided to Pennsylvania Electric Company d/b/a GPU Energy, and to Pennsylvania Public Utility Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Midwest Energy, Inc.

[Docket No. ER98–1736–000]

Take Notice that on February 3, 1998, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-Firm Point-to-Point Transmission Service entered into between Midwest and Amoco Energy Trading Corporation.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. UtiliCorp United Inc.

[Docket No. ER98–1737–000]

Take notice that on February 3, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with Williams Energy Services Company. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to Williams Energy Services Company pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Williams Energy Services Company.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. UtiliCorp United Inc.

[Docket No. ER98–1738–000]

Take notice that on February 3, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Williams Energy Services Company. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Williams Energy Services Company pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Williams Energy Services Company.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. UtiliCorp United Inc.

[Docket No. ER98–1739–000]

Take notice that on February 3, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Williams Energy Services Company. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Williams Energy Services Company pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Williams Energy Services Company.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Central Louisiana Electric Co., Inc.

[Docket No. ER98–1740–000]

Take notice that on February 3, 1998, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to OGE Energy Resources, Inc., under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on OGE Energy Resources, Inc.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Bangor Hydro-Electric Company

[Docket No. ER98–1741–000]

Take notice that on February 4, 1998, Bangor Hydro-Electric Company filed an executed service agreement for non-firm point-to-point transmission service with the Cinergy Capital & Trading, Inc.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. MidAmerican Energy Company

[Docket No. ER98–1742–000]

Take notice that on February 2, 1998, MidAmerican Energy Company tendered for filing a proposed change in its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The proposed change consists of certain reused tariff sheets consistent with the quarterly filing requirement.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in Southern Company Services, Inc., 75 FERC ¶61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the applicable quarter with confidential price and quantity information removed.

MidAmerican proposes an effective date of the first day of the applicable quarter for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the Southern Company Services, Inc., order and the effective date authorized in Docket No. ER96–2459–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Western Resources, Inc.

[Docket No. ER98–1743–000]

Take notice that on February 5, 1998, Western Resources, Inc., tendered for filing a short-term firm transmission agreement between Western Resources and Duke/Louis Dreyfus L.L.C. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective January 1, 1998.

Copies of the filing were served upon Duke/Louis Dreyfus L.L.C. and the Kansas Corporation Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. South Carolina Electric & Gas Company

[Docket No. ER98–1744–000]

Take notice that on February 5, 1998, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing American Electric Power Service Corporation (AEPSC), Avista Energy, Inc. (AVISTA), and Western Resources (WR) as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon AEPSC, AVISTA, WR, and the South Carolina Public Service Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Central Louisiana Electric Co., Inc.

[Docket No. ER98–1745–000]

Take notice that on February 5, 1998 Central Louisiana Electric Company, Inc., (CLECO), tendered for filing two service agreements under which CLECO will provide non-firm and short term firm point-to-point transmission services to Amoco Energy Trading Corporation under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Amoco Energy Trading Corporation.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. New York State Electric & Gas Corporation

[Docket No. ER98–1747–000]

Take notice that on February 5, 1998, 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, service agreements under which NYSEG may provide capacity and/or energy to Engage Energy US, L.P. (Engage), Eastern Power Distribution, Inc. (Eastern Power), Energetix, Inc. (Energetix), New England Power Company (NEP), and Wheeled Electric Power Corp. (WEPCo), (collectively, the Purchasers) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreements with Eastern Power, Energetix, NEP, and WEPCo become effective as of February 6, 1998, and the service agreement with Engage becomes effective as of February 2, 1998.

The Service Agreements are subject to the Commission Order Authorizing Disposition of Jurisdictional Facilities and Corporate Reorganization issued on December 16, 1997 in Docket No. EC97–52–000.

NYSEG served copies of the filing upon the New York State Public Service Commission, Engage, Eastern Power, Energetix, NEP, and WEPCo.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Northern Indiana Public Service Company

[Docket No. ER98–1750–000]

Take notice that on February 5, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Continental Energy Services, L.L.C. (Continental).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Continental pursuant to the Open-Access Transmission Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to Continental pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of February 15, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. Black Hills Corporation

[Docket No. ER98–1751–000]

Take notice that on February 5, 1998, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Form Service Agreement with Public Service Company of Colorado.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements

be allowed to become effective January 12, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. Black Hills Corporation

[Docket No. ER98–1753–000]

Take notice that on February 5, 1998, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Form Service Agreement with Wyoming Municipal Power Agency.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective December 12, 1997.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

48. Cinergy Services, Inc.

[Docket No. ER98–1754–000]

Take notice that on February 5, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff entered into between Cinergy and Northern States Power Company (NSP).

Cinergy and NSP are requesting an effective date of February 4, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

49. UtiliCorp United Inc.

[Docket No. ER98–1755–000]

Take notice that on February 6, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with OGE Energy Resources, Inc. for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

50. UtiliCorp United Inc.

[Docket No. ER98–1756–000]

Take notice that on February 6, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with OGE Energy Resources, Inc., for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

51. Public Service Company of New Mexico

[Docket No. ER98–1757–000]

Take notice that on February 6, 1998, Public Service Company of New Mexico (PNM), submitted for filing a service agreement executed January 12, 1998, for firm point-to-point transmission service between PNM (Transmission Provider), and Southwestern Public Service Company (Transmission Customer), under the terms of PNMs Open Access Transmission Service Tariff. Under this service agreement Transmission Provider will provide to Transmission Customer 20 MW of firm point-to-point reserved capacity from the Four Corners 345kV Switchyard to the Roosevelt 230KV Bus, subject to certain conditions and scheduling provisions, for the four (4) month period beginning May 1, 1998, and ending August 31, 1998. PNMs filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

52. California Power Exchange Corporation

[Docket Nos. ER98–210–000 and ER98–1729–000]

Take notice that on January 30, 1998, the California Power Exchange Corporation (PX), made an amended rate filing to be effective on March 31, 1998, pursuant to Section 205 of the Federal Power Act. According to the PX, as a result of the delay in the start of the operations of the PX, it is necessary for the PX to amend the rate filing that it made on October 17, 1997 in Docket No. ER98–210–000. Copies of the filing were served upon all persons included on the service list compiled in Docket No. ER98–210–000.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4434 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11181–002]

Energy Storage Partners; Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings

February 17, 1998.

The staff of the Federal Energy Regulatory Commission (staff) has determined that issuance of a license for the construction and operation of the proposed Lorella Pumped Storage Project, FERC No. 11181–002, in Klamath County, Oregon, would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the proposed project in accordance with the National Environmental Policy Act. The staff's EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

The scoping process will provide a public forum to determine the scope and the significant issues that should be analyzed in depth in the EIS. The times and locations of the scoping meetings and public hearings will be announced in a subsequent public notice.

For further information, please contact the FERC Project Coordinator, Héctor M. Pérez at (202) 219–2843.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4433 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Preliminary Permit

February 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11611–000.

c. Date filed: January 14, 1998.

d. Applicant: Alaska Power & Telephone Company.

e. Name of Project: Twin Basin Hydroelectric.

f. Location: Off Kizhuyak Bay, on two unnamed streams, near the town of Kodiak, Kodiak Island Borough, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. Applicant Contact: Mr. Glen D. Martin, Project Manager, Alaska Power and Telephone Co., 191 Otto Street, P.O. Box 222, Port Townsend, WA 98368, (360) 385–1733.

i. FERC Contact: Surender M. Yepuri, P.E., (202) 219–2847.

j. Comment Date: April 22, 1998.

k. Description of Project: The proposed project would consist of: (1) two 30-foot-long, 15-foot-high concrete or wood crib diversion structures with screened intakes; (2) two reservoirs with a total surface area of maximum 5 acres; (3) two 30-inch-diameter penstocks totaling 5,300 feet; (4) a 40-foot-long, 30-foot-wide, and 20-foot-high powerhouse with a total installed capacity of 5 MW; (5) a tailrace; (6) a 12.5-kV, 2.0-mile-long transmission line connecting the project to an existing substation; and (7) other appurtenances.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named document 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, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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,

Acting Secretary.

[FR Doc. 98–4432 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed With the Office of Hearings and Appeals; Week of January 5 through January 9, 1998

During the Week of January 5 through January 9, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: February 11, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 5 through January 9, 1998]

Date	Name and location of Applicant	Case No.	Type of Submission
1/5/98	Cincinnati Gas & Electric Co., Cincinnati, OH.	VEA–0008	Appeal of an Order Issued Under A.F.T.P. 10 CFR Part 490. *If granted:* The Cincinnati Gas & Electric Co. would receive a waiver of the requirements of 10 CFR Part 490 that would give the firm credit for vehicles converted to alternative fuel use during the period October 1, 1997 through December 31, 1997 which would count toward Model Year 1997 compliance.
1/5/98	Personnel Security Review	VSA–0170	Request for Review of Opinion Under 10 CFR Part 710. *If granted:* The December 8, 1997 Opinion of the Office of Hearings and Appeals Case No. VSO–0170 would be reviewed at the request of an individual employed by the Department of Energy.
1/5/98	The Oregonian Portland, OR	VFA–0368	Appeal of an Information Request Denial. *If granted:* The November 26, 1997 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and the Oregonian would receive access to certain DOE information.

[FR Doc. 98–4501 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Case Filed With the Office of Hearings and Appeals; Week of January 12 Through January 16, 1998

During the Week of January 12 through January 16, 1998, the appeal, application, petition or other request listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in in this case may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: February 11, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 12 through January 16, 1998]

Date	Name and location of applicant	Case No.	Type of submission
1/13/98	Personnel Security Hearing	VSO–0191	Request for Hearing under 10 CFR part 710. If Granted, an individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.

[FR Doc. 98–4502 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of October 13 through October 17, 1997

During the week of October 13 through October 17, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 11, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

[Decision List No. 55] Week of October 13 Through October 17, 1997

Appeal

Dr. Daniel D. Eggers, 10/4/97; *VFA–0332*

Dr. Daniel D. Eggers Appealed a Determination issued to him in response to a request he submitted under the Freedom of Information Act for documents generated in connection with a patient his father, a DOE contractor employee, had filed in the 1940s. In its Determination, the Oak Ridge Operations Office (Oak Ridge) found that the DOE could not locate any responsive documents. On appeal, the DOE found that adequate search was adequate, because the Appellant had provided insufficiently specific information to enable Oak Ridge to focus its search. However, DOE determined that the Appellant possessed more specific information that might permit Oak Ridge to narrow its search and locate responsive documents. Therefore, OHA granted the Appeal remanded the matter to Oak Ridge for a further search.

Personnel Security Hearing

Personnel Security Hearing, 10/14/96; *VSO–0161*

A Hearing Officer recommended that access authorization not be restored to

an individual. The Hearing Officer found that information presented by the DOE established that the individual suffers from alcohol abuse and had not mitigated the security concerns by sufficient evidence of rehabilitation and reformation.

Refund Application

Pruner Healther Services, Inc., et al., 10/14/97; *RK272–02447 et al.*

The Department of Energy issued a Decision and Order granting 16 Applications for Supplemental Refund filed in the Subpart V crude oil refund proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CRUDE OIL SUPPLE REF DIST	RB272–00123	10/15/97
ERIE MATERIALS, INC. ET AL	RF272–98607	10/16/97
MACDONALD H. JONES ET AL	RK272–04624	10/15/97

Dismissals

The following submissions were dismissed.

NAME	CASE NO.
OXNARD FROZEN FOOD COOPERATIVE	RF272–76782
PERSONNEL SECURITY HEARING	VSO–0162

[FR Doc. 98–4499 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearing and Appeals

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of November 3 Through November 7, 1997

During the week of November 3 through November 7, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 11, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 58; Week of November 3 through November 7, 1997

Appeals

Convergence Research, 11/7/97, [VFA–0340]

Convergence Research (CR) appealed a determination by the Bonneville Power Administration (BPA) that denied in part a request for information that it filed under the Freedom of Information Act (FOIA). The DOE found that a likelihood of significant competitive harm would result from release of the requested information and that, therefore, BPA properly withheld the information under Exemption 5. Consequently, CR's Appeal was denied.

The Oregonian, 11/3/97, [VFA–0336]

The Oregonian appealed a determination by the Bonneville Power Administration (BPA) that denied in part a request for information the newspaper filed under the Freedom of Information Act (FOIA). The DOE found that a likelihood of significant competitive harm would result from release of the requested information and that, therefore, BPA properly withheld the information under Exemption 5. Consequently, the Appeal filed by The Oregonian was denied.

Refund Applications

Eason Oil Co./Koch Hydrocarbon Co., 11/7/97, [RF352–2]

The DOE granted in part an application for refund submitted by Koch Hydrocarbon Co. (KHC) in the Eason Oil Co. (Eason) special refund proceeding. The DOE found that KHC purchased a mixed stream of NGLs from Eason, which it fractionated into propane, butane and natural gasoline and resold to third parties. KHC's NGL purchases from Eason were not discretionary in nature, and were dictated by KHC's requirements for its fractionation and marketing activities. For the period November 1973 through December 1979, the DOE found that KHC had demonstrated that the prices it paid to Eason for butane resulted in some economic injury to KHC. However, the DOE found that KHC's competitive disadvantage analysis failed to establish that KHC suffered the type of substantial and consistent competitive disadvantage that would qualify the firm for 100% of its allocable share of the refund. Accordingly, the DOE granted KHC a refund based on 79.5 percent of its allocable share.

Gulf Oil Corp./Ryder Energy Distributing, 11/3/97, [RR300–261]

The DOE denied a motion for reconsideration filed by the Ryder Energy Distributing in the Gulf refund proceeding. The DOE had previously granted Ryder a $36,637 refund based on the medium range presumption of injury applicable to resellers. In considering the motion, the DOE found that Ryder Energy failed to demonstrate that it was entitled to the end-user presumption of injury for any of its Gulf purchases.

Star-Kist Foods, Inc., 11/6/97, [RR272–148]

The DOE granted a Motion for Reconsideration filed by Star-Kist Foods, Inc. The DOE found that the company had acted in a timely fashion

when it corrected the deficiency which had caused the DOE to dismiss Star-Kist's Application for Refund, and DOE determined that Star-Kist should receive a refund.

TMBR/Sharp Drilling, Inc. Tom Brown, Inc, Tom Brown, Inc., 11/3/97, [RF272–98766; RC272–00375; RJ272–00050]

TMBR/Sharp Drilling, Inc. (TMBR) filed an Application for Refund in the crude oil refund proceeding. Another company, Tom Brown, Inc. (TBI), from which TMBR had been spun off, had earlier received a refund for the same purchases for which TMBR was entitled to a refund. The DOE rescinded the portions of TBI's original and supplemental refunds pertaining to purchases made by its drilling division, which became TMBR. Moreover, the DOE accepted TBI's estimates of its drilling division's purchases instead of TMBR's, because TBI's records were based on records contemporaneous to the refund period, as opposed to TMBR's estimates, which were based on current records. Accordingly, TMBR was granted a refund and TBI's refunds were reduced.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple Refund	RB272–00124	11/7/97
Gulf Oil Corporation/Monarch Oil Co., Inc	RF300–21676	11/3/97
Gulf Oil Corporation/Texas City Refining, Inc	RF300–14009	11/6/97
Shell Oil Co./Merbert M. Hsu	RF315–10287	11/4/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Nash Finch Co.	RK272–04629

[FR Doc. 98–4500 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Registration of Fuels and Fuel Additives—Health-effects Research Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Registration of Fuels and Fuel Additives: Health-effects Research Requirements for Manufacturers (40 CFR 79—subpart F) (OMB Control Number 2060–0297, expiration date: 4–30–98). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 25, 1998.

FOR FURTHER INFORMATION CONTACT:

For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E–Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1696.02.

SUPPLEMENTARY INFORMATION

Title: Registration of Fuels and Fuel Additives: Health-effects Research Requirements for Manufacturers (40 CFR 79—subpart F), (OMB Control Number 2060–0297, EPA ICR Number 1696.02) expiring 4–30–98. This is a request for an extension of a currently approved collection.

Abstract: In accordance with the Clean Air Act regulations at 40 CFR 79, manufacturers (including importers) of gasoline, diesel fuel, and additives for gasoline or diesel fuel, are required to have their products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The health-effects research is the subject of this ICR. The other information collection requirements at 40 CFR 79 are covered by a separate ICR (EPA ICR Number 309.09, OMB Control Number 2060–0150). The health-effects research is divided into three tiers of requirements for specific categories of fuels and additives. Tier 1 requires a health-effects literature search and emissions characterization. Tier 1 data were submitted in 1997 and will be applicable for most new products seeking registration. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects, unless comparable data are already available. Alternative Tier 2 testing can be required in lieu of the standard Tier 2 if EPA concludes that such testing would be more appropriate. Certain small businesses are exempt from some or all of the Tier 1 and Tier 2 requirements. Tier 3 provides for follow-up research, if necessary. (However, no Tier 3 requirements have been established. Thus, it is not covered in this notice.) This information will be used to determine if there are any products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. In accordance with the Clean Air Act, the results of this research shall not be considered confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on December 1, 1997 (62 FR 63544); no comments were received.

Burden Statement: The burden covered by this document is limited because little additional Tier 1 activity is anticipated and the EPA is in negotiation with the regulated parties on Alternative Tier 2 requirements for most of the registered products for which standard Tier 2 testing would otherwise be required. This ICR will be amended once the Alternative Tier 2 requirements are established. Thus, over the next three years only one Tier 1 submission and one standard Tier 2 submission are anticipated, with a total burden of 10,400 hours and cost of $1 million. The annual public reporting and recordkeeping burden for this collection is estimated to average 3,467 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of gasoline, diesel fuel, and fuel additives.

Estimated Number of Respondents: 2.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 3,467 hours.

Estimated Total Annualized Cost Burden: $154,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to the following addresses. Please refer to EPA ICR Number 1696.02 and OMB Control Number 2060–0297 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated February 19, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–4519 Filed 2–20–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. FRL–5969–9]

Interstate Lead Company (ILCO) Superfund Site, Leeds, Alabama; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has entered into de minimis settlements with 210 small quantity generators at the Interstate Lead Company (ILCO) Superfund site located in Leeds, Alabama.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication at the address above.

Dated: February 6, 1998.

Anita Davis,

Acting Chief, Program Services Branch, Waste Management Division, Region 4.

[FR Doc. 98–4521 Filed 2–20–98; 8:45 am]

BILLING CODE 6560–50–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 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, D.C. 20573.

Marianas Steamship Agencies, Inc., 1026 Cabras Highway, Administration Building Annex, Piti, Guam 96925, Officers: Junichi Kinoshita, President, Clarence Tenorio, Vice President

Crosstrans Service U.S.A., 339 Carey Ct., Chicago Heights, IL 604511, Officer: Kurt Konodi-Floch, President

International Transport Corp. 2229 N.W. 79th Avenue, Miami, FL 33122, Officer: Danica S. Campbell, President

Global Logistics International Inc., 1207 N.W. 93rd Ct., Miami, FL 33172, Officers: Guillermo Damian, President, Evelyn A. Damian, Vice President

Triton Forwarding, Inc., 3080 Bristol Street, Suite 610, Costa Mesa, CA 92626, Officers: George O. Eickhoff III, President, Anthony G. Khamis, Director

Dated: February 18, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–4494 Filed 2–20–98; 8:45 am]

BILLING CODE 6730–01–M

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 March 9, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Eatherly Family Limited Partnership, Ponca City, Oklahoma; to acquire voting shares of First Bancorp of Oklahoma, Tonkawa, Oklahoma, and thereby indirectly acquire First National Bank of Oklahoma, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, February 17, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4386 Filed 2–20–98; 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 March 19, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. First Citizens Banc Corp., Sandusky, Ohio; to acquire 100 percent of the voting shares of The Farmers State Bank of New Washington, New Washington, Ohio.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First American Corporation, and First American National Bank, both of Nashville, Tennessee; to merge with Victory Bancshares Inc., Memphis, Tennessee, and thereby indirectly acquire Victory Bank and Trust Company, Memphis, Tennessee. Comments regarding this application must be received by March 9, 1998.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Farmers State Corporation, Mountain Lake, Minnesota; to acquire 100 percent of the voting shares of Community Bank New Ulm, New Ulm, Minnesota.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Azle Bancshares, Inc., Employee Stock Ownership Plan, Azle, Texas; to become a bank holding company by acquiring 26.20 percent of the voting shares of First Azle Bancshares, Inc., Azle, Texas, and thereby indirectly acquire First Bank, Azle, Texas.

Board of Governors of the Federal Reserve System, February 17, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4387 Filed 2–20–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Office of Acquisition Policy; Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of the FY 1998 Defense Authorization Act

AGENCY: General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The Acting Administrator of the Office of Federal Procurement Policy (OFPP) has requested that the General Services Administration publish the following notice regarding his determination pursuant to Section 808 of the FY 1998 Defense Authorization Act related to the allowability of certain personal compensation costs covered by the Federal Acquisition Regulation at 48 CFR 31.205–6.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP, on (202) 395–3254.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Executive Office of the President

Office of Management and Budget, Washington, D.C. 20503

February 12, 1998.

To the Heads of Executive Departments and Agencies

Subject: Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of the FY 1998 Defense Authorization Act, Pub. L. 105–85

This memorandum sets forth the "benchmark compensation amount" as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under Section 39, the "benchmark compensation amount" is "the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available." The "benchmark compensation amount" established as directed by Section 39 limits the allowability of compensation costs under government contracts. The "benchmark compensation amount" does not limit the compensation that an executive may otherwise receive.

Based on a review of commercially available surveys of executive compensation and after consultation with the Director of the Defense Contract Audit Agency, I have determined pursuant to the requirements of Section 39 that the benchmark compensation amount for contractor fiscal year 1998 is $340,650. This benchmark compensation amount is to be used for contractor fiscal year 1998, and subsequent contractor fiscal years, unless and until revised by OFPP. This benchmark compensation amount applies to contract costs incurred after January 1, 1998, under covered contracts of both the defense and civilian procurement agencies as specified in Section 808 of the FY 1998 Defense Authorization Act.

Questions concerning this memorandum may be addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP, on (202) 395–3254.

Allan E. Brown,

Acting Administrator.

[FR Doc. 98–4291 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service Notice of Availability of Agency Record of Decision for a New Federal Building and U.S. Courthouse in Fresno, CA

The United States General Services Administration (GSA) announces its decision, in accordance with the National Environmental Policy Act (NEPA) and the Regulations issued by the Council on Environmental Quality,

November 29, 1978, to construct a new United States Courthouse in downtown Fresno, California.

The new Courthouse will be 360,000 gross square feet, with 392 parking spaces. The project will be developed on a site of approximately 4.5 acre. This site size will accommodate possible building expansion to meet the U.S. Courts long term requirements.

The General Services Administration has prepared a Record of Decision (ROD) for the proposed project and believes that there are no outstanding issues to be resolved. Copies of the ROD are available and can be obtained from Mr. Javad Soltani, GSA, Portfolio Management (9PT), Public Building, Services, 450 Golden Gate Avenue, San Francisco, CA 94102, at (415) 522–3493.

Ken Schreiber,

Portfolio Management (9PT), PBS, GSA, Pacific Rim Region.

[FR Doc. 98–4429 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

State Offices of Rural Health Grant Program

AGENCY: Health Resources and Services Administration. HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy, Health Resources and Services Administration (HRSA), announces that applications are being accepted for matching grants to States for the purpose of improving health care in rural areas through the continued operation of State Offices of Rural Health. This program is authorized by section 338J of the Public Health Service Act 42 U.S.C. 254r. Awards will be made from funds appropriated under Public Law 105–78 (HHS Appropriations Act for Fiscal Year 1998). Approximately $3.0 million will be available to support 50 grants in fiscal year (FY) 1998.

Background

This Federal-State partnership helps America's rural communities rebuild their health care system by supporting initiatives and partnerships in rural health development. Begun in 1991, the State Office of Rural Health Grant Program has spurred the development of State offices by providing matching funds for their creation and a forum for exchanging information and strategies among States, providing an institutional framework that links small rural communities with State and Federal resources and developing long-term solutions to rural health problems.

Other Award Information

Grant applications should be submitted for a five-year project period. Funding will be for a single year. Continued funding is contingent upon the availability of Federal funds and satisfactory performance by the grantee. Only one grant application may be submitted from each State. It must indicate approval by a senior official of the State Health Department or their designee.

This is a renewal of an existing grant program that features a single grantee from each of the 50 States. A list of these grantees may be obtained by contacting Roberto Anson, Office of Rural Health Policy, HRSA, at (301) 443–0835.

Requesting Applications

Call the HRSA Grants Application Center at 1–888–300–4772 to request a grant application kit and program guidance for the State Office of Rural Health Grant Program (Catalog of Federal Domestic Assistance (CFDA) No. 93.913). Applications and guidance will be available following publication of this notice.

The standard application form and general instructions for completing applications (Form PHS–5161–1, OMB 0937–0189) have been approved by the Office of Management and Budget.

Deadline for Submitting Applications

Application deadline for this program is March 23, 1998. The application must be postmarked no later than March 23, 1998. Applicants should submit the signed original and two copies of the application to the: HRSA GRANTS APPLICATION CENTER, 40 West Gude Drive, Suite 100, Rockville, MD 20850.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will be returned to the sender.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Roberto Anson, Director, State Offices of Rural Health Grant Program, Office of Rural Health Policy, HRSA, (301) 443–0835.

SUPPLEMENTAL INFORMATION:

Program Objectives

The purpose of the program is to improve health care in rural areas. To receive a Federal grant, each State must agree that its State Office of Rural Health will carry out at least the following activities: (1) Establish and maintain a clearinghouse for collecting and disseminating information on rural health care issues; (2) coordinate the activities carried out in the State that relate to rural health care, including providing coordination for the purpose of avoiding duplication in such activities; (3) identify Federal, State and non-governmental programs regarding rural health, and provide technical assistance to public and nonprofit private entities regarding participation in such programs; and (4) help develop rural health policies through inter-organization collaborations and partnerships. In addition to these required activities, State Offices of Rural Health are encouraged to use Federal grant funds for activities that support, but do not directly fund, the recruitment and retention of health professionals to serve in rural areas. State Offices must also submit an annual report regarding its performance, progress and activities.

Federal funds under this grant program may not be used to: (1) Provide health care services; (2) purchase medical equipment, vehicles or real property; or (3) conduct certificate of need activities. Also, not more than 10% of grant funds may be expended on research.

Eligible Applicants

The fifty States.

The State (*e.g.*, Department of Health, State University) can conduct the required and any discretionary activities directly or through grants or contracts to other public or nonprofit private entities (*e.g.*, University, Area Health Education Center). To encourage States to commit their own resources, this program requires a match of three non-Federal dollars for every one Federal dollar to support the operation of their State Office of Rural Health.

Review Criteria

Grant applications will be evaluated on the basis of the following criteria:

(1) The extent to which the application is responsive to the requirements and purposes of this Federal-State partnership program;

(2) The extent to which the applicant has developed measurable goals,

objectives and timetable including performance and outcome measures;

(3) The extent to which the Office coordinates rural health activities within the State and collaborates with other health entities, especially the State Primary Care Organizations and Primary Care Associations;

(4) The strength of the applicant's plans for administrative and financial management of the Office; and

(5) The reasonableness of the budget proposed for the Office.

Executive Order 12372

The State Office of Rural Health Grant Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intra-governmental review of Federal programs, as implemented by 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. A current list of State Single Point of Contact (SPOCs), including their names, addresses, and telephone numbers, is included in the application kit. Not all States have SPOCs so this requirement only applies to those States with SPOCs. Applicants should contact their SPOCs as early as possible to alert them to the prospective application and receive any necessary instructions on the State process. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

The OMB Catalog of Federal Domestic Assistance number is 93.913.

Dated: February 13, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–4532 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Bioethics Advisory Commission (NBAC) Meeting

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will continue addressing (1.) the protection of the rights and welfare of human subjects in research including research subjects with decisional impairments and (2.) issues in tissue storage as they relate to genetic information. The meeting is open to the public and opportunities for statements by the public will be provided.

Dates/Times	Location
March 3, 1998, 1:00 pm–5:00 pm; March 4, 1998, 8:00 am–5:30 pm.	McLean Hilton at Tysons Corner, 7920 Jones Branch Drive, McLean, Virginia 22102

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below prior to the meeting as soon as possible. The Chair will reserve time for presentations by persons requesting to speak. The order of speakers will be assigned on a first come, first serve basis. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 98–4385 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0235]

International Conference on Harmonisation; Guidance on Testing for Carcinogenicity of Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled "S1B Testing for Carcinogenicity of Pharmaceuticals." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance outlines experimental approaches to evaluating the carcinogenic potential of pharmaceuticals to humans that may obviate the necessity for the routine conduct of two long-term rodent carcinogenicity studies.

DATES: Effective February 23, 1998. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the draft guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have

been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of August 21, 1996 (61 FR 43298), FDA published a draft tripartite guideline entitled "Testing for Carcinogenicity of Pharmaceuticals" (S1B). The notice gave interested persons an opportunity to submit comments by October 21, 1996.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 17, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

Long-term rodent carcinogenicity studies for assessing the carcinogenic potential of pharmaceuticals to humans are currently receiving critical examination. Many investigations have shown that it is possible to provoke a carcinogenic response in rodents by a diversity of experimental procedures, some of which are now considered to have little or no relevance for human risk assessment. It is in keeping with the mission of ICH to examine whether the need for carcinogenicity studies in two species could be reduced without compromising human safety. This guidance outlines experimental approaches to the evaluation of carcinogenic potential that may obviate the necessity for the routine conduct of two long-term rodent carcinogenicity studies for those pharmaceuticals that need such evaluation.

This guidance represents the agency's current thinking on methods for evaluating the carcinogenic activity of pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). 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. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at "http://www.fda.gov/cder/guidance.index.htm" or at CBER's World Wide Web site at "http://www.fda.gov/cber/cberftp.html".

The text of the guidance follows:

S1B Testing for Carcinogenicity of Pharmaceuticals[1]

1. Objective

This document provides guidance on approaches for evaluating the carcinogenic potential of pharmaceuticals.

2. Background

Historically, the regulatory requirements for the assessment of the carcinogenic potential of pharmaceuticals in the three regions (EU, Japan, the United States) provided for the conduct of long-term carcinogenicity studies in two rodent species, usually the rat and the mouse. Given the cost of these studies and their extensive use of animals, it is in keeping with the mission of ICH to examine whether this practice requiring long-term carcinogenicity studies in two species could be reduced without compromising human safety.

This guidance should be read in conjunction with other guidances, especially:

S1A The Need for Carcinogenicity Studies of Pharmaceuticals.

S1C Dose Selection for Carcinogenicity Studies of Pharmaceuticals.

Long-term rodent carcinogenicity studies for assessing the carcinogenic potential of chemicals (including pharmaceuticals) to humans are currently receiving critical examination. Since the early 1970's, many investigations have shown that it is possible to provoke a carcinogenic response in rodents by a diversity of experimental procedures, some of which are now considered to have little or no relevance for human risk assessment. This guidance outlines experimental approaches to the evaluation of carcinogenic potential that may obviate the necessity for the routine conduct of two long-term rodent carcinogenicity studies for those pharmaceuticals that need such evaluation. The relative individual contribution of rat and mouse carcinogenicity studies and whether the use of rats or mice alone would result in a significant loss of information on carcinogenicity relevant to human risk assessment has been addressed by six surveys of the data for human pharmaceuticals. The surveys were those of the International Agency for Research on Cancer (IARC), the U.S. Food and Drug Administration (FDA), the U.S. Physicians' Desk Reference (PDR), the Japanese Pharmaceutical Manufacturers' Association (JPMA), the EU Committee for Proprietary Medicinal Products (CPMP), and the UK Centre for Medicines Research (CMR). The dimensions of these surveys and the principal conclusions of the analyses can be found in the Proceedings of the Third International Conference (1995) on Harmonisation.

Positive results in long-term carcinogenicity studies that are not relevant to the therapeutic use of a pharmaceutical present a dilemma to all parties: Regulatory reviewers, companies developing drugs, and the public at large. The conduct of one long-term carcinogenicity study (rather than two long-term studies) would, in part, allow resources to be diverted to other approaches to uncover potential carcinogenicity relevant to humans. A "weight of evidence" approach, that is use of scientific judgment in evaluation of the totality of the data

[1] This guidance represents the agency's current thinking on methods for evaluating the carcinogenic activity of pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

derived from one long-term carcinogenicity study along with other appropriate experimental investigations, enhances the assessment of carcinogenic risk to humans.

3. Scope of the Guidance

The guidance embraces all pharmaceutical agents that need carcinogenicity testing as indicated in ICH guidance S1A. For biotechnology-derived pharmaceuticals, refer to ICH guidance "S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals."

4. The Guidance

4.1 Preamble.

The strategy for testing the carcinogenic potential of a pharmaceutical is developed only after the acquisition of certain key units of information, including the results of genetic toxicology (ICH guidances "S2A Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals" and "S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals"), intended patient population, clinical dosage regimen (ICH guidance S1A), pharmacodynamics in animals and in humans (selectivity, dose-response) (ICH guidance S1C), and repeated-dose toxicology studies. Repeated-dose toxicology studies in any species (including nonrodents) may indicate that the test compound possesses immunosuppressant properties, hormonal activity, or other activity considered to be a risk factor for humans, and this information should be considered in the design of any further studies for the assessment of carcinogenic potential (see also Note 1).

4.2 Experimental approaches to testing for carcinogenic potential.

Flexibility and judgment should be exercised in the choice of an approach, which should be influenced by the information cited in the above preamble. Given the complexity of the process of carcinogenesis, no single experimental approach can be expected to predict the carcinogenic potential of all pharmaceuticals for humans.

The basic principle:

The basic scheme comprises one long-term rodent carcinogenicity study, plus one other study of the type mentioned in section 4.2.2 that supplements the long-term carcinogenicity study and provides additional information that is not readily available from the long-term assay.

4.2.1 Choice of species for a long-term carcinogenicity study.

The species selected should be appropriate, based on considerations that include the following:

(a) Pharmacology.

(b) Repeated-dose toxicology.

(c) Metabolism (see also ICH guidances S1C and "S3A Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies").

(d) Toxicokinetics (see also ICH guidances S1C, S3A, and S3B).

(e) Route of administration (e.g., less common routes such as dermal and inhalation).

In the absence of clear evidence favoring one species, it is recommended that the rat be selected. This view is based on the factors discussed in section 6.

4.2.2 Additional in vivo tests for carcinogenicity.

Additional tests may be either (a) or (b) (see Note 2).

(a) Short- or medium-term in vivo rodent test systems.

Possibilities should focus on the use of in vivo models providing insight into carcinogenic endpoints. These may include models of initiation-promotion in rodents or models of carcinogenesis using transgenic or neonatal rodents (Note 3).

(b) A long-term carcinogenicity study in a second rodent species is still considered acceptable (see section 4.2.1 for considerations).

4.2.3 Considerations in the choice of short- or medium-term tests for carcinogenicity.

Emphasis should be placed on selection of a test method that can contribute information valuable to the overall "weight of evidence" for the assessment of carcinogenic potential. The rationale for this choice should be documented and based on information available at the time of method selection about the pharmaceutical, such as pharmacodynamics and exposure compared to human or any other information that may be relevant. This rationale should include a scientific discussion of the strengths and weaknesses of the method selected for the pharmaceutical (see Note 4).

5. Mechanistic Studies

Mechanistic studies are often useful for the interpretation of tumor findings in a carcinogenicity study and can provide a perspective on their relevance to human risk assessment. The need for or the design of an investigative study will be dictated by the particular properties of the drug and/or the specific results from the carcinogenicity testing. Dose dependency and the relationship to carcinogenicity study conditions should be evaluated in these investigational studies. Suggestions include:

5.1 Cellular changes.

Relevant tissues may be examined for changes at the cellular level using morphological, histochemical, or functional criteria. As appropriate, attention may be directed to such changes as the dose-relationships for apoptosis, cell proliferation, liver foci of cellular alteration, or changes in intercellular communication.

5.2 Biochemical measurements.

Depending on the putative mode of tumorigenic action, investigations could involve measurements of:

- plasma hormone levels, e.g. T3/T4, TSH, prolactin;
- growth factors;
- binding to proteins such as $\alpha 2\mu$-globulin;
- tissue enzyme activity, etc.

In some situations, it may be possible to test a hypothesis of, for example, a hormone imbalance with another study in which the imbalance has been, at least in part, compensated.

5.3 Considerations for additional genotoxicity testing (see ICH guidances S2A and S2B).

Additional genotoxicity testing in appropriate models may be invoked for compounds that were negative in the standard test battery but that have shown effects in a carcinogenicity test with no clear evidence for an epigenetic mechanism. Additional testing can include modified conditions for metabolic activation in in vitro tests or can include in vivo tests measuring genotoxic damage in target organs of tumor induction (e.g., DNA damage and repair tests, 32P-postlabeling, mutation induction in transgenes).

5.4 Modified protocols.

Modified protocols may be helpful to clarify the mode of tumorigenic action of the test substance. Such protocols might include groups of animals to explore, for example, the consequence of interrupted dosage regimens, or the reversibility of cellular changes after cessation of dosing.

6. General Considerations in the Choice of an Appropriate Species for Long-Term Carcinogenicity Testing

There are several general considerations that, in the absence of other clear indications, suggest that the rat will normally be the species of choice for a long-term carcinogenicity study.

6.1 Information from surveys on pharmaceuticals.

In the six analyses, attention was given to data on genetic toxicology, tumor incidence, strain of animal, route and dosage regimen, pharmacological or therapeutic activity, development and/or regulatory status, and, if relevant, reason for termination of development. Inevitably, there was considerable overlap of the data, but that is not necessarily an impediment to drawing valid conclusions.

The main overall conclusions from the analysis were:

a. Although very few instances have been identified of mouse tumors being the sole reason for regulatory action concerning a pharmaceutical, data from this species may have contributed to a "weight of evidence" decision and to identifying agents that caused tumors in two rodent species.

b. Of the compounds displaying carcinogenic activity in only one species, the number of "rat-only" compounds was about double the number of "mouse-only" compounds, implying in a simplistic sense that the rat is more "sensitive" than the mouse.

c. As with other surveys accessible in the literature, the data for pharmaceuticals were dominated by the high incidence of rodent liver tumors. The high susceptibility of mouse liver to nongenotoxic chemicals has been the subject of many symposia and workshops. These have concluded that these tumors may not always have relevance to carcinogenic risk in humans and can potentially be misleading.

6.2 Potential to study mechanisms.

The carcinogenic activity of nongenotoxic chemicals in rodents is characterized by a

high degree of species, strain, and target organ specificity and by the existence of thresholds in the dose-response relationship. Mechanistic studies in recent years have permitted the distinction between effects that are specific to the rodent model and those that are likely to have relevance for humans. Progress has often been associated with increased understanding of species and tissue specificity. For example, receptor-mediated carcinogenesis is being recognized as of growing importance. Most of these advances are being made in the rat, and only rarely in the mouse.

6.3 Metabolic disposition.

Neither rats nor mice would seem, on metabolic grounds, to be a priori generally more suitable for the conduct of long-term carcinogenicity studies. However, much attention is now being given to pharmacokinetic-pharmacodynamic relationships and rapid progress is occurring in knowledge of the P–450 isozymes that mediate the biotransformation of drugs. Most of this research activity is confined to rats and humans. Therefore, in the near future at least, where specific information on the P–450 isozymes involved in biotransformation is critical for the evaluation, it appears that mice would be less likely to provide this mechanistic information.

6.4 Practicality.

Pertinent to the above two topics is the question of feasibility of investigative studies. Size considerations alone put the mouse at a severe disadvantage when it comes to the taking of serial blood samples, microsurgery/catheterization, and the weighing of organs. Blood sampling often requires the sacrifice of the animals, with the result that many extra animals may be needed when mice are subject to such investigations.

6.5 Testing in more than one species.

Most of the currently available short- and medium-term in vivo models for carcinogenicity testing involve the use of mice. In order to allow testing in more than one species for carcinogenic potential when this is considered important and appropriate, the rat will often be used in the long-term carcinogenicity study.

6.6 Exceptions.

Despite the above considerations, there may be circumstances under which the mouse or another rodent species could be justified on mechanistic, metabolic, or other grounds as being a more appropriate species for the long-term carcinogenicity study for human risk assessment (cf. section 4.2.1). Under such circumstances, it may still be acceptable to use the mouse as the short-term or medium-term model.

7. Evaluation of Carcinogenic Potential

Evidence of tumorigenic effects of the drug in rodent models should be evaluated in light of the tumor incidence and latency, the pharmacokinetics of the drug in the rodent models as compared to humans, and data from any ancillary or mechanistic studies that are informative with respect to the relevance of the observed effects to humans.

The results from any tests cited above should be considered as part of the overall "weight of evidence," taking into account the scientific status of the test systems.

Notes

Note 1. Data from in vitro assays, such as a cell transformation assay, can be useful at the compound selection stage.

Note 2. If the findings of a short- or long-term carcinogenicity study and of genotoxicity tests and other data indicate that a pharmaceutical clearly poses a carcinogenic hazard to humans, a second carcinogenicity study would not usually be useful.

Note 3. Several experimental methods are under investigation to assess their utility in carcinogenicity assessment. Generally, the methods should be based on mechanisms of carcinogenesis that are believed relevant to humans and applicable to human risk assessment. Such studies should supplement the long-term carcinogenicity study and provide additional information that is not readily available from the long-term assay. There should also be consideration given animal numbers, welfare, and the overall economy of the carcinogenic evaluation process. The following is a representative list of some approaches that may meet these criteria and is likely to be revised in the light of further information.

(a) The initiation-promotion model in rodent. One initiation-promotion model for the detection of hepatocarcinogens (and modifiers of hepatocarcinogenicity) employs an initiator, followed by several weeks of exposure to the test substance. Another multi-organ carcinogenesis model employs up to five initiators followed by several months of exposure to the test substance.

(b) Several transgenic mouse assays, including the p53+/- deficient model, the Tg.AC model, the TgHras2 model, the XPA deficient model, etc.

(c) The neonatal rodent tumorigenicity model.

Note 4. While there may be a number of approaches that will in general meet the criteria described in Note 3 for use as the additional in vivo study, not all may be equally suitable for a particular pharmaceutical. The following are examples of factors that should be considered and addressed in the rationale:

1. Can results from the model provide new information not expected to be available from the long-term study that is informative with respect to hazard identification and/or risk assessment?

2. Can results from the model address concerns related to the carcinogenic process arising from prior knowledge of the pharmaceutical or compounds with similar structures and/or mechanisms of action? These concerns may include genotoxic, mitogenic, promotional, or receptor-mediated effects, etc.

3. Does the metabolism of the pharmaceutical shown in the animal model affect the evaluation of carcinogenic risk for humans?

4. Is adequate systemic or local exposure attained in relation to human exposure?

5. How extensively has the model been evaluated for its intended use? Prior to using any new in vivo methods in testing the carcinogenic potential of pharmaceuticals for humans, it is critical that the method be evaluated for its ability to contribute to the weight of evidence assessment. Many experimental studies are in progress (1997) to evaluate the new short or medium tests for carcinogenic potential. These include selected pharmaceuticals with known potencies and known mechanism of carcinogenic activity in rodents and also putative human noncarcinogens. When the results of these studies become available, it may be possible to offer more specific guidance on which of these tests have the most relevance for cancer assessment in humans.

Other ICH Guidances Cited

"S2A Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals."

"S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals."

"S3A Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies."

"S3B Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies."

"S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals."

Dated: February 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–4373 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; 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). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on March 12 and 13, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn Gaithersburg, Walker Room, Two Montgomery Ave., Gaithersburg, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–

741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 12, 1998, the committee will discuss a proposed draft of a guidance document for the development of drugs for the treatment of diabetes mellitis. On March 13, 1998, the committee will discuss New Drug Application 20–766, Xenical™, (orlistat tetrahydrolipstatin, Hoffman-LaRoche) for long term treatment of obesity.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 6, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m. on March 12 and 13, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 6, 1998, 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.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 18, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–4529 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0260]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Customer/Partner Satisfaction Surveys" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 2, 1997 (62 FR 63721), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0360. The approval expires on January 31, 1999.

Dated: February 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–4374 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of the OIG Compliance Program Guidance for Hospitals

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the recently issued compliance program guidance for hospitals developed by the Office of Inspector General (OIG) in cooperation with, and with input from, several provider groups and industry representatives. Many providers and provider organizations have expressed an interest in better protecting their operations from fraud and abuse through the adoption of voluntary compliance programs. The first compliance guidance, addressing clinical laboratories, was prepared by the OIG and published in the **Federal Register** on March 3, 1997. We believe the development of this second program guidance, for hospitals, will continue as a positive step towards promoting a higher level of ethical and lawful conduct throughout the health care industry.

FOR FURTHER INFORMATION CONTACT: Stephen Davis, Office of Counsel to the Inspector General, (202) 619–0070.

SUPPLEMENTARY INFORMATION: The creation of compliance program guidances has become a major initiative of the OIG in its efforts to engage the private health care community in combating fraud and abuse. In developing these compliance guidances, the OIG has agreed to work closely with the Health Care Financing Administration, the Department of Justice and various sectors of the health care industry. The first of these compliance guidances focused on clinical laboratories, and was intended to provide clear guidance to those segments of the health care industry that were interested in reducing fraud and abuse within their organizations. The compliance guidance was reprinted in an OIG **Federal Register** notice published on March 3, 1997 (62 FR 9435). This second compliance program guidance developed by the OIG continues to build upon the basic elements contained in our initial compliance guidance, and encompasses principles that are applicable to hospitals as well as a wider variety of organizations that provide health care services to beneficiaries of Medicare, Medicaid and all other Federal health care programs.

Like the previously-issued compliance program guidance for clinical laboratories and future compliance program guidances, adoption of the hospital compliance program guidance set forth below will be voluntary. Future compliance program guidances to be developed will be similarly structured and based on substantive policy recommendations, the elements of the Federal Sentencing Guidelines, and applicable statutes, regulations and Federal health care program requirements.

A reprint of the OIG compliance program guidance follows.

Compliance Program Guidance for Hospitals

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) continues in its efforts to promote voluntarily developed and implemented compliance programs for the health care industry. The following compliance program guidance is intended to assist hospitals and their agents and subproviders (referred to collectively in this document as "hospitals") develop effective internal controls that promote adherence to applicable Federal and State law, and the program requirements of Federal, State and private health plans. The adoption and implementation of voluntary compliance programs significantly advance the prevention of fraud, abuse and waste in these health care plans while at the same time furthering the fundamental mission of

all hospitals, which is to provide quality care to patients.

Within this document, the OIG intends to provide first, its general views on the value and fundamental principles of hospital compliance programs, and, second, specific elements that each hospital should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines for a hospital interested in implementing a compliance program to consider. The recommendations and guidelines provided in this document must be considered depending upon their applicability to each particular hospital.

Fundamentally, compliance efforts are designed to establish a culture within a hospital that promotes prevention, detection and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as the hospital's ethical and business policies. In practice, the compliance program should effectively articulate and demonstrate the organization's commitment to the compliance process. The existence of benchmarks that demonstrate implementation and achievements are essential to any effective compliance program. Eventually, a compliance program should become part of the fabric of routine hospital operations.

Specifically, compliance programs guide a hospital's governing body (e.g., Boards of Directors or Trustees), Chief Executive Officer (CEO), managers, other employees and physicians and other health care professionals in the efficient management and operation of a hospital. They are especially critical as an internal control in the reimbursement and payment areas, where claims and billing operations are often the source of fraud and abuse and, therefore, historically have been the focus of government regulation, scrutiny and sanctions.

It is incumbent upon a hospital's corporate officers and managers to provide ethical leadership to the organization and to assure that adequate systems are in place to facilitate ethical and legal conduct. Indeed, many hospitals and hospital organizations have adopted mission statements articulating their commitment to high ethical standards. A formal compliance program, as an additional element in this process, offers a hospital a further concrete method that may improve quality of care and reduce waste. Compliance programs also provide a central coordinating mechanism for furnishing and disseminating information and guidance on applicable Federal and State statutes, regulations and other requirements.

Adopting and implementing an effective compliance program requires a substantial commitment of time, energy and resources by senior management and the hospital's governing body.[1] Programs hastily constructed and implemented without appropriate ongoing monitoring will likely be ineffective and could result in greater harm or liability to the hospital than no program at all. While it may require significant additional resources or reallocation of existing resources to implement an effective compliance program, the OIG believes that the long term benefits of implementing the program outweigh the costs.

A. Benefits of a Compliance Program

In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate claims to government and private payors, a hospital may gain numerous additional benefits by implementing an effective compliance program. Such programs make good business sense in that they help a hospital fulfill its fundamental care-giving mission to patients and the community, and assist hospitals in identifying weaknesses in internal systems and management.

Other important potential benefits include the ability to:

- Concretely demonstrate to employees and the community at large the hospital's strong commitment to honest and responsible provider and corporate conduct;
- Provide a more accurate view of employee and contractor behavior relating to fraud and abuse;
- Identify and prevent criminal and unethical conduct;
- Tailor a compliance program to a hospital's specific needs;
- Improve the quality of patient care;
- Create a centralized source for distributing information on health care statutes, regulations and other program directives related to fraud and abuse and related issues;
- Develop a methodology that encourages employees to report potential problems;
- Develop procedures that allow the prompt, thorough investigation of alleged misconduct by corporate officers, managers, employees, independent contractors, physicians, other health care professionals and consultants;
- Initiate immediate and appropriate corrective action; and
- Through early detection and reporting, minimize the loss to the Government from false claims, and thereby reduce the hospital's exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusion.[2]

Overall, the OIG believes that an effective compliance program is a sound investment on the part of a hospital.

The OIG recognizes that the implementation of a compliance program may not entirely eliminate fraud, abuse and waste from the hospital system. However, a sincere effort by hospitals to comply with applicable Federal and State standards, as well as the requirements of private health care programs, through the establishment of an effective compliance program, significantly reduces the risk of unlawful or improper conduct.

B. Application of Compliance Program Guidance

There is no single "best" hospital compliance program, given the diversity within the industry. The OIG understands the variances and complexities within the hospital industry and is sensitive to the differences among large urban medical centers, community hospitals, small, rural hospitals, specialty hospitals, and other types of hospital organizations and systems. However, elements of this guidance can be used by all hospitals, regardless of size, location or corporate structure, to establish an effective compliance program. We recognize that some hospitals may not be able to adopt certain elements to the same comprehensive degree that others with more extensive resources may achieve. This guidance represents the OIG's suggestions on how a hospital can best establish internal controls and monitoring to correct and prevent fraudulent activities. By no means should the contents of this guidance be viewed as an exclusive discussion of the

[1] Indeed, recent case law suggests that the failure of a corporate Director to attempt in good faith to institute a compliance program in certain situations may be a breach of a Director's fiduciary obligations. See, e.g., *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Ct. Chanc. Del. 1996).

[2] The OIG, for example, will consider the existence of an *effective* compliance program that pre-dated any Governmental investigation when addressing the appropriateness of administrative penalties. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government, in certain circumstances will be subject to not less than double, as opposed to treble, damages. See 31 U.S.C. 3729(a).

advisable elements of a compliance program.

The OIG believes that input and support by representatives of the major hospital trade associations is critical to the development and success of this compliance program guidance. Therefore, in drafting this guidance, the OIG received and considered input from various hospital and medical associations, as well as professional practice organizations. Further, we took into consideration previous OIG publications, such as Special Fraud Alerts and Management Advisory Reports, the recent findings and recommendations in reports issued by OIG's Office of Audit Services and Office of Evaluation and Inspections, as well as the experience of past and recent fraud investigations related to hospitals conducted by OIG's Office of Investigations and the Department of Justice.

As appropriate, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the law, and in the rules, policies and procedures of the Federal, State and private health plans occur. The OIG understands that hospitals will need adequate time to react to these modifications and expansions to make any necessary changes to their voluntary compliance programs. We recognize that hospitals are already accountable for complying with an extensive set of statutory and other legal requirements, far more specific and complex than what we have referenced in this document. We also recognize that the development and implementation of compliance programs in hospitals often raise sensitive and complex legal and managerial issues.[3] However, the OIG wishes to offer what it believes is critical guidance for providers who are sincerely attempting to comply with the relevant health care statutes and regulations.

II. Compliance Program Elements

The elements proposed by these guidelines are similar to those of the clinical laboratory model compliance program published by the OIG in February 1997[4] and our corporate integrity agreements.[5] The elements represent a guide—a process that can be used by hospitals, large or small, urban or rural, for-profit or not for-profit. Moreover, the elements can be incorporated into the managerial structure of multi-hospital and integrated delivery systems. As we stated in our clinical laboratory plan, these suggested guidelines can be tailored to fit the needs and financial realities of a particular hospital. The OIG is cognizant that with regard to compliance programs, one model is not suitable to every hospital. Nonetheless, the OIG believes that every hospital, regardless of size or structure, can benefit from the principles espoused in this guidance.

The OIG believes that every effective compliance program must begin with a formal commitment by the hospital's governing body to include *all* of the applicable elements listed below. These elements are based on the seven steps of the Federal Sentencing Guidelines.[6] Further, we believe that every hospital can implement most of our recommended elements that expand upon the seven steps of the Federal Sentencing Guidelines.[7] We recognize that full implementation of all elements may not be immediately feasible for all hospitals. However, as a first step, a good faith and meaningful commitment on the part of the hospital administration, especially the governing body and the CEO, will substantially contribute to a program's successful implementation.

At a minimum, comprehensive compliance programs should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures that promote the hospital's commitment to compliance (e.g., by including adherence to compliance as an element in evaluating managers and employees) and that address specific areas of potential fraud, such as claims development and submission processes, code gaming, and financial relationships with physicians and other health care professionals;

(2) The designation of a chief compliance officer and other appropriate bodies, e.g., a corporate compliance committee, charged with the responsibility of operating and monitoring the compliance program, and who report directly to the CEO and the governing body;

(3) The development and implementation of regular, effective education and training programs for all affected employees;

(4) The maintenance of a process, such as a hotline, to receive complaints, and the adoption of procedures to protect the anonymity of complainants and to protect whistleblowers from retaliation;

(5) The development of a system to respond to allegations of improper/illegal activities and the enforcement of appropriate disciplinary action against employees who have violated internal compliance policies, applicable statutes, regulations or Federal health care program requirements;

(6) The use of audits and/or other evaluation techniques to monitor compliance and assist in the reduction of identified problem area; and

(7) The investigation and remediation of identified systemic problems and the development of policies addressing the non-employment or retention of sanctioned individuals.

A. Written Polices and Procedures

Every compliance program should require the development and distribution of written compliance policies that identify specific areas of risk to the hospital. These policies should be developed under the direction and supervision of the chief compliance officer and compliance committee, and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the hospital's agents and independent contractors.

1. *Standards of Conduct.* Hospitals should develop standards of conduct for all affected employees that include a clearly delineated commitment to compliance by the hospital's senior management[8] and its divisions,

[3] Nothing stated herein should be substituted for, or used in lieu of, competent legal advice from counsel.

[4] See 62 FR 9435, March 3, 1997.

[5] Corporate integrity agreements are executed as part of a civil settlement between the health care provider and the Government to resolve a case arising under the False Claims Act (FCA), including the *qui tam* provisions of the FCA, based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of three to five years and require many of the elements included in this compliance guidance.

[6] See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, comment. (n.3(k)).

[7] Current HCFA reimbursement principles provide that certain of the costs associated with the creation of a voluntarily established compliance program may be allowable costs on certain types of hospitals' cost reports. These allowable costs, of course, must at a minimum be *reasonable* and related to patient care. See generally 42 U.S.C. 1395x(v)(1)(A) (definition of reasonable cost); 42 CFR 413.9(a) and (b)(2) (costs related to patient care). In contrast, however, costs specifically associated with the implementation of a corporate integrity agreement in response to a Government investigation resulting in a civil or criminal judgment or settlement are unallowable, and are also made specifically and expressly unallowable in corporate integrity agreements and civil fraud settlements.

[8] The OIG strongly encourages high-level involvement by the hospital's governing body, chief executive officer, chief operating officer, general counsel, and chief financial officer, as well as other medical personnel, as appropriate, in the development of standards of conduct. Such

Continued

including affiliated providers operating under the hospital's control,[9] hospital-based physicians and other health care professionals (e.g., utilization review managers, nurse anesthetists, physician assistants and physical therapists). Standards should articulate the hospital's commitment to comply with all Federal and State standards, with an emphasis on preventing fraud and abuse. They should state the organization's mission, goals, and ethical requirements of compliance and reflect a carefully crafted, clear expression of expectations for all hospital governing body members, officers, managers, employees, physicians, and, where appropriate, contractors and other agents. Standards should be distributed to, and comprehensible by, all employees (e.g., translated into other languages and written at appropriate reading levels, where appropriate). Further, to assist in ensuring that employees continuously meet the expected high standards set forth in the code of conduct, any employee handbook delineating or expanding upon these standards of conduct should be regularly updated as applicable statutes, regulations and Federal health care program requirements are modified.[10]

2. *Risk Areas.* The OIG believes that a hospital's written policies and procedures should take into consideration the regulatory exposure for each function or department of the hospital. Consequently, we recommend that the individual policies and procedures be coordinated with the appropriate training and educational programs with an emphasis on areas of special concern that have been identified by the OIG through its investigative and audit functions.[11] Some of the special areas of OIG concern include.[12]

- Billing for items or services not actually rendered;[13]
- Providing medically unnecessary services;[14]
- Upcoding;[15]
- "DRG creep;"[16]
- Outpatient services rendered in connection with inpatient stays;[17]
- Teaching physician and resident requirements for teaching hospitals;
- Duplicate billing;[18]
- False cost reports;[19]
- Unbundling;[20]
- Billing for discharge in lieu of transfer;[21]
- Patients' freedom of choice;[22]
- Credit balances—failure to refund;
- Hospital incentives that violate the anti-kickback statute or other similar Federal or State statute or regulation;[23]
- Joint ventures;[24]
- Financial arrangements between hospitals and hospital-based physicians;[25]
- Stark physician self-referral law;
- Knowing failure to provide covered services or necessary care to members of a health maintenance organization; and
- Patient dumping.[26]

involvement should help communicate a strong and explicit statement of compliance goals and standards.

[9] E.g., skilled nursing facilities, home health agencies, psychiatric units, rehabilitation units, outpatient clinics, clinical laboratories, dialysis facilities.

[10] The OIG recognizes that not all standards, policies and procedures need to be communicated to all employees. However, the OIG believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all affected employees' training. The hospital must appropriately decide which additional educational programs should be limited to the different levels of employees, based on job functions and areas of responsibility.

[11] The OIG periodically issues Special Fraud Alters setting forth activities believed to raise legal and enforcement issues. Hospital compliance programs should require that the legal staff, chief compliance officer, or other appropriate personnel, carefully consider any and all Special Fraud Alerts issued by the OIG that relate to hospitals. Moreover, the compliance programs should address the ramifications of failing to cease and correct any conduct criticized in such a Special Fraud Alert, if applicable to hospitals, or to take reasonable action to prevent such conduct from reoccurring in the future. If appropriate, a hospital should take the steps described in Section G regarding investigations, reporting and correction of identified problems.

[12] The OIG's work plan is currently available on the Internet at http://www.dhhs.gov/progorg/oig.

[13] Billing for services not actually rendered involves submitting a claim that represents that the provider performed a service all or part of which was simply not performed. This form of billing fraud occurs in many health care entities, including hospitals and nursing homes, and represents a significant part of the OIG's investigative caseload.

[14] A claim requesting payment for medically unnecessary services intentionally seeks reimbursement for a service that is not warranted by the patient's current and documented medical condition. See 42 U.S.C. 1395y(a)(1)(A) ("no payment may be made under part A or part B for any expenses incurred for items or services which . . . are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of the malformed body member"). On every HCFA claim form, a physician must certify that the services were medically necessary for the health of the beneficiary.

[15] "Upcoding" reflects the practice of using a billing code that provides a higher payment rate than the billing code that actually reflects the service furnished to the patient. Upcoding has been a major focus of the OIG's enforcement efforts. In fact, the Health Insurance Portability and Accountability Act of 1996 added another civil monetary penalty to the OIG's sanction authorities for upcoding violations. See 42 U.S.C. 1320a–7a(a)(1)(A).

[16] Like upcoding, "DRG creep" is the practice of billing using a Diagnosis Related Group (DRG) code that provides a higher payment rate than the DRG code that accurately reflects the service furnished to the patient.

[17] Hospitals that submit claims for non-physician outpatient services that were already included in the hospital's inpatient payment under the Prospective Payment System (PPS) are in effect submitting duplicate claims.

[18] Duplicate billing occurs when the hospital submits more than one claim for the same service or the bill is submitted to more than one primary payor at the same time. Although duplicate billing can occur due to simple error, systematic or repeated double billing may be viewed as a false claim, particularly if any overpayment is not promptly refunded.

[19] As another example of health care fraud, the submission of false costs reports is usually limited to certain Part A providers, such as hospitals, skilled nursing facilities and home health agencies, which are reimbursed in part on the basis of their self-reported operating costs. An OIG audit report on the misuse of fringe benefits and general and administrative costs identified millions of dollars in unallowable costs that resulted from providers' lack of internal controls over costs included in their Medicare cost reports. In addition, the OIG is aware of practices in which hospitals inappropriately shift certain costs to cost centers that are below their reimbursement cap and shift non-Medicare related costs to Medicare cost centers.

[20] "Unbundling" is the practice of submitting bills piecemeal or in fragmented fashion to maximize the reimbursement for various tests or procedures that are required to be billed together and therefore at a reduced cost.

[21] Under the Medicare regulations, when a prospective payment system (PPS) hospital transfers a patient to another PPS hospital, only the hospital to which the patient was transferred may charge the full DRG; the transferring hospital should charge Medicare only a per diem amount.

[22] This area of concern is particularly important for hospital discharge planners referring patients to home health agencies, DME suppliers or long term care and rehabilitation providers.

[23] Excessive payment for medical directorships, free or below market rents or fees for administrative services, interest-free loans and excessive payment for intangible assets in physician practice acquisitions are examples of arrangements that may run afoul of the anti-kickback statute. See 42 U.S.C. 1320a–7b(b) and 59 FR 65372 (12/19/94).

[24] Equally troubling to the OIG is the proliferation of business arrangements that may violate the anti-kickback statute. Such arrangements are generally established between those in a position to refer business, such as physicians, and those providing items or services for which a Federal health care program pays. Sometimes established as "joint ventures," these arrangements may take a variety of forms. The OIG currently has a number of investigations and audits underway that focus on such areas of concern.

[25] Another OIG concern with respect to the anti-kickback statute is hospital financial arrangements with hospital-based physicians that compensate physicians for less than the fair market value of services they provide to hospitals or require physicians to pay more than market value for services provided by the hospital. See OIG Management Advisory Report: "Financial Arrangements Between Hospitals and Hospital-Based Physicians." OEI–09–89–0030, October 1991. Examples of such arrangements that may violate the anti-kickback statute are token or no payment for Part A supervision and management services; requirements to donate equipment to hospitals; and excessive charges for billing services.

[26] The patient anti-dumping statute, 42 U.S.C. 1395dd, requires that all Medicare participating hospitals with an emergency department: (1) Provide for an appropriate medical screening examination to determine whether or not an individual requesting such examination has an emergency medical condition; and (2) if the person

Additional risk areas should be assessed as well by hospitals and incorporated into the written policies and procedures and training elements developed as part of their compliance programs.

3. *Claim Development and Submission Process.* A number of the risk areas identified above, pertaining to the claim development and submission process, have been the subject of administrative proceedings, as well as investigations and prosecutions under the civil False Claims Act and criminal statutes. Settlement of these cases often has required the defendants to execute corporate integrity agreements, in addition to paying significant civil damages and/or criminal fines and penalties. These corporate integrity agreements have provided the OIG with a mechanism to advise hospitals concerning what it feels are acceptable practices to ensure compliance with applicable Federal and State statutes, regulations, and program requirements. The following recommendations include a number of provisions from various corporate integrity agreements. While these recommendations include examples of effective policies, each hospital should develop its own specific policies tailored to fit its individual needs.

With respect to reimbursement claims, a hospital's written policies and procedures should reflect and reinforce current Federal and State statutes and regulations regarding the submission of claims and Medicare cost reports. The policies must create a mechanism for the billing or reimbursement staff to communicate effectively and accurately with the clinical staff. Policies and procedures should:

- Provide for proper and timely documentation of all physician and other professional services prior to billing to ensure that only accurate and properly documented services are billed;
- Emphasize that claims should be submitted only when appropriate documentation supports the claims and only when such documentation is maintained and available for audit and review. The documentation, which may include patient records, should record the length of time spent in conducting the activity leading to the record entry, and the identity of the individual providing the service. The hospital should consult with its medical staff to establish other appropriate documentation guidelines;
- State that, consistent with appropriate guidance from medical staff, physician and hospital records and medical notes used as a basis for a claim submission should be appropriately organized in a legible form so they can be audited and reviewed;
- Indicate that the diagnosis and procedures reported on the reimbursement claim should be based on the medical record and other documentation, and that the documentation necessary for accurate code assignment should be available to coding staff; and
- Provide that the compensation for billing department coders and billing consultants should not provide any financial incentive to improperly upcode claims.

The written policies and procedures concerning proper coding should reflect the current reimbursement principles set forth in applicable regulations[27] and should be developed in tandem with private payor and organizational standards. Particular attention should be paid to issues of medical necessity, appropriate diagnosis codes, DRG coding, individual Medicare Part B claims (including evaluation and management coding) and the use of patient discharge codes.[28]

a. Outpatient services rendered in connection with an inpatient stay. Hospitals should implement measures designed to demonstrate their good faith efforts to comply with the Medicare billing rules for outpatient services rendered in connection with an inpatient stay. Although not a guard against intentional wrongdoing, the adoption of the following measures are advisable:

- Installing and maintaining computer software that will identify those outpatient services that may not be billed separately from an inpatient stay; or
- Implementing a periodic manual review to determine the appropriateness of billing each outpatient service claim, to be conducted by one or more appropriately trained individuals familiar with applicable billing rules; or
- With regard to each inpatient stay, scrutinizing the propriety of any potential bills for outpatient services rendered to that patient at the hospital, within the applicable time period.

In addition to the pre-submission undertakings described above, the hospital may implement a post-submission testing process, as follows:

- Implement and maintain a periodic post-submission random testing process that examines or re-examines previously submitted claims for accuracy;
- Inform the fiscal intermediary and any other appropriate government fiscal agents of the hospital's testing process; and
- Advise the fiscal intermediary and any other appropriate government fiscal agents in accordance with current regulations or program instructions with respect to return of overpayments of any incorrectly submitted or paid claims and, if the claim has already been paid, promptly reimburse the fiscal intermediary and the beneficiary for the amount of the claim paid by the government payor and any applicable deductibles or copayments, as appropriate.

b. Submission of claims for laboratory services. A hospital's policies should take reasonable steps to ensure that all claims for clinical and diagnostic laboratory testing services are accurate and correctly identify the services ordered by the physician (or other authorized requestor) and performed by the laboratory. The hospital's written policies and procedures should require, at a minimum,[29] that:

- The hospital bills for laboratory services only after they are performed;
- The hospital bills only for medically necessary services;
- The hospital bills only for those tests actually ordered by a physician and provided by the hospital laboratory;
- The CPT or HCPCS code used by the billing staff accurately describes the service that was ordered by the

has such a condition, (a) stabilize that condition; or (b) appropriately transfer the patient to another hospital.

[27] The official coding guidelines are promulgated by HCFA, the National Center for Health Statistics, the American Medical Association and the American Health Information Management Association. See International Classification of Diseases, 9th Revision, Clinical Modification (ICD9–CM); 1998 Health Care Financing Administration Common Procedure Coding System (HCPCS); and Physicians' Current Procedural Terminology (CPT).

[28] The failure of hospital staff to: (i) document items and services rendered; and (ii) properly submit them for reimbursement is a major area of potential fraud and abuse in Federal health care programs. The OIG has undertaken numerous audits, investigations, inspections and national enforcement initiatives aimed at reducing potential and actual fraud, abuse and waste. Recent OIG audit reports, which have focused on issues such as hospital patient transfers incorrectly paid as discharges, and hospitals' general and administrative costs, continue to reveal abusive, wasteful or fraudulent behavior by some hospitals. Our inspection report entitled "Financial Arrangements between Hospitals and Hospital-Based Physicians," see fn. 25, *supra*, and our Special Fraud Alerts on Hospital Incentives to Physicians and Joint Venture Arrangements, further illustrate how certain business practices may result in fraudulent and abusive behavior.

[29] The OIG's February 1997 Model Compliance Plan for Clinical Laboratories provides more specific and detailed information than is contained in this section, and hospitals that have clinical laboratories should extract the relevant guidance from both documents.

physician and performed by the hospital laboratory;

• The coding staff: (1) Only submit diagnostic information obtained from qualified personnel; and (2) contact the appropriate personnel to obtain diagnostic information in the event that the individual who ordered the test has failed to provide such information; and

• Where diagnostic information is obtained from a physician or the physician's staff after receipt of the specimen and request for services, the receipt of such information is documented and maintained.

c. Physicians at teaching hospitals. Hospitals should ensure the following with respect to all claims submitted on behalf of teaching physicians:

• Only services actually provided may be billed;

• Every physician who provides or supervises the provision of services to a patient should be responsible for the correct documentation of the services that were rendered;

• The appropriate documentation must be placed in the patient record and signed by the physician who provided or supervised the provision of services to the patient;

• Every physician is responsible for assuring that in cases where that physician provides evaluation and management (E&M) services, a patient's medical record includes appropriate documentation of the applicable key components of the E&M service provided or supervised by the physician (e.g., patient history, physician examination, and medical decision making), as well as documentation to adequately reflect the procedure or portion of the service performed by the physician; and

• Every physician should document his or her presence during the key portion of any service or procedure for which payment is sought.

d. Cost reports. With regard to cost report issues, the written policies should include procedures that seek to ensure full compliance with applicable statutes, regulations and program requirements and private payor plans. Among other things, the hospital's procedures should ensure that:

• Costs are not claimed unless based on appropriate and accurate documentation;

• Allocations of costs to various cost centers are accurately made and supportable by verifiable and auditable data;

• Unallowable costs are not claimed for reimbursement;

• Accounts containing both allowable and unallowable costs are analyzed to determine the unallowable amount that should not be claimed for reimbursement;

• Costs are properly classified;

• Fiscal intermediary prior year audit adjustments are implemented and are either not claimed for reimbursement or claimed for reimbursement and clearly identified as protested amounts on the cost report;

• All related parties are identified on Form 339 submitted with the cost report and all related party charges are reduced to cost;

• Requests for exceptions to TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) limits and the Routine Cost Limits are properly documented and supported by verifiable and auditable data;

• The hospital's procedures for reporting of bad debts on the cost report are in accordance with Federal statutes, regulations, guidelines and policies;

• Allocations from a hospital chain's home office cost statement to individual hospital cost reports are accurately made and supportable by verifiable and auditable data; and

• Procedures are in place and documented for notifying promptly the Medicare fiscal intermediary (or any other applicable payor, e.g., TRICARE (formerly CHAMPUS) and Medicaid) of errors discovered after the submission of the hospital cost report, and where applicable, after the submission of a hospital chain's home office cost statement.

With regard to bad debts claimed on the Medicare cost report, see also section six, below, on Bad Debts.

4. Medical Necessity—Reasonable and Necessary Services. A hospital's compliance program should provide that claims should only be submitted for services that the hospital has reason to believe are medically necessary and that were ordered by a physician [30] or other appropriately licensed individual.

As a preliminary matter, the OIG recognizes that licensed health care professionals must be able to order any services that are appropriate for the treatment of their patients. However, Medicare and other government and private health care plans will only pay for those services that meet appropriate medical necessity standards (in the case of Medicare, i.e., "reasonable and necessary" services). Providers may not bill for services that do not meet the applicable standards. The hospital is in a unique position to deliver this information to the health care professionals on its staff. Upon request, a hospital should be able to provide documentation, such as patients' medical records and physicians' orders, to support the medical necessity of a service that the hospital has provided. The compliance officer should ensure that a clear, comprehensive summary of the "medical necessity" definitions and rules of the various government and private plans is prepared and disseminated appropriately.

5. Anti-Kickback and Self-Referral Concerns. The hospital should have policies and procedures in place with respect to compliance with Federal and State anti-kickback statutes, as well as the Stark physician self-referral law.[31] Such policies should provide that:

• All of the hospital's contracts and arrangements with referral sources comply with all applicable statutes and regulations;

• The hospital does not submit or cause to be submitted to the Federal health care programs claims for patients who were referred to the hospital pursuant to contracts and financial arrangements that were designed to induce such referrals in violation of the anti-kickback statute, Stark physician self-referral law or similar Federal or State statute or regulation; and

• The hospital does not enter into financial arrangements with hospital-based physicians that are designed to provide inappropriate remuneration to the hospital in return for the physician's ability to provide services to Federal health care program beneficiaries at that hospital.[32]

Further, the policies and procedures should reference the OIG's safe harbor regulations, clarifying those payment practices that would be immune from prosecution under the anti-kickback statute. See 42 CFR 1001.952.

6. Bad Debts. A hospital should develop a mechanism [33] to review, at least annually: (1) whether it is properly reporting bad debts to Medicare; and (2) all Medicare bad debt expenses claimed, to ensure that the hospital's procedures are in accordance with applicable

[30] For Medicare reimbursement purposes, a physician is defined as: (1) a doctor of medicine or osteopathy; (2) a doctor of dental surgery or of dental medicine; (3) a podiatrist; (4) an optometrist; and (5) a chiropractor, all of whom must be appropriately licensed by the state. 42 U.S.C. 1395x(r).

[31] Towards this end, the hospital's in-house counsel or compliance officer should, inter alia, obtain copies of all OIG regulations, special fraud alerts and advisory opinions concerning the anti-kickback statute, Civil Monetary Penalties Law (CMPL) and Stark physician self-referral law (the fraud alerts and anti-kickback or CMPL advisory opinions are published on HHS OIG's home page on the Internet), and ensure that the hospital's policies reflect the guidance provided by the OIG.

[32] See fn. 25, *supra.*

[33] E.g., assigning in-house counsel or contracting with an independent professional organization, such as an accounting, law or consulting firm.

Federal and State statutes, regulations, guidelines and policies. In addition, such a review should ensure that the hospital has appropriate and reasonable mechanisms in place regarding beneficiary deductible or copayment collection efforts and has not claimed as bad debts any routinely waived Medicare copayments and deductibles, which waiver also constitutes a violation of the anti-kickback statute. Further, the hospital may consult with the appropriate fiscal intermediary as to bad debt reporting requirements, if questions arise.

7. Credit Balances. The hospital should institute procedures to provide for the timely and accurate reporting of Medicare and other Federal health care program credit balances. For example, a hospital may redesignate segments of its information system to allow for the segregation of patient accounts reflecting credit balances. The hospital could remove these accounts from the active accounts and place them in a holding account pending the processing of a reimbursement claim to the appropriate program. A hospital's information system should have the ability to print out the individual patient accounts that reflect a credit balance in order to permit simplified tracking of credit balances.

In addition, a hospital should designate at least one person (e.g., in the Patient Accounts Department or reasonable equivalent thereof) as having the responsibility for the tracking, recording and reporting of credit balances. Further, a comptroller or an accountant in the hospital's Accounting Department (or reasonable equivalent thereof) may review reports of credit balances and reimbursements or adjustments on a monthly basis as an additional safeguard.

8. *Retention of Records.* Hospital compliance programs should provide for the implementation of a records system. This system should establish policies and procedures regarding the creation, distribution, retention, storage, retrieval and destruction of documents. The two types of documents developed under this system should include: (1) all records and documentation, e.g., clinical and medical records and claims documentation, required either by Federal or State law for participation in Federal health care programs (e.g., Medicare's conditions of participation requirement that hospital records regarding Medicare claims be retained for a minimum of five years, see 42 CFR 482.24(b)(1) and HCFA Hospital Manual section 413(C)(12–91)); and (2) all records necessary to protect the integrity of the hospital's compliance process and confirm the effectiveness of the program, e.g., documentation that employees were adequately trained; reports from the hospital's hotline, including the nature and results of any investigation that was conducted; modifications to the compliance program; self-disclosure; and the results of the hospital's auditing and monitoring efforts.[34]

9. *Compliance as an Element of a Performance Plan.* Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of managers and supervisors. They, along with other employees, should be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors involved in the coding, claims and cost report development and submission processes should:

- Discuss with all supervised employees the compliance policies and legal requirements applicable to their function;
- Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and
- Disclose to all supervised personnel that the hospital will take disciplinary action up to and including termination or revocation of privileges for violation of these policies or requirements.

In addition to making performance of these duties an element in evaluations, the compliance officer or hospital management should include in the hospital's compliance program a policy that managers and supervisors will be sanctioned for failure to instruct adequately their subordinates or for failing to detect noncompliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor would have led to the discovery of any problems or violations and given the hospital the opportunity to correct them earlier.

B. Designation of a Compliance Officer and a Compliance Committee

1. *Compliance Officer.* Every hospital should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the hospital and the complexity of the task. Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the hospital with direct access to the hospital's governing body and the CEO.[35] The officer should have sufficient funding and staff to perform his or her responsibilities fully. Coordination and communication are the key functions of the compliance officer with regard to planning, implementing, and monitoring the compliance program.

The compliance officer's primary responsibilities should include:

- Overseeing and monitoring the implementation of the compliance program;[36]
- Reporting on a regular basis to the hospital's governing body, CEO and compliance committee on the progress of implementation, and assisting these components in establishing methods to improve the hospital's efficiency and quality of services, and to reduce the hospital's vulnerability to fraud, abuse and waste;
- Periodically revising the program in light of changes in the needs of the organization, and in the law and policies and procedures of government and private payor health plans;
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeks to ensure that all appropriate employees and management are knowledgeable of, and comply with, pertinent Federal and State standards;
- Ensuring that independent contractors and agents who furnish medical services to the hospital are aware of the requirements of the hospital's compliance program with respect to coding, billing, and marketing, among other things;
- Coordinating personnel issues with the hospital's Human Resources office

[34] The creation and retention of such documents and reports may raise a variety of legal issues, such as patient privacy and confidentiality. These issues are best discussed with legal counsel.

[35] The OIG believes that there is some risk to establishing an independent compliance function if that function is subordinance to the hospital's general counsel, or comptroller or similar hospital financial officer. Free standing compliance functions help to ensure independent and objective legal reviews and financial analyses of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief hospital financial officer (where the size and structure of the hospital make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

[36] For multi-hospital organizations, the OIG encourages coordination with each hospital owned by the corporation or foundation through the use of a headquarter's compliance officer, communicating with parallel positions in each facility, or regional office, as appropriate.

(or its equivalent) to ensure that the National Practitioner Data Bank and Cumulative Sanction Report[37] have been checked with respect to all employees, medical staff and independent contractors;

• Assisting the hospital's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;

• Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (e.g., responding to reports of problems or suspected violations) and any resulting corrective action with all hospital departments, providers and sub-providers,[38] agents and, if appropriate, independent contractors; and

• Developing policies and programs that encourage managers and employees to report suspected fraud and other improprieties without fear of retaliation.

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, patient records, billing records, and records concerning the marketing efforts of the facility and the hospital's arrangements with other parties, including employees, professionals on staff, independent contractors, suppliers, agents, and hospital-based physicians, etc. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment issues that could violate the anti-kickback statute, as well as the physician self-referral prohibition and other legal or regulatory requirements.

2. *Compliance Committee.* The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[39] The committee's functions should include:

• Analyzing the organization's industry environment, the legal requirements with which it must comply, and specific risk areas;

• Assessing existing policies and procedures that address these areas for possible incorporation into the compliance program;

• Working with appropriate hospital departments to develop standards of conduct and policies and procedures to promote compliance with the institution's program;

• Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's standards, policies and procedures as part of its daily operations;

• Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms; and

• Developing a system to solicit, evaluate and respond to complaints and problems.

The committee may also address other functions as the compliance concept becomes part of the overall hospital operating structure and daily routine.

C. Conducting Effective Training and Education

The proper education and training of corporate officers, managers, employees, physicians and other health care professionals, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. As part of their compliance programs, hospitals should require personnel to attend specific training on a periodic basis, including appropriate training in Federal and State statutes, regulations and guidelines, and the policies of private payors, and training in corporate ethics, which emphasizes the organization's commitment to compliance with these legal requirements and policies.

These training programs should include sessions highlighting the organization's compliance program, summarizing fraud and abuse laws, coding requirements, claim development and submission processes and marketing practices that reflect current legal and program standards. The organization must take steps to communicate effectively its standards and procedures to all affected employees, physicians, independent contractors and other significant agents, e.g., by requiring participation in training programs and disseminating publications that explain in a practical manner specific requirements.[40] Managers of specific departments or groups can assist in identifying areas that require training and in carrying out such training. Training instructors may come from outside or inside the organization. New employees should be targeted for training early in their employment.[41] Any formal training undertaken by the hospital as part of the compliance program should be documented by the compliance officer.

A variety of teaching methods, such as interactive training, and training in several different languages, particularly where a hospital has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable of the institution's standards of conduct and procedures for alerting senior management to problems and concerns. Targeted training should be provided to corporate officers, managers and other employees whose actions affect the accuracy of the claims submitted to the Government, such as employees involved in the coding, billing, cost reporting and marketing processes. Given the complexity and interdependent relationships of many departments, proper coordination and supervision of this process by the compliance officer is important. In addition to specific training in the risk areas identified in section II.A.2, above, primary training to appropriate corporate officers, managers and other hospital staff should include such topics as:

• Government and private payor reimbursement principles;

• General prohibitions on paying or receiving remuneration to induce referrals;

• Proper confirmation of diagnoses;

[37] The Cumulative Sanction Report is an OIG-produced report available on the Internet at http://www.dhhs.gov/progorg/oig. It is updated on a regular basis to reflect the status of health care providers who have been excluded from participation in the Medicare and Medicaid programs. In addition, the General Services Administration maintains a monthly listing of debarred contractors on the Internet at http://www.arnet.gov/epls. Also, once the data base established by the Health Care Fraud and Abuse Data Collection Act of 1996 is fully operational, the hospital should regularly request information from this data bank as part of its employee screening process.

[38] E.g., skilled nursing facilities and home health agencies.

[39] The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, utilization review, social work, discharge planning, medicine, coding and legal, as well as employees and managers of key operating units.

[40] Some publications, such as OIG's Management Advisory Report entitled "Financial Arrangements between Hospitals and Hospital-Based Physicians," Special Fraud Alerts, audit and inspection reports, and advisory opinions, as well as the annual OIG work plan, are readily available from the OIG and could be the basis for standards, educational courses and programs for appropriate hospital employees.

[41] Certain positions, such as those involving the coding of medical services, create a greater organizational legal exposure, and therefore require specialized training. One recommendation would be for a hospital to attempt to fill such positions with individuals who have the appropriate educational background and training.

- Submitting a claim for physician services when rendered by a non-physician (i.e., the "incident to" rule and the physician physical presence requirement);
- Signing a form for a physician without the physician's authorization;
- Alterations to medical records;
- Prescribing medications and procedures without proper authorization;
- Proper documentation of services rendered; and
- Duty to report misconduct.

Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a hospital's marketing and financial personnel, in that the pressure to meet business goals may render these employees vulnerable to engaging in prohibited practices.

The OIG suggests that all relevant levels of personnel be made part of various educational and training programs of the hospital. Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.[42] For example, for certain employees involved in the billing and coding functions, periodic training in proper DRG coding and documentation of medical records should be required.[43] In hospitals with high employee turnover, periodic training updates are critical.

The OIG recommends that attendance and participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. Adherence to the provisions of the compliance program, such as training requirements, should be a factor in the annual evaluation of each employee.[44] The hospital should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

Finally, the OIG recommends that hospital compliance programs address the need for periodic professional education courses that may be required by statute and regulation for certain hospital personnel.

D. Developing Effective Lines of Communication

1. *Access to the Compliance Officer.* An open line of communication between the compliance officer and hospital personnel is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse and waste. Written confidentiality and non-retaliation policies should be developed and distributed to all employees to encourage communication and the reporting of incidents of potential fraud.[45] The compliance committee should also develop several independent reporting paths for an employee to report fraud, waste or abuse so that such reports cannot be diverted by supervisors or other personnel.

The OIG encourages the establishment of a procedure so that hospital personnel may seek clarification from the compliance officer or members of the compliance committee in the event of any confusion or question with regard to a hospital policy or procedure. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards, policies and procedures can be updated and improved to reflect any necessary changes or clarifications. The compliance officer may want to solicit employee input in developing these communication and reporting systems.

2. *Hotlines and Other Forms of Communication.* The OIG encourages the use of hotlines (including anonymous hotlines), e-mails, written memoranda, newsletters, and other forms of information exchange to maintain these open lines of communication. If the hospital establishes a hotline, the telephone number should be made readily available to all employees and independent contractors, possibly by conspicuously posting the telephone number in common work areas.[46] Employees should be permitted to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies, regulations or statutes should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance officer that records such calls, including the nature of any investigation and its results. Such information should be included in reports to the governing body, the CEO and compliance committee. Further, while the hospital should always strive to maintain the confidentiality of an employee's identity, it should also explicitly communicate that there may be a point where the individual's identity may become known or may have to be revealed in certain instances when governmental authorities become involved.

The OIG recognizes that assertions of fraud and abuse by employees who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel, who can provide guidance regarding such issues.

E. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

1. *Discipline Policy and Actions.* An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, employees, physicians and other health care professionals who have failed to comply with the hospital's standards of conduct, policies and procedures, or Federal and State laws, or those who have otherwise engaged in wrongdoing, which have the potential to impair the hospital's status as a reliable, honest and trustworthy health care provider.

The OIG believes that the compliance program should include a written policy statement setting forth the degrees of disciplinary actions that may be imposed upon corporate officers, managers, employees, physicians and other health care professionals for failing to comply with the hospital's standards and policies and applicable statutes and regulations. Intentional or reckless noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral

[42] Currently, the OIG is monitoring approximately 165 corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one to three hours annually for basic training in compliance areas. More is required for speciality fields such as billing and coding.

[43] Accurate coding depends upon the quality and completeness of the physician's documentation. Therefore, the OIG believes that active staff physician participation in educational programs focusing on coding and documentation should be emphasized by the hospital.

[44] In addition, where feasible, the OIG believes that a hospital's outside contractors, including physician corporations, should be afforded the opportunity to participate in, or develop their own, compliance training and educational programs, which complement the hospital's standards of conduct, compliance requirements, and other rules and regulations.

[45] The OIG believes that whistleblowers should be protected against retaliation, a concept embodied in the provisions of the False Claims Act. In many cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company's failure to take action when a questionable, fraudulent or abusive situation was brought to the attention of senior corporate officials.

[46] Hospitals should also post in a prominent, available area the HHS OIG Hotline telephone number, 1–800–HHS–TIPS (447–8477), in addition to any company hotline number that may be posted.

warnings to suspension, privilege revocation (subject to any applicable peer review procedures), termination or financial penalties, as appropriate. The written standards of conduct should elaborate on the procedures for handling disciplinary problems and those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by department managers, while others may have to be resolved by a senior hospital administrator. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Personnel should be advised by the hospital that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate officers and other hospital staff regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be subject to the same disciplinary action for the commission of similar offenses. The commitment to compliance applies to all personnel levels within a hospital. The OIG believes that corporate officers, managers, supervisors, medical staff and other health care professionals should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, laws, and procedures.

2. *New Employee Policy.* For all new employees who have discretionary authority to make decisions that may involve compliance with the law or compliance oversight, hospitals should conduct a reasonable and prudent background investigation, including a reference check, as part of every such employment application.[47] The application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a–7(i), or exclusion action. Pursuant to the compliance program, hospital policies should prohibit the employment of individuals who have been recently convicted of a criminal offense related to health care or who are listed as debarred, excluded or otherwise ineligible for participation in Federal health care programs (as defined in 42 U.S.C. 1320a–7b(f)).[48] In addition, pending the resolution of any criminal charges or proposed debarment or exclusion, the OIG recommends that such individuals should be removed from direct responsibility for or involvement in any Federal health care program.[49] With regard to current employees or independent contractors, if resolution of the matter results in conviction, debarment or exclusion, the hospital should terminate its employment or other contract arrangement with the individual or contractor.

F. Auditing and Monitoring

An ongoing evaluation process is critical to a successful compliance program. The OIG believes that an effective program should incorporate thorough monitoring of its implementation and regular reporting to senior hospital or corporate officers.[50] Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and shared with the hospital's senior management and the compliance committee.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular, periodic compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, regulations and Federal health care program requirements. The audits should focus on the hospital's programs or divisions, including external relationships with third-party contractors, specifically those with substantive exposure to government enforcement actions. At a minimum, these audits should be designed to address the hospital's compliance with laws governing kickback arrangements, the physician self-referral prohibition, CPT/HCPSC ICD–9 coding, claim development and submission, reimbursement, cost reporting and marketing. In addition, the audits and reviews should inquire into the hospital's compliance with specific rules and polices that have been the focus of particular attention on the part of the Medicare fiscal intermediaries or carriers, and law enforcement, as evidenced by OIG Special Fraud Alerts, OIG audits and evaluations, and law enforcement's initiatives. See section II.A.2, *supra.* In addition, the hospital should focus on any areas of concern that have been identified by any entity, i.e., Federal, State, or internally, specific to the individual hospital.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established baseline.[51] Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer, hospital administrator or manager may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the hospital should take prompt steps to correct the problem. Any overpayments discovered as a result of such deviations should be returned promptly to the affected payor, with appropriate documentation and a thorough explanation of the reason for the refund.[52]

Monitoring techniques may also include a review of any reserves the hospital has established for payments that it may owe to Medicare, Medicaid, TRICARE or other Federal health care programs. Any reserves discovered that include funds that should have been paid to Medicare or another government program should be paid promptly,

[47] See fn. 37, *supra.*

[48] Likewise, hospital compliance programs should establish standards prohibiting the execution of contracts with companies that have been recently convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded, or otherwise ineligible for participation in Federal health care programs.

[49] Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

[50] Even when a hospital is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual hospital must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent-organization's senior staff and officers.

[51] The OIG recommends that when a compliance program is established in a hospital, the compliance officer, with the assistance of department managers, should take a "snapshot" of their operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This "snapshot," often used as part of benchmarking analyses, becomes a baseline for the compliance officer and other managers to judge the hospital's progress in reducing or eliminating potential areas of vulnerability. For example, it has been suggested that a baseline level include the frequency and percentile levels of various diagnosis codes and the increased billing of complications and co-morbidities.

[52] In addition, when appropriate, as referenced in section G.2 reports of fraud or systemic problems should also be made to the appropriate governmental authority.

regardless of whether demand has been made for such payment.

An effective compliance program should also incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied, e.g., whether there has been appropriate dissemination of the program's standards, training, ongoing educational programs and disciplinary actions, among others. This process will verify actual conformance by all departments with the compliance program. Such reviews could support a determination that appropriate records have been created and maintained to document the implementation of an effective program. However, when monitoring discloses that deviations were not detected in a timely manner due to program deficiencies, appropriate modifications must be implemented. Such evaluations, when developed with the support of management, can help ensure compliance with the hospital's policies and procedures.

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- On-site visits;
- Interviews with personnel involved in management, operations, coding, claim development and submission, patient care, and other related activities;
- Questionnaires developed to solicit impressions of a broad cross-section of the hospital's employees and staff;
- Reviews of medical and financial records and other source documents that support claims for reimbursement and Medicare cost reports;
- Reviews of written materials and documentation prepared by the different divisions of a hospital; and
- Trend analysis, or longitudinal studies, that seek deviations, positive or negative, in specific areas over a given period.

The reviewers should:

- Be independent of physicians and line management;
- Have access to existing audit and health care resources, relevant personnel and all relevant areas of operation;
- Present written evaluative reports on compliance activities to the CEO, governing body and members of the compliance committee on a regular basis, but no less than annually; and
- Specifically identify areas where corrective actions are needed.

With these reports, hospital management can take whatever steps are necessary to correct past problems and prevent them from reoccurring. In certain cases, subsequent reviews or studies would be advisable to ensure that the recommended corrective actions have been implemented successfully.

The hospital should document its efforts to comply with applicable statutes, regulations and Federal health care program requirements. For example, where a hospital, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the hospital should document and retain a record of the request and any written or oral response. This step is extremely important if the hospital intends to rely on that response to guide it in future decisions, actions or claim reimbursement requests or appeals. Maintaining a log of oral inquiries between the hospital and third parties represents an additional basis for establishing documentation on which the organization may rely to demonstrate attempts at compliance. Records should be maintained demonstrating reasonable reliance and due diligence in developing procedures that implement such advice.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

1. *Violations and Investigations.* Violations of a hospital's compliance program, failures to comply with applicable Federal or State law, and other types of misconduct threaten a hospital's status as a reliable, honest and trustworthy provider capable of participating in Federal health care programs. Detected but uncorrected misconduct can seriously endanger the mission, reputation, and legal status of the hospital. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the chief compliance officer or other management officials initiate prompt steps to investigate the conduct in question to determine whether a material violation of applicable law or the requirements of the compliance program has occurred, and if so, take steps to correct the problem.[53] As appropriate, such steps may include an immediate referral to criminal and/or civil law enforcement authorities, a corrective action plan,[54] a report to the Government,[55] and the submission of any overpayments, if applicable.

Where potential fraud or False Claims Act liability is not involved, the OIG recognizes that HCFA regulations and contractor guidelines already include procedures for returning overpayments to the Government as they are discovered. However, even if the overpayment detection and return process is working and is being monitored by the hospital's audit or coding divisions, the OIG still believes that the compliance officer needs to be made aware of these overpayments, violations or deviations and look for trends or patterns that may demonstrate a systemic problem.

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Some hospitals should consider engaging outside counsel, auditors, or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process, copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, e.g., any disciplinary action taken, and the corrective action implemented. While any action taken as the result of an investigation will necessarily vary depending upon the hospital and the situation, hospitals should strive for some consistency by utilizing sound practices and disciplinary protocols. Further, after a reasonable period, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered.

[53] Instances of non-compliance must be determined on a case-by-case basis. The existence, or amount, of a *monetary* loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no monetary loss at all, but corrective action and reporting are still necessary to protect the integrity of the applicable program and its beneficiaries.

[54] Advice from the hospital's in-house counsel or an outside law firm may be sought to determine the extent of the hospital's liability and to plan the appropriate course of action.

[55] The OIG currently maintains a voluntary disclosure program that encourages providers to report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems and work with the Government to resolve these matters. The OIG's voluntary self-disclosure program has four prerequisites: (1) the disclosure must be on behalf of an entity and not an individual; (2) the disclosure must be truly voluntary (i.e., no pending proceeding or investigation); (3) the entity must disclose the nature of the wrongdoing and the harm to the Federal programs; and (4) the entity must not be the subject of a bankruptcy proceeding before or after the self-disclosure.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless an internal or Government-led undercover operation is in effect). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the hospital determines that disciplinary action is warranted, if should be prompt and imposed in accordance with the hospital's written standards of disciplinary action.

2. Reporting. If the compliance officer, compliance committee or management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law, then the hospital promptly should report the existence of misconduct to the appropriate governmental authority[56] within a reasonable period, but not more than sixty (60) days[57] after determining that there is credible evidence of a violation.[58] Prompt reporting will demonstrate the hospital's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (e.g., penalties, assessments, and exclusion), if the reporting provider becomes the target of an OIG investigation.[59]

When reporting misconduct to the Government, a hospital should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, under advice of counsel, and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal or civil violations have occurred, the appropriate Federal and State officials[60] should be notified immediately.

As previously stated, the hospital should take appropriate corrective action, including prompt identification and restitution of any overpayment to the affected payor and the imposition of proper disciplinary action. Failure to repay overpayments within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the hospital, as well as any individuals who may have been involved.[61] For this reason, hospital compliance programs should emphasize that overpayment obtained from Medicare or other Federal health care programs should be promptly returned to the payor that made the erroneous payment.[62]

III. Conclusion

Through this document, the OIG has attempted to provide a foundation to the process necessary to develop an effective and cost-efficient hospital compliance program. As previously stated, however, each program must be tailored to fit the needs and resources of an individual hospital, depending upon its particular corporate structure, mission, and employee composition. The statutes, regulations and guidelines of the Federal and State health insurance programs, as well as the policies and procedures of the private health plans, should be integrated into every hospital's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars, is constantly evolving. However, the time is right for hospitals to implement a strong voluntary compliance program concept in health care. As stated throughout this guidance, compliance is a dynamic process that helps to ensure that hospitals and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being imposed upon them by Congress and private insurers. Ultimately, it is the OIG's hope that a voluntarily created compliance program will enable hospitals to meet their goals, improve the quality of patient care, and substantially reduce fraud, waste and abuse, as well as the cost of health care to Federal, State and private health insurers.

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June Gibbs Brown,

Inspector General.

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[56] I.e., Federal and/or State law enforcement having jurisdiction over such matter. Such governmental authority would include DOJ and OIG with respect to Medicare and Medicaid violations giving rise to causes of actions under various criminal, civil and administrative false claims statutes.

[57] To qualify for the "not less than double damages" provision of the False Claims Act, the report must be provided to the Government within thirty (30) days after the date when the hospital first obtained the information. 31 U.S.C. 3729(a).

[58] The OIG believes that some violations may be so serious that they warrant immediate notification to governmental authorities, prior to, or simultaneous with, commencing an internal investigation, e.g., if the conduct: (1) is a clear violation of criminal law; (2) has a significant adverse effect on the quality of care provided to program beneficiaries (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws, an existing corporate integrity agreement, or other standards of conduct, regardless of the financial impact on Federal health care programs.

[59] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. See 62 FR 67392, December 24, 1997.

[60] Appropriate Federal and State authorities include the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in the hospital's district, and the investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, and the Offices of Inspector General of the Department of Health and Human Services, the Department of Veterans Affairs and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program).

[61] See 42 U.S.C. 1320a–7b(a)(3).

[62] Normal repayment channels as described in HCFA's manuals and guidances are the appropriate vehicle for repaying identified overpayments. Hospitals should consult with its fiscal intermediary or HCFA for any further guidance regarding these repayment channels. Interest will be assessed, when appropriate. See 42 CFR 405.376.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: January 1998

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of January 1998, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under

the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ABREU, JUAN F MIAMI, FL	02/19/1998
ADEYEYE, ADEREMI B WAUPUN, WI	02/19/1998
ANDERSON, BERN WHITE DEER, PA	02/19/1998
BEACKOM, BERNARD J HICKSVILLE, NY	02/19/1998
COMMODORE, PATRICIA WASHINGTON BALTIMORE, MD	02/19/1998
COOPER, WANDA DECATUR, GA	02/19/1998
DIXON, TERRY D E STONE GAP, VA	02/19/1998
FERRELL, CORRIE MATTHEW SOUTH BOSTON, VA	02/19/1998
GOLDBERG, LOIS MILWAUKEE, WI	02/19/1998
GONZALEZ, BARBARA ANN BRYAN, TX	02/19/1998
GRACE, KATHY ELAINE TURNER, OR	02/19/1998
GREEN, PATRICIA WOODVILLE, MS	02/19/1998
HARTLEY, CHERRI MONIC PHOENIX, AZ	02/19/1998
HERB, GREGORY WAYNE SAN JOSE, CA	02/19/1998
HOLMBERG, ANDERS BRONX, NY	02/19/1998
JACKSON, NATALIE JOYCE LITTLE ROCK, AR	02/19/1998
JOHNSON, ANTHONY L BALTIMORE, MD	02/19/1998
KEITH, LAURA S CLARKSTON, GA	02/19/1998
LODENQUAI, CHRISTOPHER TARPON SPRINGS, FL	02/19/1998
LOWRANCE, VICKY J COLORADO SPNGS, CO	02/19/1998
LUKESH, RICHARD J EXTON, PA	02/19/1998
MASON, DEBORAH MARIAH TUCSON, AZ	02/19/1998
MED–AMERICA PHYSICIAN, PC FRANKLIN SQUARE, NY	02/19/1998
MORENO, MARGIE FRESNO, CA	02/19/1998
PAULER, JOSEPH SOUTH ORANGE, NJ	02/19/1998
PENINSULA BRACE & LIMB, INC TAMPA, FL	02/19/1998
RATLIFF, GEAMES H CLINTON, VA	02/19/1998
RATLIFF, LESLIE LEE NORA, VA	02/19/1998
RAY, CAROL LENEXA, KS	08/04/1997
RIVERO, SOLEDAD M MIAMI, FL	02/19/1998
ROBBINS, JEFFREY STROUDSBERG, PA	02/19/1998
ROBINSON, RALLAND V POWHATAN, VA	02/19/1998
ROSENZWEIG, ALLAN LAWRENCE HOLLYWOOD, FL	02/19/1998
SIDDIQUI, SHAKIR KEARNY, NJ	02/19/1998
SLOAN, MELANIE COLLEGE PARK, GA	02/19/1998
SWEAT, DEBBIE L BRADENTON, FL	02/19/1998
SWERDLIK, RICHARD NEW YORK, NY	02/19/1998
TERRANA, CHARLES ELMA, NY	02/19/1998
THOMAS, CHARLES EDWARD KENBRIDGE, VA	02/19/1998
VADEN, VIRGILIO ROCKY POINT, NY	02/19/1998
VILLAVECER, VIRGIL WESTERVILLE, OH	02/19/1998
VILLAVECER, HERMENEGILDO T WESTERVILLE, OH	02/19/1998
WILKINS, DOROTHY RAWSHAWN SACRAMENTO, CA	02/19/1998
YI, FELIPE MIAMI, FL	02/19/1998
PATIENT ABUSE/NEGLECT CONVICTIONS	
CALDWELL, CHARLES A CANON CITY, CO	02/19/1998
GIBSON, ROXANNE HARKER HGTS, TX	02/19/1998
GOMEZ, ANA MARIE FRESNO, CA	02/19/1998
GORDON, TYLICIA C NASHVILLE, TN	02/19/1998
GREEN, PATRICIA MOSS POINT, MS	02/19/1998
REDDELL, ALICE LYNN MINERAL WELLS, TX	02/19/1998
RUTKOWSKI, JOSEPH CANANDAIGUA, NY	02/19/1998
SMITH, DALE A LEXINGTON PARK, MD	02/19/1998
STONE, ROBERTA CINCINNATI, OH	02/19/1998
VELURI, RAVI K ALEXANDRIA, VA	02/19/1998
WILLIAMS, CHARLES WAYNE LITTLE ROCK, AR	02/19/1998
CONVICTION FOR HEALTH CARE FRAUD	
LEITSON, MARC W BLOOMFIELD, IL	02/19/1998
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ARCHULETA, MARILYN SKILES LANCASTER, PA	02/19/1998
BARBARO, ANDREA SOUTH RIDING, VA	02/19/1998
BAYLESS, JAMES M RIVERSIDE, CA	02/19/1998
BECKERT, MARGARET WEIER NAPA, CA	02/19/1998
BRAND, ROBERT L PETERSBURG, VA	02/19/1998
BRAVERMAN, RONALD A BRAINERD, MN	02/19/1998
BRODHEAD, CHARLES L RIVERSIDE, CA	02/19/1998
BROOKS, DAVID CHICAGO, IL	02/19/1998
BROWN, KEVIN P LYNDEN, WA	02/19/1998
BROWN, SANDORS LEESBURG, VA	02/19/1998
CARMON, KIM ALLEN RICHMOND, VA	02/19/1998
CARTER, CAROL HOVER TITUSVILLE, PA	02/19/1998
CURRY, CURTIS CHICAGO, IL	02/19/1998
DARRIN, THOMAS B COUDERSPORT, PA	02/19/1998
DAVIS, REED C SANTA ROSA, CA	02/19/1998
DAY, THERESA A PORTLAND, ME	02/19/1998
DEJULIA, WAYNE C HUNTINGTON, CT	02/19/1998
ELLIOTT, STACEY H PAYNESVILLE, MN	02/19/1998
FINN, MARY C MENANDS, NY	02/19/1998
FOX, COLLEEN ROCK ISLAND, IL	02/19/1998
FRACASSI, CAROL LANDIS ERIE, PA	02/19/1998
FRANKS, DENIS BALTIMORE, MD	02/19/1998
FREDERICK, HAROLD T DOWNEY, CA	02/19/1998
GADHOK, RAJINDER S BERKELEY HGHTS, NJ	02/19/1998
GIBSON, JANET M LUVERNE, MN	02/19/1998
GILL, JANE CARLINVILLE, IL	02/19/1998
GOLDEN, BRUCE M BROCKTON, MA	02/19/1998
GRINSTEAD, SHELLIA M WAKEFIELD, VA	02/19/1998
GROSS, MARIE KIAMESHA LAKE, NY	02/19/1998
HAYDEN, GINA M WESTPORT, CT	02/19/1998
HENDERSON, MARILYN MERCHANT LAS VEGAS, NV	02/19/1998
HICKS, DEANNA M CHICOPEE, MA	02/19/1998
ILIFF, KATHLEEN HATFIELD ILIFF, KATHLEEN HATFIELD	02/19/1998

Subject, city, state	Effective date
RESTON, VA	
IPPEDICO, JESSICA	02/19/1998
SOMERVILLE, MA	
JOUBERT, EFFIE	02/19/1998
CHICAGO, IL	
KAPLAN, MARK	02/19/1998
NORCO, CA	
KASIEWSKI, REGINA	
GAFFNEY	02/19/1998
BENSALEM, PA	
KELLEY, SHANNON T	02/19/1998
SYRACUSE, NY	
KHOURY, NICHOLAS F	02/19/1998
FRESNO, CA	
KRAEGER, CARI	02/19/1998
BLOOMINGTON, IL	
KRILE, SCOTT	02/19/1998
PEKIN, IL	
LITTLE, BRUCE R	02/19/1998
LITCHFIELD, CT	
LONG, DAWN	02/19/1998
DECATUR, IL	
LOVE, BEVERLY MICHELE	02/19/1998
OKLAHOMA CITY, OK	
MAKHDOOMI, GOWHAR	02/19/1998
CLARENCE, NY	
MORAN, JANICE M	02/19/1998
WEYMOUTH, MA	
MOTLAGH, FRANK A	02/19/1998
SAN DIEGO, CA	
NALLS, DOUGLAS EARL	02/19/1998
MIAMI, FL	
NEUMAN, JACOB	02/19/1998
FLUSHING, NY	
OH, HEI YOUNG	02/19/1998
DIXHILLS, NY	
OKAJIMA, NILES M	02/19/1998
SOUTH GATE, CA	
ORCINOLO, SAMUEL L	02/19/1998
BROOKLYN, NY	
PITTS, FERRIS NEWCOMB	02/19/1998
PASADENA, CA	
POWELL, PERRY	02/19/1998
SAN DIEGO, CA	
RABOW, PETER J	02/19/1998
SPRINGFIELD, VT	
RAINEY, DIANA	02/19/1998
CHARLOTTESVILLE, VA	
REESE, TIMOTHY HERMAN	02/19/1998
MCKEESPORT, PA	
RICHARDS, JEFFREY M	02/19/1998
EDINBORO, PA	
RUCKHABER, JERRY WAYNE	02/19/1998
BINGHAMTON, NY	
SALDANHA, JOSEPH P	02/19/1998
MANHASSET, NY	
SEARS, CATHERINE	02/19/1998
BEVERLY, MA	
SHOHAYEB, AHMED ABDUL	
RAHMA	02/19/1998
LOS ANGELES, CA	
SMITH, DIANE	02/19/1998
DIXON, IL	
ST JEAN, POLUX ENRIQUE	
DILONE	02/19/1998
CAGUAS, PR	
STEPHEN, CAROL ANN	02/19/1998
NORFOLK, VA	
SUGAR, HARRY D	02/19/1998
CRANFORD, NJ	
TAYLOR, JAMES ALAN	02/19/1998
E STROUDSBURG, PA	
TOBIN, DAVID	02/19/1998
MORTON GROVE, IL	
TSENG, MAO–HSUNG	02/19/1998
EDEN, NY	
WAGNER, ROBERT R	02/19/1998
NORFOLK, VA	
WAGNER, ANDREA	02/19/1998
CHICAGO RIDGE, IL	
WAINIO, MAUREEN E	02/19/1998
NEW BEDFORD, MA	
WALKER, JERONE S	02/19/1998
NORTHRIDGE, CA	
WHEATLAND, SUZANNE	02/19/1998
STREATOR, IL	
WOO, DONNA	02/19/1998
RICHMOND, VA	

FEDERAL/STATE EXCLUSION/ SUSPENSION

BHAREL, VIVENDRA	02/19/1998
MANHASSET HILLS, NY	
KESTEN, MARK M	02/19/1998
NEW YORK, NY	
QUEENS SURGICAL PHARMACY	02/19/1998
FOREST HILLS, NY	
SOLAN, JAY R	02/19/1998
LARCHMONT, NY	
WALKER, SANDRA	02/19/1998
BROOKLYN, NY	

FRAUD/KICKBACKS

AUTOMATED BILLING SERVICES	02/19/1998
ROCKVILLE, MD	
JOHN J MERENDINO, SR, MD, PA	02/19/1998
ROCKVILLE, MD	
QRSS	02/19/1998
ROCKVILLE, MD	

OWNED/CONTROLLED BY CONVICTED EXCLUDED

CHARLES OPTICAL	02/19/1998
ELMA, NY	
JORMER SPECIALTY CORPORATION	02/19/1998
MIAMI, FL	
U S MEDICAL SYSTEMS, INC	02/19/1998
BOCA RATON, FL	

DEFAULT ON HEAL LOAN

ARAGON, JANETTE L	02/19/1998
UPLAND, CA	
BAKER, SAMUEL STEVEN	02/19/1998
TUCSON, AZ	
BLACKWELL, ROBERT E	12/22/1997
PINE BLUFF, AR	
BRADY, SCOTT M	02/19/1998
NEW MILFORD, CT	
BUCKLEY, JOHN F	12/22/1997
MASSILON, OH	
BURKS, TEMAN L	02/19/1998
COLUMBIA, MD	
CHERRY, ROBERT B	02/19/1998
SEATTLE, WA	
CLEMENTS, DAVID D	02/19/1998
DALLAS, TX	
CONNELLY, CHRISTOPHER FOUST	02/19/1998
CARSON CITY, NV	
COWLEY, ROBERT DANIEL	02/19/1998
CHARLESTON, SC	
DAVIS, MICHAEL E	12/22/1997
SHAKER HEIGHTS, OH	
DENNEY, TERESA A	02/19/1998
HONOLULU, HI	
DEVANEY, JOHN F	02/19/1998
SEABROOK, NH	
ECHOLS, HARVEY L	02/19/1998
CHICAGO, IL	
ELLIS, PATRICIA A	02/19/1998
PHILADELPHIA, PA	
GEE, WILL K	02/19/1998
CHICAGO, IL	
GEORGESON, RONALD M	02/19/1998
KERMAN, CA	
GOMES, STEVEN P	02/19/1998
GLEN ELLEN, CA	
HAYGOOD, REGINA J	12/22/1997
BROOKLYN, NY	
HERBST, STEPHEN H	12/22/1997
MOUNTAIN HOME, AR	
HETH, DAVID M	02/19/1998
LAYTON, UT	
HILL, STEPHEN J	02/19/1998
MONTGOMERYVILLE, PA	
JOHNSON, GARY M	02/19/1998
N HOLLYWOOD, CA	
KOFFEMAN, JOHN NICHOLAS	02/19/1998
JACKSON, MI	
KOSTENKO, MICHAEL MERRITT	02/19/1998
BECKLEY, WV	
LALL, LEN L	12/22/1997
ROCKWALL, TX	
LEWIS, CAROL E	12/22/1997
SCOTTDALE, AZ	
LINDSEY, SCOTT B	12/22/1997
AKRON, OH	
MAREK, MICHAEL L	12/22/1997
HOUSTON, TX	
MARTINSON, DAVID L	02/19/1998
FARGO, ND	
MASON (DOWNING), MARLENE K	02/19/1998
GLENDALE, AZ	
MCJILTON, STEPHEN J	02/19/1998
ROSSMOOR, CA	
MITCHELL, ROBERT S	02/19/1998
KIRKLAND, WA	
MONTELEONE, ANTHONY L JR	02/19/1998
NATRONA HGHTS, PA	
MUNSON, KEVIN D	12/22/1997
DETROIT, MI	
MURPHY, MICHAEL P	02/19/1998
QUINCY, MA	
PACEY, DAVID A	02/19/1998
SEATTLE, WA	
PICIULLO, LENNY R	02/19/1998
SPOKANE, WA	
POLLOCK, THOMAS G	02/19/1998
SANTA BARBARA, CA	
RABIN, SANDER M	02/19/1998
POUGHKEEPSIE, NY	
RAMOS, CARLOS A	02/19/1998
SAN DIEGO, CA	
RAMOS–VELEZ, GISELLA	02/19/1998
LOUISVILLE, KY	
RICHARDSON, GREGORY B	02/19/1998
MERIDIAN, ID	
RIVERO, EDUARDO C	02/19/1998

Subject, city, state	Effective date
MIAMI, FL	
ROGNEY, ROSS K	02/19/1998
EXCELSIOR, MN	
SMITH, ART G	02/19/1998
KERRVILLE, TX	
SMITH, ROBERT E	02/19/1998
COSTA MESA, CA	
SOLUM, JIM D	02/19/1998
LOS ANGELES, CA	
SUTHERLAND, SCOTT	
TRACY	02/19/1998
HONOLULU, HI	
SWETT, ROBERT A	02/19/1998
BELCHERTOWN, MA	
VANRENSSELAER, JEFFREY ALAN	02/19/1998
LAKE FOREST, CA	
VOLPATO, RONALD N	02/19/1998
CHICO, CA	
WADE, ERIC V	12/22/1997
TYLER, TX	
WALKER, JOSEPH C	12/22/1997
CLEVELAND HGTS, OH	
COLLINS, RODNEY DANIEL	01/14/1998
CULVER CITY, CA	
ELOFSON, OLOF R	01/14/1998
ISSAQUAH, WA	
GAMBLE, JEFFREY G SR	01/14/1998
SAN DIEGO, CA	
HESSER, ROBERT J	01/14/1998
DENVER, CO	
PARKER, SYLVESTER E JR	01/14/1998
TYLERTOWN, MS	
PAYNE, DENISE Y	01/14/1998
LOUISVILLE, KY	
PERRY, KEITH O'NEIL	01/30/1998
LOS ANGELES, CA	
SCHAEFFER, DARRELL RAY	01/14/1998
PHOENIX, AZ	
SCHUCKMAN, GARY A	01/14/1998
WILMINGTON, NC	
SMITH, ROBERT L	01/14/1998
OJAI, CA	
WATFORD, DOUGLAS E	01/14/1998
AHOSKIE, NC	
WILLIAMS, WILLIAM E	01/14/1998
OAKLAND, CA	
EXCLUSION BASED ON SETTLEMENT AGREEMENT	
BEAR LOVE MEDICAL EQUIPMENT	02/19/1998
HIALEAH, FL	
IGLESIAS, YAMIRAH ISABEL	02/19/1998
TAMPA, FL	
MENDEZ, FAUSTUS	11/04/1997
HIALEAH, FL	
PENINSULA BRACE & LIMB, INC	08/11/1997
TAMPA, FL	
PEER REVIEW ORGANIZATION CASES	
BROOKS, JESSE M	12/10/1997
ATLANTA, TX	

Dated: February 9, 1998.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 98–4423 Filed 2–20–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Test-Retest Study of the Alcohol Use Disorder and Associated Disabilities Interview Schedule (AUDADIS–IV) in a General Population Sample

SUMMARY: Under the provisions of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously in the **Federal Register** on November 17, 1997, and allowed 60 days for public comment. There were no requests for additional information about this data collection activity, no public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The NIH 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 June 30, 1999, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: Title: Test-Retest Study of the Alcohol Use Disorder and Associated Disabilities Interview Schedule (AUDADIS–IV) in a General Population Sample. Type of Information Collection request: New. Need and Use of Information Collection: The information proposed for collection in this study will be used by the NIAAA to develop and finalize psychometrically sound measures of alcohol and drug-related disabilities for use in major epidemiologic surveys conducted in the United States. Currently, there is a great need for more reliable measurement of alcohol and drug use disorders and their associated disabilities in all fields of substance use research.

Frequency of Response: On occasion.

Affected Public: Individuals.

Type of Respondents: American adults.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 2.

Average Burden Hours per Response: 1.00.

And Estimated Total Annual Burden Hours Requested: 1000.

There are no Capital Costs to report.

There are no Operating or Maintenance Costs to report.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
(First (Test) Interviews): 500	1	500	1.00	500
(Second (Retest) Interviews): 500	1	500	1.00	500
Total Number of Respondents: 500 (per year) Total Number of Responses: 1000 (per year) Total Hours: 1000 (per year)				

REQUEST FOR COMMENTS: Comments are invited on: (a) Whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents.

Send written comments to Dr. Bridget Grant, Biometry Branch, Division of Biometry and Epidemiology (DBE), NIAAA, NIH, Willco Bldg., Suite 514,

6000 Executive Blvd., Bethesda, Maryland 20892–7003.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budge, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Dr. Bridget Grant, Biometry Branch, Division of Biometry and Epidemiology, NIAAA, NIH, Willco Bldg. Suite 514, 6000 Executive Blvd., Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–7370.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before March 25, 1998.

Dated: January 23, 1998.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 98–4515 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: SPOREs in Breast and Prostate Cancer.

Date: March 17–18, 1998.

Time: March 17–7:00 p.m. to Recess; March 18–9:00 a.m. to Adjournment.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Harvey P. Stein, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611B, 6130 Executive Boulevard, Bethesda, MD 20892, Telephone: 301/496–7481.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4507 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institutes; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Committee Name: Subcommittee E—Prevention and Control.

Date: April 6–7, 1998.

Time: April 6—8:00 a.m. to Recess; April 7—8:00 a.m. to Adjournment.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Mary Fletcher, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, North, Room 635S, Bethesda, Md 20892, Telephone: 301/496–4964.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4509 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Tissue and Biological Fluids Bank of HIV-Related Malignancies.

Date: March 6, 1998.

Time: 9:00 a.m. to Adjournment.

Place: Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Courtney M. Kerwin, Ph.D., M.P.H., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630I, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7421.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4511 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institutes; Notice of Closed Meeting

Pursuant to Section 10 (d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Committee Name: Subcommittee D—Clinical Research Studies.

Date: April 1–2, 1998.

Time: April 1—6:00 p.m. to Recess, April 2—8:00 a.m. to Adjournment.

Place: Holiday Inn—Select, 881 Convention Center Boulevard, New Orleans, LA 70130.

Contact Person: Martin H. Goldrosen, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, North, Room 635C, Bethesda, Md 20892–7408, Telephone: 301/496–7930.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4512 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders on March 27, 1998 which will take place in Conference Room D, the Natcher Building, 9000 Rockville Pike, Bethesda MD 20892.

The meeting will be open to the public from 8:00 to 8:25 a.m. to present reports and discuss issues related to the business of the Board. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public from 8:25 am to adjournment. The closed portion of the meeting will be for the review, evaluation, and discussion of the research programs of tenure-track scientists within the Voice, Speech and Language Branch, the Laboratory of Molecular Genetics and the Head and Neck Surgery Branch, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, including consideration of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A meeting summary and roster of members may be obtained from James F. Battey, M.D., Ph.D., Executive Secretary, Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B–28, Rockville, Maryland 20850, 301–402–2829. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Battey at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4506 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Mental Health on March 10, 1998.

In accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., the entire meeting will be closed for the review, discussion, and evaluation of staff scientist and individual intramural programs and projects. The subject matter to be reviewed contains information of a confidential nature, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Agenda/Purpose: To evaluate recent reviews of selected intramural research projects and make final recommendations.

Committee Name: Board of Scientific Counselors, National Institute of Mental Health.

Date: March 10, 1998.

Time: 5 p.m.

Place: Building 36, Room 1B07, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robert W. Dennis, Executive Secretary, Building 10, Room 4N222, 9000 Rockville Pike, Bethesda, MD 20892, Telephone: 301, 496–4183.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4508 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, National Institute on Aging, March 13, 1998, Hay-Adams Hotel, 16th and H Streets, N.W., One Lafayette Square, Washington, D.C. which was published in the **Federal Register** on January 14, (Vol. 63, No. 9, page 2252).

This committee was to have convened at 1:30 p.m. on March 12, but has been changed to 6:00 p.m. on March 12. The location remains the same.

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, National Institute on Aging, March 13, 1998, Hay-Adams Hotel 16th and H Streets, N.W., One Lafayette Square, Washington, D.C. which was published in the **Federal Register** on January 14, (Vol. 63, No. 9, page 2252).

This committee was to have convened at 9:00 a.m. on March 13, but has been changed to 8:00 a.m. on March 13. The location remains the same. As previously announced, these meetings are closed to the public.

Dated: February 17, 1998.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 98–4510 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Services; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: Review of Conference Call Applications (R13s) (Telephone Conference Call).

Date: March 10, 1998.

Time: 9:30 a.m.

Place: National Institute of Environmental Health Sciences, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Chemical Mixtures in Environmental Health.

Date: April 6–8, 1998.

Time: 7:00 p.m.

Place: National Institute of Environmental Health Sciences, Building 101, Conference Room C, Research Triangle Park, NC 27709.

Contact Person: Mr. David Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4514 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Structural Biology of AIDS-Related Proteins (Teleconference).

Date: March 5, 1998.

Time: 1:00 p.m.–adjournment.

Place: NIH, NIGMS, Natcher Building, Room 1AS–13, Bethesda, Maryland.

Contact Person: Dr. Arthur L. Zachary, Scientific Review Administrator, NIGMS, Natcher Building—Room IAS–13, Bethesda, Maryland 20892, Telephone: 301–594–2886.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4513 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–85]

Notice of Proposed Information Collection: Comment Request

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* April 24, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public and Indian Housing/Section 8 Moving to Work Demonstration Participants Reporting Requirements.

OMB Control Number, if applicable: 2577–0216.

Description of the need for the information and proposed use: Twenty-four Housing Agencies (HAs) were approved to participate in the Moving To Work (MTW) Program after an invitation was published in the **Federal Register.** The approved applicants were required to submit a preliminary MTW plan, to hold a public hearing for citizens comments and to seek residents' comments on the MTW plan

and to comply with other submission and eligibility requirements. As a condition of MTW selection, an HA must provide assurance to HUD that it will comply with these reporting requirements: documentation on the HA's use of program funds, data to assist in assessing the MTW demonstration, and description and analyses of the effect of HA's activities in addressing the objectives of the MTW plan. Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134; 110 Stat. 1321) is the authority for the MTW Program.

Agency form numbers, if applicable: None.

Members of affected public: State, Local Governments (Public Housing Agencies).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 24 respondents, semi-annually, six hours estimated average response time, 288 hours estimated annual reporting burden.

Status of the proposed information collection: Reinstatement of reporting requirements only.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 17, 1998.

Kevin Emanuel Marchman,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–4455 Filed 2–20–98; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–84]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* March 25, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 12, 1998.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Subterranean Termite Soil Treatment Builder's Guarantee and New Construction Subterranean Termite Soil Treatment Record.

Office: Housing.

OMB Approval Number: None.

Description of the Need for the Information and Its Proposed Use: This information collection provide new home purchasers with the builder's guarantee concerning termite control treatment and the work performed by a licensed pest control company. The builder's guarantee and the termite certification are required before a mortgage insurance endorsement can take place.

Form Number: Forms NPCH–99a and NPCH–99b.

Respondents: Business or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	54,000		1		.166		8,964

Total Estimated Burden Hours: 8,964.
Status: New.
Contact: John W. Struchern, HUD, (202) 708–6396 x5626; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 12, 1998.

[FR Doc. 98–4457 Filed 2–20–98; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4240–N–02]

Announcement of Awards for the Community Partnerships for Resident Uplift and Economic Development Program Fiscal Year 1997

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

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Community Partnerships for Resident Uplift and Economic Development Program (Community Partnership). The announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 619–8201 x4250. Telecommunications Devices for the Deaf (TTY) can be accessed by contacting the Federal Information Relay Services on 1–800–877–TTY (1–800–877–8339) or (202) 708–9300. (With the exception of the "800" number, these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the Community Partnerships grant is to provide Housing Authority (HA) and Community Development Corporation (CDC) collaboratives grants for the purpose of creating neighborhood-based programs to move families residing in public housing and the adjacent neighborhood from welfare to self-sufficiency through two primary strategies: (1) Encourage the creation of employment and business development opportunities for low-income people through business, physical or commercial development in the neighborhood; and (2) provide an array of supportive services in neighborhood-based comprehensive service centers (and accessible to persons with disabilities) to enable participants to successfully make and sustain the transition to self-sufficiency.

The 1997 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on July 29, 1997 (62 FR 40642). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $4.2 million in Community Partnerships was awarded to six HA–CDC grantees. HUD and HHS each made available $2.5 million for award under this initiative. The Boys and Girls Clubs of America made up to $500,000 available to elected HA–CDC grantees for after school youth development activities providing constructive environments for children program participants.

This joint initiative, between HUD and the U.S. Department of Health and Human Services, is authorized pursuant to (1) the Community Planning and Development section of the 1997 HUD Appropriations Act entitled, "An Act Making Appropriations for the Departments of Veteran Affairs and Housing and Urban Development, and for sundry independent agencies; boards, commissions, corporations, and offices for the fiscal year ending September 30, 1997, and for other purposes", (Pub.L. 104–204, approved September 26, 1996), which provides grants to housing authorities to enable them to establish programs that increase resident self-sufficiency; and (2) the Community Initiative Program is authorized by Sections 681(a) and 681(b)(1) of the Community Services Block Grant Act (42 U.S.C. 9910(a) and (b)(1), as amended.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as follows:

Community Partnerships for Resident Uplift and Economic Development

New York City Housing Authority (with the South Brooklyn Local Development Corporation), 250 Broadway, New York, NY 10007, (212) 306–3000. Grant amount (HUD) $687,665 (HHS) $496,212.

Tampa Housing Authority (with Tampa-Hillsborough Community Development Corporation), 1514 Union Street, Tampa, FL 33607, (813) 253–0551. Grant amount (HUD) $250,000 (HHS) $350,000.

Housing Authority of the City of Charlotte (with the Reid Park Community Development Corporation), P.O.Box 36795, Charlotte, NC 28236, (704) 336–5183. Grant amount (HUD) $382,185 (HHS) $217,815.

Housing Authority of Kansas City (with the Community Development Corporation of Kansas City), 712 Broadway, Kansas City, MO 64105, (816) 842–2440. Grant amount (HUD) $300,000 (HHS) $300,000.

Housing Authority of the City of Oakland (with East Bay Local Development Corporation), 1619 Harrison Street, Oakland, CA 94612, (510) 874–1500. Grant amount (HUD) $580,150 (HHS) $205,839.

San Diego Housing Commission (with City Heights Community Development Corporation), 1625 Newton Avenue, San Diego, CA 92113–1038, (619) 685–1096. Grant amount (HUD) $300,000 (HHS) $150,000.

Dated: February 17, 1998.

Kevin E. Marchman,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–4454 Filed 2–20–98; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4287–N–02]

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of correction.

SUMMARY: On October 21, 1997, HUD published a notice of statutorily mandated designations of "Difficult Development Areas" for purposes of the Low-Income Housing Tax Credit under section 42 of the Internal Revenue Code of 1986. The notice described the methodology used by HUD to make the designations. The purpose of this notice is to advise the public that the table accompanying this notice contained an error in the listing of certain counties.

FOR FURTHER INFORMATION CONTACT: With questions on how areas are designated and on geographic definitions, Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202)

708–0426, e-mail Kurt_G._Usowski@hud.gov. With specific legal questions pertaining to section 42 and this notice, Chris Wilson, Attorney, Office of the Chief Counsel, Pass Throughs and Special Industries Branch 5, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20244, telephone (202) 622–3040, fax (202) 622–4779; or Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3260, e-mail H._JERRY_GROSS@hud.gov. A telecommunications device for deaf persons (TTY) is available at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUDUSER at (800) 245–2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: Copies of the original notice with corrected tables are available electronically on the Internet (World Wide Web) at http://www.huduser.org/ under the heading "Data Available from HUDUser."

SUPPLEMENTARY INFORMATION:

Correction

On October 21, 1997 (62 FR 54732), HUD published a notice that provides revised designations of "Difficult Development Areas" for purposes of the Low-Income Housing Tax Credit under section 42 of the Internal Revenue Code of 1986, and describes the methodology used by the United States Department of Housing and Urban Development. The notice advised that the new Difficult Development Areas are based on FY 1997 Fair Market Rents, FY 1997 income limits and 1990 census population counts. The notice also advised that the corrected designations of "Qualified Census Tracts" under section 42 of the Internal Revenue Code published May 1, 1995 (60 FR 21246) remain in effect.

The purpose of this notice is to correct an error that appeared in the table accompanying the October 21, 1997 publication. The table listing 1998 Internal Revenue Code Section 423(d)(5)(C) Nonmetropolitan Difficult Development Areas inadvertently named Bradford, Calhoun, and Citrus counties as 1998 Nonmetropolitan Difficult Development Areas in the State of Delaware. Bradford, Calhoun, and Citrus counties should have been listed as 1998 Nonmetropolitan Difficult Development Areas in the State of Florida. Through this notice, the public is therefore advised of the error in the October 21, 1997 publication and provided with the correct information.

Dated: February 17, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–4456 Filed 2–20–98; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

RIN 2550–ZA00

Privacy Act of 1974: Publication of Notice of Systems of Records

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Publication of notice of systems of records.

SUMMARY: This notice publishes and seeks comments on the notice of systems of records maintained by the Office of Federal Housing Enterprise Oversight as required by the Privacy Act of 1974. It also sets forth the routine uses of records within systems of records and will permit individuals to identify those systems in which records about them may be located.

DATES: This notice shall become effective without further notice on April 6, 1998. Any interested party may submit written comments about this notice. Comments must be received on or before March 25, 1998.

ADDRESSES: Send written comments to Anne E. Dewey, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Copies of all comments received will be available for examination by interested parties at the Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Deputy General Counsel, or Isabella W. Sammons, Associate General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3800 (not a toll-free number). The toll-free telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), is a Federal law that requires Federal agencies to limit the manner in which they collect, use, and disclose information about individuals who are citizens of the United States or resident aliens. The Privacy Act provides that, upon request, an individual has the right to access any record maintained on her/him in an agency's system of records.

The Privacy Act prohibits agencies from disclosing any record that is contained in a system of records to any person or another agency (third parties), except pursuant to a written request by or the prior written consent of the individual to whom the records pertain. However, the Privacy Act authorizes the disclosure of individual records to certain third parties and under certain circumstances. 5 U.S.C. 552a(b). Such authorized disclosures include disclosure to those officers and employees of the agency that maintains the record who have a need for the record in the performance of their duties; to the Bureau of the Census for carrying out a census; and to the Comptroller General.

Another authorized disclosure to third parties is disclosure for a routine use. 5 U.S.C. 552a(b)(3). The term "routine use" is defined by the Privacy Act to mean, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. 5 U.S.C. 552a(a)(7). In other words, routine use is the authorized disclosure of the record to third parties that is compatible with the purpose for which the information contained in the record was collected, in addition to those expressly specified in the Privacy Act.

The Privacy Act requires each agency to publish in the **Federal Register** the existence of each system of records it maintains so that individuals may be able to find more easily those systems where records about them may be located. In addition, the Privacy Act requires that the publication include the routine uses of the records contained in each system, *i.e.*, the third parties to whom they may be disclosed, in addition to those expressly specified by the Privacy Act. In compliance with that requirement, the Office of Federal Housing Enterprise Oversight (OFHEO) is publishing this notice of systems of records.

This notice of systems of records, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Governmental Affairs of the U.S. Senate, the Committee on Government Reform and Oversight of the U.S. House of Representatives, and the Office of Management and Budget.

With this publication, OFHEO is also publishing for comment an interim regulation elsewhere in this issue of the **Federal Register**. The interim regulation sets forth the procedures for requesting access to and amendment of records.

Comments on this notice of systems of records are requested and will be considered in determining whether the notice will become effective without further notice on April 6, 1998.

Table of Contents

Prefatory Statement of General Routine Uses

The following general routine uses apply to and are incorporated by reference into each system of records set forth below, except if otherwise noted or if obviously not appropriate.

1. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when—

(a) Any of the following is a party to the litigation or has an interest in such litigation:

(i) The Office of Federal Housing Enterprise Oversight (OFHEO);

(ii) Any employee of OFHEO, in his/her official capacity;

(iii) Any employee of OFHEO, or any agency thereof, in his/her individual capacity where the Department of Justice has agreed to represent the employee;

(iv) The United States or any agency thereof, where OFHEO determines that litigation is likely to affect the United States; and

(b) The use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by OFHEO to be relevant and necessary to the litigation.

2. It shall be a routine use of the records in this system to disclose them in any proceeding before any court or adjudicative or administrative body when—

(a) Any of the following is a party to the proceeding or has an interest in such proceeding:

(i) OFHEO;

(ii) Any employee of OFHEO, in his/her official capacity;

(iii) Any employee of OFHEO, in his/her individual capacity, where the Department of Justice has agreed to represent the employee;

(iv) The United States or any agency thereof where OFHEO determines that the proceeding is likely to affect the United States; and

(b) OFHEO determines that use of such records is relevant and necessary in the proceeding.

3. In the event that a system of records maintained by OFHEO indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

4. A record from this system of records may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, if necessary to obtain information relevant to the decision concerning the hiring or retention of an employee or the letting of a contract.

5. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

6. The information contained in this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in Office of Management and Budget Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

7. A record from this system of records may be disclosed to an authorized appeal grievance examiner; a formal complaints examiner; an equal employment opportunity investigator; or an arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in connection with the evaluation and oversight of Federal personnel management.

8. A record from this system of records may be disclosed to authorized employees of a Federal agency for purposes of audit.

9. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

10. A record in this system of records may be disclosed to the Department of Justice to determine whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

11. A record in this system of records may be disclosed when the information is subject to exemption under the Freedom of Information Act, but OFHEO, in its discretion, determines not to assert the exemption.

12. A record from this system of records may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements and to those State and local taxing authorities for which the employee is subject to tax whether or not tax is withheld.

OFHEO–01

SYSTEM NAME:

Financial Management System.

SYSTEM LOCATION:

Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former OFHEO employees and individuals who are providing or have provided goods or services to OFHEO under contractual agreements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relate to employee claims for reimbursement of official travel expenses, including travel authorizations and advances, and vouchers showing amounts claimed, exceptions taken as a result of audit, advance balances applied, and amounts paid. Other records maintained on employees, where applicable, include records relating to claims for reimbursement for relocation expenses, including authorizations and advances, and vouchers showing amounts claimed and amounts paid; records pertaining to reimbursement for educational expenses and other miscellaneous reimbursement for small purchases made for official business; records including the account number of the employee's Government American Express travel cards; records including the financial institution code and employee account number for direct

deposit; and records relating to funds owed to OFHEO. Records on individuals who are not employees of OFHEO include information relating to the purchase of and payments made for goods or services from individuals, including the financial institution code and account number for direct deposit of payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–5709; 12 U.S.C. 4513(b)(9); 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES :

See the Prefatory Statement of General Routine Uses. Another routine use is transmittal of data contained in the records to the U.S. Treasury to effect issuance of nonsalary payments to employees and payments to vendors and contractors;

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computerized system and in paper files that are stored in file folders in locked file drawers.

RETRIEVABILITY:

Computerized records are retrieved by the individual's name or by taxpayer identification number if the individual is a vendor or contractor. File folders are indexed by year and by a unique order number.

SAFEGUARDS:

Access to the system is safeguarded by password and user identification number that provides specific levels of access or by locked file drawers and is restricted to employees who have a need to access the system in the performance of their duties.

RETENTION AND DISPOSAL:

Retention is determined by the General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Financial Management Officer, Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The procedures for contesting initial denials for access to or amendment of records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Appeals Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained, other Federal agencies, financial institutions, and courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OFHEO–02

SYSTEM NAME:

Pay and Leave System.

SYSTEM LOCATION:

Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former OFHEO employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the following information on each OFHEO employee: Name; organizational unit; leave status and associated leave data (such as annual, compensatory, jury duty, family, military, sick, donated, and leave without pay); and time and attendance records (including pay period number, leave accrual category, balances and applications, number of hours worked, time reports, adjustments to time and attendance, overtime and compensatory time justifications, and supporting data such as medical certificates).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 4513(b)(9).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Prefatory Statement of General Routine Uses. Other routine uses are transmittal of data contained in the records to—

- The U.S. Treasury to effect issuance of salary payments through electronic funds transfer;
- The Internal Revenue Service, Social Security Administration, the individual, and taxing authorities of the States, the District of Columbia, territories, possessions, and local governments;
- The Office of Personnel Management concerning pay, benefits, retirement deductions, and other information necessary to carry on its governmentwide personnel functions, and to other Federal agencies to facilitate employee transfers;
- The Department of Labor to process workers' compensation injury claims;
- Other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset;
- The Federal Retirement Thrift Investment Board to administer the Thrift Savings Plan;
- The National Finance Center of the Department of Agriculture for payroll/personnel action, receipt amount, time and attendance, and administrative overpayment processing;
- Department of Veterans Affairs regarding the final accounting for employee pay and benefits;
- Federal, State, and local agencies to assist in the enforcement of child and spousal support obligations; and
- State governments, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands to assist in processing unemployment claims under the Unemployment Compensation for Federal Employees Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computerized system and in paper files that are stored in file folders in locked file drawers.

RETRIEVABILITY:

Computerized records are retrieved by the individual's name. File folders are indexed by year and pay period number.

SAFEGUARDS:

Access to the system is safeguarded by password or by locked file drawers and is restricted to employees who have a need to access the system in the performance of their duties.

RETENTION AND DISPOSAL:

Retention is determined by the General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Officer, Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, OFHEO, 1700 G Street, W., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The procedures for contesting initial denials for access to or amendment of records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Appeals Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

The information is obtained from the subject individual, supervisor, timekeeper, official personnel records, previous employers, other Federal agencies, National Finance Center, financial institutions, and courts. Where an employee is subject to a tax lien, a bankruptcy, or an attachment or a wage garnishment, information also is obtained from the appropriate taxing or judicial entity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OFHEO–03

SYSTEM NAME:

Employee Identification Card System.

SYSTEM LOCATION:

Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current OFHEO employees and contractor personnel who have been assigned an identification card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the individual's name, date of birth, social security number, photograph, identification card expiration date, and organization and status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 4513(b)(9).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computerized system.

RETRIEVABILITY:

Records are retrieved by the individual's name.

SAFEGUARDS:

Access to the system is safeguarded by password and is restricted to employees who have a need to access the system in the performance of their duties.

RETENTION AND DISPOSAL:

Retention is determined by the General Records Schedules. Records of employees and contractors are deleted from the system upon termination of employment or contract.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Officer, Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, OFHEO, 1700 G Street, W., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The procedures for contesting initial denials for access to or amendment of records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Appeals Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

The information is obtained from the individuals on whom the information is maintained and from the OFHEO Human Resources staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OFHEO–04

SYSTEM NAME:

Property Inventory System.

SYSTEM LOCATION:

Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former OFHEO employees who have had property items assigned to them.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the employee name, OFHEO organizational unit, office telephone number, pager number, room number, description of property item, and copies of signed custody receipts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 4513(b)(9); 40 U.S.C. 47, *et seq.*.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computerized system and in paper files that are stored in file folders in locked file drawers.

RETRIEVABILITY:

Computerized records are retrieved by the individual's name. File folders are indexed by property item.

SAFEGUARDS:

Access to the system is safeguarded by password or by locked file drawers and is restricted to employees who have a need to access the system in the performance of their duties.

RETENTION AND DISPOSAL:

Retention is determined by the General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Contracting/Facilities Management Specialist, Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The procedures for contesting initial denials for access to or amendment of records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Appeals Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

Information is obtained from the OFHEO Contracting/Facilities Management Specialist, Office of Finance and Administration, and from subject individuals to whom property items are assigned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OFHEO–05

SYSTEM NAME:

Senior Staff Biography System.

SYSTEM LOCATION:

Office of Public Affairs, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Senior-level OFHEO employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the employee's name and a description of the employee's education, experience, and professional accomplishments and affiliations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 4513(b)(9).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used for distribution to the media and to groups which request OFHEO staff as speakers or panel participants. The general routine uses set forth in the Prefatory Statement, above, are not applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computerized system.

RETRIEVABILITY:

Records are retrieved by the individual's name.

SAFEGUARDS:

Access to the system is safeguarded by password.

RETENTION AND DISPOSAL:

Records of employees are deleted from the system upon termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

Public Affairs Specialist, Office of Public Affairs, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The procedures for contesting initial denials for access to or amendment of records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Appeals Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: February 12, 1998.

Mark A. Kinsey,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 98–4453 Filed 2–20–98; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: To enter into a CRADA with a consortium.

SUMMARY: Notice is hereby given that the U.S. Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with a consortium of U.S. industries and academic institutions. The purpose of this CRADA is to develop a comprehensive quantitative mineral resource assessment for countries within the Latin American Region (Caribbean, Central and South America).

ADDRESS: If any other parties are interested in making contributions for the same or similar purposes, please contact Ms. Jean N. Weaver, U.S. Geological Survey, National Center, MS 913, Reston, Virginia 20192, telephone (703) 648–6012; e-mail jweaverusgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: February 9, 1998.

P. Patrick Leahy,

Chief Geologic Division.

[FR Doc. 98–4419 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–016–98–1320–01]

Availability of Coal Data

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of data from three holes drilled in Northwest Colorado in 1985.

SUMMARY: The Bureau of Land Management (BLM), Little Snake Resource Area, Craig, Colorado, hereby gives notice that data from three (3) holes drilled in Moffat County, Colorado, is made available to the public.

ADDRESS: Bureau of Land Management, Little Snake Resource Area, 455 Emerson Street, Craig, CO 81625–1129.

FOR FURTHER INFORMATION CONTACT: Janet Hook at (970) 826–5079 or (970) 826–5000.

SUPPLEMENTARY INFORMATION: Three holes were drilled in 1985 by BLM in the Horse Gulch 7½ minute quadrangle. The purpose of the drill holes was to characterize the coal resources of the Late Cretaceous Williams Fork Formation. All three drill holes are located within Moffat County, Colorado. The names and locations are as follows:

HG–5–85 T.6N., R.93W., section 17: NE¼SW¼.
HG–5–85C T.6N., R.93W., section 17: SW¼NE¼.
HG–6–85 T.6N., R.93W., section 8: SW¼NW¼.

Available data includes geophysical logs, lithologic logs, core logs and photographs, and coal quality data.

Dated: February 10, 1998.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 98–4389 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–5B–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–98–1320–01; COC 60941]

Notice of Coal Lease Offering By Sealed Bid; COC 60941

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in La Plata County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

DATES: The lease sale will be held at 11 a.m., Monday, March 30, 1998. Sealed bids must be submitted no later than 10 a.m., Monday, March 30, 1998.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered is limited to coal recoverable by underground mining methods on the Upper Menefee seam on the 7 South Mains Tract in the following lands:

T. 34 N., R. 11 W., N.M.P.M.
sec. 6, lots 1 to 5, inclusive, NE¼SW¼, and NW¼SE¼;.

containing 194.79 acres.

The recoverable reserves have been adjusted from 646,000 tons down to 624,100 tons to account for coal purchased within a mineral right-of-way by National King Coal, LLC. The underground minable coal is ranked as high volatile B bituminous coal. The estimated coal quality for the Upper Menefee seam on an as-received bases is as follows:

Btu—12,300 Btu/lb.
Moisture—5.60%
Sulfur Content—0.67%
Ash Content—10.64%

Rental and Royalty

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability

Bidding instruction for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: February 13, 1998.

Karen Purvis,

Solid Minerals Team Resource Services.

[FR Doc. 98–4422 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–08–1320–01; MTM 80697]

Notice of Hearing

SUMMARY: Notice is hereby given that a public hearing will be held at 10:00 a.m., Friday, April 3, 1998, in the conference room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Western Energy Company has requested the Bureau of Land Management to reschedule a coal lease sale for Coal Lease Application MTM 80697. The Bureau of Land Management requests additional public comments on the fair market value and maximum economic recovery of certain coal resources it proposes to re-offer for a competitive lease sale. A Decision Record was signed on May 16, 1995, which allows for coal leasing.

The land included in Coal Lease Application MTM 80697 is located in Rosebud County, Montana, and is described as follows:

T. 1 N., R. 39 E., P.M.M.
Sec. 2: S½NW¼, N½NE¼SE¼
T. 1 N., R. 40 E., P.M.M.
Sec. 6: Lots 1, 2, 3, 4, S½N½, S½
Sec. 8: E½, N½NW¼
Sec. 14: S½SW¼, SE¼
T. 2 N., R. 40 E., P.M.M
Sec. 32: All 2,061 acres

FOR FURTHER INFORMATION CONTACT: Ed Hughes (telephone 406–255–2830), Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

Dated: February 17, 1998.

[FR Doc. 98–4465 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 134662]

Public Land Order No. 7312; Withdrawal of Public Land for the Protection of Arabis Pusilla Plant Habitat; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,020 acres of public land from surface entry and mining for a period of 50 years to protect *Arabis pusilla* (small rockcress) plant habitat. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect *Arabis pusilla* plant habitat:

Sixth Principal Meridian

T. 29 N., R. 101 W.,
Sec. 26, S½NW¼ and S½;
Sec. 27, E½SW¼NE¼, SE¼NE¼, E½W½SE¼, and E½SE¼;
Sec. 35, N½, N½N½SW¼, and N½SE¼.

The area described contains 1,020 acres in Fremont County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–4396 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–1430–01: GP–8–0103]

Realty Action

AGENCY: Bureau of Land Management, Lakeview District.

ACTION: Direct sale of public land in Lake County, Oregon (OR 53809).

The following parcel of public land is suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale for at least 60 days following the publication of this notice in the **Federal Register**.

Legal description	Acreage	Sale price	Deposit
Parcel Serial No., OR 53809 T.27S., R.17E., W.M., Oregon Sec. 14: N1/2SW1/4.	80	$12,000.00	$2,400.00

The above described parcel of land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute for 270 days from the date of publication or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The land is not considered essential to the public land management base and is unsuitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with Bureau planning for the land involved and will serve important public objectives.

The sale parcel will be offered under direct sale procedures to the North Lake Family Progress Team. Direct sale procedures are considered appropriate, in this case, as the offered public land is necessary to accommodate the development of a community park for Christmas Valley, Oregon. Direct sale procedures are authorized under 43 CFR 2711.3–3. The land will be offered for direct sale at 10:00 am PST, on May 18, 1998 and will be by written bid only. A written bid must be submitted to the BLM, Lakeview District Office at P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630, no later than 4:30 pm PST, May 15, 1998, and must be for not less than the appraised sale price indicated. The written bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior-BLM for not less than the bid deposit specified in this notice.

The total purchase price for the land shall be paid within 180 days of the date of sale or the bid deposit will be forfeited and the parcel withdrawn from further sale consideration.

The terms, conditions and reservations applicable to the sale are as follows:

(1) Patent to the sale parcel will contain a reservation to the United States for ditches and canals.

(2) The sale parcel will be subject to all valid existing rights of record at the time of patent issuance.

(3) The mineral interests being offered for conveyance with sale parcel OR 53809 have no known value. A deposit or bid to purchase the parcel will also constitute an application for conveyance of the mineral estate with the following reservations;

(a) Oil and gas and geothermal resources will be reserved to the United States.

The above mineral reservations are being made in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

The North Lake Family Progress Team must include with their final payment a non-refundable $50.00 filing fee for conveyance of the mineral estate.

Federal law requires that the bidder must be a U.S. citizen, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

Detailed information concerning the sale, including the reservations, sale procedures, terms and conditions, planning and environmental documentation, is available at the Lakeview District Office, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Lakeview Resource Area Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the Lakeview District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 6, 1998.

Scott R. Florence,

Manager, Lakeview Resource Area.

[FR Doc. 98–4417 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–04–1430–01: G–0075]

Realty Action: Partial Cancellation of Sale of Public Land in Harney County, OR

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Partial cancellation of notice of realty action, sale of public land.

SUMMARY: The Notice of Realty Action—Sale of Public Land in Harney County, Oregon, published in the **Federal Register**, Volume 62, No. 217, on November 10, 1997 on pages 60527–60529 is hereby canceled as it relates to the sale of the following parcel only:

OR–52784–W.M., T.25S., R.30E.,
Sec. 33, NE¼NE¼.

On December 22, 1997, in response to the Notice of Realty Action, a protest was filed concerning the sale of Parcel No. OR–52783. The parcel is being withdrawn from sale pending review of the merits of the protest. Upon resolution of the protest the parcel may be included in future offerings. All other provisions of the Notice of Realty Action remain in effect.

ADDRESSES: Comments should be submitted to the Burns District Manager, HC 74–12533, Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Craig M. Hansen, Area Meeting or Skip Renchler, Realty Specialist, Three Rivers Resources Area at the above address, phone (541) 573–4400.

Dated: January 6, 1998.

Michael T. Green,

District Manager.

[FR Doc. 98–4418 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30355]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona; Correction

AGENCY: Bureau of Land Management.

ACTION: Correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of December 3, 1997, concerning a proposed Bureau of Reclamation withdrawal. The legal descriptions did not reflect current survey information. This notice corrects those descriptions.

FOR FURTHER INFORMATION CONTACT: Larry Koontz, BOR Phoenix Area Office, 602–395–5672.

In the **Federal Register** issue of December 3, 1997, Vol. 62, No. 232, page 63957, second and third columns, make the following corrections:

T. 4 N., R. 11 E.,
Sec. 2, change W½NW¼ to lot 4 and SW¼NW¼;
Sec. 3, change NE¼ to lots 1 and 2, and S½NE¼.
T. 5 N., R. 11 E.,
Sec. 5, delete NW¼NW¼;
Sec. 6, change NW¼ to lots 3, 4, and 5, and SE¼NW¼, delete S½NW¼NE¼.
T. 6 N., R. 11 E.,
Sec. 31, change S½NW¼SW¼ to lot 9, and change SW¼SW¼ to lot 4.
T. 4 N., R. 12 E.,
Sec. 3, add lots 1 to 4 inclusive, S½N½, and S½;
Sec. 5, change E½NE¼ to lot 1 and SE¼NE¼.
T. 3 N., R. 13 E.,
Sec. 11, add "excluding private lands within Roosevelt Lake Estates."
T. 4 N., R. 13 E.,
Sec. 31, change NW¼ to lots 1 and 2, and E½NW¼.
T. 3 N., R. 14 E.,
Sec. 5, change N½NE¼ and NW¼NW¼ to lots 1, 2, and 4;
Sec. 6, change E½NE¼ to lot 1 and SE¼NE¼.
T. 4 N., R., 14 E.,
Sec. 30, change NW¼SW¼ to lot 3;
Sec. 31, change NW¼NE¼ to SW¼NE¼.

In column 3, line 54, change the area described from 9,880 acres to approximately 9,820 acres.

Dated: February 11, 1998.

Alvin L. Burch,

Acting Deputy State Director, Resources Division.

[FR Doc. 98–4388 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–61332]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 2,737 acres of public land for 50 years to protect the Rough Canyon Area of Critical Environmental Concern. This notice closes this land to operation of the public land laws including location and entry under the mining laws for up to two years. The land has been and remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before May 26, 1998.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On February 4, 1998, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 12 S., R. 100 W., Protraction Diagram No. 13, Accepted January 22, 1965,
Sec. 29, that portion of the S½SW¼ lying southerly of Bureau of Land Management Road No. 7150, from the west boundary of section 29 easterly to the westerly side of the crossing of the streambed of Rough Canyon, thence continuing easterly along a line parallel to and 10 feet northerly of the mean high water line of the Rough Canyon watercourse to an intersection with the east boundary of the S½SW¼ of section 29:
Sec. 30, the portion lying southerly and westerly of a line parallel to and 200 feet southerly of the centerline of Bureau of Land Management Road No. 7150, from the east boundary of the section to a point 1500 feet east of the west boundary of said section 30, thence north along a line parallel to the west boundary of said section to the intersection with the north boundary thereof, thence westerly along said northern boundary of the northwest corner of section 30;
Sec. 31, All;
Sec. 32, W½.

T. 12 S., R, 101 W.,
Sec. 25: lots 2 thru 4, inclusive, SE¼NW¼ and SW¼;
Sec. 26: N½SE¼;
Sec. 35: lot 14;
Sec. 36: Lots 1 thru 6, inclusive, NW¼ and N½SW¼.

T. 13 S., R. 100 W. Protraction Diagram No. 13, accepted January 22, 1965,
Sec. Sec. 5, NW¼;
Sec. 6, N½NE¼ and SE¼NE¼.

The area described contains approximately 2,737 acres in Mesa County.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer

determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage this land.

Herbert Olson,

Acting Realty Officer.

[FR Doc. 98–4420 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment on Exploration, Development, and Production Operations and Activities in the Deepwater Gulf of Mexico OCS

AGENCY: Minerals Management Service.

ACTION: Preparation of an environmental assessment (EA).

SUMMARY: The Minerals Management Service (MMS) is beginning preparation of an environmental assessment document on oil and gas operations and activities in the deepwater areas of the Gulf of Mexico. The National Environmental Policy Act (NEPA) regulations recommend that agencies prepare an EA on any action at any time in order to assist agency planning and decisionmaking. The objectives of this EA are to identify and evaluate the significance of potential impacts from exploration, development, and production operations in the deepwater areas (generally beyond 1,000 feet water depth) of the Gulf of Mexico outer continental shelf (OCS) and from associated support activities and infrastructure.

There has been a recent upsurge of exploration and development in the deepwater areas of the Gulf of Mexico because of the development of new deepwater drilling and development technologies, the development of new geophysical surveying technologies, the announcement of several deepwater discoveries, favorable economics, the passage of the Deep Water Royalty Relief Act, and the opportunity to lease blocks from recently terminated leases. Many impacting factors associated with deepwater activities are identical or similar to those associated with conventional operations and activities on the continental shelf, which are evaluated in other MMS NEPA documents. Some deepwater operations may be significantly different from conventional operations in shallower waters of the shelf. For example, deepwater operations are farther from shore, encounter different environmental conditions, are technologically more sophisticated, may produce at much higher rates, and are subject to different economic determinants. These differences will present many technical and regulatory challenges. New and evolving technologies, larger and more complex facilities, modifications of procedures, and additional environmental protection issues are all anticipated for deepwater activities. Therefore, the EA will be used to determine the significance of impacts associated with deepwater operations. The EA will also be used to identify and eliminate from further detailed analysis those issues that are not deemed significant. If significant impacts are identified, they will be analyzed in future EIS's prepared for specific proposals that could cause these impacts. Appropriate measures to mitigate potential impacts will be developed and evaluated based on the analysis of the potential impacts of deepwater operations on the marine, coastal, and human environments.

The EA is scheduled for completion in July 1998.

FOR FURTHER INFORMATION: Questions regarding the EA should be directed to Deborah Cranswick, Environmental Assessment Section, (504) 736–2744. Questions regarding deepwater operations should be directed to Jim Regg, Field Operations, (504) 736–2843. The mailing address is Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123–2394.

Dated: February 9, 1998.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 98–4394 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Beaufort Sea

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Proposed Offshore Oil and Gas Development and Production of the Liberty Project in the Alaskan Beaufort Sea.

SUMMARY: The Minerals Management Service (MMS) is evaluating, through an EIS, approval of a Development and Production Plan (DPP) submitted by BP Exploration (Alaska) Inc. for activities to develop an offshore oil and gas discovery in Federal waters of the Beaufort Sea northeast of the Prudhoe Bay oilfields.

FOR FURTHER INFORMATION CONTACT: Mr. Fred King, Leasing Activities Section, Minerals Management Service, Alaska OCS Region, 949 E. 36th Avenue, Room 308, Anchorage, Alaska 99508–4302; telephone (907) 271–6696.

SUPPLEMENTARY INFORMATION:

1. Authority

This Notice is published pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, and the regulations issued thereunder (40 CFR Part 1501).

2. Purpose of Notice of Intent

The MMS is announcing its intent to prepare an EIS on the proposed DPP for the Liberty Project in the Alaskan Beaufort Sea. This announcement initiates the scoping process for this EIS.

The BP Exploration (Alaska) Inc. proposes to develop the Liberty oilfield from a man-made gravel island constructed on the Federal Outer Continental Shelf in Foggy Island Bay in approximately 22 feet of water inside the Barrier Islands. The Liberty project, which is located approximately 5 miles offshore the coast, is about midway between Point Brower to the west and Tigvariak Island to the east. The proposed island would be located in Federal waters between McClure Islands and the coast. The overall project includes a gravel island, stand-alone processing facilities on the island, associated infrastructure, subsea buried oil and utility pipelines (approximately 6.1 miles long), and an above-ground onshore pipeline (approximately 1.5 miles long) south to tie-in with the Badami pipeline system, an onshore gravel mine site, and ice roads. The BP Exploration proposes a construction start-up in December 1999, and that will conclude in December 2000. Initial development drilling will begin in October 2000 and conclude in April 2002. Production operations are expected to begin December 2000, and continue for an estimated 15-year field life.

The Liberty DPP will require approval by MMS, the lead permitting agency with jurisdiction over the development project, including construction, drilling,

and operations. Other Federal, State, and local agencies such as the U.S. Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency (EPA), the National Marine Fisheries Service (NMFS), the Fish and Wildlife Service (FWS), the State of Alaska (State) agencies, and the North Slope Borough (NSB) also have permit and other approval or authorization responsibilities over selected aspects of the project.

No development or production activities can be conducted until MMS has approved the DPP and the DPP has received coastal zone consistency concurrence from the State.

3. Alternatives

Alternatives considered in the EIS will include the action as proposed by BP Exploration (Alaska) Inc. as described in their DPP and a no action alternative. Other possible alternatives that may be considered include variations of the proposed action and alternatives identified during the scoping process.

4. Public Involvement and Scoping

The MMS consulted with Federal, State, and local agencies in January 1998 on the proposed action. At this time the Corps has indicated that they will be a cooperating agency for the EIS. Possible significant issues to be addressed in the draft EIS include: oil spill risk and spill response capabilities, potential effects on bowhead whale migration and subsistence hunting of whales and other marine mammals, and the potential effects of dredging and fill operations on the area known as the Boulder Patch. The MMS is requesting comments from Federal, State, and local governments and other interested parties on the scope of the EIS, significant issues that should be addressed, and additional alternatives that should be considered. Comments should be sent to the address given above and enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Liberty Project, Beaufort Sea." Comments are due no later than 45 days from publication of this Notice.

Public information versions of the Liberty Project DPP submitted by BP Exploration (Alaska) Inc. are available for review at the Minerals Management Service, Alaska OCS Region, Public Information Resource Center, 949 E. 36th Avenue, Room 330, Anchorage, Alaska. Copies of the DPP are also available for inspection in the following locations:

Fairbanks North Star Borough Public Library (Noel Wien Library) 1215 Cowles Street, Fairbanks, Alaska

State of Alaska, Division of Governmental Coordination, 240 Main Street, Suite 500, Juneau, Alaska

Office of the Mayor, North Slope Borough, Barrow, Alaska

Office of the Mayor, City of Nuiqsut, Nuiqsut, Alaska

Office of the Mayor, City of Kaktovik, Kaktovik, Alaska

Tuzzy Consortium Library, Barrow, Alaska

Minerals Management Service, Engineering & Operations Division, 381 Elden Street, Herndon, Virginia

5. Meeting Schedule

Scoping meetings are tentatively planned for the communities of Barrow, Nuiqsut, Kaktovik, and Anchorage in mid-to-late March 1998. A public announcement of the final decision on the dates and locations of the scoping meetings will be made at a later date.

Dated: February 17, 1998.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 98–4416 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–MR–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA).

DATE: March 11, 1998 (9:00 a.m. to 5:00 p.m.).

LOCATION: State Department, Loy Henderson Auditorium, 23rd Street Entrance.

This will be the first full quarterly meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA). Plenaries and breakout sessions involving public participants will focus on two major topics: (1) civil society programs and partnerships in development, and (2) achieving and measuring development results.

The meeting is free and open to the public. HOWEVER, NOTIFICATION BY MARCH 9, 1998 THROUGH THE ADVISORY COMMITTEE HEADQUARTERS IS REQUIRED. Persons wishing to attend the meeting must fax their name, organization, birthdate and social security number for security purposes to Lisa J. Douglas (703) 741–0567 or Susan Saragi (202) 216–3039.

Dated: February 9, 1998.

Elise Storck,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 98–4393 Filed 2–20–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Immigaration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; Haitian Deferred Enforcement Departure (DED) Supplement to Form I–765.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 5 CFR 1320.13(a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by February 20, 1997. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Daniel Chenok, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Daniel Chenok at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the extension and revision of the proposed collection of information. Comments are encouraged and will be accepted until [Insert date of the 60th day from the date that this notice is published in the **Federal Register**]. During the 60-day regular review ALL comments and suggestions, or questions

regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Approval of new information collection.

(2) *Title of the Form/Collection:* Haitian Deferred Enforced Departure (DED) Supplement to Form I–765.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–765 Supplement D. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. On December 23, 1997, the President of the United States directed the Attorney General and the INS to defer the deportation of certain Haitians for one year under the Haitian DED program. This information collection is required so that INS may determine eligibility for certain immigration benefits under the Haitian DED program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 40,000 respondents at one (1) hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 17, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–4463 Filed 2–20–98; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–022]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). Information collection is required to ensure proper use of and disposition of rights to inventions made in the course of, and data developed under NASA contracts.

DATES: All comments should be submitted by April 24, 1998.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA FAR Supplement, Part 1827, Patents, Data and Copyrights.

OMB Number: 2700–0052.

Type of review: Extension.

Need and Uses: The information is used by NASA legal and contracting offices to ensure disposition of inventions in accordance with statutes and to determine the Government's rights in data.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Number of Respondents: 2,845.

Responses Per Respondent: 1.

Annual Responses: 3,557.

Hours Per Request: 8 hrs, ½ hr for negative response.

Annual Burden Hours: 10,884.

Frequency of Report: As discovered.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–4376 Filed 2–20–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 98–021]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received by March 25, 1998.

ADDRESSES: All comments should be addressed to Mr. Michael Battaglia, Office of Aeronautics & Space Transportation Technology, Code RW, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: AST-Technology Utilization.

OMB Number: 2700–0009.

Type of review: Reinstatement.

Need and Uses: As required in Section 305(b) of the National Aeronautics and Space Act of 1958 and the NASA Supplement to the Federal Acquisitions Regulations, NASA R&D contracts require federally funded technology to the private sector.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 300.

Responses Per Respondent: 3.

Annual Responses: 900.

Hours Per Request: 1 hr.

Annual Burden Hours: 900.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–4375 Filed 2–20–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Meeting Change

SUMMARY: NASA's Contractor Open Forum meeting at Ames Research Center, originally planned for March 4, 1998, has been rescheduled to avoid a conflict with the NASA Jet Propulsion Laboratory's 10th Annual High Tech Small Business Conference, which is scheduled to occur on March 3–4, 1998. Accordingly, the Ames Contractor Open Forum has been rescheduled for April 8, 1998. The time and place of the meeting remain the same.

DATE: April 8, 1998, from 1:30 p.m. to 3:30 p.m.

ADDRESS: The meeting will be held at NASA-Ames Research Center in the Space Science Auditorium located on the 2nd floor of Building 245, North Warehouse Road, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Michael R. Basta, NASA-Ames Research Center, Mail Stop 241–1, Moffett Field, CA 94035, (650) 604–4010.

SUPPLEMENTARY INFORMATION:

Format: There will be a presentation by the Associate Administrator for Procurement, followed by a question and answer period. Procurement issues will be discussed including NASA policies used in the award and administration of contracts.

Admittance: Doors will be open at 1:00 p.m. Admittance will be on a first-come, first-served basis. Auditorium capacity is limited to approximately 90 persons; therefore, a maximum of two representatives per firm is requested. No reservations will be accepted. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited.

Deidre A. Lee,

Associate Administrator for Procurement.

[FR Doc. 98–4467 Filed 2–20–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Senior Executive Service (SES) Performance Review Board; Members

AGENCY: National Archives and Records Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board.

EFFECTIVE DATE: This appointment is effective on February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Steven G. Rappold, Human Resources Services Division (NHH), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001, (301) 713–6760.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommendations regarding the recertification of senior executives, and recommend final action to the appointing authority regarding matters related to senior executive performance.

The members of the Performance Review Board for the National Archives and Records Administration are: Lewis J. Bellardo, Deputy Archivist of the United States and Chief of Staff; Gerald W. George, Director, Policy and Communications Staff; and Adrienne C. Thomas, Assistant Archivist for Administrative Services. These appointments supersede all previous appointments.

Dated: February 13, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–4380 Filed 2–20–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has resubmitted the following new information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public. They were originally published on November 19, 1997. No comments were received.

DATES: Comments will be accepted until March 25, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: New collection.

Form Number: New collection.

Type of Review: New collection—survey form.

Title: Survey—Sampled Credit Unions.

Description: NCUA is considering policy changes that may allow more than one credit union to serve the same group of potential members. As part of the consideration, the agency is concerned with the potential impact on credit unions. The proposed survey will gather information to be used in the policy development process.

Respondents: Randomly sampled credit unions.

Estimated No. of Respondents/Recordkeepers: 1,137.

Estimated Burden Hours Per Response: .53 hours.

Frequency of Response: Other. Once upon request.

Estimated Total Annual Burden Hours: 600.

Estimated Total Annual Cost: N/A.

OMB Number: New collection.

Form Number: New collection.

Type of Review: New collection—survey form.

Title: Survey—Selected Overlapped Credit Unions.

Description: NCUA is considering policy changes that may allow more

than one credit union to serve the same group of potential members. As part of the consideration, the agency is concerned with the potential impact on credit unions. The proposed survey will gather information to be used in the policy development process.

Respondents: Selected credit unions with overlapped fields of membership.

Estimated No. of Respondents/ Recordkeepers: 200.

Estimated Burden Hours Per Response: .50 hours.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on February 17, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–4461 Filed 2–20–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has resubmitted the following information collections without change to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public. They were originally published on October 23, 1997. No comments were received.

DATES: Comments will be accepted until March 25, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0024.

Form Number: N/A.

Type of Review: Rule—proposed collection.

Title: 12 C.F.R. Part 708b—Merger Procedures for Federally Insured Credit Unions.

Description: The rule sets forth merger procedures for federally insured credit unions.

Respondents: All credit unions.

Estimated No. of Respondents/ Recordkeepers: 200.

Estimated Burden Hours Per Response: 15 hours.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–035.

Form Number: N/A.

Type of Review: Rule—proposed collection.

Title: 12 CFR Part 724—Trustees and Custodians of Pension Plans

Description: This rule establishes record keeping and notice to participants requirements for credit unions acting as trustees for retirement plans.

Respondents: All credit unions.

Estimated No. of Respondents/ Recordkeepers: 3,877.

Estimated Burden Hours Per Response: 50 hours.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 193,850.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on February 17, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–4462 Filed 2–20–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 1:30 p.m. Wednesday, February 25, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.

2. Request from a Federal Credit Union to Convert to a Federal Mutual Savings Association.

3. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.

4. Final Amendments to Interpretive Ruling and Policy Statement (IRPS) 94–1, (Chartering Manual).

5. Final Rule: Concerning Sections 701.26(b) and 701.27, and Part 712, NCUA's Rules and Regulations, Credit Union Service Contracts, Credit Union Service Organizations, and Advertising.

6. Final Rule: Amendments to Part 708a, Appendix A, NCUA's Rules and Regulations, Mergers or Conversions of Federally Insured Credit Unions to Non Credit Union Status.

7. Final Rule: Amendments to Part 708b, Subpart C, NCUA's Rules and Regulations, Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status.

RECESS: 2:45 p.m.

TIME AND DATE: 3:30 p.m., Wednesday, February 25, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. One (1) Administrative Action under Section 205 of the Federal Credit Union Act and Part 708b of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Three (3) Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (6), (8), (9) (A)(ii), (9) (B), and (10).

3. One (1) Administrative Action under Section 701.14 and Part 747, Subpart J, NCUA's Rules and Regulations and Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (6) and (8).

4. One (1) Administrative Action under Part 704, NCUA's Rules and Regulations. Closed pursuant to exemption (8).

5. Year 2000 Compliance. Closed pursuant to exemptions (2), (6) and (8).

6. Four (4) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–4606 Filed 2–18–98; 5:04 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR 4, "Nondiscrimination in Federally Assisted Commission Programs."

2. *Current OMB approval number:* 3150–0053.

3. *How often the collection is required:* Occasionally.

4. *Who is required or asked to report:* Recipients of Federal financial assistance provided by the Nuclear Regulatory Commission.

5. *The number of annual respondents:* 30.

6. *The number of hours needed annually to complete the requirement or request:* 8 hours annually (.27 hours per recordkeeper).

7. *Abstract:* Recipients of NRC financial assistance provide data to demonstrate assurance to NRC that they are in compliance with nondiscrimination regulations and policies.

Submit, by April 24, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld Collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 12th day of February, 1998.

For the U.S. Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–4487 Filed 2–20–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Southern Nuclear Operating Company, Inc., et al.

[Docket Nos. 50–348 and 50–364]

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–2 and NPF–8, issued to the Southern Nuclear Operating Company (SNC), Inc., *et al.* (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would revise the Technical Specifications (TSs) by relocating the reactor coolant system (RCS) pressure and temperature limits from the TSs to the proposed Pressure Temperature Limits Report in accordance with the guidance provided by Generic Letter 96–03, "Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits." TS 3.4.10.3 would be revised to require that two residual heat removal system suction relief valves be operable or that the RCS be vented at RCS indicated cold leg temperatures less than or equal to 325 "F. In addition, a new TS would be added to limit the operation of more than one reactor coolant pump below 110 "F.

The July 23, 1997, application was previously noticed in the **Federal Register** on September 10, 1997 (62 FR 47699). In addition, the December 18, 1997, supplement provided additional information that revised the original licensee's evaluation of the no significant hazards consideration and, therefore, was noticed in the **Federal Register** on January 14, 1998 (63 FR 2281). The February 12, 1998, supplement provided additional information that revised the licensee's evaluation of the no significant hazards consideration. Therefore, renotification of the Commission's proposed determination of no significant hazards consideration is necessary.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed removal of the Reactor Coolant System (RCS) pressure temperature (P–T) limits from the Technical Specifications (TSs) and relocation to the proposed Pressure Temperature Limits Report (PTLR) in accordance with the guidance provided by Generic Letter (GL) 96–03 is administrative in that the requirements for the P–T limits are unchanged. The P–T limits proposed for inclusion in the PTLR are based on the fluence associated with 2775 MW thermal power and operation through 21.9 effective full power years (EFPY) for Unit 1 and 33.8 EFPY for Unit 2. GL 96–

03 requires that the P–T limits be generated in accordance with the requirements of 10 CFR [part] 50, Appendices G and H, and be documented in an NRC-approved methodology incorporated by reference in the TSs. Accordingly, the proposed curves have been generated using the NRC-approved methods described in WCAP–14040–NP-A, Revision 2, as modified at the direction of the NRC Staff, and meet the requirements of 10 CFR [part] 50, Appendices G and H. TS 3.4.10.1 will continue to require that the RCS pressure and temperature be limited in accordance with the limits specified in the PTLR. The NRC-approval document will be specified in TS 6.9.1.15, and NRC approval will be required in the form of a TS Amendment prior to changing the methodology. Use of P-T limit curves generated using the NRC-approved methods will provide additional protection for the integrity of the reactor vessel, thereby assuring that the reactor vessel is capable of providing its function as a radiological barrier.

TS 3.4.10.3 for Farley Nuclear Plant (FNP) Unit 1 and Unit 2 provides the operability requirements for RCS low temperature overpressure protection (LTOP). Specifically, TS 3.4.10.3 will be revised to require that two residual heat removal (RHR) system suction relief valves (RHRRVs) be operable or that the RCS be vented at RCS indicated cold leg temperatures less than or equal to 325°F. The higher temperature requirement for LTOP will provide additional assurance that overpressure protection will be available at low temperatures. Consistent with GL 96–03, the Farley Unit 1 and Unit 2 requirements for LTOP will be retained in TS 3.4.10.3 and will be evaluated in accordance with the proposed methodology.

Based on the above evaluation, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed changes to remove the RCS P–T limits from the TSs and relocate them to the proposed PTLR are administrative in nature. Consistent with the guidance provided by GL 96–03, the proposed P–T limits contained in the proposed PTLR meet the requirements of 10 CFR [part] 50, Appendices G and H, and were generated using the NRC-approved methods described in WCAP–14040–NP–A, Revision 2, as modified at the direction of the NRC Staff. The proposed changes do not result in a physical change to the plant or add any new or different operating requirements on plant systems, structures, or components with the exception of limiting the number of operating RCPs at RCS temperatures below 110°F, increasing the temperature requirement at which the RHR relief valves are required to be operational, and establishing a higher minimum boltup temperature. Limiting the number of operating RCPs below 110°F results in a reduction in the [D]P between the reactor vessel beltline and the RHRRVs, thereby providing additional margin to limits of Appendix G. Provisions are made to allow the start of a second RCP at temperatures below 110°F in order to secure the pump that was originally operating without interrupting RCS flow. The LTOP enable temperature will be increased and will exceed the minimum LTOP enable temperature determined as described in WCAP–14040–NP–A, Rev. 2, thereby providing additional assurance that the LTOP system will be available to protect the RCS in the event of an overpressure transient at RCS temperatures at or below 325°F.

As stated in the above response, implementation of the proposed changes do not result in a significant increase in the probability of a new or different accident (i.e., loss of reactor vessel integrity). The RCS P–T limits will continue to meet the requirements of 10 CFR [part] 50, Appendices G and H, and will be generated in accordance with the NRC approved methodology described in WCAP–14040–NP–A, Revision 2, as modified at the direction of the NRC Staff. Therefore, the proposed changes do not result in a significant increase in the possibility of a new or different accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of the RCS P–T limits from the TSs and relocating them to the proposed PTLR. The RCS P–T limits will continue to meet the requirements of 10 CFR [part] 50, Appendices G and H. To provide additional assurance that the P–T limits continue to meet the requirements of Appendices G and H, TS 6.9.1.15 will require the use of the NRC-approved methodology to generate P–T limits. The RCS LTOP requirements will be retained in TS 3.4.10.3 due to use of the RHRRVs for LTOP, consistent with the guidance provided by GL 96–03, and will be verified to provide adequate protection of the reactor coolant system against the limits of Appendix G. The LTOP enable temperature will be increased to 325°F and will exceed the LTOP enable temperature determined in accordance with the NRC-approved methodology, thus protecting the RCS in the event of a low temperature overpressure transient over a broader range of temperatures than required by WCAP–14040–NP–A, Rev. 2. Administrative procedures will preclude operation of the RCS at temperatures below the minimum boltup temperature for the reactor vessel head, thus precluding the possibility of tensioning the reactor vessel head at RCS temperatures below the minimum boltup temperature. Operation of the plant in accordance with the RCS P–T limits specified in the PTLR and continued operation of the LTOP system in accordance with TS 3.4.10.3 will continue to meet the requirements of 10 CFR [part] 50, Appendices G and H, and will, therefore, assure that a margin of safety is not significantly decreased as the result of the proposed changes.

Based on the preceding analysis, SNC has determined that removal of the RCS P–T limits from the TS and relocation to the proposed PTLR will not significantly increase the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. SNC therefore concludes that the proposed changes meet the requirements of 10 CFR 50.92(c) and does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its

final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 25, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated February 12, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 18th day of February 1998.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4486 Filed 2–20–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Company, Centerior Service Company and the Cleveland Electric Illuminating Company, Davis-Besse Nuclear Power Station, Unit 1; Notice of Corrections

In the **Federal Register** issue dated January 28, 1998, beginning at page 4327 (63 FR 4327), two amendment requests were listed, both with application dates of December 23, 1997. For both of these listed requests:

(1) The attorney for the licensees should be Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

(2) The NRC Acting Project Director should be Richard P. Savio.

Dated at Rockville, Maryland, this 18th day of February 1998.

For the Nuclear Regulatory Commission.

Allen G. Hansen,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4488 Filed 2–20–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943]

Crow Butte Resources, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact; notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to renew NRC Source Material License SUA–1534 to authorize the licensee, Crow Butte Resources, Inc. (CBR), for continued commercial operation of its in-situ leach (ISL) uranium mine and processing facility, located in Dawes County, Nebraska. This license currently authorizes CBR to receive, acquire, possess, and transfer uranium at the Crow Butte Uranium Project, which is located approximately eight kilometers (five miles) southeast of the town of Crawford, Nebraska. An Environmental Assessment was performed by the NRC staff in support of its review of CBR's license renewal request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J8, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION:

Background

At the Crow Butte facility, the ISL mining method involves: (1) The injection of native groundwater, with added sodium carbonate/bicarbonate and oxygen or hydrogen peroxide, into a uranium-bearing orebody through injection wells; (2) the chemical mobilization of the uranium through oxidation and then complexation with the carbonate species; and (3) the extraction of the uranium-bearing solution from the subsurface through a pattern of pumping wells. The uranium is separated from the leach solution by conventional ion exchange methods in the processing facility. The resulting uranium-poor solution is recharged with carbonate and oxygen and returned to the mining zone for additional uranium recovery. This cycle continues until the ore zone is depleted or recovery of the uranium is no longer economically feasible.

The recovered uranium solution is processed further by using ammonia or hydrogen peroxide to precipitate the uranium into a slurry. The resulting slurry is thickened by gravity settling, and then washed and de-watered in a filter press to about 50 percent solids. The filter press solids (cake) are then dried in a natural gas vacuum dryer, to produce uranium oxide, which is commonly known as "yellowcake." The dried yellowcake is packaged in 208-liter (55-gallon) steel drums for storage and eventual shipment to a fuel processing facility.

CBR conducts uranium recovery operations within designated areas ("mine units") of the Crow Butte site; these mine units range between 4 to 16 hectares (10 and 40 acres) in size. A number of well patterns are installed in each mine unit, with each pattern typically including four injection wells laid out in a roughly rectangular shape and one centrally-located pumping (production) well. Currently, CBR is conducting uranium recovery operations in three mine units and groundwater restoration in two other mine units in which uranium recovery has been concluded. CBR has completed construction of a sixth mine unit but has yet to initiate operations in it.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the continued operation of the Crow Butte ISL facility, in accordance with 10 CFR part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. In conducting its appraisal, the NRC staff considered the following information: (1) CBR's license renewal application, as amended; (2) previous environmental evaluations of the Crow Butte facility; (3) CBR's license amendment requests submitted subsequent to its renewal application, and NRC staff approvals of such requests; (4) data contained in required semiannual environmental monitoring reports; (5) results of NRC staff site visits and inspections of the Crow Butte facility; and (6) consultations with the U.S. Fish and Wildlife Service, the State of Nebraska Department of Environmental Quality, and the State Historic Preservation Officer for the State of Nebraska. The results of the staff's appraisal are documented in an Environmental Assessment. The safety aspects for the continued operation of the facility are discussed in a Safety Evaluation Report.

The license renewal would authorize CBR to continue operating the Crow Butte ISL facility, such that the plant throughput does not exceed a flow rate of 18,930 liters (5000 gallons) per minute, exclusive of the flow involved in restoring the depleted mine units. Annual yellowcake production will not be authorized to exceed 907,185 kilograms (2 million pounds).

All conditions in the renewal license and commitments presented in the licensee's license renewal application are subject to NRC inspection. Violation of the license may result in enforcement action.

Conclusions

The NRC staff has re-examined actual and potential environmental impacts associated with continued operation of the Crow Butte facility, and has determined that renewal of Source Material License SUA–1534 will (1) Be consistent with requirements of 10 CFR part 40, (2) not be inimical to the public health and safety, and (3) not have long-term detrimental impacts on the environment. The following statements

support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. The proposed groundwater monitoring program is sufficient to detect excursions (vertical or horizontal) of mining solutions. Furthermore, aquifer testing and the previous history of operations indicate that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions;

2. Liquid process wastes will be disposed in accordance with approved waste disposal options. Monitoring programs are in place to ensure appropriate operation of the deep disposal well and to detect potential leakage from the solar evaporation ponds;

3. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operations have been and are expected to continue to remain below the regulatory limits;

4. All radioactive wastes generated by facility operations will be disposed offsite at a licensed byproduct disposal site;

5. Groundwater impacted by mining operations will be restored to baseline conditions on a mine unit average, as a primary goal. If baseline conditions cannot be reasonably achieved, the R&D operations have demonstrated that the groundwater can be restored to applicable class-of-use standards; and

6. Because the staff has determined that there will be no significant impacts associated with approval of the license renewal, there can be no disproportionally high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Revision 1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to renew NRC Source Material License SUA–1534, for continued operation of the Crow Butte ISL facility, as requested by CBR. Therefore, the principal alternatives available to NRC are to:

(1) Renew the license with such conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

(2) Renew the license, with such conditions as are considered necessary or appropriate to protect public health and safety and the environment, but not allow CBR to expand its operations beyond those previously approved; or

(3) Deny renewal of the license.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of CBR's future operations or the denial of the license renewal. Additionally, in the SER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for license issuance specified in 10 CFR Part 40, Section 40.32, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed renewal of NRC Source Material License SUA–1534. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Crow Butte Resources, Inc., 216 Sixteenth Street Mall, Suite 810, Denver, CO 80202;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 13th day of February 1998.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–4489 Filed 2–20–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission For OMB Review; Comment Request Standard Form 87 and 87A

AGENCY: Office of Personnel Management.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has

submitted to the Office of Management and Budget (OMB) a request for reclearance of an information collection on Standard Form 87 and 87A, Fingerprint Charts, and solicits comments on them.

Standard Form 87 and 87A Fingerprint Charts are completed by applicants for positions throughout the Federal Government. SF 87 is used by OPM, and SF 87A is used by agencies having a special agreement with OPM and the FBI. The information is used to conduct the checks of the FBI fingerprint files that are required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, or required or authorized under other authorities.

It is estimated that 250,000 individuals will respond annually for a total burden of 20,833 hours. To obtain copies of this proposal please contact James M. Farron at (202) 418–3208 or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before March 25, 1998.

ADDRESSES: Send or deliver comments to:

Richard A. Ferris, Office of Personnel Management, Investigations Service, 1900 E. Street NW., Room 5416, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–4497 Filed 2–20–98; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Representative Payee Monitoring; OMB 3220–0151.

Under Section 12 of the Railroad Retirement Act (RRA), the RRB may pay annuity benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or a minor. The RRB is responsible for determining if direct payment to an annuitant or a representative payee would best serve the annuitant's best interest. The accountability requirements authorizing the RRB to conduct periodic monitoring of representative payees, including a written accounting of benefit payments received, are prescribed in 20 CFR 266.7.

The RRB utilizes the following forms to conduct its representative payee monitoring program.

Form G–99a, Representative Payee Report, is used to obtain information needed to determine whether the benefit payments certified to the representative payee have been used for the annuitant's current maintenance and personal needs and whether the representative payee continues to be concerned with the annuitant's welfare. The RRB also includes RRB Form G–99a (Enc), Representative Payee Duties, which includes the Paperwork Reduction Act notice and a list of representative payee duties with each RRB Form G–99a released. RRB Form G–99c, Representative Payee Evaluation Report, is used to obtain more detailed information from a representative payee who fails to complete and return Form G–99a, or in situations when the returned Form G–99a indicates the possible misuse of funds by the representative payee. Form G–99c contains specific questions concerning the representative payee's performance and is used by the RRB to determine whether or not the representative payee should continue in that capacity. Completion of the forms in this collection is required to retain benefits.

The RRB proposes minor editorial changes to Form G–99a (enc) and to Form G–99c to incorporate language required by the Paperwork Reduction Act of 1995. The addition of the annuitant's social security number is being proposed to Form G–99a. The completion time for Form G–99a is estimated at 18 minutes per response. The completion time for Form G–99c is estimated at between 24 and 31 minutes per response. The RRB estimates that approximately 6,000 Form G–99a's and 535 G–99c's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–4397 Filed 2–20–98; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Appeal Under the Railroad Retirement and Railroad Unemployment Insurance Act; OMB 3220–0007.

Under Section 7(b)(3) of the Railroad Retirement Act (RRA), and section 5(c) of the Railroad Unemployment Insurance Act (RUIA) any person aggrieved by a decision on his or her application for an annuity or benefit under that Act has the right to appeal to the RRB. This right is prescribed in 20

CFR 260 and 20 CFR 320. The notification letter sent to the individual at the time of the original action on the application informs the applicant of such right. When an individual protests a decision, the concerned bureau reviews the entire file and any additional evidence submitted and sends the applicant a letter explaining the basis of the determination. The applicant is then notified that if he or she wishes to protest further, they can appeal to the RRB's Bureau of Hearings and Appeals. The procedure pertaining to the filing of such an appeal is prescribed in 20 CFR 260.5 and 260.9 and 20 CFR 320.12 and 320.38.

The form prescribed by the RRB for filing an appeal under the RRA or RUIA is form HA–1, *Appeal Under the Railroad Retirement Act or Railroad Unemployment Insurance Act.* The form asks the applicant to furnish the basis for the appeal and what additional evidence, if any, is to be submitted. Completion is voluntary, however if the information is not provided the RRB cannot process the appeal.

The RRB proposes to add an item to Form HA–1 which requests the name, address and phone number of the applicant's representative. Minor editorial changes which include the addition of language required by the Paperwork Reduction Act of 1995 are also proposed. The completion time for the HA–1 is estimated at 20 minutes per response. The RRB estimates that approximately 1,200 Form HA–1's are completed annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312)751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–4421 Filed 2–20–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39660; File No. SR–BSE–97–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Listing and Trading Standards for Portfolio Depositary Receipts

February 12, 1998.

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 December 9, 1997,[3] the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission is also granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new listing standards and trading rules for Portfolio Depositary Receipts ("PDRs"). The text of the proposed rule change is available at the Office of the Secretary, BSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment No. 1 to the proposed rule change on December 11, 1997, the substance of which is incorporated into the notice. *See* letter from Karen A. Aluise, Vice President, BSE, to Michael Walinskas, Senior Special Counsel, Market Regulation Commission, dated December 9, 1997 ("Amendment No. 1").

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Listing Requirements for PDRs. The Exchange proposes to adopt new listing and delisting requirements to accommodate the trading of PDRs, *i.e.*, securities that are interests in a unit investment trust ("Trust") holding a portfolio of securities linked to an index. Each Trust will provide investors with an instrument that (1) closely tracks the underlying portfolio of securities, (2) trades like a share of common stock, and (3) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the Exchange may list and trade, or trade pursuant to unlisted trading privileges ("UTP"), PDRs based on one or more stock indices or securities portfolios. PDRs based on each particular stock index or portfolio will be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based will be selected by the Exchange, or by another person having a proprietary interest in and authorized use of such index or portfolio, and may be revised as deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each Trust. If the Exchange trades a particular PDR pursuant to unlisted trading privileges, the Exchange will follow the listing exchange's determination of the appropriate minimum number.

Because the Trust operates on an open-end type basis, and because the number of PDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after

the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(i) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days;

(ii) If the index on which the Trust is based is no longer calculated; or

(iii) If such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings in such securities on the Exchange inadvisable.

A Trust will terminate upon removal from Exchange listing and its PDRs will be redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the sponsor of the Trust (the "Sponsor"), following notice to PDR holders, will have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.

Trading of PDRs. Dealing in PDRs on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures will also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists.[4]

With respect to trading halts, the trading of PDRs will be halted, along with trading of all other listed or traded stocks, in the event the circuit breaker thresholds are reached.[5] In addition, for PDRs tied to an index, while the triggering of futures price limits for the S&P 500 Composite Price Index ("S&P 500 Index"), S&P 100 Composite Price Stock Index ("S&P 100 Index") or Major Market Index ("MMI") futures contracts will not, in themselves, result in a halt in PDR trading or a delayed opening, such an event could be considered by the Exchange, along with other factors, such as a halt in trading in S&P 100 Index Options ("OEX"), S&P 500 Index Options ("SPX"), or Major Market Index Options ("XMI"), in deciding whether to halt trading in PDRs.

The Exchange will issue a circular to its members and member organizations informing them of Exchange policies regarding trading halts in such securities. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Disclosure. The proposed rule requires that members and member organizations provide to all purchasers of each series of PDRs a written description of the terms, characteristics and risks of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard, a member or member organization carrying an omnibus account for a non-member broker-dealer will be required to inform such nonmember that execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations. The written description must be included with any sales material relating to that series of PDRs that a member provides to customers or the public. Moreover, other written materials provided by a member or member organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of PDRs] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain your broker a prospectus for [the series of PDRs]." Additionally, as noted above, the Exchange requires that members and member organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

Two existing PDRs, Standard & Poor's Depository Receipt ("SPDRs") and Standard & Poor's MidCap 400 Depository Receipts ("MidCap SPDRs"), are traded on the American Stock Exchange ("Amex").[6] The Exchange is not seeking approval to list SPDRs or MidCap SPDRs at this time, but rather is requesting approval to trade SPDRs and MidCap SPDRs pursuant to unlisted trading privileges once the generic listing standards set forth herein are approved.

Pursuant to Rule 12f–5 under the Act, in order to trade a particular class or type of security pursuant to unlisted trading privileges, the Exchange must have rules providing for transactions in such class or type of security. The Amex has enacted listing standards for PDRs, and the Exchange's proposed rule change is designed to create similar standards for PDR listing and/or trading on the Exchange. As stated above, the Exchange proposes to trade only SPDRs and MidCap SPDRs pursuant to unlisted trading privileges upon approval of this rule filing.

If at a later time the Exchange and the issuer of the product desire to list SPDRs and MidCap SPDRs or any other PDRs on the Exchange, the Exchange will request SEC approval for that listing in a separate proposed rule change filed pursuant to Section 19(b) of the Act. Additionally, in the event a new PDR is listed on another exchange using listing standards that are different than current Exchange listing standards or the Exchange listing standards proposed in this filing, the Exchange will file a proposed rule change pursuant to Section 19(b) of the Act to adopt those listing standards before it trades that PDR pursuant to unlisted trading privileges.

With respect to the above discussion regarding disclosure issues, because SPDRs and MidCap SPDRs will be traded pursuant to unlisted trading privileges and will not be listed on the Exchange at this time, the Exchange does not intend to create its own product description to satisfy the requirements of the proposed rule, which requires members to provide to purchasers a written description of the terms and characteristics of SPDRs and MidCap SPDRs in a form approved by the Exchange. Instead, the Exchange will deem a member or member organization to be in compliance with this requirement if the member delivers either (i) the current product description produced by the Amex from time to time, or (ii) the current prospectus for

[4] Chapter VII, Section 2, will also apply to the trading of PDRs. That rule provides, in part, that every member and allied-member is required to use due diligence to learn the essential facts relative to every customer, including the possible use of a name other than that of the interested party, and to every order or account accepted by him, except when acting as agent for another member.

[5] *See* Securities Exchange Act Release No. 38221 (January 31, 1997) 62 FR 5871 (February 7, 1997) and note 7 therein.

[6] SPDRs and MidCap SPDRs are defined and discussed more fully below.

the SPDR and MidCap SPDR, as the case may be.[7] It will be the member's responsibility to obtain these materials directly from Amex for forwarding to purchasers in the time frames prescribed by Exchange and Commission rules. The Exchange will notify members and member organizations of this requirement in a notice to members.

The remainder of this section provides background information on SPDRs and MidCap SPDRs. The information, requested by BSE to have been copied from SR–AMEX–94–52 and SR–AMEX–92–18, describes the structure and mechanics of SPDRs and MidCap SPDRs.

SPDRs and MidCap SPDRs Generally.[8] On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.*[9] to accommodate trading on the Amex of PDRs generally. The Sponsor of each series of PDRs traded on the Amex is PDR Services Corporation, a wholly-owned subsidiary of the Amex. The PDRs are issued by a Trust in a specified minimum aggregate quantity ("Creation Unit") in return for a deposit consisting of specified numbers of shares of stock plus a cash amount.

The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Composite Stock Price Index ("S&P Index"), known as SPDRs. SPDRs have been trading on the Amex since January 29, 1993. The second Trust to be formed in connection with the issuance of PDRs was based on the S&P MidCap 400 Index,[10] known MidCap SPDRs.[11] The sponsor of the two Trusts has entered into trust agreements with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. ("Distributor") acts as underwriter of both SPDRs and MidCap SPDRs on an agency basis. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.

SPDRs. The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as all other voting shares of that issuer voted.[12] Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying the SPDRs.

The Trust will issue SPDRs in exchange for "Portfolio Deposits" of all of the S&P 500 Index securities weighted according to their representation in the Index.[13] An investor making a Portfolio Deposit into the Trust will receive a "Creation Unit" composed of 50,000 SPDRs.[14] The price of SPDRs will be based on a current bid/offer market. The Amex has designated 1/64's as the minimum increment for trading in SPDRs. The Exchange is proposing this same minimum variation for the trading of SPDRs on the Exchange. SPDRs will not be redeemable individually, but may be redeemed in Creation Unit size (*i.e.*, 50,000 SDPRs). Specifically, a Creation Unit may be redeemed for an in-kind distribution of securities identical to a Portfolio Deposit.[15]

MidCap SPDRs. All orders to create MidCap SPDRs in Creation Unit size aggregations (which has been set at 25,000) must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee. To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trust to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

Payment with respect to creation orders placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain specified adjustments. The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit."

Issuance of MidCap SPDRs. Upon receipt of a Portfolio Deposit in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of MidCap SPDRs, which aggregate number is referred to as a "Creation Unit." A Creation Unit is made up of 25,000 MidCap SPDRs.[16] Individual MidCap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitrageurs, and Exchange specialists.

The Trustee or Sponsor will make available (1) on a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such day; and (3) on a daily basis, the accumulated dividends, less expenses, per outstanding MidCap SPDR.

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[7] The Exchange plans to notify its members in a regulatory circular that members must comply with Chapter VII, Section 2 of the Exchange Rules prior to recommending the purchase of SPDRs or MidCap SPDRs to customers. The circular will also state that members must deliver a SPDR or MidCap SPDR product description to all purchasers of the products and that they must provide the prospectus upon request.

[8] The Commission has recently approved rule change proposals covering the trading of PDRs on the CHX and the CSE, including SPDRs and MidCap SPDRs. *See* Securities Exchange Act Release No. 39076 (September 15, 1997) 62 FR 49270 (September 19, 1997) and Securities Exchange Act Release No. 39268 (October 22, 1997) 62 FR 56211 (October 29, 1997).

[9] *See* Securities Exchange Act Release No. 31591 (December 11, 1992) 57 FR 60253 (December 18, 1992).

[10] The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each year-end market-value capitalization of between $200 million and $5 billion. The issues included in the Index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

[11] *See* Securities Exchange Act Release No. 35534 (March 24, 1995) 60 FR 16686 (March 31, 1995).

[12] The Trustee will abstain from voting if the stocks held by the Trust cannot be voted in the same proportion as all other shares of the securities are voted.

[13] A Portfolio Deposit also will include a cash payment equal to a pro rata portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the S&P 500 Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

[14] The Trust is structured so that the net asset value of an individual SPDR should equal one-tenth of the value of the S&P 500 Index.

[15] An investor redeeming a Creation Unit will receive Index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trust will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P 500 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemptions.

[16] PDRs may be created in other than Creation Unit size aggregations in connection with the DTC Dividend Reinvestment Service ("DRS").

The Amex has set the minimum fractional trading variation for MidCap SPDRs at 1/64 of $1.00. The Exchange is proposing this same minimum variation for MidCap SPDRs.

Redemption of MidCap SPDRs. MidCap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell MidCap SPDRs in the secondary market at any time, they must accumulate at least 25,000 (or multiples thereof) to redeem them through the Trust. MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a "Cash Component" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

Distributions for MidCap SPDRs. The MidCap SPDR Trust will pay dividends quarterly. The regular quarterly ex-dividend date for MidCap SPDRs will be the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of MidCap SPDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date, net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participant brokers for reinvestment of their cash proceeds. The DTC DRS is also available to holders of SPDRs. Because some brokers may choose not to offer the DTC DRS, an interested investor will have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.[17] Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

Equity Requirements for PDRs. Because of the potential risk associated with PDRs, the Exchange is raising the minimum equity for the trading of PDRs by specialists and competing specialists to $1,000,000. Corresponding increases are also being made to the Early Warning Alert and caretaker provisions of the equity rule,[18] to $875,000 and $800,000 respectively. In addition, PDRs will not be eligible for alternate account trading.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Exchange believes that such action is appropriate, in that the listing standards proposed closely mirror the listing standards of the primary market for SPDRs MidCap SPDRs, as well as the standards approved for the regional exchanges currently trading PDRs. In addition, substantially the same trading rules and procedures exist on several of the exchanges.

2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[19] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Specifically, the proposed rule change will increase competition in PDR markets by permitting Exchange members to compete for PDR order flow. By adopting the proposed rule change, the Exchange will bring the benefits of competition, including increased efficiency and price competition, to those markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–97–08 and should be submitted by March 16, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the

[17] The Creation of PDRs in connection with DTC DRS represents the only circumstances under which PDRs can be created in other than Creation Unit size aggregations.

[18] Chapter XXII, Sections 2(f)(ii), (iii) and (iv).

[19] 15 U.S.C. 78f(b)(5).

requirements of Section 6(b)(5).[20] The Commission believes that providing for the exchange-trading on BSE of PDRs, in general, and SPDRs and MidCap SPDRs, in particular, will offer investors an efficient way of participating in the securities markets. Specifically, the Commission believes that the trading on BSE of PDRs, in general, and SPDRs and MidCap SPDRs pursuant to unlisted trading privileges, in particular, will provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low-cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day, and by increasing the availability of SPDRs and MidCap SPDRs as an investment tool. The Commission also believes that PDRs will benefit investors by allowing them to trade securities based on unit investment trusts in secondary market transactions.[21] Accordingly, as discussed below, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act that Exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.[22]

As the Commission noted in the orders approving SPDRs, and MidCap SPDRs for listing and trading on Amex,[23] the Commission believes that the trading on BSE of a security like PDRs in general, and SPDRs and MidCap SPDRs in particular, which replicate the performance of a broad portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as PDRs, can trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[24]

An individual SPDR has a value approximately equal to one-tenth of the value of the S&P 500 Index, and an individual MidCap SPDR has a value of approximately one-fifth of the value of the S&P MidCap 400 Index, making them more available and useful to individual retail investors desiring to hold a security replicating the performance of a broad portfolio of stocks. Accordingly, the Commission believes that trading of SPDRs and MidCap SPDRs on BSE will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market as a whole and may provide market participants several advantages over existing methods of effecting program trades involving stocks.

The Commission also believes that PDRs, in general, and SPDRs and MidCap SPDRs, in particular, will provide investors with several advantages over standard open-end S&P 500 Index and S&P MidCap 400 Index mutual fund shares. In particular, investors will have the ability to trade PDRs continuously throughout the business day in secondary market transactions at negotiated prices.[25] In contrast, pursuant to Investment Company Act Rule 22c–1,[26] holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.[27] Accordingly, PDRs in general, and SPDRs and MidCap SPDRs in particular, will allow investors to (1) Respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although PDRs in general, and SPDRs and MidCap SPDRs in particular, are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, SPDRs are equity securities that are priced off a portfolio of stocks based on the S&P 500 Index and MidCap SPDRs are equity securities that are price off a portfolio of stocks based on the S&P MidCap 400 Index. Accordingly, the level of risk involved in the purchase or sale of a SPDR or MidCap SPDR (or a PDR in general) is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for SPDRs and MidCap SPDRs (and PDRs in general) is based on a basket of stocks. Nonetheless, the Commission has several specific concerns regarding the trading of these securities. In particular, PDRs raise disclosure, market impact, and secondary market trading issues that must be addressed adequately. As discussed in more detail below, and in the Amex Approval Order,[28] the Commission believes BSE adequately addresses these concerns.

The Commission believes that the BSE proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading PDRs. As noted above, the proposal contains four aspects addressing disclosure concerns. First, BSE members must provide their customers trading PDRs with a written explanation of any special characteristics and risks attendant to trading such PDR securities (such as SPDRs or MidCap SPDRs), in a form approved by BSE. As discussed above, BSE's filing states that SPDRs and MidCap SPDRs product descriptions should be obtained from Amex.[29] The

[20] 15 U.S.C. 78f(b)(5).

[21] The Commission notes, however, that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem PDRs in creation unit share sizes. Nevertheless, PDRs would have the added benefit of liquidity from the secondary market and PDR holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[22] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] *See supra* notes 8 and 10.

[24] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of fifteen or more stocks having a total market value of $1 million or more.

[25] Because of potential arbitrage opportunities, the Commission believes that PDRs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a PDR comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trust will tract the underlying index more closely than an open-end index fund because the Trust will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trust will redeem in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the underlying index.

[26] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted SPDRs and MidCap SPDRs an exemption from this provision in order to allow them to trade at negotiated prices in the secondary market. The Commission notes that BSE would need to apply for a similar exemption in the instance that it wishes to list and trade a new PDR because the exemptions are specific to SPDRs and MidCap SPDRs.

[27] *Id.*

[28] *See supra* note 8.

[29] The Commission notes that, in the context of a proposed rule change by CHX to add rules for listing and trading of PDRs in general, and to trade

Commission beleives that it is reasonable under the Act to allow BSE to require its members to obtain the product description for SPDRs and MidCap SPDRs from Amex.[30] Amex might decide to impose a reasonable charge for this service.[31]

Second, BSE members must include this written product description with any sales material relating to the series of PDRs that is provided to customers or the public. Third, any other written materials provided by a member or member organization to customers or the public referencing PDRs as an investment vehicle must include a statement, in a form specified by BSE, that a circular and prospectus are available from a broker upon request. Fourth, a BSE member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of PDRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms. Accordingly, the Commission believes that investors in PDR securities, in general, and SPDRs and MidCap SPDRs, in particular, will be provided with adequate disclosure of the unique characteristics of the PDR instruments and other relevant information pertaining to the instruments. Finally, BSE's Chapter VII, Section 2, Investigation of Accounts, will apply to the trading of PDRs, including transactions in SPDRs and MidCap SPDRs.

The Commission believes BSE has adequately addressed the potential market impact concerns raised by the proposal. First, BSE's proposal permits listing and trading of specific PDRs only after review by the Commission. Second, BSE has developed policies regarding trading halts in PDRs. Specifically, the Exchange would halt PDR trading if the circuit breaker parameters under BSE Chapter II, Section 34A were reached.[32] In addition, in deciding whether to halt trading or conduct a delayed opening in PDRs, in general, and SPDRs and MidCap SPDRs, in particular, BSE represents that it will be guided by, but not necessarily bound to, whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Commission believes that the trading of PDRs in general on BSE should not adversely impact U.S. securities markets. As to the trading of SPDRs and MidCap SPDRs pursuant to UTP, the Commission notes that the corpus of the SPDR Trust is a portfolio of stocks replicating the S&P 500 Index, a broad-based capitalization-weighted index consisting of 500 of the most actively-traded and liquid stocks in the U.S. The corpus of the MidCap SPDR Trust is a portfolio of stocks replicating the S&P MidCap 400 Index, also a broad-based, capitalization-weighted index consisting of 400 actively traded and liquid U.S. stocks. In fact, as described above, the Commission believes SPDRs and MidCap SPDRs may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.[33] Accordingly, the Commission believes that SPDRs and MidCap SPDRs do not contain features that will make them likely to impact adversely the U.S. securities markets, and that the addition of their trading on BSE pursuant to UTP could produce added benefits to investors through the increased competition between other market centers trading the product.

Finally, the Commission notes that BSE has submitted surveillance procedures for the trading of PDRs, specifically SPDRs and MidCap SPDRs, and believes that those procedures, which incorporate and rely upon existing BSE surveillance procedures governing equities, are adequate under the Act.

The Commission finds that BSE's proposal contains adequate rules and procedures to govern the trading of PDR securities, including trading SPDRs and MidCap SPDRs pursuant to UTP. Specifically, PDRs are equity securities that will be subject to the full panoply of BSE rules governing the trading of equity securities on BSE, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists. In addition, BSE has developed specific listing and delisting criteria for PDRs that will help to ensure that the markets for PDRs will be deep and liquid. As noted above, BSE's proposal provides for trading halt procedures governing PDRs. Finally, the Commission notes that BSE has stated that Chapter VII, Section 2, Investigation of Accounts, will apply to the trading of PDRs in general, and SPDRs and MidCap SPDRs, in particular.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because it is very similar to CHX's and CSE's previously approved proposals covering the listing and trading of PDRs in general, and SPDRs and MidCap SPDRs, in particular.[34] As such, the Commission believes that the proposed rule change does not raise any new regulatory concerns or issues.

SPDRs and MidCap SPDRs pursuant to UTP, Amex commented on CHX's proposed method regarding the delivery of the SPDR and MidCap SPDR product descriptions, and reserved the right to charge CHX members for supplying the product description should the task become burdensome to Amex. Amex did not object to the underlying policy of CHX members obtaining the product description from Amex. *See* CHX Approval Order, *supra* note 7.

[30] The Commission notes that the exemptions granted by the Commission under the Investment Company Act that permit the secondary market trading of SPDRs an Mid Cap SPDRs are specifically conditioned upon the customer disclosure requirements described above. Accordingly, BSE rules adequately ensure its members must deliver the current product description to all investors in SPDRs and MidCap SPDRs.

[31] The Commission notes that Amex would need to file a proposed rule change under Section 19(b) of the Act in the event it decides to charge a fee for supplying the SPDR or MidCap SPDR product descriptions. The Commission notes that reasonable fees would have to be imposed on the member firms rather than the customers entitled to receive the propsectus or the product description.

[32] In addition, for PDRs tied to an index, the triggering of futures price limits for the S&P 500 Index, S&P 100 Index, or MMI futures contracts will not, in itself, result in a halt in PDR trading or a delayed opening. However, the Exchange could consider such an event; along with other factors, such as a halt in trading in OEX, SPX, or MMI options, in deciding whether to halt trading in PDRs.

[33] Even though PDR transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing stock prices further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs and SPDRs and MidCap SPDRs, in particular, will serve as a vehicle to accommodate and "bundle" order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although PDRs and SPDRs and MidCap SPDRs could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

[34] *See supra* note 7.

It is therefore ordered, pursuant to Section 19(b)(2)[35] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39665; File No. SR–NASD–98–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Postpone the Effective Date of Recently-Approved Amendments to Rules 3010 and 3110

February 13, 1998.

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 10, 1998, the NASD Regulation, Inc. ("NASDR") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASDR. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDR proposes to indefinitely postpone the effective date of recently-approved amendments to the National Association of Securities Dealers, Inc. ("NASD" or "Association") Rules 3010, "Supervision," and 3110, "Books and Records," to allow the NASDR an opportunity to consider comment letters received from the public.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDR 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

1. Purpose

On April 11, 1997, a proposed rule change to amend NASD Rules 3010 and 3110 was filed with the SEC.[3] The purpose of the amendments was to allow firms to develop flexible procedures for the review of correspondence with the public. In that filing, the NASD stated that it would make the proposed rule change effective within 45 days of Commission approval. Amendment No. 1, containing a draft Notice to Members to be issued following approval of the proposed rule change, was filed with the SEC on December 4, 1997.[4] The Notice to Members described the new rules and provided guidance to NASD members on the implementation of the new rules. The SEC approved the proposed rule change and Amendment No. 1 to the proposed rule change on December 31, 1997.[5] Notice to Members 98–11 announced approval of the proposed rule change and stated that the amendments to Rules 3010 and 3110 would be effective on February 15, 1998.

Subsequent to approval of the proposed rule change by the SEC, several commenters filed letters with the SEC raising issues regarding Amendment No. 1 to the proposed rule change and its accompanying Notice to Members.[6] NASDR believes that their letters raise important issues that should be fully addressed before the rule change becomes effective.

The proposed rule change indefinitely postpones the effective date of the amendments to Rules 3010 and 3110 approved in Release No. 39510. An extension of the effective date will allow NASDR an opportunity to consider comments on these and other issues raised by the rule and the accompanying Notice to Members. NASDR will submit a further proposed rule change to the SEC announcing the new effective date. Because this rule proposal has been made in conjunction with a similar proposal by the New York Stock Exchange ("NYSE"), which has been approved by the SEC[7] and immediately became effective,[8] and is designed to complement that proposal, joint members of the NYSE and NASD would be permitted to rely on the procedures provided by NYSE Rules 342, 440, and 472 and NYSE Interpretation 342.16/01 pending the effective date of the proposed rule change.

2. Statutory Basis

The NASDR believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASDR believes that delaying the effective date of the new rules to allow for consideration of member views will not be inconsistent with these requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDR does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the

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[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change (SR–NASD–97–24) was published for comment in the **Federal Register** on May 2, 1997. *See* Securities Exchange Act Release No. 38548 (April 25, 1997), 62 FR 24147.

[4] *See* Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 1, 1997 ("Amendment No. 1").

[5] *See* Securities Exchange Act Release No. 39510 (December 31, 1997) 63 FR 1131 (January 8, 1998) (order approving File No. SR–NASD–97–24) ("Release No. 39510").

[6] *See* letters from Carl B. Wilkerson, American Council of Life Insurance, to Jonathan G. Katz, Secretary, SEC, dated January 9, 1998; Richard V. Silver, The Equitable Life Assurance Society of the United States, to Jonathan G. Katz, Secretary, SEC, dated January 29, 1998; and Michael L. Kerley, MML Investors Services, Inc. to Secretary, SEC, dated January 26, 1998.

[7] *See* Securities Exchange Act Release No. 39511 (December 31, 1997) 63 FR 1135 (January 8, 1998) (order approving File No. SR–NYSE–96–26).

[8] *See* NYSE Information Memo 98–3 (January 14, 1998).

[9] 15 U.S.C. 78o–3(b)(6).

meaning, administration or enforcement of an existing rule of the Association and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (e) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington D.C. Copies of such filing also will be available for inspection and copying at the NASD. All submissions should refer to File No. SR–NASD–98–10 and should be submitted by March 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(e).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39655; File No. SR–NSCC–97–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising NSCC's Fee Schedule

February 12, 1998.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on December 22, 1997, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates references to NSCC's discontinued securities transfer service in NSCC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to eliminate references to NSCC's discontinued securities transfer service in NSCC's fee schedule. Earlier this year, NSCC discontinued its securities transfer service, which was also known as the national transfer service ("NTS"), by deleting NSCC Rule 42.[3] However, that rule filing inadvertently failed to delete references to NTS in NSCC's fee schedule. Therefore, this amendment eliminates all references to NTS in NSCC's fee schedule.

The proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[5] of the Act and pursuant to Rule 19b–4(e)(4)[6] promulgated thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in its custody or control and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, N.W.,

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 38556 (April 29, 1997), 62 FR 24522.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(4).

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–97–17 and should be submitted by March 16, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4405 Filed 2–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39666; File No. SR–NYSE–98–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 80B ("Trading Halts Due to Extraordinary Market Volatility")

February 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 80B ("Trading Halts Due to Extraordinary Market Volatility").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose.

Rule 80B provides, in part, that if the Dow Jones Industrial Average℠ ("DJIA")[3] falls 350 or more points below its previous trading day's closing value, trading in all stocks on the Exchange will halt for one half-hour, except that if the 350 or more point decline is reached at or after 3:00 p.m., there will be no halt in trading. It further provides that if on the same day the DJIA drops 550 or more points from its previous trading day's close, trading on the Exchange will halt for one hour, except that if the 550 point decline occurs after 2:00 p.m., but before 3:00 p.m., the halt will be one half-hour instead of one hour. But if the 550 point drop occurs in the last hour of trading (at or after 3:00 p.m.), the Exchange will close for the rest of the day. These provisions are in effect on a pilot basis through April 30, 1998.

Some believe that the current trigger levels are too low given the current DJIA level of approximately 8000. Others believe that static point values are unresponsive to dynamic market conditions, and prefer triggers based on a percentage of the DJIA, so that the triggers will move with the market. The Exchange is now proposing revisions to the trigger levels that address these concerns.

a. The Proposal. The Exchange proposes to set the triggers at 10%, 20% and 30% of the DJIA, calculated at the beginning of each calendar quarter, using the average closing value of the DJIA for the prior month, thereby establishing specific point values for the quarter. Each trigger will be rounded to the nearest 50 points.

Generally, the halt for a 10% decline will be one hour. If the 10% trigger value is reached at or after 2:00 p.m., but before 2:30 p.m., the halt would be one half hour; at or after 2:30 p.m. the market would continue trading, unless a 20% decline occurred, in which case the market would close for the remainder of the day. Generally, the halt for a 20% decline will be two hours. If the 20% trigger value is reached at or after 1:00 p.m. but before 2:00 p.m. the halt would be one hour; at or after 2:00 p.m., trading would halt for the rest of the day. If the market declines by 30%, at any time, trading will be halted for the remainder of the day.

The Exchange has expanded the duration of the halts early in the day to address concerns that shorter periods were too compressed to respond adequately to extreme declines in the market. The Exchange believes that by varying the duration of the halt periods depending on the severity of the decline and the time of day it occurs, Rule 80B strikes a balance between the desire to reopen after a market-wide trading halt due to extraordinary volatility, and the need for there to be sufficient time before the scheduled close to allow for an orderly reopening.

The Exchange has filed a petition[4] with the Commission to amend Rule 10b–18[5] under the Exchange Act to extend the "safe harbor" provisions of the Rule. The Exchange wishes to reiterate its position, expressed in the petition, particularly in view of the amendments to Rule 80B proposed herein, that an expansion of the safe harbor provisions of Rule 10b–18 following a market-wide trading halt would benefit the market by providing additional liquidity during times of market stress. The Exchange requests that the Commission address the Exchange's concerns and amend Rule 10b–18 as proposed in the petition.

b. Price indications. The Exchange also proposes to amend Rule 80B to require that price indications be made during an intra-day Rule 80B trading halt for the stocks comprising the DJIA. This is designed to supply information to market participants on expected pricing levels for these highly capitalized stocks, and, thereby, the Index. Specialists in these stocks will have the responsibility to disseminate these price indications. Indications may

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

[4] *See* letter to Jonathan Katz, Secretary, Commission, from James E. Buck, Senior Vice President and Secretary, NYSE, dated January 8, 1998.

[5] 17 CFR 240.10b–18.

also be disseminated in other stocks with Floor Official approval.

Floor Official supervision and approval is mandatory for any indication, including stocks in the DJIA, that represents a change from the last sale of one point or more for stocks priced under $10, the lesser of 10% or three points from a last sale for stocks priced between $10 and $99 15/16, and five points from the last sale for stocks priced at $100 or more. Indications in stocks in the DJIA which do not represent such a change do not require Floor Official approval.

c. Background. Rule 80B was enacted in response to studies of the October 1987 Market Break. One such study was the Interim Report of the Working Group on Financial Markets issued by the Under Secretary for Finance of the Department of the Treasury and the Chairmen of the Securities and Exchange Commission, the Commodity Futures Trading Commission and the Board of Governors of the Federal Reserve System in May, 1988. This "Working Group" recommended "coordinated trading halts and reopenings for large, rapid market declines that threaten to create panic conditions." The "Working Group" specifically recommended, and the Exchange endorsed, temporary halts in the trading of all stocks, stock options, and stock index options as well as the trading of stock index futures and options on stock index futures when the DJIA reaches certain trigger values. The Presidential Task Force on Market Mechanisms ("Brady Commission") also endorsed the concept of coordinated market trading halts.

Rule 80B was approved by the Commission on a pilot basis on October 19, 1988, and was extended annually, most recently until April 30, 1998.[6] Originally, the halt periods and trigger values were one hour for a decline of 250 points in the DJIA (11.7% of the DJIA at that time), and two hours for a 400 point decline (18.7% of the DJIA at that time). In July 1996, the SEC approved the Exchange's proposal to reduce the duration of the halts to 30 minutes and one hour, respectively.[7] In January 1997, the trigger values were increased to the current levels of 350 (5.1% of the DJIA at that time) and 550 points (8.1% of the DJIA at that time).[8]

The circuit breakers have been triggered just once since their adoption. On October 27, 1997, the market closed for 30 minutes at 2:35 p.m., and after reopening at 3:05 p.m., the Exchange halted trading for the remainder of the trading day when the decline reached 550 points. Several views on the appropriateness of the levels and the duration and timing of the halts were expressed. The Exchange initiated immediate discussions with the SEC, other markets and Exchange advisory committees on possible refinements to the process.

d. Constituent input. Exchange committees comprised of trading professionals, specialists, brokerage houses and representatives of the individual investor community were asked for their views. Other marketplaces, including equities, options and financial futures markets, were likewise consulted for their views. Indeed, the Exchange originally adopted Rule 80B with the understanding that all United States stock and option exchanges and the National Association of Securities Dealers would adopt rules or procedures substantively identical to Rule 80B, and that the futures exchanges would adopt rules halting the trading of stock index futures and options on such futures contracts under circumstances substantively identical to those contained in Rule 80B. The above-described rule change is proposed contingent on that same understanding.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change accomplishes these ends by balancing the need to halt trading temporarily during periods of extraordinary market volatility with the need to provide an open marketplace for trading securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 the 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 copes thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–06 and should be submitted by March 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4401 Filed 2–20–98; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* Exchange Act Release No. 39582 (January 26, 1998) 63 FR 5408 (February 2, 1998).

[7] *See* Exchange Act Release No. 37457 (July 19, 1996) 61 FR 39176 (July 26, 1996).

[8] *See* Exchange Act Release No. 38221 (January 31, 1997) 62 FR 5871 (February 7, 1997).

[9] 15 U.S.C. 78f(b).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39659; File No. SR–NYSE–97–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval Policy

February 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1997, as amended on January 30, 1998,[1] the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its shareholder approval policy (the "Policy"), contained in Paragraphs 312.03 and 312.04 of the Exchange's Listed Company Manual (the "Manual"). The proposal will provide greater flexibility for listed companies to adopt stock option and similar plans ("Plans") without shareholder approval, while preserving the significant shareholder rights afforded under the Policy.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] The Exchange filed a letter supplementing and amending the proposed rule filing on January 30, 1998, the substance of which is incorporated into this notice. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Heather Seidel, Attorney, Market Regulation, Commission, dated January 28, 1998 ("Amendment No. 1").

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

During the past year, the Exchange has conducted a broad review of the Policy. Based on that review, the Exchange recently adopted, and the Commission approved, amendments to the Policy regarding related-party transactions and private sales.[2] The Exchange has continued its review of that portion of the Policy that requires shareholder approval of certain Plans.

Currently, the Policy requires a listed company to seek shareholder approval of all stock option plans that are not "broadly-based." The only exception is for stock or options issued as an inducement for employment to a person not previously employed by the company.

The legal requirements governing shareholder approval of Plans has been subject to recent change. The Commission recently amended its rules in this area, and those rules now permit companies to adopt Plans without shareholder approval.[3] The Commission's action recognizes the increasing role of independent compensation committees and enhanced disclosure rules regarding compensation policies. Listed companies also have urged the Exchange to review the Policy in light of these changes.

For these reasons, the Exchange has been reviewing the Policy with its various constituents. The consensus favored some relaxation in the Policy, but not a total repeal of the shareholder approval requirement for Plans. Specifically, the general view was to require shareholder approval when there is the potential for a material dilution of shareholder's equity. The consensus was that the threshold should be based on the cumulative dilution of an issuer's non-broad-based Plans, and not on a single Plan. Constituents also asked for more guidance on the definition of a "broad-based" Plan.

This proposed rule change would amend the Policy to exempt from shareholder approval non-broad-based Plans in which:

- No single officer or director acquires more than one percent of the shares of the issuer's common stock outstanding at the time the Plan is adopted; and
- The cumulative dilution of all non-broad-based Plans of the issuer does not exceed five percent of the issuer's common stock outstanding at the time the Plan is adopted.

The Exchange reviewed the non-broad-based Plans of a sample of listed companies,[4] and the average dilution for such Plans was 3.35 percent, with the median dilution being somewhat lower. Based on this review, the Exchange believes that a five percent cumulative threshold will protect shareholder interests while affording issuers reasonable flexibility in establishing their compensation policies.

The Exchange also proposes a definition of a "broadly-based Plan." The definition generally would require a review of a number of factors, including the number of persons covered by the Plan and the nature of the company's employees (such as whether they are compensated on an hourly or salaried basis). The Exchange will invite companies to discuss their proposed Plans with the Exchange staff to seek guidance on whether the Exchange considers such Plans to be "broadly-based."

To provide a level of certainty for companies, the definition would include a non-exclusive "safe harbor" for any Plan in which at least 20 percent of an issuer's employees are eligible, the majority of whom are neither officers nor directors. This is based on the current "rule of thumb" the Exchange uses in determining whether a Plan is broadly-based.[5]

The rule change also makes one correction to the previous amendments to the Policy, clarifying that, in calculating a company's outstanding shares, the company must exclude shares held by subsidiaries, not all affiliates.[6] Finally, the proposed rule

[2] *See* Securities Exchange Act Release No. 39098 (September 19, 1997) 62 FR 50979 (September 29, 1997).

[3] *See* Rule 16b–3(d) under the Exchange Act, as amended in Securities Exchange Act Release No. 37260 (May 31, 1996) 61 FR 30376 (June 14, 1996).

[4] NYSE has indicated that they sampled 29 companies. Telephone conversation between Michael Simon, NYSE, Steve Walsh, NYSE, and Heather Seidel, Market Regulation, Commission, on January 16, 1998.

[5] The NYSE's definition of a "broad-based plan" is based on NYSE interpretations of this term, and will not generally correspond to definitions regarding the scope of stock options plans used in other contexts. *See, e.g.*, Sections 401(a)(26), 410 and 423 of the Internal Revenue Code (26 U.S.C. 401(a)(26), 410 and 423) and Section 201(2) of the Employee Retirement Income Security Act (29 U.S.C. 1051(2)).

[6] In September, 1997, the Commission approved various changes to the NYSE's shareholder approval requirements. *See supra* note 2. One such change substituted the term "affiliate" for "subsidiary" in Paragraph 312.04(c) of the Manual. While the NYSE believed that use of the term "affiliate" would clarify the operation of that provision, in fact, it has created confusion. Specifically, an "affiliate" of a listed company can include natural persons who

change also amends the exception for stock or options issued as an inducement for employment to a person not previously employed by the company, to state that it must be a material inducement (as opposed to an inducement essential) to such person's entering into an employment contract with the company. In its discussions with the NYSE on the proposed rule change, the Legal Advisory Committee raised for discussion the current requirements that a stock option grant be an "essential" inducement, and believed that it is difficult, if not impossible, to conclude that any single item is "essential" to a person's entering into an employment contract. Rather, they believed that a "materiality" standard would be more workable, yet still would achieve the NYSE's goal of ensuring that the stock option grant be an important aspect of an employment decision. The NYSE agreed with that comment and incorporated the change into the proposed rule change.

2. Statutory Basis

The Exchange believes that the basis under the Act of this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

control the company, as well as corporate affiliates. While the NYSE never intended to exclude stock holdings of natural persons in making calculations under Paragraph 312.04(c), the current wording of this provision is ambiguous. To eliminate this ambiguity, the NYSE now proposed to return to the original working of Paragraph 312.04(c) through the use of the term "subsidiary." As before, the NYSE will interpret the term to include any majority-owned subsidiary of the listed company. *See* Amendment No. 1, *supra* note 1.

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–97–37 and should be submitted by March 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4402 Filed 2–20–98; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 98-1(8)]

Newton v. Chater; Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-1(8).

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Eighth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after February 23, 1998. If we made a determination or decision on your application for benefits between August 9, 1996, the date of the Court of Appeals decision, and February 23, 1998, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence

Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: December 22, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 98-1(8)

Newton v. *Chater*, 92 F.3d 688 (8th Cir. 1996)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act.

Issue: Whether a person's return to substantial gainful activity (SGA) within 12 months of the onset date of his or her disability, and prior to an award of benefits, precludes an award of benefits and entitlement to a trial work period.

Statute/Regulation/Ruling Citation: Sections 222(c), 223, 1614(a)(3) and (4) and 1619 of the Social Security Act (42 U.S.C. 422(c), 423, 1382c(a)(3) and (4) and 1382h); 20 CFR 404.1505, 404.1520(b), 404.1592, 416.262, 416.905, 416.906, 416.920(b), 416.924(b); Social Security Ruling (SSR) 82-52.

Circuit: Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota).

Newton v. *Chater*, 92 F.3d 688 (8th Cir. 1996).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council review).

Description of Case: Donald A. Newton applied for disability insurance benefits and Supplemental Security Income (SSI) on April 22, 1993, alleging disability since October 30, 1992, based on illiteracy, memory lapses, alcoholism and hypertension. The applications were denied initially and on reconsideration. From June to September 1994, Mr. Newton worked in a foundry as a grinder and a metal beater for at least 40 hours per week and earned between $6.50 and $7.26 per hour. In October 1994, he worked for one week at a wood products firm. In November 1994, a hearing was held before an ALJ who issued a decision in February 1995 denying disability benefits.

The ALJ found that Mr. Newton was not disabled under step one of the five-step sequential evaluation process due to his performance of substantial gainful activity from June to September 1994. The ALJ also cited this 1994 work activity as evidence that Mr. Newton's alleged impairments did not prevent him from performing his past relevant work. The Appeals Council denied Mr. Newton's request for review in May 1995 and the district court affirmed the ALJ's decision in December 1995. On his appeal to the United States Court of Appeals for the Eighth Circuit, Mr. Newton argued, among other things, that he was entitled to a trial work period for the work he performed in 1994 and that the evidence supported a finding of disability.

Holding: The Eighth Circuit reversed the judgment of the district court and directed that the case be remanded to the Social Security Administration (SSA) for further administrative proceedings. The court of appeals determined that the ALJ erred in considering Mr. Newton's work from June to September 1994 as evidence of substantial gainful activity to support a finding of no disability without first determining whether he was entitled to a trial work period during those months.[1] The court stated that under the Social Security Act (the Act) and SSA's regulations,

> . . . a trial work period starts in the month that entitlement to disability benefits begins, which is the month following five consecutive months of being under a disability that has lasted or is *expected* to last a total of twelve continuous months. (Emphasis in original.)[2]

The court found that the provision of SSR 82-52 which precludes a finding of disability where a claimant returns to substantial gainful activity before an award of benefits and before 12 months have elapsed since the date of onset of an impairment which prevented substantial gainful activity "is inconsistent with the statutory provisions governing the start of a trial work period." The Eighth Circuit held:

> The language in the statutes and regulations does not require that a trial work period be conditioned on a prior receipt of benefits and/or the lapse of a twelve month period of disability.

In support of its holding, the Eighth Circuit cited two other court of appeals decisions in which the courts reached a similar conclusion on this issue — *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991), for which SSA published Acquiescence Ruling (AR) 92-6(10), and *McDonald* v. *Bowen*, 818 F.2d 559 (7th Cir. 1987), for which SSA published AR 88-3(7).

Statement As To How Newton Differs From Social Security Policy

SSR 82-52 contains a clear statement of SSA policy on this issue[3] as follows:

> When the [individual's] return to work demonstrating ability to engage in SGA occurs before approval of the award and prior to the lapse of the 12-month period after onset, the claim must be denied.

The Eighth Circuit held that, under the Act and regulations, entitlement to a trial work period is not conditioned upon a prior award of benefits and/or the lapse of a 12-month period of disability. This raises the possibility that, on remand of the case to SSA, should Mr. Newton establish the onset of an impairment that could otherwise be the basis for a finding of disability, Mr. Newton may receive a benefit award and a trial work period even if he returned to work demonstrating an ability to engage in substantial gainful activity before the lapse of the 12-month period after the onset date of such impairment and before a decision by SSA to award benefits.

Explanation of How SSA Will Apply The Newton Decision Within The Circuit

This Ruling applies only to cases in which the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

This Ruling applies to claims for title II benefits based on disability. It also applies to claims for title XVI benefits based on disability as explained below.

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[1] Section 222(c)(2) of the Act provides that "any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether disability has ceased in a month during such period."

[2] Section 222(c)(3) of the Act provides, in pertinent part, that "[a] period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits . . . ." Under section 222(c)(4) of the Act, a trial work period ends with the ninth month, in any period of 60 consecutive months, in which the individual renders services (whether or not the nine months are consecutive), or, if earlier, with the month in which disability ceases.

[3] SSR 91-7c superseded SSR 82-52, but only to the extent that SSR 82-52 discussed former procedures used to determine disability in children. The issue in this AR does not relate to those former procedures and the cited policy statement in SSR 82-52 remains in effect.

A claim for title II disability insurance benefits, widow(er)'s insurance benefits based on disability or child's insurance benefits based on disability in which the claimant returns to work within 12 months of the established onset date of an impairment which could otherwise be the basis for a finding of disability should be allowed and the claimant granted a trial work period if the following conditions are met:

(1) the claimant establishes that, at the time he or she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

(2) the claimant returns to work after the waiting period (if a waiting period is applicable) and after the established onset date (but within the 12-month period following such onset date); and

(3) the return to work demonstrating an ability to engage in substantial gainful activity occurs either before or after approval of the award.

A claim for title XVI benefits based on disability in which the claimant returns to work within 12 months of the established onset date of an impairment which could otherwise be the basis for a finding of disability should be allowed and the claimant granted section 1619 status[4] if the following conditions are met:

(1) the claimant establishes that, at the time he or she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

(2) the claimant returns to work in a month subsequent to the month of established onset (but within the 12-month period following such onset date);

(3) the claimant is eligible for "regular" SSI benefits under section 1611 of the Act (or a federally administered State supplementary payment) based on the impairment (disregarding the effect that the claimant's return to work within 12 months after onset would otherwise have on eligibility for such benefits or payment) for at least one month in the period preceding the month in which he or she returns to work;

(4) the claimant meets all other nondisability requirements for section 1619 status; and

(5) the return to work demonstrating an ability to engage in substantial gainful activity occurs either before or after approval of the award.

[FR Doc. 98-4468 Filed 2-20-98; 8:45 am]

BILLING CODE 4190-29-F

[4] Pursuant to statutory amendments made by Public Law 99-643, effective July 1, 1987, the trial work period provisions no longer apply to title XVI disability claims. Beginning July 1, 1987, a disabled individual, who was eligible to receive "regular" SSI benefits under section 1611 of the Act (or a federally administered State supplementary payment) for a month and subsequently has earnings ordinarily considered to represent substantial gainful activity, will move directly to section 1619 status rather than be accorded a trial work period. This Ruling extends to such individuals, i.e., a claim for title XVI benefits based on disability should be allowed and the claimant granted section 1619 status if the claimant would otherwise be eligible for section 1619 status and the same conditions set out above for title II claims based on disability are met.

DEPARTMENT OF STATE

[Public Notice 2745]

Bureau of Political-Military Affairs; Imposition of Chemical and Biological Weapons Proliferation Sanctions on a Foreign Person

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that an individual has engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authorities of which were most recently continued by Executive Order 12924 of August 19, 1994).

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to Section 81(a) of the Arms Export Control Act (22 U.S.C. 2798(a)), Section 11C(a) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a)) and Executive Order 12851 of June 11, 1993, the United States Government determined that the following foreign person has engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in Section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and Section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)): *Berge Aris Balanian* (fugitive from justice previously residing in Germany, and last known to be in Lebanon).

Accordingly, the following sanctions are being imposed:

(A) Procurement Sanction. The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned person; and

(B) Import Sanction. The importation into the United States of products produced by the sanctioned person shall be prohibited.

Sanctions on the person described above may apply to firms or other entities with which that individual is associated. Questions as to whether a particular transaction is affected by the sanctions should be referred to the contact listed above. The sanctions shall commence on February 9, 1998. They will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in the Executive Order 12851 of June 11, 1993.

Dated: February 10, 1998.

Robert J. Einhorn,

Acting Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 98–4414 Filed 2–20–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2744]

Bureau of Political-Military Affairs, Determination Under the Arms Export Control Act

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Acting Under Secretary of State for Arms Control and International Security Affairs and Director of the Arms Control and Disarmament Agency has made a determination pursuant to Section 81 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: February 10, 1998.

Robert J. Einhorn,

Acting Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 98–4415 Filed 2–20–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Form, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of The Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 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 review and comment. 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 was published on December 11, 1997 [62 FR 65307].

DATES: Comments must be submitted on or before March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 7th Street, SW, Room 3430, Washington, DC 20590 (202) 366–4387.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Report of Passengers Denied Confirmed Space Part 250.

Type of Request: Extension of a Currently Approved Collection.

OMB Control Number: 2138–0018.

Form No.: 251.

Affected Entities: Large U.S. and foreign passenger air carriers.

Abstract: BTS Form 251 is a one-page report on the number of passengers denied boarding voluntarily or involuntarily, whether the bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary. The involuntary denied-boarding rate has decreased over the years from 4.38 per 10,000 passengers in 1980 to 1.16 per 10,000 passengers for the nine months ended September 1997. These statistics demonstrate the effectiveness of the "volunteer" provision, which has reduced the need for more intrusive regulation.

The rate of denied boarding can be examined as an air carrier continuing fitness factor. This rate provides an insight into a carrier's policy on treating over booked passengers and its compliance disposition. A rapid sustained increase in the rate of denied boarding often is an indicator of operational difficulty.

Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with low bumping incidents when booking a trip. This information is made available to the public through the Air Travel Consumer Report, which the Department publishes. The report is sent to newspapers, magazines, and trade journals.

Estimated Annual Burden Hours: 2,312 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: DOT/BTS Desk Officer. Comments are invited on: whether the proposed collections of information are 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 estimates of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to OMB regarding this information collection is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 17, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4474 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. 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 collections of information was published on December 10, 1997 [62 FR 65122].

DATES: Comments must be submitted on or before March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

United States Coast Guard (USCG)

Title: Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Requirements for Prince William Sound, Alaska.

OMB Control Number: 2115–0595

Type of Request: Extension of a currently approved collection.

Affected Public: Owners or operators of tank vessels that carry oil in bulk and operate in waters subject of U.S. jurisdiction; owners or operators of marine transportation-facilities; owners or operators of U.S. flag oil tankers of 150 gross tons and above and each U.S. ship of 400 gross tons and above; owners or operators of tank vessels that load cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act in Prince William Sound, Alaska.

Abstract: Three of the requirements found in this collection of information are from the passage of the Oil Pollution Act of 1990 (Pub.L. 101–380). The requirements meet the intent of the Oil Pollution Action of 1990 to reduce the impact of oil spills by requiring owners or operators of certain tank vessels and facilities to plan response actions, practice those actions, and ensure, through appropriate means, the necessary response resources for an oil spill. Additionally, Regulation 26 of Annex I of MARPOL 73/78, the Shipboard Oil Pollution Emergency Plan requirements were designed to improve response capabilities and minimize environmental impacts of oil spills.

Need: 33 U.S.C. 1321 requires the development of tank vessel and facility response plans. 33 U.S.C. 1901–1911 requires the implementation of MARPOL 73/78 in U.S. regulations. 33 U.S.C. 2735 requires the additional response measure in Prince William Sound, Alaska.

Estimated Annual Burden: 188,629 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, N.W., Washington, DC 20503, Attention USCG 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.

Comments to OMB regarding this information collection is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 17, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4475 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 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 review and comment. The ICR describes the nature of the information collection and it's expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 25, 1997 [FR 62, page 50426].

DATES: Comments on this notice must be received on or before March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes, U.S. Department of Transportation (M–62), (202) 366–4268, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

OMB Control Number: 2105–0531.

Affected Public: Schools, hospitals, and other nonprofit organizations receiving Federal financial assistance from the Department of Transportation (DOT).

Type of Request: Extension of a previously approved collection.

Form(s): SF 269, SF 270, SF 271, SF 272, and SF 424.

Abstract: Requirements for Federal administration of financial assistance to schools, hospitals, and other nonprofit organizations is provided to affected Executive agencies via OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, with the Department has codified at 49 CFR part 19. OMB provides management and oversight of the circular. OMB also provides for a standard figure of seventy (70) annual burden hours per grantee for completion of required forms. This action initiates extension of an existing paperwork clearance approval (OMB Number 2105–0531).

These information collections are available for inspection at the Grants Management Division (M–62), Office of Acquisition and Grant Management, Department of Transportation, at the address above. Copies of 49 CFR parts 18 and 19 can be obtained from Mr. Ladd Hakes at the address and phone number shown above.

Estimated Annual Burden Hours: 10,500 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention OST Desk Officer.

Comments are invited on: whether the proposed collection 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.

Comments to OMB are best assured of having their full effect if OMB receives them within 30 days of publication.

Issued in Washington, DC, on February 17, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4523 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending June 18, 1997.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.170 et seq.).The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–2632.

Date Filed: June 18, 1997.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 16, 1997.

Description: Application of Royal Aviation Inc., pursuant to 49 U.S.C. Section 40109, Subpart Q of the Regulations, requests a foreign air carrier permit to operate scheduled services between any point in Canada and any point in the United States of America.

Paulette V. Twine,

U.S. DOT Dockets.

[FR Doc. 98–4526 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Craven Regional Airport, New Bern, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Craven Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 25, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia, 30337–2747.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Mr. John H. Price, Jr., Airport Director of the Craven Regional Airport Authority at the following address: Mr. John H. Price, Jr., Airport Director, Craven Regional Airport Authority, Post Office Box 3258, New Bern, NC 28564.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Craven Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Mr. Terry R. Washington, Program Manager, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7143.

The application may be viewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Craven Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 11, 1998, the FAA determined that the application to use the revenue from a PFC submitted by Craven Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 13, 1998. The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1997.

Proposed charge expiration date: May 1, 2022.

Total estimated PFC revenue: $10,303,898.

Application number: 98–02–U–00–EWN.

Brief description of proposed project(s):

(1) Design & construction (Phase II) of Terminal Development
(2) Design & construction of air carrier apron
(3) Design & construction of access road

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: The airport has already received approval not to collect PFCs from nonscheduled operations by Air/Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Craven Regional Airport Authority.

Issued in College Park, Georgia on February 11, 1998.

Dell T. Jernigan,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 98–4482 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements Under Emergency Review by the Office of Management and Budget (OMB)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comments on a proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek expedited OMB approval.

DATES: OMB approval has been requested by March 31, 1998.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5110, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Edward Kosek. NHTSA Information Collection Clearance Officer. NHTSA, 400 Seventh Street, SW, Room 5110, Washington, DC 20590. Mr. Kosek's telephone number is (202) 366–2589.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including 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.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Drivers' Experiences and Expectations of Light Vehicle Brake System Performance: ABS vs. Conventional

Type of Request—New collection.

OMB Clearance Number—2127–####.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Two years from date of approval.

Summary of the Collection of Information—Data collection will be accomplished through the use of Computer Assisted Telephone Interviewing (CATI). The CATI system allows a computer to perform a number of functions prone to error when done manually by interviewers, including:

A. Providing correct question sequence;

B. Automatically executing skip patterns based on responses to prior questions (which decreases overall interview time and consequentially the burden on respondents);

C. Recalling answers to prior questions and displaying the

information in the test of later questions;

D. Providing random rotation of specified questions or response categories (to avoid bias);

E. Ensuring that questions cannot be skipped; and

F. Rejecting invalid responses or data entries.

The CATI system lists questions and corresponding response categories automatically on the screen, eliminating the need for interviewers to track slip patterns and flip pages. Moreover, the interviewers enter responses directly from their keyboards, and the information is automatically recorded in the computer's memory.

The CATI system includes safeguards to reduce interviewer error in direct key-entry of survey responses. It has a double check method to eliminate the problem of key entry error as a result of accidentally hitting the wrong key. Unlike some systems, when the interviewer enters the code for the respondent reply, the code is not immediately accepted and the interview moved to the next screen. Rather, the screen remains on the question and response categories for the item, and the code and category entered by the interviewer are displayed at the bottom of the screen. The interviewer must confirm the initial entry before it is accepted by the computer as final. If, despite these safeguards, the wrong answer is entered or a respondent changes his/her reply, the interviewer can correct the entry before moving on to the next question.

CATI allows the computer to perform a number of critical assurance routines that are monitored by survey supervisors, including tracking average interview length, refusal rate, and termination rate by interviewer; and performing consistency checks for inappropriate combination of answers.

Description of the need for the information and proposed use of the information: Antilock brake systems (ABS) have been increasingly prevalent on passenger car and light trucks in recent years. Brake experts anticipated that the introduction of ABS on these vehicles would reduce the number and severity of crashes. A number of statistical analyses of crash databases have been performed over the past three years, and suggest that the introduction of ABS does not appear to have reduced the number of automobile crashes where they were expected to be effective. Included in these analyses is a significant increase of single-vehicle, run-off-road crashes for vehicles equipped with ABS as compared to cars without ABS. It is unknown to what extent, if any, this increase is due to incorrect driver usage of ABS, incorrect driver responses to their ABS, or unrealistic driver expectations of an ABS braking ability.

NHTSA will analyze the survey data to determine differences in drivers' experiences and expectations of brake performance between ABS-equipped and non-ABS-equipped light vehicles. From these findings, inferences about the ability of ABS to mitigate crashes will be made and the need for an educational campaign for specific demographic groups will be assessed.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): The respondents are the population of the United States age 16 and older living in households with telephones. The agency estimates the number of respondents to total 4000. The survey will be conducted once only.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: The agency estimates there will be no annual reporting burden, as the study will be conducted only once. Respondents answer the survey strictly on a voluntary basis. No payment or gift will be provided to any respondent. The agency estimates the time per respondent to be 20 minutes, and a total time burden of 1375 hours. The agency estimates the total cost per survey respondent to be $50.00.

Authority: Title 15 U.S.C. 1395 Section 106(b): The National Traffic and Motor Vehicle Safety Act of 1966, Title 15 United States Code 1395, Section 106(b), (Exhibit V), gives the Secretary authorization to conduct research, testing, development, and training as authorized to be carried out by subsections of this title.

Dated: February 17, 1998.

Raymond P. Owings,

Associated Administrator for Research and Development.

[FR Doc. 98–4527 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1–Motor vehicle, 2–Rail freight, 3–Cargo vessel, 4–Cargo aircraft only, 5–Passenger-carrying aircraft.

DATES: Comments must be received on or before March 25, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 13, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

New Exemptions

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12029–N	RSPA–98–3384	NACO Technologies, Lombard, IL.	49 CFR 179.14	To authorize the manufacture, mark and sale of specially designed couplers to be used on tank cars used in transporting various classes of hazardous materials. (mode 2)
12030–N	RSPA–98–3389	East Penn Manufacturing Co., Inc., Lyon Station, PA.	49 CFR 173.159(h)	To authorize the transportation in commerce of battery fluid, acid, Class 8, in UN6HG composite packagings tested to Packing Group II test criteria with dry storage batteries, continuing no hazardous material, in UN 4G fiberboard boxes. The maximum gross weight will not exceed 81.5 pounds. (modes 1, 3, 4)
12032–N	RSPA–98–3456	Physical Acoustics Quality Services, Lawrenceville, NJ.	49 CFR 173.31(c), 180.509(e)	To authorize the use of acoustic emission non-destructive testing procedure for tank car structural re-certification. (mode 2)
12033–N	RSPA–98–3457	PPG Industries, Inc, Pittsburgh, PA.	49 CFR 180.509(e)	To authorize the use of acoustic emission non-destructive testing procedure for tank car structural re-certification. (mode 2)
12037–N	RSPA–98–3460	The Carbide/Graphite Group, Inc., Louisville, KY.	49 CFR 173.35(b)	To authorize the transportation in commerce of Division 4.3 material in reused UN 13H4 lined woven polypropylene flexible intermediate bulk containers in truckload or carload lots. (modes 1, 2)
12038–N	RSPA–98–3461	Duracool Limited, Edmonton, Alberta, CN.	49 CFR 173.306(a)(3)	To authorize the transportation in commerce of Hydrocarbon Blend B refrigerant gas, Division 2.1, in non-DOT specification containers similar to DOT2Q cans with overpack. (modes 1, 2, 3)
12039–N	RSPA–98–3443	Sun Company, Inc., Philadelphia, PA.	49 CFR 173.319(d)(2)	To authorize the transportation in commerce of liquid refrigerated liquid, Division 2.1, in DOT113C120W tank car tank at a higher pressure than presently authorized. (mode 2)

NOTE: In Federal Register Vol. 63, No. 8, January 13, 1998, Page 1991, Application No. 11986, RSPA–98–3171 and Application No. 11989, RSPA–98–3170 should have appeared as Application No. 11986, RSPA–97–3171 and Application No. 11989, RSPA–97–3170.

[FR Doc. 98–4524 Filed 2–20–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.
ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions for the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional modes of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 10, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
7887–M		Kosdon Enterprises, Ventura, CA (See Footnote 1)	7887
9610–m		Alliant Techsystems Inc., Hopkins, MN (See Footnote 2)	9610
9791–M		Pressed Steel Tank Co., Inc., Milwaukee, WI (See Footnote 3)	9791
10996–M		Kosdon Enterprises, Ventura, CA (See Footnote 4)	10996
11888–M	RSPA–97–2583	Alliant Techsystems, Inc., Hopkins, MN (See Footnote 5)	11888
11984–M	RSPA–97–3173	Trans World Airlines, Inc., Kansas City, MO (See Footnote 6)	11984
12013–M	RSPA–97–3249	All Pure Chemical Company, Walnut Creek, CA (See Footnote 7)	12013

(1) To modify the exemption to provide for rocket motors and reloadable kits which are classified as Division 1.3G that exceed the 25 gram limitation to be excepted from labeling requirements.

(2) To modify the exemption to provide for the transportation of smokeless powder in DOT-Specification UN 1A2 steel drums as an alternative container.

(3) To modify the exemption to provide for cargo only aircraft as an additional mode of transportation for shipment of non-specification cylinders containing Division 2.2 material.

(4) To modify the exemption to provide for certain rocket motors and explosive articles with propellant charges in excess of 25 grams to be classed as Division 1.3C.

(5) To reissue the exemption originally issued on an emergency basis and to modify the exemption to provide for transportation by ocean vessel.

(6) To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of a second safety mechanism when shipping oxygen generators.

(7) To modify the exemption originally issued on an emergency basis to authorize the discharge of certain Class 8 liquids from IBCs without removing tanks from vehicles.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 13, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 98–4525 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–15: OTS No. 03934]

Bay State Federal Savings Bank, Brookline, Massachusetts; Approval of Conversion Application

Notice is hereby given that on February 12, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Bay State Federal Savings Bank, Brookline, Massachusetts, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: February 18, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–4518 Filed 2–20–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–14: OTS No. 03309]

First Federal Lincoln Bank, Lincoln, Nebraska; Approval of Conversion Application

Notice is hereby given that on February 12, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Lincoln Bank, Lincoln, Nebraska, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: February 18, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–4517 Filed 2–20–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–13: OTS No. 03545]

First Federal Savings and Loan Association of Hazleton, Hazleton, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on February 12, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Hazleton, Hazleton, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: February 18, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–4516 Filed 2–10–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Future of VA Long-Term Care

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on the Future of VA Long-Term Care will be held on February 26–27, 1998, at the Department of Veterans Affairs, in Room 230, located at 810 Vermont Avenue, NW, Washington, DC. The purpose of the Committee is to provide professional advice on the present scope and structure of VA's long-term care services, and about changes necessary to ensure that services are available and effective in a future healthcare setting. The Committee will begin at 10:00 a.m. (EDT) and continue until 5:00 p.m. (EDT) on February 26 and will begin at 8:30 a.m. (EDT) and continue until 11:45 a.m. (EDT) on February 27.

The agenda for February 26 and 27 will cover review and preparation of the Committee's final report.

The meeting will be open to the public. Those wishing to attend should contact Jacqueline Holmes, Program Assistant, Geriatrics and Extended Care Strategic Healthcare Group at 202–273–8539 not later then February 23, 1998.

Dated: February 11, 1998.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–4466 Filed 2–20–98; 8:45 am]

BILLING CODE 8320–01–M

federal register

Monday
February 23, 1998

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 et al.
Federal Acquisition Regulations (FAR); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–04; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules, interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–04. A companion document, the Small Entity Compliance Guide, follows this FAC and may be located on the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–04 and specific FAR case number(s).

Item	Subject	FAR case	Analyst
I	Use of Data Universal Numbering System as the Primary Contractor Identification	95–307	Moss.
II	Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements	92–054B	Linfield.
III	Review of Procurement Integrity Clauses	97–601	Linfield.
IV	Certificate of Competency	96–002	Moss.
V	Applicability of Cost Accounting Standards (CAS) Coverage	97–020	Nelson.
VI	OMB Circular No. A–133	97–029	Olson.
VII	SIC Code and Size Standard Appeals	97–026	Moss.
VIII	Small Business Competitiveness Demonstration Program	97–305	Moss.
IX	Special Disabled and Vietnam Era Veterans	95–602	O'Neill.
X	Treatment of Caribbean Basin Country End Products	97–039	Linfield.
XI	Administrative Changes to Cost Accounting Standards (CAS) Applicability	97–025	Nelson.
XII	Changes in Contract Administration and Audit Cognizance	95–022	Klein.
XIII	Limitation on Allowability of Compensation for Certain Contractor Personnel (Interim)	97–303	Nelson.
XIV	Transfer of Assets Following a Business Combination	96–006	Nelson.
XV	Modular Contracting	96–605	Nelson.
XVI	Technical Amendments		

SUPPLEMENTARY INFORMATION:
Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–04 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Use of Data Universal Numbering System as the Primary Contractor Identification (FAR Case 95–307)

This final rule amends FAR Subpart 4.6, Contract Reporting, and 52.212–1, Instructions to Offerors—Commercial Items; and adds a new solicitation provision at 52.204–6, Data Universal Numbering System (DUNS) Number; to replace the Contractor Establishment Code (CEC) with the Data Universal Numbering System (DUNS) number as the means of identifying contractors in the Federal Procurement Data System (FPDS). It reflects Dun and Bradstreet procedures for offerors located overseas.

Item II—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements (FAR Case 92–054B)

The interim rule published as Item V of FAC 90–46 is revised and finalized. The rule implements Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements." The final rule differs from the interim rule in that it amends FAR 23.1004 and 52.223–5 to clarify the obligations of Federal facilities to comply with the reporting and emergency planning requirements of the Pollution Prevention Act of 1990 and the Emergency Planning and Community Right-to-Know Act of 1986.

Item III—Review of Procurement Integrity Clauses (FAR Case 97–601)

This final rule amends FAR Parts 4 and 52 to revise the application of procurement integrity requirements to contracts for commercial items. The rule amends (1) 4.803 to remove an obsolete requirement for maintenance of a record of persons having access to proprietary or source selection information, (2) the clause at 52.212–4 to add the procurement integrity provisions of 41 U.S.C. 423 to the list of laws applicable to contracts for commercial items, and (3) the clause at 52.212–5 to remove 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, from the list of FAR clauses required to implement provisions of law or Executive orders. As amended by the Clinger-Cohen Act of 1996, 41 U.S.C. 423 no longer requires that a contract clause specify administrative remedies for procurement integrity violations.

Item IV—Certificate of Competency (FAR Case 96–002)

The interim rule published as Item IX of FAC 97–01 is converted to a final rule with a minor change at 19.302(d). The rule implements revisions made to the Small Business Administration's procurement assistance programs contained in 13 CFR Part 125.

Item V—Applicability of Cost Accounting Standards (CAS) Coverage (FAR Case 97–020)

This final rule amends FAR Parts 12 and 52 to exempt contracts and subcontracts for the acquisition of commercial items from Cost Accounting Standards requirements when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the

price adjustment is not based on actual costs incurred).

Item VI—OMB Circular No. A–133 (FAR Case 97–029)

This final rule amends FAR 15.209 and the associated clause at 52.215–2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A–133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations," and now addresses audits of State and local governments as well as audits of institutions of higher learning and other nonprofit organizations.

Item VII—SIC Code and Size Standard Appeals (FAR Case 97–026)

This final rule amends FAR Subpart 19.3 to conform to the Small Business Administration regulations at 13 CFR 121 and 134 pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's standard industrial classification code designation and related small business size standard.

Item VIII—Small Business Competitiveness Demonstration Program (FAR Case 97–305)

This final rule amends FAR Subpart 19.10 to eliminate the termination date of the Small Business Competitiveness Demonstration Program, in accordance with Section 401 of the Small Business Reauthorization Act of 1997 (Public Law 105–135).

Item IX—Special Disabled and Vietnam Era Veterans (FAR Case 95–602)

This final rule amends FAR Subpart 22.13 and the clauses at 52.212–5, 52.222–35, and 52.222–37 to implement revised Department of Labor regulations regarding affirmative action for disabled veterans and veterans of the Vietnam era.

Item X—Treatment of Caribbean Basin Country End Products (FAR Case 97–039)

This final rule revises FAR 25.402(b) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. The United States Trade Representative has directed that such treatment continue through September 30, 1998.

Item XI—Administrative Changes to Cost Accounting Standards (CAS) Applicability (FAR Case 97–025)

This final rule amends FAR 30.101 and the clauses at 52.230–1 and 52.230–5 to conform to changes made to the Cost Accounting Standards (CAS) Board rules and regulations (FAR Appendix), pertaining to the applicability of CAS to negotiated contracts and subcontracts.

Item XII—Changes in Contract Administration and Audit Cognizance (FAR Case 95–022)

This final rule amends FAR Parts 31, 32, 42, 46, 47, and 52 to add policies and procedures for assigning and performing contract audit services, and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect cost rates.

Item XIII—Limitation on Allowability of Compensation for Certain Contractor Personnel (FAR Case 97–303)

This interim rule revises FAR 31.205–6(p) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Section 808 limits the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy.

Item XIV—Transfer of Assets Following a Business Combination (FAR Case 96–006)

This final rule revises FAR 31.205–10(a)(5) and 31.205–52 to conform to changes made to the Cost Accounting Standards regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations.

Item XV—Modular Contracting (FAR Case 96–605)

This final rule amends FAR Part 39 to implement Section 5202 of the Information Technology Management Reform Act of 1996 (Public Law 104–106). Section 5202 encourages maximum practicable use of modular contracting for acquisition of major systems of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

Item XVI—Technical Amendments

Amendments are being made at FAR 1.201–1(b)(2), 44.204(b), and 52.219–1(b)(2) and (b)(3) to update references and make editorial changes.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

FAC 97–04

[Date]

Federal Acquisition Circular (FAC) 97–04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–04 are effective April 24, 1998, except for Items VIII, X, XIII, and XVI, which are effective February 23, 1998.

Dated: February 11, 1998.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: February 12, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: February 12, 1998.

Deidre A. Lee,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 98–4290 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 52, and 53

[FAC 97–04; FAR Case 95–307; Item I]

RIN 9000–AH33

Federal Acquisition Regulation; Use of Data Universal Numbering System as the Primary Contractor Identification

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 61 FR 67412,

December 20, 1996, as Item III of Federal Acquisition Circular 90–43. This final rule amends the Federal Acquisition Regulation (FAR) to replace the Contractor Establishment Code (CEC) with the Data Universal Numbering System (DUNS) number as the means of identifying contractors in the Federal Procurement Data System (FPDS). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–04, FAR case 95–307.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 4 and 52 to replace the CEC with the DUNS number as the means of identifying contractors in the FPDS. Federal agencies report data to the Federal Procurement Data Center, which collects, processes, and disseminates official statistical data on Federal contracting.

An interim rule was published in the **Federal Register** on December 20, 1996 (61 FR 67412). The final rule differs from the interim rule mainly (1) to reflect new Dun and Bradstreet procedures that accommodate offerors located overseas; and (2) to clarify that this requirement applies to commercial items by adding the DUNS requirement to the provision at FAR 52.212–1, Instructions to Offerors Commercial Items.

Public comments were received from two sources. The comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely replaces the Contractor Establishment Code with the Data Universal Numbering System number to identify contractors in the Federal Procurement Data System.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. The information collection aspects of this rule have been approved by the Office of Management and Budget and assigned Control No. 9000–0145.

List of Subjects in 48 CFR Parts 1, 4, 52, and 53

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 4, 52, and 53, which was published at 61 FR 67412, December 20, 1996, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 1, 4, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by adding the following entries:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * *	*
4.602	9000–0145
4.603	9000–0145
* * * *	*
52.204–6	9000–0145
* * * *	*

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.603 is amended by revising paragraph (a) to read as follows:

4.603 Solicitation provisions.

(a)(1) The contracting officer shall insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations that are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or a similar agency form.

(2) For offerors located outside the United States, the contracting officer may modify paragraph (c) of the provision at 52.204–6 to provide the correct phone numbers for the Dun and Bradstreet offices in the areas from which offerors are anticipated to respond.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.204–6 is amended by revising the section heading, provision heading and date; and the provision is amended by removing paragraph (a) and redesignating paragraphs (b), (c), and (d), as (a), (b), and (c), respectively; by revising newly designated paragraph (a), the third sentence of newly designated introductory paragraph (b), and newly designated paragraph (c) to read as follows:

52.204–6 Data Universal Numbering System (DUNS) Number.

* * * * *

Data Universal Numbering System (DUNS) Number (Apr 1998)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) * * * For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1–800–333–0505. * * *

* * * * *

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet home page at http://www.dnb.com/. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

5. Section 52.212–1 is amended by revising the provision date to read "(Apr 1998)" and adding paragraph (j) to the provision to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Apr 1998)

* * * * *

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to offers exceeding $25,000.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address. If the offeror does not have a DUNS number, it should contact

Dun and Bradstreet to obtain one at no charge. An offeror within the United States may call 1–800–333–0505. The offeror may obtain more information regarding the DUNS number, including locations of local Dun and Bradstreet Information Services offices for offerors located outside the United States, from the Internet home page at http://www.dnb.com/. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

[FR Doc. 98–4292 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 11, 23, and 52

[FAC 97–04; FAR Case 92–054B; Item II]

RIN 9000–AH39

Federal Acquisition Regulation; Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 62 FR 12690, March 17, 1997, as Item V of Federal Acquisition Circular 90–46. The rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements". This regulatory action was not subject to Office of Management and Budget (OMB) review under E.O. 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–04, FAR case 92–054B.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule with request for public comment was published on March 17, 1997 (62 FR 12690), to implement E.O. 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements". E.O. 12856 requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109) and the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (42 U.S.C. 11001–11050). As a result of the one public comment received in response to the interim rule, FAR 23.1004(b) and 52.223–5(b) have been revised to clarify the obligations of Federal facilities to comply with the reporting and emergency planning requirements of the PPA and the EPCRA.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows:

No comments were received in response to the Initial Regulatory Flexibility Analysis.

The rule will apply to all contractors that use certain hazardous or toxic substances in the performance of contracts on a Federal facility. It is estimated that there are approximately 6,100 small business contractors to which the rule will apply. Such contractors must provide any information necessary to enable the Federal facility to fulfill its reporting requirements under EPCRA, PPA, and E.O. 12856. The information collection would be prepared by contractor employees using records that the contractor is required to maintain under existing law and regulation. No special professional skills are needed for preparation of the required information.

There are no known alternatives which would accomplish the objectives of the PPA, EPCRA, and E.O. 12856. The rule implements an explicit requirement of E.O. 12856 to provide a contract clause to collect information on the use of specific substances from certain contractors. Any alternative to the final rule that lessens the burden on small entities would fail to comply with E.O. 12856.

C. Paperwork Reduction Act

The final rule imposes no new information collection requirements that require approval of OMB under 44 U.S.C. 3501, *et seq.* The information collection requirements imposed by the interim rule have been approved by OMB through May 31, 2000, under OMB Control Number 9000–0147.

List of Subjects in 48 CFR Parts 1, 11, 23, and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 23 and 52, which was published at 62 FR 12696, March 17, 1997, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 1, 11, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by adding the following entry:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB Control No.
* * * * *	
52.223–5	9000–0147
* * * * *	

PART 11—DESCRIBING AGENCY NEEDS

11.001 [Amended]

3. Section 11.001 is amended by removing the definition of "New".

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.1004 [Amended]

4. Section 23.1004 is amended at the end of paragraph (b) by removing the period and inserting ", and other agency obligations under E.O. 12856.".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213–4 [Amended]

5. Section 52.213–4 is amended by revising the date of the clause to read "(APR 1998)"; and in paragraph (b)(1)(vii) of the clause by revising "(MAR 1997)" to read "(APR 1998)".

6. Section 52.223–5 is amended by revising the clause date and paragraph (b) to read as follows:

52.223–5 Pollution Prevention and Right-to-Know Information.

* * * * *

Pollution Prevention and Right-to-Know Information (Apr 1998)

* * * * *

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3–302 of Executive Order 12856.

(End of clause)

[FR Doc. 98–4293 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 97–04; FAR Case 97–601; Item III]

RIN 9000–AH92

Federal Acquisition Regulation; Review of Procurement Integrity Clauses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the application of procurement integrity requirements to contracts for commercial items. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–04, FAR case 97–601.

SUPPLEMENTARY INFORMATION:

A. Background

Prior to its amendment by the Clinger-Cohen Act of 1996 (Public Law 104–106), Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) required that the FAR prescribe a contract clause specifying appropriate contractual penalties for procurement integrity violations. The resulting clause is FAR 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity. A reference to this clause was included in the clause at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. The final rule published in the **Federal Register** at 62 FR 226, January 2, 1997, as FAR case 96–314, Item I of FAC 90–45, implemented the Clinger-Cohen amendments to 41 U.S.C. 423, but did not revise the contract clauses applicable to contracts for commercial items.

Upon subsequent review, the Councils have determined that 41 U.S.C. 423, as amended, no longer requires that a contract clause specify administrative remedies for procurement integrity violations. Therefore, this rule amends FAR 52.212–5 to remove the reference therein to FAR 52.203–10. However, since contracts for commercial items are not exempt from the procurement integrity prohibitions at 41 U.S.C. 423, the clause at FAR 52.212–4 is amended to add 41 U.S.C. 423 to the list of applicable laws.

The rule also amends FAR 4.803 to remove the obsolete requirement to maintain a record of persons having access to proprietary or source selection information.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–04, FAR Case 97–601), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.803 [Amended]

2. Section 4.803 is amended by removing paragraph (a)(42).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.212–4 is amended by revising the date of the clause and paragraph (r) to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (Apr 1998)

* * * * *

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51–58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

* * * * *

52.212–5 [Amended]

4. Section 52.212–5 is amended by revising the date of the clause to read

"(Apr 1998)" and removing and reserving paragraph (b)(2).

[FR Doc. 98–4294 Filed 2–20–98; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 19

[FAC 97–04; FAR Case 96–002; Item IV]

RIN 9000–AH66

Federal Acquisition Regulation; Certificate of Competency

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with a minor change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with one change, the interim rule published in the **Federal Register** at 62 FR 44819, August 22, 1997, as Item IX of Federal Acquisition Circular 97–01. This final rule amends the Federal Acquisition Regulation (FAR) to implement revisions made to the Small Business Administration's regulations covering the procurement assistance programs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–04, FAR case 96–002.

SUPPLEMENTARY INFORMATION:

A. Background

The interim rule amended FAR Parts 9 and 19 to comply with revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125 and published at 61 FR 3310, January 31, 1996. The rule increased the threshold over which contracting officers may appeal the award of a certificate of competency (COC) from $25,000 to $100,000; updated the names of SBA offices involved in processing COCs; implemented the requirement that compliance with the limitations on subcontracting be considered an element of responsibility; and removed language implementing Section 305 of Pub. L. 103–403, as Section 305 has expired.

No public comments were received in response to the interim FAR rule. The interim FAR rule is being converted to a final rule with a minor change to provide a more precise reference to SBA regulations.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any new requirements on contractors, large or small. The Small Business Administration has certified that the revisions to 13 CFR Part 125 being implemented by this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9 and 19

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With A Minor Change

Accordingly, the interim rule amending 48 CFR Parts 9 and 19, which was published at 62 FR 44819, August 22, 1997, is adopted as a final rule with the following change:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

19.302 [Amended]

2. Section 19.302 is amended in the introductory text of paragraph (d) by removing the reference "13 CFR 121.10" and inserting "13 CFR 121.1004".

[FR Doc. 98–4295 Filed 2–20–98; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAC 97–04; FAR Case 97–020; Item V]

RIN 9000–AH89

Federal Acquisition Regulation; Applicability of Cost Accounting Standards (CAS) Coverage

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the criteria for application of Cost Accounting Standards (CAS) to negotiated Government contracts. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–04, FAR case 97–020.

SUPPLEMENTARY INFORMATION:

A. Background

On June 6, 1997, the CAS Board published a final rule, Applicability of CAS Coverage, in the **Federal Register** (62 FR 31294). The CAS rule implemented Section 4205 of Public Law 104–106, the Clinger-Cohen Act, by exempting contracts and subcontracts for the acquisition of commercial items from CAS requirements when these contracts and subcontracts are firm-

fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred).

This final rule amends FAR Subpart 12.2, Special Requirements for the Acquisition of Commercial Items, and the clauses at 52.230–2, Cost Accounting Standards, and 52.230–3, Disclosure and Consistency of Cost Accounting Practices, to conform the FAR to the revised CAS.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–020), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 12 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 12 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. Section 12.214 is revised to read as follows:

12.214 Cost Accounting Standards.

Cost Accounting Standards (CAS) do not apply to contracts and subcontracts for the acquisition of commercial items when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred). See 48 CFR 30.201–1 for CAS applicability to fixed-price with economic price adjustment contracts and subcontracts for commercial items when the price adjustment is based on actual costs incurred. When CAS applies, the contracting officer shall insert the appropriate provisions and clauses as prescribed in 48 CFR 30.201.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.230–2 is amended by revising the clause date and paragraph (d) to read as follows:

52.230–2 Cost Accounting Standards.

* * * * *

Cost Accounting Standards (Apr 1998)

* * * * *

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201–4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)

4. Section 52.230–3 is amended by revising the clause date and paragraphs (d)(1), (2) and (3) to read as follows:

52.230–3 Disclosure and Consistency of Cost Accounting Practices.

* * * * *

Disclosure and Consistency of Cost Accounting Practices (Apr 1998)

* * * * *

(d) * * *

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201–4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)

[FR Doc. 98–4296 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 97–04; FAR Case 97–029; Item VI]

RIN 9000–AH83

Federal Acquisition Regulation; OMB Circular No. A–133

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement revisions to Office of Management and Budget (OMB) Circular No. A–133, published as a final rule in the **Federal Register** at 62 FR 35277, June 30, 1997. This regulatory action was not subject to OMB review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 97–04, FAR case 97–029.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 15.209 and the associated clause at FAR 52.215–2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A–133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations", and now addresses audits of State and local Governments as well as audits of institutions of higher learning and other nonprofit organizations.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C.610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–029), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.209 is amended by revising paragraph (b)(3) to read as follows:

15.209 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(3) For cost-reimbursement contracts with State and local Governments, educational institutions, and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.215–2 is amended by revising Alternate II to read as follows:

52.215–2 Audit and Records—Negotiation.

* * * * *

Alternate II (Apr 1998). As prescribed in 15.209(b)(3), add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A–133, "Audits of States, Local Governments, and Nonprofit Organizations," apply to this contract.

* * * * *

[FR Doc. 98–4297 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 97–04; FAR Case 97–026; Item VII]

RIN 9000–AH87

Federal Acquisition Regulation; SIC Code and Size Standard Appeals

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to conform to the Small Business Administration (SBA) regulations pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's Standard Industrial Classification (SIC) code designation and related small business size standard. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–04, FAR case 97–026.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Subpart 19.3 to conform to SBA regulations at 13 CFR 121 and 134 pertaining to protest of small business representations, and appeal of SIC code designations and related small business size standards. The rule contains procedures for filing such protests and appeals.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19:

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 19 is amended as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.302 is amended—

a. By revising paragraph (a);

b. In paragraph (c)(1) by adding "Government Contracting" after "SBA";

c. In paragraph (d)(1)(i) by adding "business" after "1";

d. In paragraphs (e)(1) and (g)(1) by removing "protestant" and adding "protester" in its place;

e. In the first sentence of paragraph (g)(2) by adding "Government Contracting" after "SBA", and ", or designee," after "Director"; and in the third sentence by removing the word "below" and adding "of this section" in its place;

f. By revising the second sentence of paragraph (h)(4); and

g. By revising paragraphs (i) and (j) to read as follows:

19.302 Protesting a small business representation.

(a) An offeror, the SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, the SBA Associate

Administrator for Government Contracting, or another interested party may protest the small business representation of an offeror in a specific offer.

* * * * *

(h) * * *

(4) * * * The contracting officer shall forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the concern is not being considered for award, and shall notify the protester of this action.

(i) An appeal from an SBA size determination may be filed by: any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director; any concern or other interested party that has been adversely affected by a Government Contracting Area Director's decision; or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the—

Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416

within the time limits and in strict accordance with the procedures contained in subpart C of 13 CFR Part 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, the Judge will issue an order denying review and specifying the reasons for the decision. The SBA will inform the contracting officer of its ruling on the appeal. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award shall not apply to that acquisition.

(j) A protest that is not timely, even though received before award, shall be forwarded to the SBA Government Contracting Area Office (see paragraph (c)(1) of this section), with a notation on it that the protest is not timely. The protester shall be notified that the protest cannot be considered on the instant acquisition but has been referred to SBA for its consideration in any future actions. A protest received by a contracting officer after award of a contract shall be forwarded to the SBA Government Contracting Area Office with a notation that award has been made. The protester shall be notified that the award has been made and that the protest has been forwarded to SBA for its consideration in future actions.

3. Section 19.303 is amended by revising the section heading and paragraph (c) to read as follows:

19.303 Determining standard industrial classification codes and size standards.

* * * * *

(c) The contracting officer's determination is final unless appealed as follows:

(1) An appeal from a contracting officer's SIC code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation. SBA's Office of Hearings and Appeals (OHA) will dismiss summarily an untimely SIC code appeal.

(2)(i) The appeal petition must be in writing and must be addressed to the—

Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the size determination or SIC code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(3) The appellant must serve the appeal petition upon—

(i) The SBA official who issued the size determination;

(ii) The contracting officer who assigned the SIC code to the acquisition;

(iii) The business concern whose size status is at issue;

(iv) All persons who filed protests; and

(v) SBA's Office of General Counsel.

(4) Upon receipt of a SIC code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR Part 134), and must be received by OHA within 10 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must immediately send to OHA a copy of the solicitation relating to the SIC code appeal.

(5) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation must be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

[FR Doc. 98–4298 Filed 2–20–98; 8:45 am]
BILLING CODE 8820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 97–04; FAR Case 97–305; Item VIII]

RIN 9000–AH91

Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 401 of the Small Business Reauthorization Act of 1997. Section 401 eliminates the termination date of the Small Business Competitiveness Demonstration Program. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–04, FAR case 97–305.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 19.10 to eliminate the termination date of the Small Business Competitiveness Demonstration Program. Section 401 of the Small Business Reauthorization Act of 1997 (Pub. L. 105–135) amended Section 711(c) of the Small Business

Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) to remove the program termination date of September 30, 1997.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–305), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 19 is amended as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.1001 is revised to read as follows:

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by the Small Business Competitiveness Demonstration Program Act of 1988, Public Law 100–656 (15 U.S.C. 644 note). Pursuant to the Small Business Reauthorization Act (Pub. L. 105–135), the Small Business Competitiveness Demonstration Program has been extended indefinitely. The program is implemented by an OFPP Policy Directive and Test Plan, dated August 31, 1989, as amended on April 16, 1993, which remains in effect until supplemented or revised to reflect the statutory changes in Public Law 105–135. Pursuant to Section 713(a) of Public Law 100–656, the requirements of the FAR that are inconsistent with the program procedures are waived. The program consists of two major components—

(a) Unrestricted competition in four designated industry groups; and

(b) Enhanced small business participation in 10 agency targeted industry categories.

3. Section 19.1003 is amended by revising the introductory text and the first sentence of paragraph (a) to read as follows:

19.1003 Purpose.

The purpose of the Program is to—

(a) Assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. * * *

* * * * *

4. Section 19.1006 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

19.1006 Procedures.

* * * * *

(b) *Designated industry groups.* (1) Solicitations for acquisitions in any of the four designated industry groups that have an anticipated dollar value greater than $25,000 shall not be considered for small business set-asides under Subpart 19.5 (however, see paragraphs (b)(2) and (c)(1) of this section). * * *

* * * * *

[FR Doc. 98–4299 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97–04; FAR Case 95–602; Item IX]

RIN 9000–AH86

Federal Acquisition Regulation; Special Disabled and Vietnam Era Veterans

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement revised Department of Labor (DoL) regulations regarding affirmative action for employment of disabled veterans and veterans of the Vietnam era. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–04, FAR case 95–602.

SUPPLEMENTARY INFORMATION:

A. Background

As a result of 1994 amendments to the Vietnam Veteran Readjustment Act, DoL published revisions to its regulations at 41 CFR 60–250 on January 5, 1995 (60 FR 1985), and corrections to these revisions on February 16, 1996 (61 FR 6116). This final rule amends the FAR to conform to the DoL revisions.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 95–602), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.13—Disabled Veterans and Veterans of the Vietnam Era

2. The heading of Subpart 22.13 is revised to read as set forth above.

3. Sections 22.1300 and 22.1301 are revised to read as follows:

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 4211 and 4212) (the Act); Executive Order 11701, January 24, 1973 (3 CFR 1971–1975 Comp., p. 752); and the regulations of the Secretary of Labor (41 CFR Part 60–250 and Part 61–250). In this subpart, the terms "contract" and "contractor" include "subcontract" and "subcontractor."

22.1301 Policy.

Government contractors, when entering into contracts subject to the Act, are required to list all employment openings, except those for executive and top management positions, positions to be filled from within the contractor's organization, and positions lasting 3 days or less, with the appropriate local employment service office. Contractors are required to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era without discrimination based on their disability or veteran's status.

22.1303 [Amended]

4. Section 22.1303 is amended in the last sentence of paragraph (d) by removing the word "calendar".

5. Section 22.1304 is amended by revising the first sentence of paragraph (b) to read as follows:

22.1304 Department of Labor notices and reports.

* * * * *

(b) The Act requires contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and disabled veterans unless all of the terms of the clause at 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, have been waived (see 22.1303). * * *

* * * * *

6. Section 22.1308 is amended by revising paragraphs (a)(1)(i) and (b) to read as follows:

22.1308 Contract clauses.

(a)(1) * * *

(i) Work is performed outside the United States by employees recruited outside the United States (for the purposes of this subpart, "United States" includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam); or

* * * * *

(b) The contracting officer shall insert the clause at 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts containing the clause at 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

22.1303, 22.1304, and 22.1306 [Amended]

7a. In the list below, for each section listed in the left column, remove the title indicated in the middle column, and add the title indicated in the right column:

Section	Remove	Add
22.1303(a) introductory text	Director, Office of	Deputy Assistant Secretary for.
22.1303(a) introductory text	(Director)	(Deputy Assistant Secretary).
22.1303(b)(1)	Director of OFCCP	Deputy Assistant Secretary.
22.1303(b)(2)	Director	Deputy Assistant Secretary.
22.1303(d)	Director	Deputy Assistant Secretary.
22.1304(a)	Director	Deputy Assistant Secretary.
22.1306, second sentence	Director of the Office of Federal Contract Compliance Programs of the DOL.	Deputy Assistant Secretary.

7b. In addition to the amendments set forth above, in Subpart 22.13 remove the phrase "Affirmative Action for Special Disabled and Vietnam Era Veterans" and add "Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era" in the following places:

22.1302(b)
22.1303(a) introductory text
22.1305
22.1307 introductory paragraph
22.1308(a)(1) introductory text

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.212–5 is amended by revising the date of the clause, and paragraphs (b)(7), (b)(9), and (e)(2) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Apr 1998)

* * * * *

(b) * * *

(7) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

* * * * *

(9) 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

* * * * *

(e) * * *

(2) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);

* * * * *

9. Section 52.213–4 is amended by revising the clause date and paragraphs (b)(1)(iii) and (b)(1)(v) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions Simplified Acquisitions (Other than Commercial Items) (Apr 1998)

* * * * *

(b)(1) * * *

* * * * *

(iii) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (Apr 1998) (38 U.S.C. 4212) (Applies to contracts over $10,000).

* * * * *

(v) 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212) (Applies to contracts over $10,000).

* * * * *

10. Section 52.222–35 is amended—

a. By revising the section heading, introductory paragraph, clause heading and date, and paragraph (a);

b. By revising paragraph (b)(1) introductory text;

c. In the first sentence of paragraph (c)(1) by removing the word "suitable";

d. In (c)(2) by removing the words "their suitable" and adding "employment";

e. In the first sentence of paragraph (c)(3) by removing the word "suitable";

f. By removing paragraph (c)(5);

g. By revising paragraph (d);

h. In paragraph (e)(1)(i) by removing the word "special"; by revising (e)(2); and in (e)(3) by removing "special disabled and Vietnam Era veterans" and adding in its place "disabled veterans and veterans of the Vietnam era";

i. In the second sentence of paragraph (g) by removing the word "Director" and inserting in its place "Deputy Assistant Secretary"; and

j. By revising the introductory text of Alternate I. The revised text reads as follows:

52.222–35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in 22.1308(a)(1), insert the following clause:

Affirmative Action for Disabled Veterans and Veterans of the Vietnam ERA (Apr 1998)

(a) *Definitions.* As used in this clause—

All employment openings includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who—

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as—

* * * * *

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) *Postings.* * * *

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

* * * * *

Alternate I (Apr 1984). As prescribed in 22.1308(a)(2), add the following as a preamble to the clause:

* * * * *

11. Section 52.222–37 is amended—

a. By revising the section heading, clause heading, and date of the clause;

b. By revising the introductory text of paragraph (a);

c. In paragraphs (a)(1) and (a)(2) by removing the word "special"; and

d. By revising paragraph (e). The revised text reads as follows:

52.222–37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.

* * * * *

Employment Reports on Disabled Veterans and Veterans of the Vietnam ERA (Apr 1998)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

* * * * *

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

* * * * *

12. Section 52.244–6 is amended by revising the date of the clause and paragraph (c)(2) to read as follows:

52.244–6 Subcontracts for Commercial Items and Commercial Components.

* * * * *

Subcontracts for Commercial Items and Commercial Components (Apr 1998)

* * * * *

(c) * * *

(2) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

* * * * *

[FR Doc. 98–4300 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 97–04; FAR Case 97–039; Item X]

RIN 9000–AH93

Federal Acquisition Regulation; Treatment of Caribbean Basin Country End Products

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–04, FAR case 97–039.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises FAR 25.402(b) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. The United States Trade Representative has directed that such treatment continue through September 30, 1998 (62 FR 59014, October 31, 1997).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–039), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.402 is amended by revising paragraph (b) to read as follows:

25.402 Policy.

* * * * *

(b) The U.S. Trade Representative has determined that, in order to promote further economic recovery of the Caribbean Basin countries (as defined in 25.401), products originating in those countries that are eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act shall be treated as eligible products for the purposes of this subpart. This determination is effective until September 30, 1998. This date may be extended by the U.S. Trade Representative by means of a notice in the **Federal Register**.

* * * * *

[FR Doc. 98–4301 Filed 2–20–98; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 97–04; FAR Case 97–025; Item XI]

RIN 9000–AH88

Federal Acquisition Regulation; Administrative Changes to Cost Accounting Standards (CAS) Applicability

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to conform to changes made to the Cost Accounting Standards (CAS) Board rules and regulations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–04, FAR case 97–025.

SUPPLEMENTARY INFORMATION:

A. Background

On July 29, 1996, the CAS Board published an interim rule, Applicability of CAS Coverage, in the **Federal Register** (61 FR 39360). The CAS rule implemented Section 4205 of Public Law 104–106, the Clinger-Cohen Act of 1996, by revising the criteria for application of CAS to negotiated Federal contracts. The interim rule revised the solicitation provision at 48 CFR 9903.201–3, Cost Accounting Standards Notices and Certifications, and the contract clause at 48 CFR 9903.201–4, Cost Accounting Standards—Educational Institutions, to reflect these changes.

This final FAR rule amends Part 52 to conform the solicitation provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, and the contract clause at FAR 52.230–5, Cost Accounting Standards—Educational Institution, to the corresponding CAS Board contract clauses at 48 CFR 9903.201–3 and 9903.201–4. In addition, FAR 30.101, CAS, is amended to reflect the current contents of the CAS Board regulations.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–025), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 30 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 30 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

2. Section 30.101 is amended by revising paragraph (c) to read as follows:

30.101 Cost Accounting Standards.

* * * * *

(c) The appendix to the FAR loose-leaf edition contains—

(1) Cost Accounting Standards and Cost Accounting Standards Board Rules and Regulations Recodified by the Cost

Accounting Standards Board at 48 CFR Chapter 99; and

(2) The following preambles:

(i) Part I—Preambles to the Cost Accounting Standards Published by the Cost Accounting Standards Board.

(ii) Part II—Preambles to the Related Rules and Regulations Published by the Cost Accounting Standards Board.

(iii) Part III—Preambles Published under the FAR System.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.230–1 is amended by revising the provision date and paragraph (a) to read as follows:

52.230–1 Cost Accounting Standards Notices and Certification.

* * * * *

Cost Accounting Standards Notices and Certification (Apr 1998)

* * * * *

(a) Any contract in excess of $500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201–1.

* * * * *

4. Section 52.230–5 is amended by revising the clause date and paragraphs (d)(1) and (d)(2); and by adding (d)(3) to read as follows:

52.230–5 Cost Accounting Standards—Educational Institution.

* * * * *

Cost Accounting Standards—Educational Institution (Apr 1998)

* * * * *

(d) * * *

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201–4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000; and

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)

[FR Doc. 98–4302 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31, 32, 42, 46, 47, and 52

[FAC 97–04; FAR Case 95–022; Item XII]

RIN 9000–AH27

Federal Acquisition Regulation; Changes in Contract Administration and Audit Cognizance

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add policies and procedures for assigning and performing contract audit services and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect cost rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–04, FAR case 95–022.

SUPPLEMENTARY INFORMATION:

A. Background

In February 1994, the Office of Federal Procurement Policy formed a Contract Audit Committee. This final rule implements recommendations of the committee pertaining to civilian agencies' contract administration and audit practices. The rule amends FAR Parts 31, 32, 42, 46, 47, and 52 to add policies and procedures for assigning and performing contract audit services, and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect costs rates. A proposed rule was published in the **Federal Register** on December 11, 1996 (61 FR 65306). Forty-two comments were received from 19 respondents. All comments were considered in the development of this final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily pertains to internal Government procedures for performing contract administration functions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31, 32, 42, 46, 47, and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 31, 32, 42, 46, 47, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 31, 32, 42, 46, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.109 [Amended]

2. Section 31.109 is amended in paragraph (f)(3) by removing the word "cognizant" and adding "responsible" in its place.

PART 32—CONTRACT FINANCING

32.503–3 [Amended]

3. Section 32.503–3 is amended in paragraph (b)(2) by removing "cognizant independent" and adding "responsible" in its place.

32.503–12 [Amended]

4. Section 32.503–12 is amended in paragraph (c) by removing "cognizant independent" and adding "responsible" in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

5. The heading for Part 42 is revised as set forth above.

6. Section 42.000 and Subparts 42.1 and 42.2 are revised to read as follows:

Sec.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

42.000 Scope of part.

This part prescribes policies and procedures for assigning and performing contract administration and contract audit services.

42.001 Definitions.

As used in this part—

Cognizant Federal agency means the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

Responsible audit agency means the agency that is responsible for performing all required contract audit services at a business unit (as defined in 48 CFR 31.001).

42.002 Interagency agreements.

(a) Agencies shall avoid duplicate audits, reviews, inspections, and examinations of contractors or subcontractors, by more than one agency, through the use of interagency agreements (see OFPP Policy Letter 78–4, Field Contract Support Cross-Servicing Program).

(b) Subject to the fiscal regulations of the agencies and applicable interagency agreements, the requesting agency shall reimburse the servicing agency for rendered services in accordance with the Economy Act (31 U.S.C. 1535).

(c) When an interagency agreement is established, the agencies are encouraged to consider establishing procedures for the resolution of issues that may arise under the agreement.

42.003 Cognizant Federal agency.

(a) For contractors other than educational institutions and nonprofit organizations, the cognizant Federal agency normally will be the agency with the largest dollar amount of negotiated contracts, including options. For educational institutions and nonprofit organizations, the cognizant Federal agency is established according to Subsection G.11 of OMB Circular A–21, Cost Principles for Educational Institutions, and Attachment A, Subsection E.2, of OMB Circular A–122, Cost Principles for Nonprofit Organizations, respectively.

(b) Once a Federal agency assumes cognizance for a contractor, it should remain cognizant for at least 5 years to ensure continuity and ease of administration. If, at the end of the 5-year period, another agency has the largest dollar amount of negotiated contracts, including options, the two agencies shall coordinate and determine which will assume cognizance. However, if circumstances warrant it and the affected agencies agree, cognizance may transfer prior to the expiration of the 5-year period.

Subpart 42.1—Contract Audit Services

42.101 Contract audit responsibilities.

(a) The auditor is responsible for—

(1) Submitting information and advice to the requesting activity, based on the auditor's analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs;

(2) Reviewing the financial and accounting aspects of the contractor's cost control systems; and

(3) Performing other analyses and reviews that require access to the contractor's financial and accounting records supporting proposed and incurred costs.

(b) Normally, for contractors other than educational institutions and nonprofit organizations, the Defense Contract Audit Agency (DCAA) is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies shall agree on the most efficient and economical approach to meet contract audit requirements. For educational institutions and nonprofit organizations, audit cognizance will be determined according to the provisions of OMB Circular A–133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.

42.102 Assignment of contract audit services.

(a) As provided in agency procedures or interagency agreements, contracting officers may request audit services directly from the responsible audit agency cited in the Directory of Federal Contract Audit Offices. The audit request should include a suspense date and should identify any information needed by the contracting officer.

(b) The responsible audit agency may decline requests for services on a case-by-case basis, if resources of the audit agency are inadequate to accomplish the tasks. Declinations shall be in writing.

42.103 Contract audit services directory.

(a) DCAA maintains and distributes the Directory of Federal Contract Audit Offices. The directory identifies cognizant audit offices and the contractors over which they have cognizance. Changes to audit cognizance shall be provided to DCAA so that the directory can be updated.

(b) Agencies may obtain a copy of the directory or information concerning cognizant audit offices by contacting the—Defense Contract Audit Agency, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Subpart 42.2—Contract Administration Services

42.201 Contract administration responsibilities.

(a) For each contract assigned for administration, the contract administration office (CAO) (see 48 CFR 2.101) shall—

(1) Perform the functions listed in 42.302(a) to the extent that they apply to the contract, except for the functions specifically withheld;

(2) Perform the functions listed in 42.302(b) only when and to the extent specifically authorized by the contracting officer; and

(3) Request supporting contract administration under 42.202(e) and (f) when it is required.

(b) The Defense Logistics Agency, Defense Contract Management Command, Fort Belvoir, Virginia, and other agencies offer a wide variety of contract administration and support services.

42.202 Assignment of contract administration.

(a) *Delegating functions.* As provided in agency procedures, contracting officers may delegate contract administration or specialized support services, either through interagency agreements or by direct request to the cognizant CAO listed in the Federal

Directory of Contract Administration Services Components. The delegation should include—

(1) The name and address of the CAO designated to perform the administration (this information also shall be entered in the contract);

(2) Any special instructions, including any functions withheld or any specific authorization to perform functions listed in 42.302(b);

(3) A copy of the contract to be administered; and

(4) Copies of all contracting agency regulations or directives that are—

(i) Incorporated into the contract by reference; or

(ii) Otherwise necessary to administer the contract, unless copies have been provided previously.

(b) *Special instructions.* As necessary, the contracting officer also shall advise the contractor (and other activities as appropriate) of any functions withheld from or additional functions delegated to the CAO.

(c) *Delegating additional functions.* For individual contracts or groups of contracts, the contracting office may delegate to the CAO functions not listed in 42.302: *Provided* that—

(1) Prior coordination with the CAO ensures the availability of required resources;

(2) In the case of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule, the head of the contracting activity or designee approves the delegation; and

(3) The delegation does not require the CAO to undertake new or follow-on acquisitions.

(d) *Rescinding functions.* The contracting officer at the requesting agency may rescind or recall a delegation to administer a contract or perform a contract administration function, except for functions pertaining to cost accounting standards and negotiation of forward pricing rates and indirect cost rates (also see 42.003). The requesting agency must coordinate with the CAO to establish a reasonable transition period prior to rescinding or recalling the delegation.

(e) *Secondary delegations of contract administration.* (1) A CAO that has been delegated administration of a contract under paragraph (a) or (c) of this section, or a contracting office retaining contract administration, may request supporting contract administration from the CAO cognizant of the contractor location where performance of specific contract administration functions is required. The request shall—

(i) Be in writing;

(ii) Clearly state the specific functions to be performed; and

(iii) Be accompanied by a copy of pertinent contractual and other necessary documents.

(2) The prime contractor is responsible for managing its subcontracts. The CAO's review of subcontracts is normally limited to evaluating the prime contractor's management of the subcontracts (see Part 44). Therefore, supporting contract administration shall not be used for subcontracts unless—

(i) The Government otherwise would incur undue cost;

(ii) Successful completion of the prime contract is threatened; or

(iii) It is authorized under paragraph (f) of this section or elsewhere in this regulation.

(f) *Special surveillance.* For major system acquisitions (see Part 34), the contracting officer may designate certain high risk or critical subsystems or components for special surveillance in addition to requesting supporting contract administration. This surveillance shall be conducted in a manner consistent with the policy of requesting that the cognizant CAO perform contract administration functions at a contractor's facility (see 42.002).

(g) *Refusing delegation of contract administration.* An agency may decline a request for contract administration services on a case-by-case basis if resources of the agency are inadequate to accomplish the tasks. Declinations shall be in writing.

42.203 Contract administration services directory.

The Defense Contract Management Command (DCMC) maintains and distributes the Federal Directory of Contract Administration Services Components. The directory lists the names and telephone numbers of those DCMC and other agency offices that offer contract administration services within designated geographic areas and at specified contractor plants. Federal agencies may obtain a free copy of the directory on disk by writing to—HQ Defense Logistics Agency, ATTN: DCMC–AQBF, 8725 John J. Kingman Road, Fort Belvoir, VA 22060, or access it on the Internet at http://www.dcmc.dcrb.dla.mil.

7. Section 42.301 is revised to read as follows:

42.301 General.

When a contract is assigned for administration under Subpart 42.2, the contract administration office (CAO) shall perform contract administration functions in accordance with 48 CFR Chapter I, the contract terms, and, unless otherwise agreed to in an interagency agreement (see 42.002), the applicable regulations of the servicing agency.

8. Section 42.302 is amended by revising paragraphs (a) introductory text, (a)(11) introductory text, (a)(11)(iv), (a)(13), (a)(20), (a)(32), (a)(61), and (a)(63) to read as follows:

42.302 Contract administration functions.

(a) The following contract administration functions are normally delegated to a CAO. The contracting officer may retain any of these functions, except those in paragraphs (a)(5), (a)(9), and (a)(11) of this section, unless the contracting officer has been designated to perform these functions by the cognizant Federal agency (see 42.001).

* * * * *

(11) In connection with Cost Accounting Standards (see 48 CFR 30.601 and 48 CFR Chapter 99 (FAR Appendix))—

* * * * *

(iv) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at 48 CFR 52.230–2, 52.230–3, 52.230–4, 52.230–5, and 52.230–6.

* * * * *

(13) Make payments on assigned contracts when prescribed in agency acquisition regulations.

* * * * *

(20) For classified contracts, administer those portions of the applicable industrial security program delegated to the CAO (see Subpart 4.4).

* * * * *

(32) Perform preaward surveys (see Subpart 9.1).

* * * * *

(61) Obtain contractor proposals for any contract price adjustments resulting from amended shipping instructions. Review all amended shipping instructions on a periodic, consolidated basis to ensure that adjustments are timely made. Except when the ACO has settlement authority, the ACO shall forward the proposal to the contracting officer for contract modification. The ACO shall not delay shipments pending completion and formalization of negotiations of revised shipping instructions.

* * * * *

(63) Cancel unilateral purchase orders when notified of nonacceptance by the contractor. The CAO shall notify the contracting officer when the purchase order is canceled.

* * * * *

9. Section 42.602 is amended by revising paragraphs (c)(2) and (d) to read as follows:

42.602 Assignment and location.

* * * * *

(c) * * *

(2) When the locations are under the contract administration cognizance of more than one agency, the agencies concerned shall agree on the responsible agency (normally on the basis of the agency with the largest dollar balance, including options, of affected contracts). In such cases, agencies may also consider geographic location.

(d) The directory of contract administration services components referenced in 42.203 includes a listing of CACO's and the contractors for which they are assigned responsibility.

42.603 [Amended]

10. Section 42.603 is amended in the introductory text of paragraph (a) by removing the parenthetical "(see subpart 42.3)"; and in the introductory text of paragraph (b)(1) by removing the word "cognizant" and adding "responsible" in its place.

11. Section 42.701 is amended by revising the definitions for "Business unit" and "Indirect cost", and by adding, in alphabetical order, the definition for "Forward pricing rate agreement" to read as follows:

42.701 Definitions.

* * * * *

Business unit is defined at 31.001.

* * * * *

Forward pricing rate agreement is defined at 48 CFR 15.401.

Indirect cost is defined at 48 CFR 31.203.

* * * * *

12. Section 42.703–1 is amended by revising the first sentence of paragraph (a), and paragraph (c) to read as follows:

42.703–1 Policy.

(a) A single agency (see 42.705–1) shall be responsible for establishing final indirect cost rates for each business unit. * * *

* * * * *

(c) To ensure compliance with 10 U.S.C. 2324(a) and 41 U.S.C. 256(a)—

(1) Final indirect cost rates shall be used for contract closeout for a business unit, unless the quick-closeout procedure in 42.708 is used. These final rates shall be binding for all cost-reimbursement contracts at the business unit, subject to any specific limitation in a contract or advance agreement; and

(2) Established final indirect cost rates shall be used in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established, unless the quick-closeout procedure in 42.708 is used.

42.703–2 [Amended]

13. Section 42.703–2(d) is amended by removing the word "contractor" and adding "contractor's" in its place.

14. Section 42.704 is amended by revising paragraphs (a), (b), and (c) to read as follows:

42.704 Billing rates.

(a) The contracting officer (or cognizant Federal agency official) or auditor responsible under 42.705 for establishing the final indirect cost rates also shall be responsible for determining the billing rates.

(b) The contracting officer (or cognizant Federal agency official) or auditor shall establish billing rates on the basis of information resulting from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the contracting officer (or cognizant Federal agency official) or auditor should ensure that the billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the contracting officer (or cognizant Federal agency official) or auditor determines that the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(c) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When agreement cannot be reached, the billing rates may be unilaterally determined by the contracting officer (or cognizant Federal agency official).

* * * * *

15. Section 42.705–1 is amended by revising paragraphs (a) introductory text, (a)(3), (a)(4), (b)(1), (b)(2), and (b)(3) to read as follows:

42.705–1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* Contracting officer determination shall be used for the following, with the indicated cognizant contracting officer (or cognizant Federal agency official) responsible for establishing the final indirect cost rates:

* * * * *

(3) For business units not included in paragraph (a)(1) or (a)(2) of this subsection, the contracting officer (or cognizant Federal agency official) will determine whether the rates will be contracting officer or auditor determined.

(4) Educational institutions (see 42.705–3).

* * * * *

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 48 CFR 52.216–7 or 52.216–13, the contractor shall submit to the contracting officer (or cognizant Federal agency official) and to the cognizant auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, each contractor shall submit an adequate proposal to the contracting officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor shall support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 5 of the Defense Contract Audit Agency Pamphlet (DCAAP) No. 7641.90, Information for Contractors. The Model can be obtained by—

(i) Contacting Internet address http://www.dtic.mil/dcaa/chap5.html;

(ii) Sending a telefax request to Headquarters DCAA, ATTN: CMO, Publications Officer, at (703) 767–1061;

(iii) Sending an e-mail request to *CMO@hql.dcaa.mil; or

(iv) Writing to—Headquarters DCAA, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

(2) The auditor shall submit to the contracting officer (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(3) The contracting officer (or cognizant Federal agency official) shall head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest shall be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

* * * * *

15. Section 42.705–2 is amended by revising paragraphs (a)(2) introductory text, (a)(2)(iv), and (b) to read as follows:

42.705–2 Auditor determination procedure.

(a) * * *

* * * * *

(2) In addition, auditor determination may be used for business units that are covered in 42.705–1(a) when the contracting officer (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

* * * * *

(iv) The contracting officer (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer (or cognizant Federal agency official) and auditor a final indirect cost rate proposal in accordance with 42.705–1(b)(1).

(2) Upon receipt of a proposal, the auditor shall—

(i) Audit the proposal and seek agreement on indirect costs with the contractor;

(ii) Prepare an indirect cost rate agreement conforming to the requirements of the contracts. The agreement shall be signed by the contractor and the auditor;

(iii) If agreement with the contractor is not reached, forward the audit report to the contracting officer (or cognizant Federal agency official) identified in the Directory of Contract Administration Services Components (see 42.203), who will then resolve the disagreement; and

(iv) Distribute resulting documents in accordance with 42.706.

16. Section 42.705–3 is amended by revising paragraph (a)(2) to read as follows:

42.705–3 Educational institutions.

(a) * * *

(2) OMB Circular No. A–21, Cost Principles for Educational Institutions, assigns each educational institution to a single Government agency for the negotiation of indirect cost rates and provides that those rates shall be accepted by all Federal agencies. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see 42.103).

* * * * *

PART 46—QUALITY ASSURANCE

17. Section 46.103 is amended by revising paragraph (d) to read as follows:

46.103 Contracting office responsibilities.

* * * * *

(d) When contract administration is retained (see 42.201), verifying that the contractor fulfills the contract quality requirements; and

* * * * *

18. Section 46.104 is amended by revising paragraph (f) to read as follows:

46.104 Contract administration office responsibilities.

* * * * *

(f) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs (see 46.103(c)).

19. Section 46.502 is amended by revising the second sentence to read as follows:

46.502 Responsibility for acceptance.

* * * When this responsibility is assigned to a cognizant contract administration office or to another agency (see 42.202(g)), acceptance by that office or agency is binding on the Government.

PART 47—TRANSPORTATION

47.301–3 [Amended]

20. Section 47.301–3 is amended in the introductory text of paragraph (c) by removing "42.202(d)" and adding "42.202(a)" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

21. Section 52.216–7 is amended by revising the clause date and the first sentence of paragraph (d)(2)(i) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (Apr 1998)

* * * * *

(d) *Final indirect cost rates.* (1) * * *

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. * * *

* * * * *

(End of clause)

22. Section 52.216–13 is amended by revising the clause date and the first sentence of paragraph (c)(2)(i) to read as follows:

52.216–13 Allowable Cost and Payment—Facilities.

* * * * *

Allowable Cost and Payment—Facilities (Apr 1998)

* * * * *

(c) *Negotiated Indirect Costs.* (1) * * *

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. * * *

* * * * *

(End of clause)

23. Section 52.216–15 is amended by revising the clause date and the first sentence of paragraph (b)(1); by revising the second sentence of paragraph (d); and revising paragraph (e) to read as follows:

52.216–15 Predetermined Indirect Cost Rates.

* * * * *

Predetermined Indirect Cost Rates (APR 1998)

* * * * *

(b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. * * *

* * * * *

(d)* * * The Contracting Officer (or cognizant Federal agency official) and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. * * *

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.

* * * * *

(End of clause)

[FR Doc. 98–4303 Filed 2–20–98; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–04; FAR Case 97–303; Item XIII]

RIN 9000–AH90

Federal Acquisition Regulation; Limitation on Allowability of Compensation for Certain Contractor Personnel

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) by limiting the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 23, 1998.

Applicability Date: This policy applies to costs of compensation incurred under Federal contracts after January 1, 1998, regardless of the date of contract award.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 24, 1998, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97–303@gsa.gov

Please cite FAC 97–04, FAR case 97–303 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–04, FAR case 97–303.

SUPPLEMENTARY INFORMATION:

A. Background

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) limits allowable compensation costs of senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator, Office of Federal Procurement Policy. Section 808 requires the Administrator, Office of Federal Procurement Policy (OFPP), to review commercially available surveys of executive compensation, and, on the basis of the results of the review, determine the benchmark compensation amount for each fiscal year. See OFPP's "Determination of Executive Compensation Benchmark Amount", as published by GSA in the Notices Section of this **Federal Register**. This determination shall be made in consultation with the Defense Contract Audit Agency and other executive agencies, as the Administrator deems appropriate. Section 808 defines benchmark compensation as the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination is made.

This interim rule revises FAR 31.205–6(p) to implement the statutory ceiling on allowable compensation costs for senior executives. Because the commercial survey used in making the benchmark compensation determination is based on Securities and Exchange Commission disclosure data (which cannot be separately broken down), it includes the cost of employer contributions to defined contribution pension plans (which are a form of deferred compensation). The implementing language at FAR 31.205–6(p)(2)(i) specifies the components of compensation subject to the benchmark compensation. This restriction applies to costs of compensation incurred after January 1, 1998, under contracts awarded before, on, or after the date of the enactment of Public Law 105–85 (November 18, 1997). This restriction applies to the chief executive officer (CEO), the four most highly compensated employees in management positions other than the CEO, and the five most highly compensated individuals in management positions at intermediate home offices and segments if a contractor is organizationally subdivided into such units.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–303), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting, recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule implements Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) and applies to costs of compensation incurred after January 1, 1998, under contracts entered into before, on, or after the date of enactment (November 18, 1997) of this public law. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–6 is amended by revising paragraph (p) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(p) *Limitation on allowability of compensation for certain contractor personnel.* (1) Costs incurred after January 1, 1998, for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP), under Section 39 of the OFPP Act (41 U.S.C. 435) are unallowable (10 U.S.C. 2324(e)(1)(P) and 41 U.S.C. 256(e)(1)(P)). This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under new or previously existing contracts. This limitation applies whether or not the affected contracts were previously subject to a statutory limitation on such costs.

(2) As used in this paragraph:

(i) *Compensation* means the total amount of wages, salary, bonuses, deferred compensation (see paragraph (k) of this subsection), and employer contributions to defined contribution pension plans (see paragraphs (j)(5) and (j)(8) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

(ii) *Senior executive* means—

(A) The contractor's Chief Executive Officer (CEO) or any individual acting in a similar capacity;

(B) The contractor's four most highly compensated employees in management positions, other than the CEO; and

(C) If the contractor has intermediate home offices or segments that report directly to the contractor's corporate headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

(iii) *Fiscal year* means the fiscal year established by the contractor for accounting purposes.

[FR Doc. 98–4304 Filed 2–20–98; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–04; FAR Case 96–006; Item XIV]

RIN 9000–AH56

Federal Acquisition Regulation; Transfer of Assets Following a Business Combination

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement a final rule of the Cost Accounting Standards (CAS) Board regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 97–04, FAR case 96–006.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on July 2, 1997 (62 FR 35890). The rule proposed amendments to the FAR to implement a final rule published by the CAS Board on February 13, 1996 (61 FR 5520), that amended CAS 9904.404, Capitalization of Tangible Assets, and CAS 9904.409, Depreciation of Tangible Capital Assets. The final FAR rule differs from the proposed rule by revising FAR 31.205–52(a) to clarify that CAS 9904.404 measures the capitalized asset values that are used to compute depreciation expense and cost of money, and FAR 31.205–52(b) to delete the term "depreciation," since intangible capital assets do not generate depreciation expense.

Public comments were received from three sources. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–10 is amended by revising paragraph (a)(5) to read as follows:

31.205–10 Cost of money.

(a) * * *

(5) The requirements of 31.205–52 shall be observed in determining the allowable cost of money attributable to including asset valuations resulting from business combinations in the facilities capital employed base.

* * * * *

3. Section 31.205–52 is revised to read as follows:

31.205–52 Asset valuations resulting from business combinations.

(a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be based on the capitalized asset values measured and assigned in accordance with 48 CFR 9904.404–50(d), if allocable, reasonable, and not otherwise unallowable.

(b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization and cost of money shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

[FR Doc. 98–4305 Filed 2–20–98; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 97–04; FAR Case 96–605; Item XV]

RIN 9000–AH55

Federal Acquisition Regulation; Modular Contracting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 5202 of the Information Technology Management Reform Act (ITMRA) of 1996, which encourages maximum practicable use of modular contracting in acquiring information technology. ITMRA is part of the Clinger-Cohen Act of 1996 (Public Law 104–106). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, 1800 F Street, NW, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst at (202) 501–1900. Please cite FAC 97–04, FAR case 96–605.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule with request for comment and notice of public meeting was published in the **Federal Register** (62 FR 14756) on March 27, 1997. Comments were received from four respondents. All comments were considered in the development of the final rule. The final rule differs from the proposed rule by adding in paragraph 39.103(d) "task order contracts" as another example.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while it may affect the structure of certain information technology (IT) acquisition programs, it will not impose any specific cost burden on small entities. The modular contracting approach should slightly benefit small entities, because use of modular contracting techniques should increase the number of business opportunities available to them. When a modular contracting approach is used, large, complex IT systems acquisitions will be divided into smaller, discrete increments that may subsequently be made available to small entities for competition.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 39 is amended as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR Part 39 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 39.002 is amended by adding in alphabetical order the definition of "Modular contracting" to read as follows:

39.002 Definitions.

Modular contracting, as used in this part, means use of one or more contracts to acquire information technology systems in successive, interoperable increments.

* * * * *

3. Section 39.103 is added to read as follows:

39.103 Modular contracting.

(a) This section implements Section 5202, Incremental Acquisition of Information Technology, of the Clinger-Cohen Act of 1996 (Public Law 104–106). Modular contracting is intended to reduce program risk and to incentivize contractor performance while meeting the Governments need for timely access to rapidly changing technology. Consistent with the agency's information technology architecture, agencies should, to the maximum extent practicable, use modular contracting to acquire major systems (see 2.101) of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

(b) When using modular contracting, an acquisition of a system of information technology may be divided into several smaller acquisition increments that—

(1) Are easier to manage individually than would be possible in one comprehensive acquisition;

(2) Address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives;

(3) Provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions;

(4) Provide an opportunity for subsequent increments to take advantage of any evolution in technology or needs that occur during implementation and use of the earlier increments; and

(5) Reduce risk of potential adverse consequences on the overall project by

isolating and avoiding custom-designed components of the system.

(c) The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system being developed. The following factors may be considered:

(1) To promote compatibility, the information technology acquired through modular contracting for each increment should comply with common or commercially acceptable information technology standards when available and appropriate, and shall conform to the agency's master information technology architecture.

(2) The performance requirements of each increment should be consistent with the performance requirements of the completed, overall system within which the information technology will function and should address interface requirements with succeeding increments.

(d) For each increment, contracting officers shall choose an appropriate contracting technique that facilitates the acquisition of subsequent increments. Pursuant to Parts 16 and 17 of the Federal Acquisition Regulations, contracting officers shall select the contract type and method appropriate to the circumstances (*e.g.*, indefinite delivery, indefinite quantity contracts, single contract with options, successive contracts, multiple awards, task order contracts). Contract(s) shall be structured to ensure that the Government is not required to procure additional increments.

(e) To avoid obsolescence, a modular contract for information technology should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued. If award cannot be made within 180 days, agencies should consider cancellation of the solicitation in accordance with 48 CFR 14.209 or 15.206(e). To the maximum extent practicable, deliveries under the contract should be scheduled to occur within 18 months after issuance of the solicitation.

[FR Doc. 98–4306 Filed 2–20–98; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 44, and 52

[FAC 97–04; Item XVI]

Federal Acquisition Regulations; Technical Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to Federal Acquisition Regulations in order to update references, and make editorial changes.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 1, 44 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 44 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 44 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.201–1 [Amended]

1. Section 1.201–1 is amended in paragraph (b)(2) by adding "Social Security Administration," after "Agency,".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.204 [Amended]

2. Section 44.204 is amended at the end of paragraph (b) by removing "See also 44.205."

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219–1 [Amended]

3. Section 52.219–1 is amended by revising the date of the provision to read "(FEB 1998)", and in the parentheticals of paragraphs (b)(2) and (b)(3) by removing "block (b)(1) of this section" and adding "paragraph (b)(1) of this provision".

[FR Doc. 98–4307 Filed 2–20–98; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 97–04 which amends the FAR. The rules marked with an asterisk (*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97–04 which precedes this document. This document may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–4755. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–04

Item	Subject	FAR case	Analyst
I	Use of Data Universal Numbering System as the Primary Contractor Identification	95–307	Moss.

LIST OF RULES IN FAC 97–04—Continued

Item	Subject	FAR case	Analyst
II *	Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements	92–054B	Linfield.
III	Review of Procurement Integrity Clauses	97–601	Linfield.
IV	Certificate of Competency	96–002	Moss.
V	Applicability of Cost Accounting Standards (CAS) Coverage	97–020	Nelson.
VI	OMB Circular No. A–133	97–029	Olson.
VII	SIC Code and Size Standard Appeals	97–026	Moss.
VIII	Small Business Competitiveness Demonstration Program	97–305	Moss.
IX	Special Disabled and Vietnam Era Veterans	95–602	O'Neill.
X	Treatment of Caribbean Basin Country End Products	97–039	Linfield.
XI	Administrative Changes to Cost Accounting Standards (CAS) Applicability	97–025	Nelson.
XII	Changes in Contract Administration and Audit Cognizance	95–022	Klein.
XIII	Limitation on Allowability of Compensation for Certain Contractor Personnel (Interim)	97–303	Nelson.
XIV	Transfer of Assets Following a Business Combination	96–006	Nelson.
XV	Modular Contracting	96–605	Nelson.

Item I—Use of Data Universal Numbering System as the Primary Contractor Identification (FAR Case 95–307)

This final rule amends FAR Subpart 4.6, Contract Reporting, and 52.212–1, Instructions to Offerors—Commercial Items; and adds a new solicitation provision at 52.204–6, Data Universal Numbering System (DUNS) Number; to replace the Contractor Establishment Code (CEC) with the Data Universal Numbering System (DUNS) number as the means of identifying contractors in the Federal Procurement Data System (FPDS). It reflects Dun and Bradstreet procedures for offerors located overseas.

Item II—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements (FAR Case 92–054B)

The interim rule published as Item V of FAC 90–46 is revised and finalized. The rule implements Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements." The final rule differs from the interim rule in that it amends FAR 23.1004 and 52.223–5 to clarify the obligations of Federal facilities to comply with the reporting and emergency planning requirements of the Pollution Prevention Act of 1990 and the Emergency Planning and Community Right-to-Know Act of 1986.

Item III—Review of Procurement Integrity Clauses (FAR Case 97–601)

This final rule amends FAR Parts 4 and 52 to revise the application of procurement integrity requirements to contracts for commercial items. The rule amends (1) 4.803 to remove an obsolete requirement for maintenance of a record of persons having access to proprietary or source selection information, (2) the clause at 52.212–4 to add the procurement integrity provisions of 41 U.S.C. 423 to the list of laws applicable to contracts for commercial items, and (3) the clause at 52.212–5 to remove 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, from the list of FAR clauses required to implement provisions of law or Executive orders. As amended by the Clinger-Cohen Act of 1996, 41 U.S.C. 423 no longer requires that a contract clause specify administrative remedies for procurement integrity violations.

Item IV—Certificate of Competency (FAR Case 96–002)

The interim rule published as Item IX of FAC 97–01 is converted to a final rule with a minor change at 19.302(d). The rule implements revisions made to the Small Business Administration's procurement assistance programs contained in 13 CFR Part 125.

Item V—Applicability of Cost Accounting Standards (CAS) Coverage (FAR Case 97–020)

This final rule amends FAR Parts 12 and 52 to exempt contracts and subcontracts for the acquisition of commercial items from Cost Accounting Standards requirements when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred).

Item VI—OMB Circular No. A–133 (FAR Case 97–029)

This final rule amends FAR 15.209 and the associated clause at 52.215–2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A–133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations," and now addresses audits of State and local governments as well as audits of institutions of higher learning and other nonprofit organizations.

Item VII—SIC Code and Size Standard Appeals (FAR Case 97–026)

This final rule amends FAR Subpart 19.3 to conform to the Small Business Administration regulations at 13 CFR 121 and 134 pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's standard industrial classification code designation and related small business size standard.

Item VIII—Small Business Competitiveness Demonstration Program (FAR Case 97–305)

This final rule amends FAR Subpart 19.10 to eliminate the termination date of the Small Business Competitiveness Demonstration Program, in accordance with Section 401 of the Small Business Reauthorization Act of 1997 (Public Law 105–135).

Item IX—Special Disabled and Vietnam Era Veterans (FAR Case 95–602)

This final rule amends FAR Subpart 22.13 and the clauses at 52.212–5, 52.222–35, and 52.222–37 to implement revised Department of Labor regulations regarding affirmative action for disabled veterans and veterans of the Vietnam era.

Item X—Treatment of Caribbean Basin Country End Products (FAR Case 97–039)

This final rule revises FAR 25.402(b) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. The United States Trade Representative has directed that such treatment continue through September 30, 1998.

Item XI—Administrative Changes to Cost Accounting Standards (CAS) Applicability (FAR Case 97–025)

This final rule amends FAR 30.101 and the clauses at 52.230–1 and 52.230–5 to conform to changes made to the Cost Accounting Standards (CAS) Board rules and regulations (FAR Appendix), pertaining to the applicability of CAS to negotiated contracts and subcontracts.

Item XII—Changes in Contract Administration and Audit Cognizance (FAR Case 95–022)

This final rule amends FAR Parts 31, 32, 42, 46, 47, and 52 to add policies and procedures for assigning and performing contract audit services, and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect cost rates.

Item XIII—Limitation on Allowability of Compensation for Certain Contractor Personnel (FAR Case 97–303)

This interim rule revises FAR 31.205–6(p) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Section 808 limits the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy.

Item XIV—Transfer of Assets Following a Business Combination (FAR Case 96–006)

This final rule revises FAR 31.205–10(a)(5) and 31.205–52 to conform to changes made to the Cost Accounting Standards regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations.

Item XV—Modular Contracting (FAR Case 96–605)

This final rule amends FAR Part 39 to implement Section 5202 of the Information Technology Management Reform Act of 1996 (Public Law 104–106). Section 5202 encourages maximum practicable use of modular contracting for acquisition of major systems of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–4308 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Monday
February 23, 1998

Part III

Department of Education

Office of Postsecondary Education; State Student Incentive Grant Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.069]

Office of Postsecondary Education; State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of the Closing Date for Receipt of State Applications for Fiscal Year 1998.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 1998 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides grants to students with substantial financial need. The SSIG Program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

A State that wishes to receive SSIG funds for this fiscal year must have an agreement with the Secretary as provided under section 1203(a) of the Higher Education Act of 1965, as amended (HEA). The State must submit an application through the State agency that administered its SSIG Program as of July 1, 1985, unless the Governor has subsequently designated, and the Secretary has approved, a different State agency. (20 U.S.C. 1070c–2(a).)

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau. Authority for this program is contained in sections 415A through 415E of the HEA. (20 U.S.C. 1070c–1070c–4)

Closing Date for Transmittal of Applications: An application for fiscal year 1998 SSIG funds must be mailed or hand-delivered by March 31, 1998.

Application Form: The required application form for receiving SSIG funds will be mailed to officials of the appropriate State agency in each State or territory at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants only submit information that is requested.

Applications Delivered by Mail: An application sent by mail must be addressed to: Mr. Harold McCullough, Acting Chief, Grants Branch, Room 3045, ROB–3, U.S. Department of Education, Student Financial Assistance Programs, 600 Independence Avenue, S.W., Washington, D.C. 20202–5447.

The Secretary will accept the following proof of mailing: (1) a legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. The Department of Education encourages applicants to use certified or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 1998 funding.

Applications Delivered by Hand: An application that is hand-delivered must be taken to Mr. Harold McCullough, U.S. Department of Education, Student Financial Assistance Programs, 7th and D Streets, S.W., Room 3045, General Service Administration Regional Office Building #3, Washington, D.C. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Section 415C(a) of the HEA requires that an annual application be submitted for a State or territory to receive SSIG funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds. In fiscal year 1997, 48 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Island (Palau), and the Commonwealth of the Northern Mariana Islands received funds under the SSIG Program.

Applicable Regulations: The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations in 34 CFR part 692.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement), and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(3) The regulations in 34 CFR part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in 34 CFR part 668.

For Further Information: For further information contact Mr. Mike Oliver, Grants Branch, U.S. Department of Education, Student Financial Assistance Programs, Washington, D.C. 20202–5447; telephone (202) 708–8242. 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 alternate 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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Anyone may also view these documents in text copy only on an

electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register.**

(Program Authority: 20 U.S.C. 1070c–1070c–4)

Dated: February 12, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–4384 Filed 2–20–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
February 23, 1998

Part IV

Environmental Protection Agency

40 CFR Part 156

Fiammability Labeiing Requirements for Total Reiease Fogger Pesticides; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[OPP–36189; FRL–5748–7]

RIN 2070–AC60

Flammability Labeling Requirements for Total Release Fogger Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This rule requires specific precautionary labeling relating to the flammability of total release fogger pesticides. EPA has found that, as currently labeled, total release foggers pose an unreasonable risk to property and pesticide users from fires and explosions that can be caused by a build up of extremely flammable propellants. EPA expects that the additional flammability label warnings required by this rule will reduce the potential for fires and explosions by alerting consumers to the dangers of total release foggers. The required labeling will also provide specific directions for proper use of these products with minimal costs to industry or consumers. Although EPA issued a proposed rule and received public comments in 1994, this action includes some labeling requirements that differ from those discussed in the proposal. EPA is therefore issuing this action as a direct final rule in order to provide an opportunity for affected entities to submit adverse comments on the new labeling requirements. If EPA receives any adverse comments on the addition of these labeling requirements for pesticides within 30 days from the date of this final rule, EPA will withdraw that paragraph of the rule to which adverse comments pertain. At that point, EPA will issue a proposed rule addressing this issue and will provide a 30–day period for public comment. If no adverse comments are received, the rule will become effective on the date specified.

DATES: This rule will become effective on April 24, 1998. Comments must be received by March 25, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VIII. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, Labeling Team, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington VA, 703–308–9071, e-mail: downing.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Category	Examples of Regulated Entities
Industry	Persons who sell and distribute total release fogger products.

This table is not exhaustive, but is a guide to the entities EPA believes are regulated by this action. Read carefully the applicability criteria in § 156.10(h)(2)(iii)(C) of the regulatory text to decide whether this rule applies to you.

II. Background

A. Authority

This amendment to the labeling requirements for pesticides and devices (40 CFR 156.10) is issued under the authority of sections 3, 6, 12, and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. 136 through 136y. FIFRA section 25(a) authorizes the Administrator of EPA to prescribe regulations to carry out the provisions of FIFRA. The statutory standard that is the basis for Agency regulation of pesticide labeling is contained in section 2(q) of FIFRA, which defines a "misbranded" pesticide and enumerates specific labeling deficiencies that constitute misbranding. EPA's labeling regulations interpret and elaborate upon the statutory standard.

Under FIFRA section 3(c)(5), the labeling of the pesticide must comply with the requirements of FIFRA. Sections 12(a)(1)(E) and (F) of FIFRA provide that it is unlawful to distribute or sell a pesticide or device that is misbranded. Under FIFRA section 2(q), a pesticide may be considered misbranded in a number of circumstances. Sections 2(q)(1)(E) through (G) provide part of the basis for EPA's authority to impose label restrictions to protect health and the environment. Specifically, sections 2(q)(1)(F) and (G) provide that a pesticide is misbranded if its labeling does not contain directions for use or if the label does not contain a warning or caution statement adequate to protect health and the environment. Under FIFRA section 2(x), the term "protect health and the environment" means protect against any unreasonable adverse effects on the environment. FIFRA section 2(bb) defines the term "unreasonable adverse effects on the environment" to include any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide. With this final rule, EPA is giving notice of its determination that total release fogger pesticides that are not labeled in accordance with the directions for use and warning statements required by this rule will be considered misbranded and subject to possible enforcement action.

Each provision described above is designed to prevent the sale or distribution of pesticides that, due to inadequate labeling, might cause unreasonable adverse effects to the environment.

B. Proposed Rule

EPA issued in the **Federal Register** of April 15, 1994 (59 FR 18058) (FRL–4186–4), a proposal to require additional precautionary labeling relating to the flammability of total release fogger pesticides. From the review of the fire/explosion incidents involving total release foggers, EPA found that foggers as currently labeled present a risk of unreasonable adverse effects from fires and/or explosions caused by a build up of extremely

flammable propellants. EPA concluded that this risk is not adequately addressed in current labeling of total release foggers. To mitigate this risk, EPA proposed specific label requirements including physical and chemical hazards warning statements, graphic symbols, and specific directions for total release foggers, which if complied with, would be adequate to human health and the environment. Comments about the scope of the proposed rule were also solicited.

Because comments received in response to the proposal have caused the Agency to include in this final rule certain requirements which were not discussed in the proposal (see discussion in Unit III.B., of this preamble), EPA is issuing this action as a direct final rule in order to provide an opportunity for affected entities to submit adverse comments on the new labeling requirements.

C. Hazards Caused by Total Release Foggers

For several years EPA has received reports of incidents of fires and explosions involving total release foggers. For instance, the New York City Fire Department (NYCFD) reported 40 incidents of fires or explosions (28% resulting in personal injuries) reported to be caused by total release foggers over a 12-year period. Fifteen of the 40 reported incidents occurred in 1990 and 1991 alone. In 32 of those 40 documented incidents, the specific total release fogger product involved was identified. In its proposal, the Agency identified many incidents, and solicited for additional incidents involving foggers. However, no additional incidents were submitted in the comments, but the Agency did receive reports of several incidents connected with use of foggers from various other locations around the country from states and media articles which revealed extensive property damage. These reports are in the public information docket for this rule.

Fire experts have indicated to the Agency that the actual number of such incidents occurring around the country is much higher. Due to the lack of a nationwide reporting system that could capture these type of fire incidents, EPA believes the reports it has received are only the "tip of the iceberg"; annually, there are many more such incidents occurring for which EPA does not receive reports.

III. Comments Received on the Proposed Rule

Twenty-two comments from registrants, trade associations, public interest groups, and others were received on the proposed rule. Most of the comments generally agreed with the need for label improvement for total release foggers. The significant comments are presented below with EPA's response to the comment. A detailed response to comments is available in the public record.

A. Graphic Symbols

EPA proposed the use of graphic symbols (one symbol depicting fire and one symbol representing explosive potential) to alert users of the potential dangers of misuse of total release foggers. Six commenters expressed concern with the use of graphic symbols or they were definitely opposed to the use of graphic symbols. Their biggest concerns were that the proposed symbols would be confusing, and could unduly alarm consumers or that consumers might "misunderstand or misinterpret" the meaning of the symbols. One commenter stated, "We have a strong concern that users will not understand the graphic symbols. For example, the bursting symbol may actually portray to a person that the product is meant to burst to disperse the product properly during usage when such, of course, is not the case. On the other hand, the symbol may be interpreted by others to mean that it presents far more of a danger than actually exists. Unlike an industrial worker audience, consumers are not generally educated as to the meaning of symbols."

As an alternative, one of the six commenters suggested using the fire symbol, but not the proposed explosion (bursting) symbol. One of the commenters supporting the use of symbols encouraged the use of the internationally accepted graphic symbol for fire.

The Agency has decided to retain the use of the fire symbol, but to eliminate the proposed explosion symbol. The Agency believes the fire symbol is widely recognized and is necessary to capture the pesticide user's attention to alert the user to the potential hazards of these products. EPA's fire symbol is similar to many other fire symbols used by other agencies for many years. The U.S. Department of Transportation, the European Community, and Canada use a fire symbol that incorporates a fire as a symbol of flammability. Because there are slight variations in the presentation of the fire symbol among various authorities, and to allow maximum flexibility, EPA has decided to allow use of an "equivalent" fire symbol as an alternative to the one in the proposed rule. Since a fire graphic is widely understood by the public, EPA believes that slight variations among existing symbols will not reduce the value of the information conveyed by the symbol. On the other hand, the Agency agreed with several commenters that the explosion symbol on total release foggers could be misunderstood or misinterpreted or that it might not be effective. Therefore the proposed explosion symbol was omitted from the final rule.

B. Number of Foggers to be Used and Pilot Lights

EPA proposed to limit the number of foggers to be used. By limiting the use to one fogger per room and eliminating all ignition sources, the risks of fire and/or explosions can be substantially reduced, if not eliminated. From an evaluation of the incidents, the Agency recognizes that fires/explosions are generally due to excessively high concentrations of highly flammable gases (propellent in the foggers) in the area being fogged. This is caused by too many foggers being used with the presence of an ignition source. Furthermore, the Agency has learned from fire officials that the elimination of ignition sources is very important to safe use of foggers containing highly flammable propellants. Several fire officials EPA talked with acknowledged the risk of consumers extinguishing and relighting their pilot lights. However, they agreed that those risks were far outweighed by the risks associated with activation of foggers with pilot lights unextinguished. A record of these conversations is available in the public information docket. Therefore, EPA has concluded that limiting the number of foggers to be used and eliminating all ignition sources are paramount to continued safe use of total release foggers. No commenter disagreed with the proposal to eliminate all ignition sources before using a total release fogger. In fact, two commenters recommended the label instruct users to extinguish pilot lights and other ignition sources. In earlier comments on a previous notice dated February 19, 1991 (56 FR 6856), a commenter had raised the issue of the hazard of instructing fogger users (consumers) to turn off their gas pilot lights; the danger of consumers extinguishing and relighting their own pilot lights was emphasized.

After consultation with fire safety professionals and gas industry representatives, the Agency has decided to instruct users to turn off all ignition sources such as pilot lights, other open flames and running electrical appliances. One fire professional suggested referring fogger users to their

gas utility or management company for assistance in extinguishing and relighting pilot lights. The Agency believes the risks of consumers improperly extinguishing and relighting pilot lights are outweighed by the benefits of eliminating all ignition sources before total release foggers are used; and that instructing consumers to contact their gas utility or management company for assistance will further reduce any risks.

This approach of limiting the number of foggers used and extinguishing pilot lights will also eliminate the issues from the proposed rule of the six-foot "buffer zone" and the square footage limitation. As was pointed out by one commenter, the flammability of total release fogger use is not a function of distance from an ignition source, but a function of the concentration of the highly flammable (propellant) gas. By eliminating sources of ignition altogether, risks can be reduced without complex decisions by consumers about distances between foggers and ignition sources. By simplifying the label instructions, EPA believes consumers are more likely to be able to comply.

One commenter, S.C. Johnson Son, Inc. conducted a consumer-based label testing and development program to determine the most effective method of improving consumer comprehension regarding the proper use of total release foggers. This study included qualitative research to decide which fogger labeling best communicates proper use and safety information and evaluated consumers' perceptions of room size. Quantitative research, also a part of the study program, tested various fogger labels, including a fogger label amended according to the proposed rule. An "optimized label" developed from the quantitative research was also tested, which included the simpler instructions "Do not use more than one fogger in a room." and "Extinguish All Flames and Pilot Lights."

The results of the S.C. Johnson study suggested limiting the user to only one fogger per room, as is shown in the final rule language. The study showed that consumers have difficulty accurately estimating room size. Less than 10% of consumers could accurately estimate cubic feet. Therefore, the approach ("DO NOT use more than one fogger per ____ square feet.") of the proposed rule was judged by EPA not to be very effective after all. However, limiting the use to one fogger per room to manage the concentration of highly flammable gases in the area to be fogged was judged to be the most effective. Furthermore, EPA has determined that a limit of one fogger per room will be adequately protective. An added safety factor is the limit of "Do not use in a room 5 ft. x 5 ft. or smaller. . .", as was shown on the "optimized label" used in the S.C. Johnson study. This limit would help a fogger user avoid using too many foggers in a dwelling with many small rooms. This limit of a room 5 ft. x 5 ft. (the typical "walk-in" closet or small bathroom) or smaller was judged to be appropriate.

The Agency has attempted to allow efficacious, but not excessive use, while creating a restriction that can be easily understood and carried out by the typical fogger user. The circumstances in which foggers can be used vary widely. Room size, natural ventilation, ambient temperatures, humidity, presence and proximity of ignition sources, etc. are different from structure to structure, yet each factor can have an impact on risk. While the one fogger per room approach may allow for more concentrated use than that permitted by the language of the proposed rule, it is still within a safe level of use considering the fact that the ignition sources will be eliminated as well. EPA also believes that the efficacy of foggers will be unaffected by this requirement. Users are far more likely to understand and successfully follow the one fogger per room approach than would have been the case from the formula approach of the proposed rule ("DO NOT use more than one fogger per ____ square feet."). Based on the above, EPA has determined that the "one fogger per room" label language achieves equivalent risk mitigation as the language of the proposed rule and has adopted this language and included it in the final rule.

C. Flammability Terminology

EPA proposed the use of the term "extremely flammable" to describe the hazard of the hydrocarbon propellant. Several commenters opposed the use of this term, stating that it would conflict with required flammability labeling already required in the Physical and Chemical Hazards statement for the product as a whole. EPA currently requires that a pressurized product bear a hazard statement of either "Flammable" or "Extremely Flammable" based on flash point and flame extension test results. The commenter's point is that a fogger that bears the statement "Extremely Flammable" under the proposal because it contains a flammable propellant might, based upon flammability characteristics of the product as a whole, bear only the term "Flammable."

EPA acknowledges that sometimes this could be true. However, EPA also believes it likely that total release foggers containing significant levels of hydrocarbon propellant requiring "Extremely Flammable" labeling under this rule would also require "Extremely Flammable" labeling under the current regulations. The "Extremely Flammable" term is required only when the propellant has a flash point of <20 °F. The same flash point triggers the flammability hazard warning for the product as a whole. Thus, a product would have to have a significant amount of non-propellant ingredients with flash points above 20 °F to compensate for the extremely flammable nature of the propellant. Even if this were the case, some number of products would likely fail the flame extension test for pressurized products (flashback to the valve opening) and would still require the "Extremely Flammable" statement.

Because of the potential for confusion with some fogger products, EPA has decided to require the term "Highly Flammable" instead of "Extremely Flammable." The Agency believes that most consumers would not distinguish between the two terms and believes the same message would be conveyed to the fogger user. EPA recognizes that it is very important that the user know the product contains highly or very flammable ingredients. This terminology, in addition to the fire symbol, is extremely important in communicating to the user the hazards of total release foggers containing extremely flammable propellants.

D. Format

EPA did not propose specific formatting or presentation criteria for the required label language. However, several commenters suggested setting off the warning language contained in the final rule with boxes, contrasting colors, and pictograms on the total release fogger labels. Many of these formatting ideas were a part of the S.C. Johnson consumer study mentioned earlier. EPA is not prescribing such formatting in this rule. However, registrants are encouraged to use formatting appropriate for the hazard statement that will highlight the statement for consumers.

E. General Comments

EPA solicited comments concerning the scope of the proposed rule, i.e., for total release foggers only. Most comments concurred with EPA's decision to limit labeling changes to the total release foggers. Two comments indicated that regulatory changes should be extended to aerosol pesticide products overall. However, no additional data were submitted

indicating unreasonable adverse effects from other aerosol pesticide products, so EPA has decided to limit the scope of this rule to total release foggers as proposed.

IV. Provisions of the Final Rule

This final rule amends 40 CFR 156.10 to add required label language to the "Directions for Use" and the "Physical and Chemical Hazards" warning statements. This new language warns fogger users about the hazard of a concentration of gases that could cause a fire or explosion. These warnings limit the number of foggers that can be released within the dwelling. The precautionary label language reads as outlined in Units IV.A. and IV.B. of this preamble.

A. Labeling Changes to the "Physical and Chemical Hazards" Section

This product contains a highly flammable ingredient. It may cause a fire or explosion if not used properly. Follow the "Directions for Use" on this label very carefully.

This wording is slightly different from that which was contained in the proposed rule. In the final rule, the Agency decided to alter the wording to improve communication. In addition to the above label language, EPA is requiring on all total release foggers the use of a standard graphic symbol representing fire.

B. Labeling Changes to the "Directions for Use" Section

DO NOT use more than one fogger per room. DO NOT use in small, enclosed spaces such as closets, cabinets, or under counters or tables. Do not use in a room 5 ft. x 5 ft. or smaller; instead, allow fog to enter from other rooms. Turn off ALL ignition sources such as pilot lights (shut off gas valves), other open flames, or running electrical appliances that cycle off and on (i.e., refrigerators, thermostats, etc.). Call your gas utility or management company if you need assistance with your pilot lights.

V. Risks/Benefits of this Rule

As discussed in the proposed rule, the Agency recognizes the benefits of total release foggers and has taken into consideration these benefits regarding the Agency's assessment of the risks of total release foggers. The Agency has determined that these label changes will be adequate to reduce the risks from total release foggers. EPA believes fewer fires/explosions with loss of life or property will result from the better labeling of these products. Further, these labeling requirements do not reduce the benefits of these products, but provide for safer use.

Overall, as was concluded in the proposed rule, EPA believes these label changes are needed and that the benefits of such changes outweigh the risks. The modification to the required label language mentioned above does not change in any way the Agency's risk-benefit determination. Labeling for improved hazard warnings of foggers does not affect the sale or use of such products.

VI. Implementation

Under 40 CFR 152.130, EPA may prescribe timeframes for the implementation of Agency directed label changes. This unit describes how EPA will implement the changes in this rule. EPA will provide detailed instructions directly to registrants. After the effective date of the final rule, applications for new registrations of total release foggers will not be approved unless they comply with these labeling requirements. Further, no total release fogger products containing an extremely flammable propellant may be distributed or sold by registrants after October 1, 1999, unless the product bears the amended label language required by this rule. Thereafter, EPA may initiate cancellation proceedings under FIFRA section 6, or an enforcement action for misbranding under FIFRA section 12(a)(1)(E), for any total release fogger product not in compliance with the requirements of FIFRA and this rule.

VII. Statutory Review

A draft of this rule was provided to the Secretary of Agriculture (USDA), the Committee on Agriculture, Nutrition, and Forestry of the United States Senate, and to the Committee on Agriculture, of the U.S. House of Representatives. The FIFRA Scientific Advisory Panel waived its review of this rule.

VIII. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number "OPP–36189" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–36189." Electronic comments on this final rule may be filed online at many Federal Depository Libraries.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB).

According to the Economic Assessment conducted by the Agency, the costs per product of this rule were between $8,000 and $13,000. The total costs for the industry would be between $1.87 million and $3 million (net present value). A copy of the Economic Assessment is available in the public docket for this rule.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action does not impact any small entities. Information relating to this determination is provided upon request to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking.

The label changes for aerosol pesticides, known as total release foggers, will not impose a significant adverse economic impact on a substantial number of small entities. The estimated cost impacts associated with the label changes are less than 1% (0.07%) of the annual revenues for small businesses. One of the main benefits of the rule is to reduce the number of accidents that occur from the misuse of total release foggers.

EPA will allow all registrants almost 2 years to incorporate the label changes. This compliance time will allow all registrants, including those that are small businesses, to revise labels in the

normal course of business, thus minimizing the economic impact. Therefore, no regulatory flexibility analysis was prepared. However, the economic assessment for this rule is available in the public docket for this rule.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. In accordance with the procedures at 5 CFR 1320.11, OMB has assigned OMB control number 2070–0060 (EPA ICR No. 277.10) to this activity. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

Public reporting burden for this collection of information is estimated to average 0.85 hours per product, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send any comments on the burden estimates and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques within 30 days to EPA at the address provided above, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act and Executive Order 12875

Under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), this action does not result in the expenditure of $100 million or more by any State, local, or tribal governments, or by anyone in the private sector, and will not result in any "unfunded mandates" as defined by Title II. The costs associated with this action are described in the Executive Order 12866 unit above.

Under Executive Order 12875 (58 FR 58093, October 28, 1993), EPA must consult with representatives of affected State, local, and tribal governments before promulgating a discretionary regulation containing an unfunded mandate. This action does not contain any mandates on States, localities, or tribes and is therefore not subject to the requirements of Executive Order 12875.

E. 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, 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 United States prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 156

Environmental protection, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 4, 1998.

Carol M. Browner

Administrator.

Therefore, 40 CFR part 156 is amended as follows:

PART 156—[AMENDED]

1. The authority citation for part 156 continues to read as follows:

Authority: 7 U.S.C. 136 - 136y.

2. In § 156.10, by revising paragraph (h)(2)(iii) and adding paragraph (i)(2)(x)(D) to read as follows:

§ 156.10 Labeling requirements.

* * * * *

(h) * * *

(2) * * *

(iii) *Physical or chemical hazards.* (A) Warning statements on the flammability or explosive characteristics of all pesticides are required as set out in Table 1 and Table 2 of this paragraph as follows:

Table 1.—Pressurized Containers

Flash Point	Required Text
Flash point at or below 20 °F; if there is a flashback at any valve opening	Extremely flammable. Contents under pressure. Keep away from fire, sparks, and heated surfaces. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting
Flash point above 20 °F and not over 80 °F or if the flame extension is more than 18 inches long at a distance of 6 inches from the flame	Flammable. Contents under pressure. Keep away from heat, sparks, and open flame. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting
All other pressurized containers	Contents under pressure. Do not use or store near heat or open flame. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting.

Table 2.—Nonpressurized Containers

Flash Point	Required Text
At or below 20 °F	Extremely flammable. Keep away from fire, sparks, and heated surfaces.
Above 20 °F and not over 80 °F	Flammable. Keep away from heat and open flame.

Table 2.—Nonpressurized Containers—Continued

Flash Point	Required Text
Above 80 °F and not over 150 °F	Do not use or store near heat or open flame.

(B) A "total release fogger" is defined as a pesticide product in a pressurized container designed to automatically release the total contents in one operation, for the purpose of creating a permeating fog within a confined space to deliver the pesticide throughout the space.

(C)*(1)* If the pesticide product is a total release fogger containing a propellant with a flash point at or below 20 °F, then the following special instructions must be added to the "Physical and Chemical Hazards" warning statement:

This product contains a highly flammable ingredient. It may cause a fire or explosion if not used properly. Follow the "Directions for Use" on this label very carefully.

(2) A graphic symbol depicting fire such as illustrated in this paragraph or an equivalent symbol, must be displayed along with the required language adjoining the "Physical and Chemical Hazards" warning statement. The graphic symbol must be no smaller than twice the size of the first character of the human hazard signal word.

Highly Flammable Ingredient
Ingrediente Altamente Inflamable

(i) * * *
(2) * * *
(x) * * *

(D) For total release foggers as defined in paragraph (h)(2)(iii)(B) of this section, the following statements must be included in the "Directions for Use":

DO NOT use more than one fogger per room. DO NOT use in small, enclosed spaces such as closets, cabinets, or under counters or tables. Do not use in a room 5 ft. x 5 ft. or smaller; instead, allow fog to enter from other rooms. Turn off ALL ignition sources such as pilot lights (shut off gas valves), other open flames, or running electrical appliances that cycle off and on (i.e., refrigerators, thermostats, etc.). Call your gas utility or management company if you need assistance with your pilot lights."

* * * * *

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

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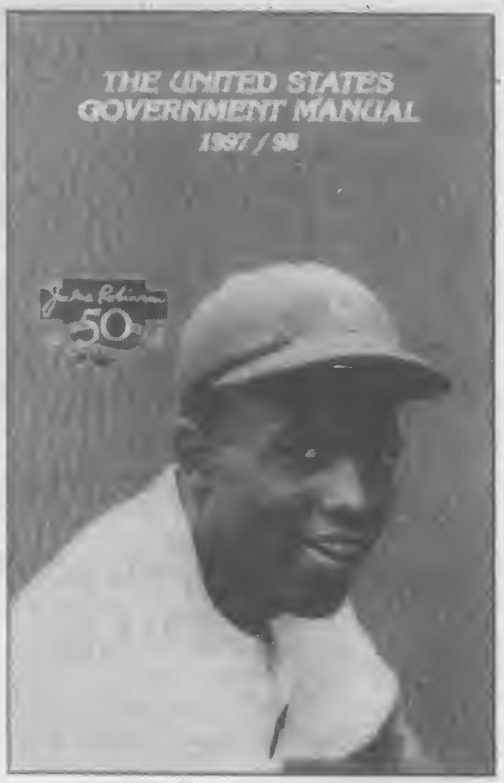

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